

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

NOV 20 2018 AM 11:42

**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**

DELAWARE ENERGY'S RESPONSE TO ALPHA'S MOTION FOR DISMISSAL

Delaware Energy LLC ("Delaware"), files this response to the motion for dismissal filed by Alpha SWD Operating, LLC ("Alpha").

Administrative Order SWD-1680 authorizes Alpha to inject produced water into the Devonian formation in Unit J of Section 10, Township 24 South, Range 28 East. There is no dispute that this administrative order was issued without notice to Delaware and 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. Now, after litigating this matter for over a year and invoking two orders confirming Order SWD-1680 was improperly issued, Alpha seeks to bury these findings by filing a motion contending Delaware lacked "standing" to bring this matter to light. Alpha's motion is not only stale but wrong.

UNDISPUTED FACTUAL AND PROCEDURAL BACKGROUND

The already extensive record in this matter reflects the following undisputed facts and sequence of events:

1. On October 24, 2016, Delaware filed an application with the Division for a disposal well in the Devonian formation in Unit K of Section 10 and subsequently was informed by the Division that its prior-filed application was "suspended" following protests by nearby operators. *See* Attachment 1 (Exhibit 3 from Division hearing).

2. Alpha was 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 submitted a competing disposal well application to inform Delaware. *See* Attachment 2 (Tr. 11/7/17) at pp. 41-49. *See also* Attachments 3,4, and 5 (referenced Division Examiner Hearing Exhibits 10, 11 and 12).

3. Alpha never informed Delaware of its subsequently filed, competing disposal application and Delaware only learned of the premature issuance of Administrative Order SWD-1680 when Alpha offered to sell its injection authority to Delaware. Attachment 2 at at p. 35-36.

4. The day before Administrative Order SWD-1680 was prematurely issued for Alpha's disposal well, the operators protesting Delaware's prior-filed application informed the Division that they "hereby drop their objection" because Delaware had agreed to revise the "casing program to our satisfaction." *See* Attachment 1.

5. 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 formerly protesting parties. *See* Attachment 2 at pp. 28-29.

6. While Alpha's subsequently filed application was still subject to the 15-day waiting period required by NMAC 19.15.26.8(C), the necessary amendments to Delaware's prior filed application were provided to the Division. *See* Attachment 6 (Division Hearing Exhibit 4).

7. At no point after the filing of Delaware's application did the Division suggest to Delaware that its prior-filed application had been removed from a "suspended" status or that it was no longer viable for approval. *See* Attachment 2 at p. 28 (lines 6-19); p. 33 (lines 16-25).¹

This undisputed factual prompted Delaware to file an Application with the Division to revoke the injection authority improperly granted under Administrative Order SWD-1680. Alpha did not contest Delaware's standing to bring its action and instead proceeded to litigate before the Division Examiners whether Administrative Order SWD-1680 was properly issued. The Division

¹ While Alpha suggests certain notations in the Division's files indicate Delaware's application was "cancelled" or "withdrawn" (*see* Alpha Ex. A), the representations and actions of the Division reflect otherwise. Moreover, after entertaining Alpha's contention and reviewing its file, the Division issued Order R-14484-A granting Delaware's application to rescind Administrative Order SWD-1680.

eventually entered Division Order R-14484-A finding that its administrative order had been improperly issued. Alpha appealed this matter to the Commission and proceeded to litigate the matter to the point of invoking findings by the Commission confirming Administrative Order SWD-1680 was improperly issued. *See* Commission Order R-14484-B. Now after the Commission has confirmed the findings made by the Division, Alpha has filed a motion challenging Delaware's legal standing to bring this matter to light.

I. Alpha Has Waived Any Argument That Delaware Lacks Standing to Request A Rescission of Order SWD-1680.

Delaware filed its application to revoke Order SWD-1680 on September 12, 2017. Alpha did not move to dismiss the application for lack of standing.

Instead, Alpha proceeded to:

- Unsuccessfully oppose a motion to stay the injection authority (*see* Order R-14484);
- Respond to a subpoena for information prior to the Division Examiner hearing;
- File a prehearing statement that did not contest Delaware's standing to bring this action (*see* Attachment 7); and
- Present argument and evidence at the Division Examiner hearing without contesting Delaware's standing (*see, e.g.,* Attachment 2 (Tr. 7/11/17) at pp. 15-17).

Now, after the Commission has confirmed Order SWD-1680 was improperly issued (*see* Order R-14484-B at Findings 7 and 8), Alpha seeks to quash any effort to cure the defect by suggesting Delaware lacked legal standing to file its Application for a Division hearing.

New Mexico courts have held that standing can be waived where the issue was not raised until after the entry of a judgment. *See, e.g., Deutsche Bank Nat'l Tr. Co. v. Johnston*, 2016-NMSC-013, ¶15, 369 P.3d 1046 (noting that in a foreclosure action standing can be waived if not raised prior to trial). Since Alpha did not contest Delaware's standing to file its Application until after

unsuccessfully litigating the propriety of the issuance of Order SWD-1680, any question about Delaware's standing to bring that Application over a year ago has been waived.

II. Delaware Had Standing to Challenge Whether SWD-1680 Was Properly Issued.

Not only is Alpha's standing argument stale, but it is without merit. Legal standing exists when a plaintiff can show "(1) an injury in fact, (2) a causal relationship between the injury and the challenged conduct, and (3) a likelihood that the injury will be redressed by a favorable decision." *ACLU of N.M. v. City of Albuquerque*, 2008-NMSC-045, at ¶7. Further, "once the plaintiff has alleged that he is among those who are directly injured or imminently threatened with injury, the alleged injury itself need only be slight." *ACLU* at ¶18.

The premature issuance of Order SWD-1680 has caused Delaware more than "slight" harm, as it has prevented the Division from considering Delaware's prior-filed application for a disposal well in Unit J of Section 10. *See* Attachment 8 (9/19/18 email from the Division). This type of injury easily confers Delaware with standing to seek the relief sought under its application. *See DeVarga and Loan Ass'n of Santa Fe v. Campbell*, 1975-NMSC-026, ¶16, 535 P.2d 1320 (holding that four savings and loan associations had standing to challenge the approval of a competing branch office after alleging "they will suffer from undue competitive injury if another branch is permitted in Santa Fe because there is not sufficient business and demand to assure and maintain the solvency of existing associations.")

Further, the New Mexico Supreme Court has instructed that any party "materially affected" by an administrative action is entitled to "actual notice." *Uhdén v. New Mexico Oil Conservation Commission*, 1991-NMSC-089 at ¶ 2. Here, Delaware was informed by the Division that its prior-filed application was "suspended" pending resolution of the casing concerns raised by offsetting operators, Delaware informed Alpha of its prior-filed application and requested that Alpha notify

it if Alpha filed a competing application, the Division was informed that the concerns raised by the offsetting operators to Delaware's prior-filed application were resolved before the premature issuance of SWD-1680, the Division accepted amendments to Delaware's prior filed application before the 15-day period applicable to Alpha's subsequently filed application expired. Yet, Delaware was never informed of the filing of Alpha's competing application. Further, Order SWD-1680 was issued prior to the expiration of the 15-day time frame for "interested parties" to file objections. *See* NMAC 19.15.26.8(C). The evidence in the record supporting these facts not only satisfy the "injury in fact standard" for standing, but also demonstrates that Delaware was "materially affected" by the improper issuance of Order SWD-1680.

Since there is no question Delaware has been harmed by the premature issuance of Order SWD-1680, and that this harm can be cured by the relief requested in Delaware's application, Delaware had legal standing to file its Application with the Division. Alpha's tardy and legally deficient motion for dismissal "based on a lack of standing" must be denied.

Respectfully Submitted,

HOLLAND & HART LLP



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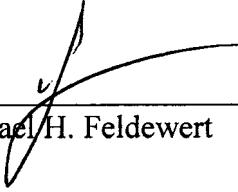
ATTORNEYS FOR DELAWARE ENERGY LLC

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2018, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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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: [REDACTED] 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 implemented a casing program to our satisfaction.~~

Regards,

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

On Monday, ~~October 31, 2017~~ 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.~~ 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

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ATTACHMENT

- 1 -

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

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2 (Pages 2 to 5)

1 (9:00 a.m.)
 2 EXAMINER GOETZE: Good morning, gentlemen.
 3 This is a special Examiner Hearing for Tuesday, November
 4 7, 2017, Porter Hall, Santa Fe. This is Docket Number
 5 40-17. We're here to hear only one case. It is Case
 6 Number 15855, application of Delaware Energy, LLC to
 7 revoke the injection authority granted under SWD-1680
 8 for the Alpha SWD No. 1 well operated by Alpha SWD
 9 Operating, LLC, Eddy County, New Mexico.
 10 Call for appearances.
 11 MR. FELDEWERT: May it please the Examiner,
 12 Michael Feldewert and Adam Rankin for the Applicant
 13 Delaware Energy, LLC. I've been able to trim our
 14 presentation down here today, so I only have one
 15 witness. I do have an opening statement.
 16 EXAMINER GOETZE: Very good.
 17 Mr. Larson?
 18 MR. LARSON: Good morning, Mr. Examiner.
 19 Gary Larson, with the Santa Fe office of Hinkle Shanor,
 20 for Alpha SWD Operating, LLC. I have three witnesses.
 21 MR. RANKIN: Mr. Examiner, I'll also make
 22 an appearance for Matador Production Company. I'll have
 23 a short letter to present to the Division and to Alpha
 24 with recommendations on the -- to change the location
 25 and some of the --

1 EXAMINER GOETZE: Some other suggestions?
 2 MR. RANKIN: Some other suggestions.
 3 EXAMINER GOETZE: Okay. Very good.
 4 MR. RANKIN: So I'd like to present that as
 5 well. Thank you.
 6 EXAMINER GOETZE: And you have a time
 7 constraint?
 8 MR. RANKIN: I can do that first, and if I
 9 might just approach to distribute the recommendations.
 10 EXAMINER GOETZE: Well, let's do this
 11 first. Let's go ahead and have all the witnesses who
 12 are going to appear stand, identify themselves and be
 13 sworn in by the court reporter, please.
 14 MR. KNEWITZ: Kurtis Knewitz, with Alpha
 15 SWD Operating.
 16 MR. PICKARD: Jason Pickard, Alpha SWD
 17 Operating.
 18 MR. WEYAND: Christopher Weyand, Lonquist &
 19 Company.
 20 MR. McCURDY: Michael McCurdy, Delaware
 21 Energy.
 22 (Mr. Knewitz, Mr. Pickard, Mr. Weyand and
 23 Mr. McCurdy sworn.)
 24 EXAMINER GOETZE: All right. Let's start
 25 with opening statements.

1 OPENING STATEMENT
 2 MR. FELDEWERT: Mr. Examiner, as you
 3 gathered from our pre-hearing statement in the
 4 application, we are seeking the revocation of Order
 5 SWD-1680, which was issued by the Division on June 28th,
 6 2017. And for purposes of my opening statement, if you
 7 turn to what we've marked as Exhibit Number 1 in our
 8 notebook or in our exhibit package, you'll see I've put
 9 together a timeline of events. And probably what would
 10 be helpful, you may want to circle June 12th, 2017,
 11 which is the sixth entry down, because that was the date
 12 when Alpha filed its application for a Devonian disposal
 13 well, for its SWD No. 1, which resulted in Order
 14 SWD-1680.
 15 Mr. Examiner, the issuance of this order
 16 suffers from both notice and procedural defects. And if
 17 you take a look at the timeline, really the first half
 18 of that timeline above that June 12th filing date, it
 19 addresses events that reflect and bear upon this notice
 20 defect because it is, first off, undisputed that the
 21 order was issued without any notice to Delaware Energy,
 22 and there was a failure of notice to Delaware Energy
 23 even though it had a pre-existing application on file
 24 with the Division for an injection well right next door.
 25 If you take -- if you look at Tab 16 -- so

1 keep your finger on the timeline and then quickly flip
 2 over to Tab 16, we've provided you a nice aerial
 3 depiction of the acreage we're talking about here. And
 4 you'll see that the thing in yellow was that the Alpha
 5 SWD was for subject of the order, and right next door up
 6 there in Unit K is the Ruiz No. 1, which is the subject
 7 of Delaware's pre-existing October 2016 application.
 8 And while that application was suspended
 9 because there was a protest, it was still on file with
 10 the Division while the parties worked through the
 11 objections. And as we will show you here today, that's
 12 exactly what Delaware did. They worked through the
 13 objections, and there was notice provided to the
 14 Division that those objections had been withdrawn. Yet
 15 despite the fact that there was an application on file
 16 by Delaware, nobody gave notice to Delaware about this
 17 filing of a competing application for a disposal well
 18 right next door in the same zone.
 19 The second point that the timeline
 20 demonstrates to bear on is this absence of notice, is
 21 that Delaware is a lessee of record in Section 10 under
 22 a recorded Memorandum of a Salt Water Disposal
 23 Agreement, if you look at Exhibit Number 11. This is a
 24 Memorandum of Salt Water Disposal Agreement. It was of
 25 record as of February 6, 2017, long before Alpha filed

1 its application, and it reflects that Delaware is a
 2 lessee of acreage for disposal purposes in Section 10.
 3 Now, I go to the Division's rule, which I
 4 I've put in here as Tab 15. So Mr. Brooks can look at
 5 his notebook or, Mr. Examiner, you can look at Tab 15.
 6 And when you take a look at Tab 15, which is -- I'll
 7 call it Rule 26 to make it easy. There is a Section B,
 8 "Method of making application." So Rule 26B(2). And
 9 what it says is that the application -- the applicant
 10 shall furnish, by registered mail, a copy of its
 11 application and give notice to each -- to the owner of
 12 the surface on which the injection well or disposal well
 13 is to be located. And then it goes on to say -- and I'm
 14 halfway through paragraph two -- "and to each leasehold
 15 operator or other affected person within any tract
 16 wholly or partially contained within one-half mile of
 17 the well."
 18 Now, if I hold a recorded Memorandum of
 19 Salt Water Agreement right next door to where you're
 20 proposing to put a disposal well, it seems to me that I
 21 am an affected person. Yet despite this recorded
 22 instrument and this knowledge, Delaware was never
 23 provided notice by anybody of this competing disposal
 24 application.
 25 The third point borne out by the timeline

1 is that Delaware told Alpha, provided information to
 2 Alpha about its acreage subject to disposal agreements
 3 before Alpha filed its application. And that's
 4 reflected in Exhibit Number 10. Mr. Stein, who is with
 5 Delaware, as reflected in Exhibit Number 10, sent to
 6 Mr. Knewitz -- I hope I said right --
 7 MR. KNEWITZ: (Indicating.)
 8 MR. FELDEWERT: -- way back in March of
 9 2017 a list of his disposal agreements, and that's
 10 provided as an attachment to this email of Exhibit 10, a
 11 separate page. Now, we have -- because this is a public
 12 record, we've blotted out the big, long list that he
 13 sent. What we left intact was the notice that was
 14 provided in that list that Delaware had a disposal
 15 agreement with Mr. Raymond -- with Mr. Reyes Ruiz in
 16 Section 10. So Alpha knew about it. They were provided
 17 with this list. It was recorded, yet Alpha chose not to
 18 provide any notice to Delaware when it files its
 19 competing disposal application right next door.
 20 Finally, Mr. McCurdy, our witness here, is
 21 going to testify on this notice issue that he told Alpha
 22 three different times, three times, to provide notice to
 23 them if Alpha chose to move forward with the filing of a
 24 disposal well in its unit acreage in Section 10, and
 25 Alpha conveniently decided not to tell Delaware anything

1 about the filing of their application.
 2 So that's the notice defect here.
 3 This application also suffers from a
 4 procedural defect, and that is our timeline -- the
 5 second half of our timeline, because what you'll see is
 6 that Alpha's order was issued prematurely, before the
 7 expiration of that 15-day review period. And we have to
 8 start with Exhibit 14.
 9 Exhibit 14 is Alpha's application that we
 10 have pulled down from the Division's file. Okay? The
 11 first thing you're going to notice, up in the left-hand
 12 corner, is that it too was suspended. Now, if I go to
 13 page 25, you'll see why. And these pages are,
 14 fortunately, numbered. So I go to page 25 of Exhibit
 15 14, and there is an email from the Division to Alpha who
 16 just filed their application. It's on the same day that
 17 they filed it. Is says, "Your application that was
 18 received on June 17 will not be placed into the
 19 administrative review process. The following
 20 information is required." And then it includes a list
 21 of information as to what's missing, which is why it's
 22 not in the review process.
 23 What happens then is, if you take a look at
 24 page -- or the timeline or you can look at this
 25 exhibit -- page 28 is probably the easiest -- that

1 information wasn't provided until June 19. That's also
 2 reflected on page -- the last page, page 30. The
 3 missing information was not provided until June 19th, an
 4 important date. Okay? Because when I take these facts
 5 and I look at the Division's rule -- I go again to
 6 Exhibit 15, and I go to the next page of their Division
 7 rule and that would be Rule 26C(2) -- it very clearly
 8 says, "The Division shall not approve an application for
 9 administrative approval until 15 days following the
 10 Division's receipt of Form C-108 complete with all
 11 attachments." It has to be administratively complete
 12 before that 15-day period even starts to run.
 13 I look at my timeline. I look at June
 14 19th. That's when Alpha submitted the additional
 15 information necessary to deem it complete. Fifteen days
 16 after that -- you can all go look on your calendar; I
 17 did -- is July 4th. Okay? Fifteen days after July 19th
 18 is July 4th. And it's important to see what happened in
 19 this 15-day period, because, first off, as we know, the
 20 Division order was issued only nine days after June
 21 19th, well before the expiration of that 15-day period.
 22 The second thing that happened, during
 23 that -- within that 15-day period is that the Division
 24 received notice that Delaware -- that the objections to
 25 Delaware's application had been rescinded. That's

1 Exhibit Number 3. That notice was provided to the
 2 Division on June 27th, within that 15-day review period.
 3 The second thing -- and, therefore, it was no longer
 4 suspended. The second thing that happened during that
 5 15-day period is that there was discussion between the
 6 Division and Delaware about how to move forward,
 7 discussions about what additional information, if any,
 8 needed to be provided to the October 2016 application.
 9 And what they were informed is reflected on Exhibit
 10 Number 4, which is what Mike McCurdy sent on behalf of
 11 Delaware on July 2nd, again within that 15-day period,
 12 And they provided amendments to the October 2016
 13 application. That application was still viable. It was
 14 still pending, and all they had to do was provide some
 15 amendments to that. All of that occurred before the
 16 expiration of that 15-day period.

17 Now, If the Division had waited that 15-day
 18 period, as they were required to under the rule, perhaps
 19 it would have realized that Alpha's application was a
 20 direct offset to Delaware's application and that it was
 21 a direct offset competing disposal application within
 22 800 feet of the pre-existing Delaware application. And
 23 perhaps it would have notified Alpha and Delaware that
 24 there are competing disposal applications on file in the
 25 same area, within 800 feet of each, in the same zone,

1 Operating submitted its C-108 on June 12 of this year.
 2 Alpha's position is that Delaware's October 2016
 3 submission had been canceled, and we will present
 4 Division records that support its position.

5 The second issue is whether Alpha had
 6 knowledge of Delaware's October 2016 submission, and
 7 even if it did, it was required to notify Delaware of
 8 Alpha's C-108 submitted on June 12 of 2017.

9 Alpha's position on the factual issue is
 10 that it had no knowledge of Delaware's October 2016
 11 submission, and its position on the legal issue, which
 12 involves the application of Division's notice rules, is
 13 that the rules did not require it to provide notice to
 14 Delaware.

15 The third issue is whether the Division
 16 violated its rules by, one, not requiring Alpha to
 17 provide notice to Delaware of Alpha's June 12th,
 18 2008 [sic] C-108 application or self-provide notice to
 19 Delaware; and, two, by issuing Administrative Order
 20 SWD-1680 16 days after it received Alpha's C-108
 21 violated the Division's rules. These are legal issues
 22 which lead to the conclusion that the Division fully
 23 complied with its rules in granting the injection well
 24 authority to Alpha.

25 Delaware's made assertions in its

1 and they have either told the parties to work it out or
 2 set the matter for hearing.

3 So that's why we're here today, because
 4 that's what the Division must do now to cure this notice
 5 defect, to cure the substantial prejudice that has
 6 occurred to Delaware here to avoid an infringement of
 7 Delaware's due-process rights and to address and cure
 8 these procedural defects associated with the issuance of
 9 its order.

10 So that's why we're asking that this order
 11 be rescinded so that the Division can then look at these
 12 competing disposal applications and properly consider
 13 how to move forward.

14 Any questions?

15 EXAMINER GOETZE: Is that it?

16 MR. FELDEWERT: That's it, unless you've
 17 got any questions.

18 EXAMINER GOETZE: No. I'm sure there will
 19 be an opportunity for that.

20 Mr. Larson, we'll let you go next.

21 OPENING STATEMENT

22 MR. LARSON: Mr. Examiner, this case
 23 essentially presents three issues. The first is whether
 24 the C-108 that Delaware submitted in October of 2016 had
 25 been canceled or remained pending when Alpha SWD

1 application that Alpha did not know about -- did know --
 2 I'm sorry -- about Delaware's October 2016 C-108, that
 3 Alpha offered to sell Administrative Order SWD-1680 to
 4 Delaware, that Alpha's intent all along was to flip the
 5 order, and Alpha protested Delaware's July 2017 C-108 in
 6 retaliation. And while these are tangential issues,
 7 Alpha is constrained [sic] to present testimony on those
 8 issues to set the record straight.

9 Those tangential issues aside, Alpha
 10 submits that its focus should remain on the three
 11 pivotal issues raised by Delaware's application and
 12 further submits that Delaware is unable to sustain the
 13 burden of establishing that Alpha's injection authority
 14 should be revoked.

15 EXAMINER GOETZE: Very good.

16 And then Matador?

17 MR. RANKIN: Mr. Examiner, thank you. I
 18 have no opening statement.

19 I would like to present to the Division and
 20 the parties Matador's recommendations for both location
 21 and the completion of Alpha's proposed well, should it
 22 be approved. So I have the statement.

23 EXAMINER GOETZE: Is that the statement on
 24 behalf of Matador?

25 MR. RANKIN: It is. It is.

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 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. 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 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. 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. 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. 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 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 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 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

This electronic transmission and any attached documents or other writings are intended only for the person or entity to which it is addressed and may contain information that is privileged, confidential or otherwise protected from disclosure. If you have received this communication in error, please immediately notify sender by return e-mail and destroy the communication. Any disclosure, copying, distribution or the taking of any action concerning the contents of this communication or any attachments by anyone other than the named recipient is strictly prohibited.

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

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF EDDY

This Memorandum of Salt Water Disposal Agreement is made and entered into as of the 6 day of ~~October~~ 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: 0898 Pages: 3

Recorded: 08/20/17 09:57 AM Fee: \$28.00

Eddy County, New Mexico - Robin Van Natta, County Clerk



NOV 1

ATTACHMENT

- 4 -

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

From: Mike McCurdy

Sent: Sunday, July 2, 2017 8:03 AM

To: McMillan, Michael, EMNRD <Michael.McMillan@state.nm.us>; Collins, Karen, EMNRD <Karen.Collins@state.nm.us>; Sharp, Karen, EMNRD <Karen.Sharp@state.nm.us>

Cc: Preston Stein <Preston@delawareenergyllc.com>

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

Michael/Karen/Karen,

This permit was protested last October 2016 due to Guardian/RSC's (Both Randy Cate, see Randy's email signature below) concerns with our casing design. Guardian/RSC protested due to Delaware Energy not specifying the casing weights we planned to use on our new drill design (emails attached). As you can see we have updated our casing design and are requesting approval of our Ruiz SWD #1 permit. Attached in this email are the following items as requested (copies of these documents will be sent on 7/3 via certified mail to Karen Collins, Michael McMillan and Karen Sharp).

Attached are the following documents for the Ruiz SWD #1 (as requested):

- Administrative Application Checklist
- C-108 Application for Authority to Inject
- C-108 Additional Questions Answered
- C-102
- Wellbore Diagram of Ruiz SWD #1 As Proposed (with casing weights specified)
- Email from Guardian/RSC release of protest
- Email correspondence over casing concerns and needed changes

Best Regards,

Mike McCurdy
Operations Engineer
Delaware Energy, LLC
3001 W. Loop 250 N.
Midland, TX 79705
432-312-5251

From: Preston Stein

Date: Tuesday, June 27, 2017 at 1:35 PM

To: Mike McCurdy

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

Best Regards,

Preston M. Stein
Vice President
Delaware Energy, LLC
3001 W. Loop 250 N

ATTACHMENT

-6-

BEFORE THE OIL CONSERVATION DIVISION
Santa Fe, New Mexico
Exhibit No. 4
Submitted by: DELAWARE ENERGY LLC
Hearing Date: November 7, 2017

DATE	SUBJECT	PROJECT	OWNER	APPROVAL
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FOR OFFICIAL USE ONLY

NEW MEXICO OIL CONSERVATION DIVISION
 - Engineering Bureau -
 1270 South St. Francis Drive, Santa Fe, NM 87505



ADMINISTRATIVE APPLICATION CHECKLIST

THIS CHECKLIST IS MANDATORY FOR ALL ADMINISTRATIVE APPLICATIONS FOR EXCEPTIONS TO DIVISION RULES AND REGULATIONS WHICH REQUIRE PROCESSING AT THE DIVISION LEVEL IN SANTA FE.

Application Acronyms:

- [NSL-Non-Standard Location] [NSP-Non-Standard Proration Unit] [SD-Simultaneous Dedication]
- [DHC-Downhole Commingling] [CTB-Lease Commingling] [PLC-Pool/Lease Commingling]
- [PC-Pool Commingling] [OLS - Off-Lease Storage] [OLM-Off-Lease Measurement]
- [WFX-Waterflood Expansion] [PMX-Pressure Maintenance Expansion]
- [SWD-Salt Water Disposal] [IPI-Injection Pressure Increase]
- [EOR-Qualified Enhanced Oil Recovery Certification] [PPR-Positive Production Response]

- [1] **TYPE OF APPLICATION** - Check Those Which Apply for [A]
- [A] Location - Spacing Unit - Simultaneous Dedication
 NSL NSP SD
- Check One Only for [B] or [C]
- [B] Commingling - Storage - Measurement
 DHC CTB PLC PC OLS OLM
- [C] Injection - Disposal - Pressure Increase - Enhanced Oil Recovery
 WFX PMX SWD IPI EOR PPR
- [D] Other: Specify _____
- [2] **NOTIFICATION REQUIRED TO:** - Check Those Which Apply, or Does Not Apply
- [A] Working, Royalty or Overriding Royalty Interest Owners
- [B] Offset Operators, Leaseholders or Surface Owner
- [C] Application is One Which Requires Published Legal Notice
- [D] Notification and/or Concurrent Approval by BLM or SLO
U.S. Bureau of Land Management - Commissioner of Fisheries and State Land Office
- [E] For all of the above, Proof of Notification or Publication is Attached, and/or.
- [F] Waivers are Attached

[3] **SUBMIT ACCURATE AND COMPLETE INFORMATION REQUIRED TO PROCESS THE TYPE OF APPLICATION INDICATED ABOVE.**

[4] **CERTIFICATION:** I hereby certify that the information submitted with this application for administrative approval is accurate and complete to the best of my knowledge. I also understand that no action will be taken on this application until the required information and notifications are submitted to the Division.

Note: Statement must be completed by an individual with managerial and/or supervisory capacity.

Mike McCurdy

Operations Engineer

7/02/2017

Print or Type Name

Signature

Title

Date

mmccurdy@delawareenergyllc.com
 e-mail Address

Oil Conservation Division
1220 South St. Francis Dr.
Santa Fe, New Mexico 87505

FORM C-108
Revised June 10, 2003

APPLICATION FOR AUTHORIZATION TO INJECT

I. PURPOSE: Secondary Recovery Pressure Maintenance XXX Disposal Storage
Application qualifies for administrative approval? XXX Yes No

II OPERATOR: Delaware Energy LLC

ADDRESS: 3001 W. Loop 250 N. Suite C-105-318, Midland TX 79705

CONTACT PARTY: Mike McCurdy PHONE: 432-312-5251

III. WELL DATA: Complete the data required on the reverse side of this form for each well proposed for injection.
Additional sheets may be attached if necessary.

IV. Is this an expansion of an existing project? Yes XXX No
If yes, give the Division order number authorizing the project: _____

V. Attach a map that identifies all wells and leases within two miles of any proposed injection well with a one-half mile radius circle drawn around each proposed injection well. This circle identifies the well's area of review.

VI. Attach a tabulation of data on all wells of public record within the area of review which penetrate the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of completion, and a schematic of any plugged well illustrating all plugging detail.

VII. Attach data on the proposed operation, including:

1. Proposed average and maximum daily rate and volume of fluids to be injected
2. Whether the system is open or closed.
3. Proposed average and maximum injection pressure:
 4. Sources and an appropriate analysis of injection fluid and compatibility with the receiving formation if other than re-injected produced water, and,
 5. If injection is for disposal purposes into a zone not productive of oil or gas at or within one mile of the proposed well, attach a chemical analysis of the disposal zone formation water (may be measured or inferred from existing literature, studies, nearby wells, etc.)

*VIII. Attach appropriate geologic data on the injection zone including appropriate lithologic detail, geologic name, thickness, and depth. Give the geologic name, and depth to bottom of all underground sources of drinking water (aquifers containing waters with total dissolved solids concentrations of 10,000 mg/l or less) overlying the proposed injection zone, as well as any such sources known to be immediately underlying the injection interval.

LX. Describe the proposed stimulation program, if any.

*X. Attach appropriate logging and test data on the well. (If well logs have been filed with the Division, they need not be resubmitted.)

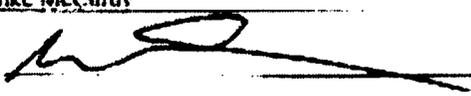
*XI. Attach a chemical analysis of fresh water from two or more fresh water wells (if available and producing) within one mile of any injection or disposal well showing location of wells and dates samples were taken.

XII. Applicants for disposal wells must make an affirmative statement that they have examined available geologic and engineering data and find no evidence of open faults or any other hydrologic connection between the disposal zone and any underground sources of drinking water.

XIII. Applicants must complete the "Proof of Notice" section on the reverse side of this form.

XIV. Certification: I hereby certify that the information submitted with this application is true and correct to the best of my knowledge and belief.

NAME: Mike McCurdy TITLE: Operations Engineer

SIGNATURE:  DATE: 7/02/2017

E-MAIL ADDRESS: Mmccurdy@delawareenergyllc.com

* If the information required under Sections VI, VIII, X, and XI above has been previously submitted, it need not be resubmitted. Please show the date and circumstances of the earlier submission: _____

DISTRIBUTION: Original and one copy to Santa Fe with one copy to the appropriate District Office

Side 2

III. WELL DATA

A. The following well data must be submitted for each injection well covered by this application. The data must be both in tabular and schematic form and shall include:

- (1) Lease name; Well No.; Location by Section, Township and Range; and footage location within the section
- (2) Each casing string used with its size, setting depth, sacks of cement used, hole size, top of cement, and how such top was determined
- (3) A description of the tubing to be used including its size, lining material, and setting depth.
- (4) The name, model, and setting depth of the packer used or a description of any other seal system or assembly used.

Division District Offices have supplies of Well Data Sheets which may be used or which may be used as models for this purpose. Applicants for several identical wells may submit a "typical data sheet" rather than submitting the data for each well.

B. The following must be submitted for each injection well covered by this application. All items must be addressed for the initial well. Responses for additional wells need be shown only when different. Information shown on schematics need not be repeated.

- (1) The name of the injection formation and, if applicable, the field or pool name.
- (2) The injection interval and whether it is perforated or open-hole.
- (3) State if the well was drilled for injection or, if not, the original purpose of the well.
 - (4) Give the depths of any other perforated intervals and detail on the sacks of cement or bridge plugs used to seal off such perforations
- (5) Give the depth to and the name of the next higher and next lower oil or gas zone in the area of the well, if any.

XIV. PROOF OF NOTICE

All applicants must furnish proof that a copy of the application has been furnished, by certified or registered mail, to the owner of the surface of the land on which the well is to be located and to each leasehold operator within one-half mile of the well location.

Where an application is subject to administrative approval, a proof of publication must be submitted. Such proof shall consist of a copy of the legal advertisement which was published in the county in which the well is located. The contents of such advertisement must include:

- (1) The name, address, phone number, and contact party for the applicant.
- (2) The intended purpose of the injection well, with the exact location of single wells or the Section, Township, and Range location of multiple wells.
- (3) The formation name and depth with expected maximum injection rates and pressures; and.
- (4) A notation that interested parties must file objections or requests for hearing with the Oil Conservation Division, 1220 South St. Francis Dr., Santa Fe, New Mexico 87505, within 15 days.

NO ACTION WILL BE TAKEN ON THE APPLICATION UNTIL PROPER PROOF OF NOTICE HAS BEEN SUBMITTED

NOTICE: Surface owners or offset operators must file any objections or requests for hearing of administrative applications within 15 days from the date this application was mailed to them.
Side 1

OPERATOR: Delaware Energy LLC

WELL NAME & NUMBER Ruiz SWD No1

WELL LOCATION: 2565' FSL, 2,360'

<u>FWL</u>	<u>K</u>	<u>10</u>	<u>24S</u>	<u>28E</u>
FOOTAGE LOCATION	UNIT LETTER	SECTION	TOWNSHIP	RANGE

WELLBORE SCHEMATIC

WELL CONSTRUCTION DATA
(See attached wellbore diagram)

Surface Casing

Hole Size: 24"

Casing Size: 20"

Cemented with: 1400 sx

or ft

Top of Cement: SURFACE

Method Determined: Circulated

Total Depth: 100'

Intermediate Casing

Hole Size: 17-1/2"

Casing Size: 13-5/8"

Cemented with: 2,000 ss

or _____ ft³

Top of Cement: SURFACE

Method Determined: Circulated

Total Depth: 2,600'

2nd Intermediate Casing

Hole Size: 12-1/4"

Casing Size: 9-5/8"

Cemented with: 2,200 ss

or _____ ft³

Top of Cement: Surface

Method Determined: Circulated

Total Depth: 9,500'

Production Casing

Hole Size: 8 5/8"

Casing Size: 7"

Cemented with: 2,200 ss

or _____ ft³

Top of Cement: surface

Method Determined: Circulated

Total Depth: 13,650'

Injection Interval

13.650' Feet to 14.650' Open hole

INJECTION WELL DATA SHEET

Tubing Size 4.5" Lining Material: Internally plastic coated

Type of Packer: Weatherford Arrow Set 1X Injection Packer (Nickel Plated)

Packer Setting Depth: 50-100ft above open hole

Other Type of Tubing/Casing Seal (if applicable) NONE

Additional Data

1. Is this a new well drilled for injection? XXX Yes No

2. Name of the Injection Formation: Devonian

3. Name of Field or Pool (if applicable) SWD, Devonian

4. Has the well ever been perforated in any other zone(s)? List all such perforated intervals and give plugging detail, i.e. sacks of cement or plug(s) used.

N/A.

5. Give the name and depths of any oil or gas zones underlying or overlying the proposed injection zone in this area:

BELOW: None

ABOVE: Bone Spring 6,050'-9,347', Wolfcamp 9,347'-11,400', Atoka 11,400'-11,900', Morrow 11,900'-12,800'

Additional Questions on C-108

VII.

1. Proposed average and maximum daily rate and volume of fluids to be injected;

Average 20,000 BWPD, Max 25,000 BWPD

2. Whether the system is open or closed;

Open System, Commercial SWD

3. Proposed average and maximum injection pressure;

Average 1,000-2,000 PSI, Max 2,730 PSI

4. Sources and an appropriate analysis of injection fluid and compatibility with the receiving formation if other than reinjected produced water; and,

Bone Spring, Delaware, and Wolfcamp produced water. No known incompatibility exists with these produced water types and the Devonian. Devonian formation is used as a disposal interval in offset Townships for Wolfcamp, Bone Springs, and Delaware produced water. See attached water analysis from Bone Spring, Wolfcamp, and Delaware produced water.

5. If injection is for disposal purposes into a zone not productive of oil or gas at or within one mile of the proposed well, attach a chemical analysis of the disposal zone formation water (may be measured or inferred from existing literature, studies, nearby wells, etc.).

Disposal interval is barren and does not produce. No Devonian receiving formation water samples in the surrounding area.

***VIII. Attach appropriate geologic data on the injection zone including appropriate lithologic detail, geologic name, thickness, and depth. Give the geologic name, and depth to bottom of all underground sources of drinking water (aquifers containing waters with total dissolved solids concentrations of 10,000 mg/l or less) overlying the proposed injection zone as well as any such sources known to be immediately underlying the injection interval.**

The proposed disposal interval is located in the Devonian formations 13,650'-14,650'. Devonian is an impermeable Shale at the very top (13,550', Woodford Shale) followed by permeable lime and dolomite. There are no fresh water zones underlying the proposed injection zone. Usable water depth is from surface to +/-300', the water source is older alluvium (Quaternary). All of the fresh water wells in the area have an average depth to water of 50' - 200' (Based on State Engineers Office).

IX. Describe the proposed stimulation program, if any.

20,000 gallons 15% HCL acid job with packer

X. Attach appropriate logging and test data on the well

Logs will be filed following drilling operations, Cased hole CBL, Gamma, CCL. Open Hole Neutron, Resistivity, Gamma.

XI. Attach a chemical analysis of fresh water from two or more fresh water wells (if available and producing) within one mile of any injection or disposal well showing location of wells and dates samples were taken.

Attached are water samples from section 10 and 11 of Township 24 South, Range 28 East.

Well is a planned new drill for SWD

(4) Give the depths of any other perforated intervals and detail on the sacks of cement or bridge plugs used to seal off such perforations.

None, well is a planned new drill

(5) Give the depth to and the name of the next higher and next lower oil or gas zone in the area of the well, if any.

Next Higher: Bone Spring 6,050'-9,347', Wolfcamp 9,347'-11,400'', Atoka 11,400'-11,900', Morrow 11,900'-12,800'

Next Lower: None

DISTRICT I
 1220 S. French Dr., Santa Fe, NM 87502
 Phone (505) 426-6222 Fax (505) 426-6222

DISTRICT II
 615 N. First St., Artesia, NM 82210
 Phone (505) 742-2222 Fax (505) 742-2222

DISTRICT III
 1000 E. Spruce St., Aztec, NM 87410
 Phone (505) 824-4176 Fax (505) 824-4176

DISTRICT IV
 1220 S. St. Francis Dr., Santa Fe, NM 87502
 Phone (505) 426-6222 Fax (505) 426-6222

State of New Mexico
 Energy, Minerals and Natural Resources Department

Form C-102
 Revised August 1, 2011

Submit one copy to appropriate District Office

OIL CONSERVATION DIVISION
 1220 South St. Francis Dr.
 Santa Fe, New Mexico 87505

WELL LOCATION AND ACREAGE DEDICATION PLAT

AMENDED REPORT

API Number	Pool Code	Pool Name
Property Code	Property Name B-17-SWC	Well Number 1
OCRD No.	Operator Name DELAWARE ENERGY	Elevation 3004'

Surface Location

UL or lot No.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
K	10	24 S	28 E		2565	SOUTH	2360	WEST	EDDY

Bottom Hole Location if Different From Surface

UL or lot No.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County

Dedicated Acres	Joint or Infill	Consolidation Code	Order No.

NO ALLOWABLE WILL BE ASSIGNED TO THIS COMPLETION UNTIL ALL INTERESTS HAVE BEEN CONSOLIDATED OR A NON-STANDARD UNIT HAS BEEN APPROVED BY THE DIVISION

SURFACE LOCATION
 Lot - W 32.332458'
 Long - W 104.076481'
 NAD83PC - N 448325.2
 NAD83PC - E 820757.1
 (RAD-63)

OPERATOR CERTIFICATION

I hereby certify that the information contained herein is true and complete to the best of my knowledge and belief, and that this organization either owns a working interest or undivided interest in the land including the proposed bottom hole location or has a right to drill this well at this location pursuant to a contract with an owner of such a mineral or working interest, or to a voluntary pooling agreement or a compulsory pooling order heretofore entered by the Division.

Signature: *[Signature]* Date: _____

Printed Name: **MIKE MCCORDY**

Email Address: *mccordy@delawareenergy.com*

SURVEYOR CERTIFICATION

I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervision and that the same is true and correct to the best of my belief.

Date Surveyed: **JUNE 29, 2011**

Signature: *[Signature]*
 Professional Surveyor

Certification No. **7977**
 Board Expires **2015**

SCALE: 1" = 2000'
 WD Form: 33124

Ruiz SWD No 1
2,565' FSL & 2,360' FWL, UL K, SEC. 10, T-24S R-28E, Eddy County, NM
API # 30-015-

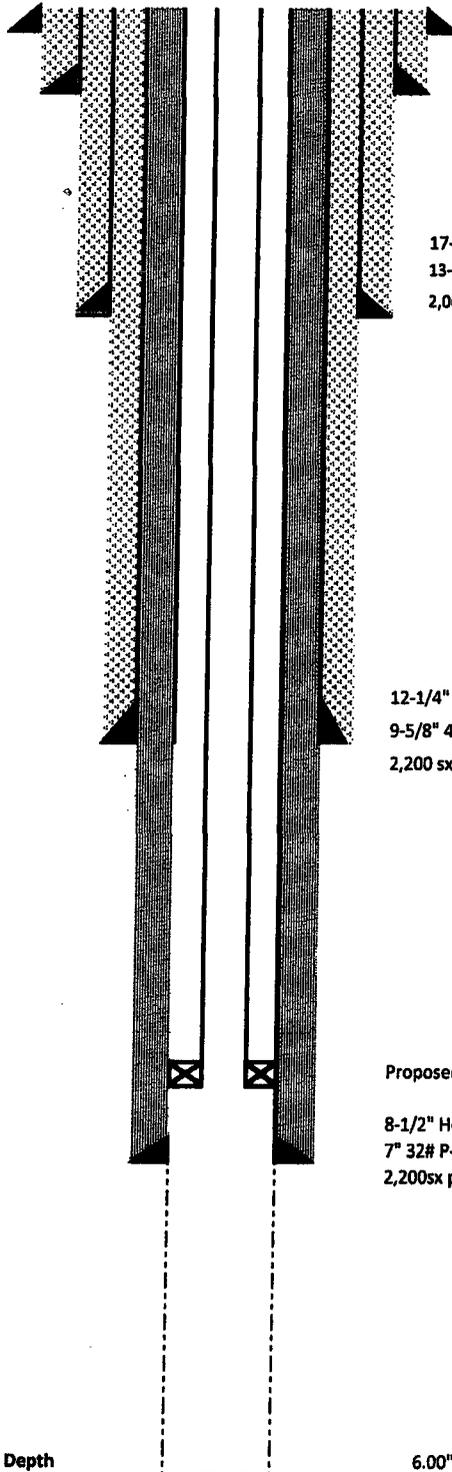
4.5" IPC tubing to 13,600'
12.6#/ft L-80 premium threads
400ft

2,600ft

9,500'

13,650'

14,650' Total Depth



30" Conductor @ 80'

24" Hole to 400ft
20" 106.5# J55 BTC
1,400 sacks cement, w

17-1/2" Hole
13-3/8", 61# J-55 BTC @ 2,600'
2,000 sx cmt, will circulate

12-1/4" Hole
9-5/8" 47# J-55 BTC to 9,500 ft
2,200 sx plan to circulate

Proposed packer @ 13,600' Weatherford Arrow

8-1/2" Hole
7" 32# P-110 BTC to 13,650'
2,200sx plan to circulate

6.00" Hole Open Hole

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

RECEIVED OGD

2017 OCT 31 P 4:11

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

**PRE-HEARING STATEMENT
OF ALPHA SWD OPERATING, LLC**

Alpha SWD Operating, LLC ("Alpha") submits this Pre-Hearing Statement as required by
the Oil Conservation Division ("the Division").

APPEARANCES

PARTIES

ATTORNEYS

APPLICANT

Delaware Energy, LLC

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
agrarkin@hollandhart.com
jlkessler@hollandhart.com

OPPONENT

Alpha SWD Operating, LLC

Gary W. Larson, Esq.
Hinkle Shanor LLP
P.O. Box 2068
Santa Fe, NM 87504
glarson@hinklelawfirm.com

ATTACHMENT

STATEMENT OF THE CASE

Applicant Delaware Energy LLC (“Delaware”) requests the Division to enter an order revoking the injection authority granted to Alpha under Administrative Order SWD-1680. In its application, Delaware asserts that its due process rights have been violated because (i) Alpha had knowledge of a Delaware C-108 application for injection authority for a nearby well, which Delaware submitted in October 2016, and failed to notify Delaware when Alpha submitted its C-108 application for the Alpha SWD No. 1 well on June 12, 2017, thereby violating 19.15.26.7.A and 19.15.26.8.B(2) NMAC, (ii) the Division should have required Alpha to notify Delaware of Alpha’s application or notified Delaware itself, thereby also violating 19.15.26.7.A and 19.15.26.8.B(2) NMAC, and (iii) the Division prematurely issued Administrative Order SWD-1680 in violation of 19.15.26.8.C(2). Delaware’s application alternatively requests that, if it does not revoke Administrative Order SWD-1680, the Division should reduce the two-year period for Alpha to commence injection under the order to a one-year period.

Alpha opposes Delaware’s request for the revocation of Administrative Order SWD-1680 application on the grounds that (i) Alpha had no knowledge of Delaware’s October 2016 C-108 when it filed its administrative application, (ii) in any event, the Division’s rules did not require Alpha – or the Division – to notify Delaware of Alpha’s submission of its C-108 application, and (iii) the Division complied with 19.15.26.8.C(2) by timely issuing Administrative Order SWD-1680 when no protests of the application were received. Alpha does not oppose Delaware’s alternative request for relief.

PROPOSED EVIDENCE

<u>WITNESS</u>	<u>ESTIMATED TIME</u>	<u>EXHIBITS</u>
Kurt Knewitz	40 minutes	12
Jason Pickard	40 minutes	10
Chris Weyand (Engineer)	20 minutes	2

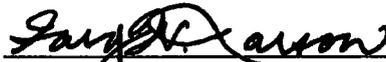
Alpha reserves the right to call a rebuttal witness(es) and introduce rebuttal exhibits if appropriate.

PROCEDURAL MATTERS

Alpha is not aware of any procedural matters to be resolved prior to or at the hearing.

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

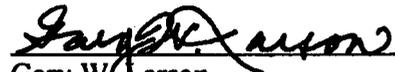
Counsel for Alpha SWD Operating LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 2017, I served a true and correct copy of the foregoing *Pre-Hearing Statement of Alpha SWD Operating, LLC* 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
agrarkin@hollandhart.com
jlkessler@hollandhart.com

Counsel for Delaware Energy LLC



Gary W. Larson

Michael Feldewert

From: Goetze, Phillip, EMNRD <Phillip.Goetze@state.nm.us>
Sent: Wednesday, September 19, 2018 9:44 AM
To: Michael Feldewert
Cc: Gary Larson; Adam Rankin; Brooks, David K, EMNRD; McMillan, Michael, EMNRD; Jones, William V, EMNRD; Riley, Heather, EMNRD
Subject: RE: Protested Application of Delaware Energy LLC Ruiz SWD Well No. 1, Unit K, Section 10, T-24-S, R-28-E.
Attachments: SWD Wells_Ruiz Appl 09_19_2018.pdf

Gentlemen:

Disregarding the ongoing legal transactions and pending decisions, the location of the proposed Ruiz presents technical issues which would be in opposition of the Division's effort to minimize interference between large capacity disposal wells and provide long-term, dependable disposal opportunity for the growing volume of produced water, thereby supporting the development of hydrocarbon resources and preventing waste. Additionally, the greater "spacing" of these large capacity wells provides the ability for infill at a later time should the measured reservoir characteristics support this decision. Based on the Division's current approach when considering the Ruiz's proposed location (see attachment) and the current standing of administrative order SWD-1680 (still valid as of this date), the Division would not administratively approved the application and would appear in opposition for the consideration of the application at hearing before either Division or Commission. Please contact me with any questions regarding the content of the e-mail or its content. PRG

Phillip Goetze, PG
Engineering Bureau, Oil Conservation Division, NM EMNRD
1220 South St. Francis Drive, Santa Fe, NM 87505
Direct: 505.476.3466
E-mail: phillip.goetze@state.nm.us

From: Michael Feldewert <MFeldewert@hollandhart.com>
Sent: Tuesday, September 18, 2018 11:40 AM
To: Brooks, David K, EMNRD <DavidK.Brooks@state.nm.us>; McMillan, Michael, EMNRD <Michael.McMillan@state.nm.us>; Goetze, Phillip, EMNRD <Phillip.Goetze@state.nm.us>
Cc: Gary Larson <glarson@hinklelawfirm.com>; Adam Rankin <AGRRankin@hollandhart.com>
Subject: Protested Application of Delaware Energy LLC Ruiz SWD Well No. 1, Unit K, Section 10, T-24-S, R-28-E.

Gentlemen: As you know, Delaware's Administrative Application for disposal into the Devonian formation through the proposed Ruiz SWD Well No. 1 in Unit K of Section 10 has been suspended since July due an objection filed by Alpha SWD premised on the issuance of Administrative Order SWD-1680, which improperly granting an injection permit to Alpha SWD for a disposal in the Devonian formation through the proposed Alpha SWD No. 1 in Unit J of Section 10. In November of 2017, the Division issued Order R-14484-A rescinding Alpha's injection authority. Division Order R-14484-A was appealed by Alpha "de novo" to the Commission. After initially issuing Order R-14484-B vacating Division Order R-14484-A on the grounds that Division Examiners lacked jurisdiction to revoke Alpha's injection authority, the Commission concluded at its September 13th meeting to withdraw Order R-14484-B and set Alpha's "de novo" appeal for a Commission hearing.

ATTACHMENT

Now that Division Order R-14484-A has been reinstated pending Alpha's "de novo" appeal, Delaware requests that the Division inform whether Delaware's Application for the Ruiz SWD Well No. 1 can now be approved administratively or whether a Division hearing is necessary to address Delaware's prior-filed application.

Thank you for your attention to this matter.

Michael H. Feldewert

Partner, Holland & Hart LLP

110 N Guadalupe St, Suite A, Santa Fe, NM 87501

T 505.988.4421

HOLLAND & HART 



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