

RECEIVED OGD **NEWELL LAW FIRM**

2017 AUG 18 A 11: 15
MICHAEL T. NEWELL
ATTORNEYS AT LAW
10 W. Adams Avenue, Suite E
Lovington, New Mexico 88260
mnewell@newelllawnm.com

(575) 739-6395
F: (855) 494-0059

August 17, 2017

VIA FEDERAL EXPRESS

NMOCD

Department of Energy, Minerals and Natural Resources

ATTN: DIVISION CLERK

1220 South St. Francis Drive

Santa Fe, NM 87505

**Re: Owl SWD Operating, LLC Application for Authorization to Inject
Case No. 15723**

To Whom It May Concern:

Enclosed for filing with the New Mexico Oil Conservation Division is an original and three copies of City of Jal, New Mexico's Post Hearing Brief in reference to the above-mentioned matter.

Upon filing of same please return a conformed copy to this office in the enclosed self-addressed stamped envelope.

Your attention to this matter is greatly appreciated. If you have any questions, please do not hesitate to call.

Sincerely,

NEWELL LAW FIRM

By:


Michael Newell

MTN:sj
Enclosure

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

**IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION DIVISION FOR
THE PURPOSE OF CONSIDERING**

**OWL SWD OPERATING, LLC APPLICATION FOR
AUTHORIZATION TO INJECT**

Case No. 15723

CITY OF JAL, NEW MEXICO'S POST HEARING BRIEF

This post hearing brief is submitted by City of Jal, New Mexico ("Jal").

APPEARANCES

PARTIES

ATTORNEYS

Applicant

Owl SWD Operating, LLC

Dalva L. Moellenberg
Gallagher & Kennedy PA
1239 Paseo de Peralta
Santa Fe, NM 87501
DLM@gknet.com

Other Parties

The New Mexico Oil Conservation Division

David K. Brooks
Energy Minerals and Natural
Resources Department
State of New Mexico
1220 S. St Francis Drive
Santa Fe, NM 87505
Davidk.Brooks@state.nm.us

New Mexico State Land Office

Katherine M. Moss
New Mexico State Land Office
PO Box 1148
Santa Fe, NM 87504
katherinm@slo.state.nm.us

City of Jal

Michael Newell
Newell Law Firm
10 W. Adams Ave, Ste. E
Lovington, NM 88260
mnewell@newelllawnm.com

INTRODUCTION

The Applicant, Owl SWD Operating, LLC (“OWL”) on or about April 28, 2017 applied to drill a well to be used to inject produced water in Unit P Section 25, Township 25 South, Range 36 East, Lea County, New Mexico. Its proposed depth would be 3,060 feet into the Yates/Seven Rivers Formation. The proposed location is to the southwest of the City of Jal, New Mexico, approximately three (3) miles.

The purpose of this proposed well is to take fluids captured in the drilling and production of oil and gas west of the proposed well and transport them by pipeline so that water can be injected into the Yates/Seven Rivers zone. It is sought by OWL to replace the Maralo Sholes B #2 injection well that is subject to a compliance action before this Commission in Case No. 15753.

There are two issues which preclude granting the application of OWL. First Applicant has filed to meet its burden of showing this proposed well does not affect correlative rights. Second, the proposed well could endanger an aquifer which is a fresh water aquifer at least in part. Additionally, the State of New Mexico Land Office which has a constitutional duty to protect the resources of the State has determined this application places at risk both the State’s mineral resources and potential water sources. The State Land Office is entitled to considerable deference in this regard. Additionally, the Division itself offered substantial evidence in opposition to the application. As will be discussed more fully herein below, this application should be denied.

DISCUSSION

A. The Proposed Well Harms Correlative Rights.

The Division is specifically empowered to protect correlative rights. NMSA § 70-2-11 (1978). The Applicant wants to inject thirty thousand barrels per day in an existing producing formation, the Yates/Seven Rivers. Here the Division itself submitted evidence (Division Exhibit 5) which demonstrated a direct correlation between the increase in injected fluids into the Maralo Sholes B #2 well and water production in the adjacent producing wells which are completed in the Yates/Seven Rivers formation. There are clear issues of damaging the rights of the mineral rights holders by flooding out the remaining reserves. Even assuming there was a reporting error by the operator which has been claimed by the Applicant, which had reported aggregate information from several wells instead of just one (1) well there is still an increase in produced water which correlated to the increase of injected water into the Maralo Sholes B #2. Either way one looks at the data, the increase in fluid production is clear whether it is from a single well or spread out over several wells there is an impact into the producing wells. The water from the Maralo Sholes B #2 which is where this proposed well would also be located is simply being recaptured in the adjacent producing wells which harms those wells greatly. This renders these producing wells less economical as there is a need to both lift additional fluids, and also the cost of redisposing of water which was already reinjected once. The result will be that whatever Yates/Seven Rivers production there is around the proposed well will be less economical. The evidence presented by the Division could not be any clearer on this point. The data in Division Exhibit 5 completely refutes Applicant's position there is sufficient space created by prior production to accommodate these fluids without impacting correlative rights. Therefore, the application should be denied.

B. The Proposed Well Threatens the Capital Reef Aquifer.

The proposed well seeks to inject thirty thousand barrels of produced water into the Yates/Seven Rivers formations. According to the testimony of Roger Johnson, who appeared for the Applicant, the proposed well will be in use for three (3) or four (4) decades. This statement is important because even if one accepts the accuracy of the modeling presented on behalf of the Applicant, it is only modeled out for twenty (20) years. There was no effort to explain what will happen to these fluids beyond twenty (20) years even though Applicant has the intention to use this proposed well for twice that long. The Applicant wants to the Commission to ignore any potential harm which might occur.

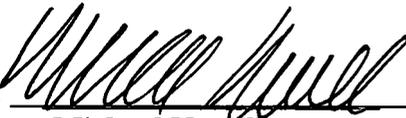
All experts referred to numerous Hiss studies to support their position. Division Exhibit 11 notes modeling done by Hiss and others favors migration of disposal fluids from the Seven Rivers Formation into the Capitan Reef Aquifer. Again in Division Exhibit 12 Hiss confirms “measurable hydraulic communication” between the Seven Rivers and the Capitan Reef Aquifer. In contrast to Hiss, Applicant claims the dolomite barrier between the Seven Rivers and the Capitan Reef Aquifer will contain the disposal fluids and prevent communications. Applicant’s position which was prepared by experts paid by the Applicant in support of this proposed well are contradicted by the peer reviewed work of Hiss and others. In fact, the science is so sound this Commission in prior orders denying similar applications has noted the connection between the Capitan Reef Aquifer and other Permian formations, including oil and gas production formations. (See Division Exhibits 9 and 10) This Application simply ignores this communication between the formations and its threat to water resources in South Lea County.

CONCLUSION

No one with OWL could answer the question of where the City of Jal would get its water in one hundred (100) years. This Application should be denied because it endangers that water supply which may eventually be needed. The proposed well also impacts correlative rights. This Application is based on flawed science and it's located simply to accommodate the infrastructure built to an existing well that is subject to an ongoing compliance Order. There is strong evidence which supports denial of this application.

Respectfully Submitted,

NEWELL LAW FIRM, LLC
10 W. Adams Ave, STE E
Lovington, New Mexico 88260
(575) 739-6395
F: (855) 494-0059
mnewell@newelllawnm.com

By: 

Michael Newell
Attorney for City of Jal

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was emailed on this 17th day of August, 2017 to the following counsel of record:

Dalva L. Moellenberg
Gallagher & Kennedy PA
1239 Paseo de Peralta
Santa Fe, NM 87501
DLM@gknet.com

David K. Brooks
Energy Minerals and Natural Resources Department
State of New Mexico
1220 S. St Francis Drive
Santa Fe, NM 87505
Davidk.Brooks@state.nm.us

Katherine M. Moss
New Mexico State Land Office
PO Box 1148
Santa Fe, NM 87504
katherinm@slo.state.nm.us



Michael Newell