

**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.**

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

**ALPHA SWD OPERATING, LLC'S RESPONSE IN OPPOSITION
TO MOTION TO STAY INJECTION AUTHORITY
GRANTED UNDER SWD-1680**

De novo applicant Alpha SWD Operating, LLC ("Alpha SWD") submits this response in opposition to Delaware Energy LLC's ("Delaware's") Motion to Stay Injection Authority Granted Under SWD-1680 ("Motion"). In support of its response, Alpha SWD states:

1. The Motion requests the Commission to enter an open-ended stay of Alpha SWD's injection authority under Administrative Order SWD-1680. Delaware's request is unwarranted and unreasonable.

2. In order to grant a stay of any duration, the Commission must determine, in this instance, that a stay is necessary to protect Delaware's correlative rights or to prevent gross negative consequences to Delaware as a party adversely affected by the Commission's ruling that the Oil Conservation Division ("Division") lacked jurisdiction to hear Delaware's application seeking the revocation of Administrative Order SWD-1680. *19.15.4.23(B) NMAC*.

3. In attempting to satisfy those requirements, the Motion first asserts that the Commission's jurisdictional ruling has a "substantial impact on Delaware's correlative rights." *Motion at 4, ¶ 13*. Yet throughout this case, Delaware has never established that it has a working interest within a half-mile radius of Alpha's SWD Well No. 1. Moreover, Delaware's application

filed with the Division asserted that Delaware's due process rights, rather than any correlative rights, were violated because it was not notified of Alpha SWD's administrative application for authorization to inject produced water into its SWD Well No. 1.

4. Regarding the second requirement, Delaware likewise cannot establish that "gross negative consequences" to its interests will result if the Commission does not grant a stay of indeterminate length. *Motion at 4*, ¶14. The only interest that Delaware potentially has at stake is an administrative application that Delaware characterizes as "suspended" and pending when Alpha SWD filed its application. *Id. at 2*, ¶5. Alpha SWD has provided Division records to the Commission indicating that Delaware's previously-filed application had been cancelled, not suspended. *See Exhibits B and C to Alpha SWD's Response In Opposition to Delaware's Motion for Judgment Based on the Division Record*. Even accepting its interpretation of the Division records as accurate, Delaware has, at best, an unapproved administrative application at stake.

5. Alpha SWD, on the other hand, has Division-approved injection authority, and its economic interests have been and continue to be negatively impacted by Delaware's unsuccessful attempt to seek the revocation of its injection authority. It has been nearly fourteen months since the Division issued Administrative Order SWD-1680, and to date Alpha SWD has been unable to develop its SWD Well No. 1. It goes without saying that Alpha SWD has suffered economic harm as a result of Delaware's unavailing efforts to have its injection authority revoked.

6. The issue of Delaware's inability to satisfy the requirements for the Commission to enter a stay of any duration aside, it is apparent that Delaware would rather request relief from the Commission than being in the position of having to request a stay from the district court on appeal, which will require Delaware to satisfy a more stringent legal standard and potentially post a bond to mitigate the ongoing economic harm to Alpha SWD.

7. Should Delaware file an appeal of the Commission's final order, the New Mexico Rules of Civil Procedure afford it an opportunity to request a stay from the district court for the duration of the appeal period. *See Rule 1-074(Q) NMRA*. Once Delaware files a notice of appeal, the district court will have jurisdiction over the case, and it is the more appropriate forum for Delaware to request a stay of indeterminate duration.

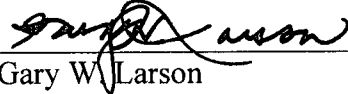
8. The district court will apply a four-part legal standard to a Delaware request for a stay, which includes a showing by Delaware that Alpha SWD "will not suffer substantial harm if a stay is granted." *Rule 1-074 (Q)(c)(1)(iii) NMRA*. And, "[a]s a condition of granting a stay," the district court has discretion to require Delaware to post a bond or other appropriate surety. *Rule 1-074 (Q)(3) NMRA*. A bond would be an appropriate mechanism for protecting Alpha SWD's economic interests, a mechanism the Commission does not have at its disposal. Thus, the entry of a stay lasting throughout the appeal period, as requested by Delaware, should come within the district court's purview, not the Commission's.

9. Because Delaware has not satisfied the requirements of 19.15.4.23 (B) NMAC, and because a request for a stay of the duration sought by Delaware is more appropriately addressed by the district court, Alpha SWD submits that the Commission should deny Delaware's request for an open-ended stay of Administrative Order SWD-1680.

WHEREFORE, Alpha SWD requests that the Commission enter an order denying Delaware's Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August, 2018 I served a true and correct copy of the foregoing *Alpha SWD Operating LLC's Response In Opposition to Motion to Stay Injection Authority Granted Under SWD-1680* via email to:

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