

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

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

CASE NOS: 15855

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 LLC,
EDDY COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS
COMMISSIONER HEARING
Agenda Item 4
February 25, 2021
Santa Fe, New Mexico

BEFORE: ADRIENNE SANDOVAL, CHAIRWOMAN
GREG BLOOM, COMMISSIONER
CHRIS MOANDER, ESQ.

This matter came on for hearing before the New Mexico Oil Conservation Commission on Thursday, February 25, 2021, via Webex Virtual Platform, hosted by New Mexico Energy, Minerals, and Natural Resources Department.

Reported by: Irene Delgado, NMCCR 253
PAUL BACA PROFESSIONAL COURT REPORTERS
500 Fourth Street, NW, Suite 105
Albuquerque, NM 87102
505-843-9241

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APPEARANCES

FOR THE APPLICANT:

MICHAEL FELDEWERT
HOLLAND & HART
110 North Guadalupe, Suite 1
Santa Fe, NM 87501
505-954-7286

FOR ALPHA SWD OPERATING LLC:

DANA HARDY
HINKLE SHANOR LLP
P.O. Box 0268
Santa Fe, NM 87504
505-982-4554

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1 CHAIRWOMAN SANDOVAL: Next item on the agenda is
2 Case Number 15855. It's a status conference in the
3 application of Delaware Energy LLC to revoke the injection
4 authority granted under SWD 1680 for the Alpha SWD Number 1
5 well operated by Alpha SWD Operating Company out of Eddy
6 County, New Mexico. Counselors, are you on?

7 MR. FELDEWERT: Good morning, Madam Chair,
8 members of the Commission, Michael Feldewert of the Santa Fe
9 office of Holland & Hart appearing on behalf of Delaware
10 Energy, LLC.

11 CHAIRWOMAN SANDOVAL: Good morning.

12 MS. HARDY: Good morning, Madam Chair,
13 Commissioners, Dana Hardy with the Santa Fe office of Hinkle
14 Shanor on behalf of Alpha SWD Operating LLC.

15 CHAIRWOMAN SANDOVAL: You are coming in a little
16 quiet for me. Can everybody else hear Ms. Hardy?

17 COMMISSIONER BLOOM: She is a little quiet as
18 well, Madam Chair.

19 MS. HARDY: Let me turn up my volume. My headset
20 wasn't working.

21 CHAIRWOMAN SANDOVAL: When you got a little
22 closer, it got better.

23 COMMISSIONER BLOOM: You sound good now.

24 MS. HARDY: Great. Thank you.

25 CHAIRWOMAN SANDOVAL: Okay. All right.

1 Counselors, would you, starting with Mr. Feldewert, like to
2 make any brief statements on behalf of your clients?

3 MR. FELDEWERT: Madam Chair, members of the
4 Commission, this case has a tortuous history that started
5 back in October of 2016, and, as you know, resulted in a
6 decision from the First Judicial District Court here in
7 Santa Fe that resulted in the remand or essentially
8 remanding the case back to the Commission to address what is
9 Alpha SWD's de novo appeal of the Division order that
10 revoked Alpha's injection authority.

11 So we have a Division order in place now that
12 revoked Alpha's injection authority. They have filed a de
13 novo appeal. That is where things get a little haywire with
14 respect to the Commission proceedings resulting in the
15 district court decision that it is now back before the
16 Commission under Alpha's de novo appeal of the Division
17 order R-14484-A.

18 So since it's Ms. Hardy's client that has the de
19 novo appeal, I'm going to punt to her because I'm not sure
20 what they want to do and where things stand, necessarily
21 with the parties. I know there's been some discussions
22 between the parties. Those have been going on for a long
23 time.

24 I'm not sure -- I can't -- I really don't have
25 any information on whether they are productive or not. So

1 I'm going to leave it to Ms. Hardy to at least give the
2 Commission an idea of where she thinks it stands and what
3 they want to do with their de novo appeal.

4 CHAIRWOMAN SANDOVAL: Thank you, Mr. Feldewert.
5 Ms. Hardy, would you like to address the Commission?

6 MS. HARDY: Yes, Madam Chair. And I just wanted
7 to briefly mention that I'm sure the Commission is aware
8 that this case has been continued numerous times, and the
9 reason for the continuances has been the parties were
10 negotiating to reach resolution. I am opt -- well, maybe I
11 shouldn't be optimistic -- I'm hopeful they may still be
12 able to reach a resolution.

13 At this point, I think since the case has been
14 remanded and is pending back before the Commission, the
15 status really would be that Alpha had filed a motion to
16 dismiss Delaware's applications for a lack of standing, and
17 that was filed with the Commission in November of 2018, and
18 that motion was never ruled on because the Commission
19 subsequently determined that the Division lacked
20 jurisdiction and that ultimately resulted in the district
21 court.

22 So my thinking is that the best way to proceed is
23 maybe for the Commission to issue a ruling on that motion,
24 and that would then allow the parties to determine -- or
25 Alpha, rather, to determine how to proceed and whether they

1 want to go forward with the de novo hearing.

2 MR. MOANDER: Ms. Hardy, this is Chris Moander.
3 Was there an actual hearing held on that motion, because
4 what I'm trying to figure out is whether the parties want or
5 need a hearing on that motion, or if one was already done,
6 approximately when that was. Because I think that issue
7 predates, obviously, my involvement with the Commission, but
8 I think if I remember, that may even predate the current
9 Chair. So I want to make sure the parties get their proper
10 hearing.

11 MS. HARDY: Right. And it predates me, also,
12 actually with respect to this case. And I reviewed the
13 record. I think the parties discussed the motion, but I
14 don't know that a hearing was actually held, and maybe Mr.
15 Feldewert can answer that question.

16 MR. FELDEWERT: Unfortunately, yes, because I
17 guess I'm the only one who was around at the time this was
18 occurring. If you look at the record, and in fact, I think
19 the district court decision has a pretty good summary of
20 what occurred, it would be helpful, I'm sure, for the
21 Commissioners and perhaps or counsel to review. But
22 essentially what happened is in the -- in October before
23 there was a change in administration, the prior Commission
24 had gotten together, looked at the issues and Alpha wanted
25 to pursue their standing motion, so they said they would

1 have a hearing and have oral argument on the standing motion
2 and they wanted the parties to, at the same time at that
3 hearing, to address the proper remedy for the defect that is
4 undisputed with respect to Alpha's permit.

5 So there was every anticipation back in October
6 of 2019, I guess it was -- actually 2018 -- that there was
7 going to be a hearing on the standing motion, and then the
8 parties would also address the proper remedy to deal with
9 the defect in the issuance of the Alpha permit.

10 That hearing did not happen. And instead there
11 was a change in administration. There was a change in
12 course. The Commission decided to issue a decision that
13 they didn't have jurisdiction. That's what resulted in the
14 decision to the district court, which reversed that, and now
15 we are back to I guess where we would have been in October
16 of 2018.

17 So I think, you know, there is two ways you can
18 go. I think the district court opinion actually is very
19 informative, at least from my perspective, on the issue of
20 standing and what's not disputed here. But the Commission
21 can certainly take a look at the standing issue and then
22 also address how -- what remedies makes the most sense to
23 deal with this defect in the issuance of Alpha's permit --
24 or simply uphold the Division's order that was issued in
25 14484-A.

1 MR. MOANDER: Okay. Thank you, Mr. Feldewert, I
2 appreciate that quick run-down. It sounds like to me that
3 at least -- well, would the parties anticipate a motion
4 hearing on this to be terribly long? I mean, I have looked
5 at the rule and some other things, but really what I'm
6 asking is, do I -- does either party feel strongly that a
7 hearing would be beneficial? Because I'm inclined to think
8 it would be, but I also don't want to hoist that on anybody
9 or have the Commission hoist it on anybody.

10 CHAIRWOMAN SANDOVAL: I might just say that, you
11 know, since I think there's such a long history, I don't
12 think this Commission has that history other than I guess
13 reading through the district court opinion. And in order to
14 make an informed decision, that might be helpful. I'm open
15 to other ideas. But whatever, whatever the path forward, we
16 need to make sure that the Commission has all of the
17 information that's necessary in order to make an informed
18 decision.

19 MS. HARDY: On behalf of Alpha, Madam Chair, I
20 think we would be okay either having a hearing on the motion
21 or not, but whatever would be most helpful for the
22 Commission would be fine.

23 CHAIRWOMAN SANDOVAL: I mean, my inclination
24 would be to have a motion hearing.

25 MR. MOANDER: I think that's a good idea, Madam

1 Chair, that way we can get everything laid out, any new
2 information can be added by the parties, and we can just get
3 the record tidied up and get a supported finding from the
4 Commission.

5 CHAIRWOMAN SANDOVAL: Commissioner Bloom, do you
6 have any thoughts or does that make sense to you?

7 COMMISSIONER BLOOM: That makes sense to me. I
8 would be in support of that. Thank you.

9 CHAIRWOMAN SANDOVAL: Okay. So I guess, I'm not
10 sure what the process would be. Probably work with
11 Commission Clerk Davidson to get on the calendar.

12 MR. FELDEWERT: Madam Chair, the only thing I can
13 add, I think Ms. Hardy would agree with me on this, I don't
14 think the motion hearing would take very long. I think you
15 are looking at an hour or two at the most. I would think,
16 you know, depending upon your questions, but I can't see our
17 oral argument being all that long.

18 MS. HARDY: Madam Chair, we do agree.

19 CHAIRWOMAN SANDOVAL: Okay. That's good to know.
20 All right. Well then on this matter, the parties will work
21 with probably both Mr. Moander and Ms. Davidson to make sure
22 we can get this schedule on the docket in the next coming
23 months.

24 MS. HARDY: Thank you, Madam Chair.

25 CHAIRWOMAN SANDOVAL: Mr. Moander, do we need any

1 sort of formal motion on that?

2 MR. MOANDER: We are scheduling another hearing,
3 so I don't think -- that's not any Commission action, so I
4 think we are okay. We just have to get it scheduled and
5 then the Commission can vote on the particulars.

6 CHAIRWOMAN SANDOVAL: Okay. All right. Great.
7 Thank you, Mr. Feldewert and the parties.

8 MS. HARDY: Thank you.

9 (Status conference concluded.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

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4 REPORTER'S CERTIFICATE

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6 I, IRENE DELGADO, New Mexico Certified Court
7 Reporter, CCR 253, do hereby certify that I reported the
8 foregoing virtual proceedings in stenographic shorthand and
9 that the foregoing pages are a true and correct transcript
10 of those proceedings to the best of my ability.

11 I FURTHER CERTIFY that I am neither employed by
12 nor related to any of the parties or attorneys in this case
13 and that I have no interest in the final disposition of this
14 case.

15 I FURTHER CERTIFY that the Virtual Proceeding was
16 of poor to good quality.

17 Dated this 25th day of February 2021.

18

/s/ Irene Delgado

Irene Delgado, NMCCR 253
License Expires: 12-31-21

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