

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

**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

MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Pursuant to 19.15.4.16.A NMAC, Delaware Energy LLC (“Delaware Energy”) respectfully moves the Oil Conservation Division to issue an order compelling Alpha SWD Operating LLC to produce documents it has acknowledged withholding from production and which are responsive to Delaware Energy’s subpoena issued by the Division on October 23, 2017, attached as Exhibit A. For the reasons stated, the motion should be granted.

1. On October 4, 2017, Kurt Knewitz prepared a self-affirmed statement which was attached as Exhibit F to Alpha’s response in opposition to Delaware Energy’s motion to stay Administrative Order SWD-1680.

2. In it, Mr. Knewitz stated that “Alpha has been prejudiced by the postponement of the drilling of the Alpha SWD Well No. 1, as well as the postponement of the closing on its purchase of acreage that includes the Alpha SWD No. 1 location.” *See* Exhibit F to Alpha’s Resp., 10/4/17, ¶ 8.

3. He also stated that “for the past several months Alpha has been negotiating contracts with operators who are seeking produced water disposal, and is in danger of losing those contracts.” *Id.*

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4. He further stated that “Alpha had a rig scheduled to commence drilling the Alpha SWD Well No. 1 on September 14, 2017[,]” but had to “release the rig because of Delaware’s application and motion to stay.” *Id.* at ¶ 6.

5. To ascertain the extent of the alleged prejudice and to confirm the existence and nature of the contracts and agreements relied on by Alpha to allege prejudice, Delaware Energy requested that the Division issue a subpoena, which in part commands production of the alleged contracts and communications Alpha appears to rely upon to assert prejudice from the relief sought by Delaware Energy's application. *See* Exhibit A.

6. After obtaining an extension of time to produce the responsive documents, Alpha has now objected to each request “to the extent that it seeks the production of documents that are not relevant to the claims asserted by Delaware in its application[.]” *See* Alpha’s Resp. to Subpoena, 10/30/17/, at 1-5, attached as Exhibit B. When counsel inquired whether Alpha has withheld responsive documents pursuant to these objections, Alpha’s counsel responded that “Alpha has not produced documents pertaining to its private, third-party communications, negotiations, and agreements.” *See* Email from G. Larson to M. Feldewert, 10/31/17, attached as Exhibit C.

7. These withheld “private, third-party communications, negotiations, and agreements” are precisely what Mr. Knewitz has apparently referenced in his self-affirmed statement and are therefore highly relevant. Essentially, Alpha has withheld an undisclosed number of contracts, agreements, and communications that (a) Alpha purportedly relies upon to suggest that it will be substantially prejudiced by Delaware’s requested relief, and (b) which relate to and reveal Alpha’s actual intent and readiness to drill and operate the Alpha SWD Well No. 1.

8. Due to a lack of notice and other procedural irregularities, Delaware Energy seeks a revocation of Order SWD-1680 to allow the competing disposal applications to be properly considered by the Division. The documents withheld by Alpha go to the heart of Alpha's alleged claims of prejudice and opposition to this requested relief. Delaware Energy must be permitted an opportunity to review in a timely fashion prior to hearing the "private, third-party communications, negotiations, and agreements" that Mr. Knewitz has referenced and which are clearly responsive to the subpoena.

WHEREFORE, for the reasons stated, Delaware Energy respectfully requests that the Division issue an order compelling Alpha to produce all documents responsive to the subpoena, including, but not limited to, the "private, third-party communications, negotiations, and agreements" Alpha specifically identified as having been withheld.

Respectfully submitted,

HOLLAND & HART LLP

By: 

Michael H. Feldewert

Adam G. Rankin

Jordan L. Kessler

Post Office Box 2208

Santa Fe, New Mexico 87504-2208

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(505) 983-6043 Facsimile

Email: mfeldewert@hollandhart.com

Email: agrarkin@hollandhart.com

Email: jlkessler@hollandhart.com

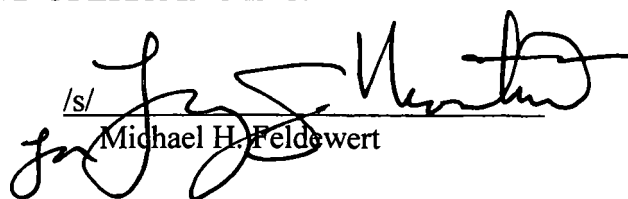
ATTORNEYS FOR DELAWARE ENERGY LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion was filed on the 1st day of November 2017 and that a copy was served via electronic mail on the following parties.

Gary W. Larson
Hinkle Shanor LLP
218 Montezuma
Santa Fe, New Mexico 87501
(505) 982-4554 telephone
glarson@hinklelawfirm.com

ATTORNEY FOR ALPHA SWD OPERATING INC.

/s/ 
for Michael H. Feldewert

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

**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

SUBPOENA

To: Alpha SWD Operating LLC
c/o Hinkle Shanor LLP
Attn: Gary W. Larson
218 Montezuma
Santa Fe, New Mexico 87501
(505) 982-4554 telephone
(505) 982-8623 facsimile
glarson@hinklelawfirm.com

YOU ARE HEREBY COMMANDED pursuant to NMSA 1978, §70-2-8 and Rule 19.15.4.16.A NMAC to produce the following documents at the offices of Holland & Hart LLC, 110 North Guadalupe, Santa Fe, New Mexico, 87501, on or before October 26, 2017:

1. All contracts, letter agreements, emails, communications or other written instruments which involve the drilling of the Alpha SWD Well No. 1 approved in Administrative Order SWD-1680.
2. All contracts, letter agreements, emails, communications or other written instruments which involve Alpha SWD Operating LLC's right to access the surface at the location of its Alpha SWD No. 1 well.
3. All contracts, letter agreements, emails, communications or other written instruments which involve the closing on Alpha SWD Operating LLC's purchase of acreage that includes the Alpha SWD No. 1 well location.



4. All contracts, letter agreements, emails, communications or other written instruments which involve the disposal of produced water through the Alpha SWD No. 1 well.

5. All documents, insurance coverage certificates, or other written instruments, reflecting that Alpha SWD Operating LLC has obtained general liability insurance and/or well control insurance that covers the proposed Alpha SWD No. 1 well.

This subpoena is issued on application of Delaware Energy LLC through its attorney, Michael H. Feldewert of Holland & Hart LLP.

Dated this 23rd day of October, 2017

NEW MEXICO OIL CONSERVATION DIVISION

BY: David P. Coland

Date: 10/23/17

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

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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

ALPHA SWD OPERATING, LLC'S RESPONSE TO SUBPOENA

Alpha SWD Operating, LLC ("Alpha") hereby provides its objections and responses to the document production subpoena issued by the Oil Conservation Division ("the Division") to Delaware Energy, LLC ("Delaware") on October 23, 2017.

OBJECTIONS AND RESPONSES

REQUEST FOR PRODUCTION NO. 1: All contracts, letter agreements, emails, communications or other written instruments which involve the drilling of the Alpha SWD Well No. 1 approved in Administrative Order SWD-1680.

RESPONSE: Alpha objects to this request to the extent that it seeks the production of documents that are not relevant to the substantive claims asserted by Delaware in its application requesting the revocation of the injection authority granted to Alpha under Administrative Order SWD-1680 ("application"), ie., that (i) Alpha and the Division violated 19.15.26.7.A and 19.15.26.8.B(2) NMAC by failing to notify Delaware of the C-108 that Alpha filed on June 12, 2017, and (ii) the Division violated 19.15.26.8.C(2) NMAC by issuing Administrative Order SWD-1680 sixteen days after Alpha submitted its administrative application. Subject to and



without waiving its objection, Alpha is contemporaneously producing responsive documents (Bates nos. ALPHA 0001 – ALPHA 0194).

REQUEST FOR PRODUCTION NO. 2: All contracts, letter agreements, emails, communications or other written instruments which involve Alpha SWD Operating LLC's right to access the surface at the location of its Alpha SWD No. 1 well.

RESPONSE: Alpha objects to this request to the extent that it seeks the production of documents that are not relevant to the substantive claims asserted by Delaware in its application, ie., that (i) Alpha and the Division violated 19.15.26.7.A and 19.15.26.8.B(2) NMAC by failing to notify Delaware of the C-108 that Alpha filed on June 12, 2017, and (ii) the Division violated 19.15.26.8.C(2) NMAC by issuing Administrative Order SWD-1680 sixteen days after Alpha submitted its administrative application. Subject to and without waiving its objection, Alpha is contemporaneously producing responsive documents (Bates nos. ALPHA 0195 – ALPHA 0208 and ALPHA 0231 - ALPHA 0249).

REQUEST FOR PRODUCTION NO. 3: All contracts, letter agreements, emails, communications or other written instruments which involve the closing on Alpha SWD Operating LLC's purchase of acreage that includes the Alpha SWD No. 1 well location.

RESPONSE: Alpha objects to this request to the extent that it seeks the production of documents that are not relevant to the substantive claims asserted by Delaware in its application, ie., that (i) Alpha and/or the Division violated 19.15.26.7.A and 19.15.26.8.B(2) NMAC by failing to notify Delaware of the C-108 that Alpha filed on June 12, 2017, and (ii) the Division violated 19.15.26.8.C(2) NMAC by issuing Administrative Order SWD-1680 sixteen days after Alpha had submitted its administrative application. Subject to and without waiving its objection, Alpha is

producing responsive documents (Bates nos. ALPHA 0195 – ALPHA 0208 and ALPHA 0231 - ALPHA 0249).

REQUEST FOR PRODUCTION NO. 4: All contracts, letter agreements, emails, communications or other written instruments which involve the disposal of produced water through the Alpha SWD No. 1 well.


RESPONSE: Alpha objects to this request to the extent that it seeks the production of documents that are not relevant to the claims asserted by Delaware in its application, ie., that (i) Alpha and/or the Division violated 19.15.26.7.A and 19.15.26.8.B(2) NMAC by failing to notify Delaware of the C-108 that Alpha filed on June 12, 2017, and (ii) the Division violated 19.15.26.8.C(2) NMAC by issuing Administrative Order SWD-1680 sixteen days after Alpha submitted its administrative application. Subject to and without waiving its objection, Alpha is contemporaneously producing responsive documents (Bates nos. ALPHA 0209 – ALPHA 0218).

REQUEST FOR PRODUCTION NO. 5: All documents, insurance coverage certificates, or other written instruments, reflecting that Alpha SWD Operating LLC has obtained general liability insurance and/or well control insurance that covers the proposed Alpha SWD No. 1 well.

RESPONSE: Alpha objects to this request to the extent that it seeks the production of documents that are not relevant to the claims asserted by Delaware in its application, ie., that (i) Alpha and/or the Division violated 19.15.26.7.A and 19.15.26.8.B(2) NMAC by failing to notify Delaware of the C-108 that Alpha filed on June 12, 2017, and (ii) the Division violated 19.15.26.8.C(2) NMAC by issuing Administrative Order SWD-1680 sixteen days after Alpha submitted its administrative application. Subject to and without waiving its objection, Alpha is contemporaneously producing responsive documents (Bates nos. ALPHA 0219 – ALPHA 0230).

Respectfully submitted,

HINKLE SHANOR LLP



Gary W. Larson
P.O. Box 2068
Santa Fe, NM 87504-2068
Phone: (505) 982-4554
Facsimile: (505) 982-8623
glarson@hinklelawfirm.com


Counsel for Alpha SWD Operating LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 2017 I served a true and correct copy of the foregoing *Alpha SWD Operating LLC's Response to Subpoena* via email to:

Michael H. Feldewert, Esq.
Adam G. Rankin, Esq.
Jordan L. Kessler, Esq.
Holland & Hart LLP
Post Office Box 2208
Santa Fe, NM 87504-2208
mfeldewert@hollandhart.com
agrankin@hollandhart.com
jlkessler@hollandhart.com

Counsel for Delaware Energy LLC



Gary W. Larson

Adam Rankin

From: Gary Larson <glarson@hinklelawfirm.com>
Sent: Tuesday, October 31, 2017 2:21 PM
To: Michael Feldewert
Cc: Adam Rankin; Jordan L. Kessler
Subject: RE: Alpha's response to the subpoena

Mike,

Alpha asserted relevance objections because all of the RFPs in the subpoena implicate private, third-party communications, negotiations, and agreements that have no bearing on the legal issues presented in Delaware's application or the Division's determinations regarding those issues. Based on its objections, Alpha has not produced documents pertaining to its private, third-party communications, negotiations, and agreements.

Gary

From: Michael Feldewert [<mailto:MFeldewert@hollandhart.com>]
Sent: Tuesday, October 31, 2017 11:04 AM
To: Gary Larson
Cc: Adam Rankin; Jordan L. Kessler
Subject: Alpha's response to the subpoena

Gary: We are unable to determine whether Alpha has withheld any responsive documents based on these objections. Please indicate whether any responsive documents have been withheld and the nature of any withheld documents.

Michael H. Feldewert
Santa Fe Office
505-988-4421
505-983-6043 (fax)
mfeldewert@hollandhart.com

HOLLAND & HART. 

CONFIDENTIALITY NOTICE: This message is confidential and may be privileged. If you believe that this email has been sent to you in error, please reply to the sender that you received the message in error; then please delete this e-mail. Thank you.

From: Gary Larson [<mailto:glarson@hinklelawfirm.com>]
Sent: Thursday, October 26, 2017 5:30 PM
To: Michael Feldewert <MFeldewert@hollandhart.com>
Cc: Adam Rankin <AGRankin@hollandhart.com>; Jordan L. Kessler <JLKessler@hollandhart.com>
Subject: OCD Case 15855

Mike,

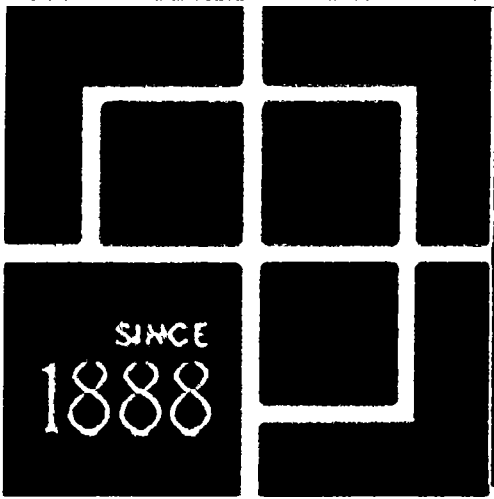
This is to confirm our conversation this morning at the OCD regarding the following matters:

1. Alpha SWD Operating will not commence drilling its Alpha SWD #1 well prior to the special hearing on November 7.



2. You agreed to extend the deadline for Alpha to respond to Delaware Energy's subpoena until Monday October 30.

Gary



Gary W. Larson,
Partner
Hinkle Shanor LLP
218 Montezuma
Santa Fe, New Mexico 87501
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(505) 982-8623 facsimile
glarson@hinklelawfirm.com

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