

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

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

**APPLICATION OF DELAWARE ENERGY, LLC
FOR AUTHORIZATION TO INJECT SALT WATER
FOR PURPOSES OF DISPOSAL THROUGH ITS
PROPOSED BEAR TRAP SWD #1 WELL, EDDY
COUNTY, NEW MEXICO.**

**CASE NO. 16258
Consolidated for purposes of hearing with**

**APPLICATION OF DELAWARE ENERGY, LLC
FOR AUTHORIZATION TO INJECT SALT WATER
FOR PURPOSES OF DISPOSAL THROUGH ITS
PROPOSED GIANT PANDA SWD #1 WELL, EDDY
COUNTY, NEW MEXICO.**

**CASE NO. 16259
Consolidated for purposes of hearing with**

**APPLICATION OF DELAWARE ENERGY, LLC
FOR AUTHORIZATION TO INJECT SALT WATER
FOR PURPOSES OF DISPOSAL THROUGH ITS
PROPOSED GRIZZLY SWD #1 WELL, EDDY
COUNTY, NEW MEXICO.**

CASE NO. 16260

DELAWARE ENERGY, LLC'S CLOSING STATEMENT

Following hearing on September 13, 2018, Delaware Energy LLC ("Delaware Energy"), the applicant in the above-referenced cases, respectfully requests that the Division approve its C-108 applications for authorization to inject in Case Nos. 16259 (Giant Panda SWD #1) and 16260 (Grizzly SWD #1). As summarized below, and upon supplementation of additional information requested by the Division, Delaware has demonstrated that it has met all the Division's technical requirements necessary for approval. None of the objections have raised a factual or legal basis to deny the applications. Subject to perfection of notice for the Grizzly

SWD #1 at the December 20, 2018 Examiner Hearing, the applications in Case Nos. 16259 and 16260 should be approved.

In Case No. 16258, the Division Examiner stated that the location of the proposed Bear Trap SWD #1 well (Unit Letter O in Section 34, Township 23 South, Range 27 East, Eddy County) encroaches by about one-quarter mile on Delaware's existing Ruehle SWD #1 well (Unit Letter P, Section 28, Township 23 South, Range 27 East, Eddy County) under the Division's non-binding guidelines for spacing of injection wells. If the Division will not approve the Bear Trap SWD #1 at its proposed location due to this encroachment, Delaware has obtained approval from the State Land Office ("SLO") for an alternative location in the SE/4 SE/4 (Unit Letter P) of Section 34, Township 23 South, Range 27 East, Eddy County. That SLO-approved alternative location—approximately 2,400 feet east of the current proposed location—does not require notice to new affected parties; however, if the Division is going to require Delaware to move the Bear Trap SWD #1 to avoid encroaching on the Ruehle SWD #1 well, Delaware will need to continue Case No. 16258 to give it time to provide notice of the updated location to parties entitled to notice. Accordingly, Delaware requests that the Division approve the Bear Trap SWD #1 in Case No. 16258, pending perfection of notice to affected parties at the December 20, 2019 Examiner Hearing, or, in the alternative, that the Division continue Case No. 16258 to the January 24, 2019 Examiner Hearing so Delaware can notify affected parties of the SLO-approved alternative location in the SE/4 SE/4 of Section 34.

I. Upon Supplementation, Delaware Will Have Met All Technical Requirements for Approval in Case Nos. 16259 (Giant Panda SWD #1) and 16260 (Grizzly SWD #1).

Delaware's three technical witnesses provided testimony and exhibits that supports Division approval of the Giant Panda SWD #1 and the Grizzly SWD #1. The Division Examiner requested that Delaware provide supplemental information on three issues: (1) information that

confirms the depth the vadose zone in the location of Delaware's proposed injection wells and, if necessary, updated conductor pipe and surface casing designs to fully protect shallow groundwater zones; (2) a well construction diagram and schematic for the Giant Panda SWD #1, correctly reflecting its proposed conductor pipe and surface casing design; and (3) a location reference, such as a legal description or Office of State Engineer water well file number, for the fresh water samples included as a baseline measurement with each of the C-108 applications. In addition, a witness for Foundation Minerals provided testimony indicating that, due to an assignment in 2013, an affected party did not receive notice for the Bear Trap SWD #1 and the Grizzly SWD #1.

Delaware is preparing the foregoing supplemental information requested by the Division and, out of an abundance of caution and in response to Foundation Mineral's testimony, has provided notice to additional affected parties within the one-mile area of review for the Giant Panda SWD #1 and the Grizzly SWD #1 wells. Delaware intends to submit the requested supplemental information to the Division (with service to all objectors) in advance of the December 20, 2018 Examiner Hearing. Delaware also will present proof of notice to the additional parties at the hearing. Upon submission of the supplemental information and additional proof of notice, Delaware will have met all conditions and requirements for approval of the Giant Panda SWD #1 and the Grizzly SWD #1 in Case Nos. 16259 and 16260, respectively. No objector has presented technical evidence or legal argument sufficient to deny approval.

II. Delaware Has Met All Technical Requirements for Approval in Case Nos. 16258 (Bear Trap SWD #1), But if the Division Requires Delaware to Relocate the Well, the Case Should Be Continued to January 24, 2019.

Division Examiner Goetze stated at the hearing that the Bear Trap SWD #1 is located closer to the Ruehle SWD #1 than current Division guidelines recommend for injection well

spacing. The SLO has approved an alternative location approximately 2,400 feet to the east in Unit Letter P of Section 34 in the same Township. The proposed alternative location will not require notice to new affected parties. If the Division will not approve the Bear Trap SWD #1 at its current proposed location due to its proximity to the Ruehle SWD #1 well, the Division should continue Case No. 16258 until the January 24, 2019, Examiner Hearing so Delaware can provide notice of the updated location to the affected parties. The Division should not dismiss the case. The proposed alternative location is less than a mile away from the existing location, will not require notice to new affected parties, and is within the same Section as the existing proposed location. If the case is continued, Delaware will submit information to the Division for review and consideration reflecting the alternative location.

III. Foundation Minerals Group Did Not Timely Intervene and Has No Basis for Standing to Object in Case Nos. 16259 (Giant Panda SWD #1) and 16260 (Grizzly SWD #1).

Foundation Minerals, LLC, Mavros Minerals, LLC, and Oak Valley Mineral and Land, L.P. (collectively, the “Foundation Minerals Group”), has not filed a timely notice of intervention and, despite filing a protest and requiring a hearing on these cases, has failed to provide testimony or evidence to establish a basis for standing to object, and has not provided technical evidence or testimony that would support denying Delaware’s applications. The Foundation Minerals Group should be dismissed as a party from Case Nos. 16259 and 16260.

The only potential case in which the Foundation Minerals Group has standing to object is in Case No. 16258 (Bear Trap SWD #1), where MRC Permian’s lease appears to have lapsed, thereby reverting its interest to the Foundation Minerals Group. However, the Foundation Minerals Group has not presented technical evidence or testimony to preclude Division approval. MRC Permian remains the leasehold operator of the fee lease at issue within the one-mile area of review for the Grizzly SWD #1 well in Case No. 16260. Accordingly, the Foundation Minerals

Group is not an affected party under Division rules and has not established a legal or factual basis for standing to object in that case or in Case No. 16259.

Having no substantive technical or legal basis to object to Delaware's applications, the Foundation Minerals Group has instead sought to delay and prolong approval of Delaware's injection wells without basis and to Delaware's substantial prejudice to its business operations. *See* Hearing Tr. 259:21-25; 271:11-272:8 (Delaware has contracts with operators for disposal of produced water). Foundation Minerals Group has now had its opportunity to be heard. Its only complaint was over a potential notice deficiency and irrelevant questions about how Delaware staked its wells. It raised no other technical or legal issues sufficient to deny Delaware's applications. And, despite having had the opportunity, and having been apprised in advance of Delaware's motion to dismiss that it failed to intervene and lacks standing to object, the Foundation Minerals Group has not offered testimony or evidence to demonstrate a basis to object in Case Nos. 16259 and 16260. The Foundation Minerals Group should be dismissed from those cases and Case Nos. 16258, 16259, and 16260 should be approved.

IV. Environmental and Surface Concerns Raised by the Davises and Ms. Ogden Do Not Preclude Approval and Are Addressed by Delaware's Updated Locations, Surface Engineering and Well-Pad Design.

The Davises and Ms. Ogden raised concerns about potential produced water spills reaching the Black River and impacting endangered Texas Hornshell mussel habitat. They also raised concerns about truck traffic. Even if the Davises and Ms. Ogden can establish standing to object, both issues are outside the core scope of Division review and consideration with respect to approval of C-108 applications. Nevertheless, Delaware's testimony and evidence demonstrates that these environmental and surface concerns are being addressed and mitigated in accordance with best management practices in this area in consultation with the Center of Excellence ("CEHMM") and the SLO.

First, Delaware updated the locations for its proposed well in consultation with the SLO, which is subject to a Candidate Conservation Agreement with Assurances (“CCAA”) with the U.S. Fish and Wildlife Service. *See* Hearing Tr. 187:13-188:3; 174:1-4 (SLO has entered into a CCAA with stipulations to protect the habitat of the Texas Hornshell mussel). Those locations were identified and approved by the SLO as being outside of areas that could adversely impact Texas Hornshell mussel habitat and the Black River. *id.* at 55:11-15; 56:4-57:20 (Delaware relocated the wells to locations approved by the SLO away from areas posing risk mussel habitat and the Black River). The Davises and Ms. Ogden continue to raise concerns about the well locations even though Matt Ramey, who is the project manager for the Texas Hornshell mussel at CEHMM, testified that he is unable “to accurately speculate or even say” whether Delaware’s injection well locations are connected to ephemeral drainages of concern along the Black River. *See id.* at 187:2-8.

Second, Delaware’s surface engineering and well pad design for its facilities will follow the SLO’s best practices guidelines, which includes berming around the entire well pad, concrete splash pads and sumps in the off-load areas, 24-hour camera surveillance, alarms, and steel berming around produced water tank batteries. *See* Hearing Tr. at 261:18-262:15. In addition, Delaware is consulting with Mr. Ramey and the CEHMM and the SLO to ensure that its injection well pad design and operations meet CEHMM and SLO recommendations for best practices. *See id.* at 254:18-255:11; 263:5-10. In fact, Mr. Ramey testified that CEHMM supports the operation of injection well companies if they follow good management practices, as Delaware testified that it proposes to do. *See id.* at 182:12-16; 254:18-255:11; 263:5-10. Even Mr. Davis testified that he does not object to produced water disposal operations that use best management practices for the area around Black River. *Id.* at 222:23-223:6

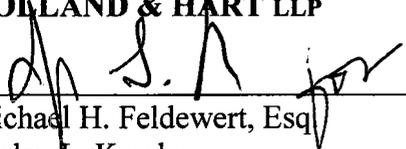
Third, Delaware is in the process of working with producers to develop and construct produced water pipelines to its disposal facilities which will significantly reduce the potential for truck traffic in the area. *See* Hearing Tr. 259:21-25; 272:1-8. Mr. Davis's testimony regarding his estimate of truck traffic—even if no pipelines are in place—is significantly overstated. *See id.* at 259:1-9 (Delaware estimates it is averaging “just over 100” trucks per day, whereas Mr. Davis stated he is concerned there will be 190 trucks per day). Moreover, Mr. Davis himself testified that his freshwater sales are significantly contributing to the truck traffic in the area and along Black River Road. In fact, he pumps approximately 550 gallons of freshwater per minute, sells all the water he can produce, and delivers water from his station to as many as 40 trucks per day traveling along Black River Road. *See* Hearing Tr. 220:14-222:9.

Finally, the Davises and Ms. Ogden have property—both fee and grazing leases—that are located upstream from Delaware's proposed injection well locations. *See id.* 257-258; 186:15-18. Testimony from Mr. Ramey establishes, and logic dictates, that surface spills will not traverse the topography in an uphill direction. No competent testimony or evidence supports a finding that the Davises or Ms. Ogden could potentially be directly harmed by a surface spill at any of Delaware's proposed injection well facility locations.

Evidence and testimony establish conclusively that Delaware has been and is working with CEHMM and the SLO to locate, design, construct, and operate its injection well facilities as a prudent operator and in accordance with accepted best practice guidelines for the Black River area and Texas Hornshell mussel habitat. Moreover, shallow freshwater zones will be protected against contamination by redundant layers of conductor pipe, surface casing, and production casing, all of which will be cemented to the surface, as well as continuous monitoring within the annulus of each injection well.

Respectfully submitted,

HOLLAND & HART LLP



Michael H. Feldewert, Esq
Jordan L. Kessler
Adam Rankin
Julia Broggi
Post Office Box 2208
Santa Fe, New Mexico 87504-2208
(505) 988-4421
(505) 983-6043 Facsimile
mfeldewert@hollandhart.com
jlkessler@hollandhart.com
agrarkin@hollandhart.com
jbroggi@hollandhart.com

**ATTORNEYS FOR DELAWARE ENERGY,
LLC**

CERTIFICATE OF SERVICE

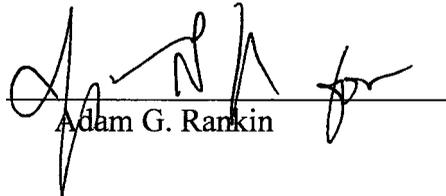
I hereby certify that on December 10, 2018 I filed with the Oil Conservation Division and served a copy of the foregoing document to all counsel of record via Electronic Mail to:

Seth C. McMillan
PO Box 2307
Santa Fe NM 87504-2307
505-982-3873
smcmillan@montand.com

**Attorney for Foundation Minerals,
LLC, Mavros Minerals, LLC, and
Oak Valley Mineral and Land, L.P.**

Marion J. Craig III, Esq.
Marion J. Craig III Attorney at Law, LLC
P.O. Box 1436
Roswell, New Mexico 88202-1436
(575) 622-1106
Jimmy@craiglawllc.com

**Attorney for Jim & Barbara Davis and
Alisa Ogden**



Adam G. Rankin