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1	INDEX	
2		PAGE
3	Case Number 15855 Called	6
4	Opening Statement by Mr. Feldewert	8
5	Opening Statement by Mr. Larson	15
6	Recommendations Presented by Matador	17
7	Delaware Energy, LLC's Case-in-Chief:	
8	Witnesses:	
9	Michael McCurdy:	
10	Direct Examination by Mr. Feldewert	19
	Cross-Examination by Mr. Larson	60
11	Cross-Examination by Examiner Brooks	93
	Cross-Examination by Examiner Goetze	97
12	Redirect Examination by Mr. Feldewert	97
13	Alpha SWD Operating, LLC's Case-in-Chief:	
14	Kurtis O. Knewitz:	
15	Direct Examination by Mr. Larson	102
	Cross-Examination by Mr. Feldewert	120
16	Cross-Examination by Examiner Brooks	153
	Cross-Examination by Examiner Goetze	156
17	Christopher B. Weyand:	
18	Direct Examination by Mr. Larson	157
19	Cross-Examination by Mr. Feldewert	166
	Cross-Examination by Examiner Brooks	172
20	Jason L. Pickard:	
21	Direct Examination by Mr. Larson	176
22	Cross-Examination by Mr. Feldewert	187
	Cross-Examination by Examiner Brooks	195
23		
24	Motion to Renew Stay	198
25		

1	INDEX	
2		PAGE
3	Closing Statement by Mr. Feldewert	201
4	Closing Statement by Mr. Larson	205
5	Proceedings Conclude	208
6	Certificate of Court Reporter	209
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	EXHIBITS OFFERED AND ADMITTED	
2		PAGE
3	Delaware Energy, LLC Exhibit Numbers 1 through 16	56
4	Delaware Energy, LLC Exhibit Numbers 17 through 20	197
5		
6	Matador Production Company Exhibit Number 1	19
7		
8	Alpha SWD Operating, LLC Exhibit Numbers 3 through 11 and 14	119
9		
10	Alpha SWD Operating, LLC Exhibit Numbers 1, 2, 12 and 13	165
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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. It 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 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 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 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 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 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. 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. 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.    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.    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 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 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 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

1 during his testimony.

2 EXAMINER GOETZE: Okay.

3 MR. FELDEWERT: So that has not been  
4 produced to us. And if he's going to discuss it in his  
5 testimony, I'm not sure why they wouldn't produce that.  
6 So that to me is an issue that's outstanding.

7 EXAMINER GOETZE: Hmm. Well, let's see  
8 what the testimony offers.

9 MR. LARSON: Can I respond, Mr. Examiner?

10 EXAMINER GOETZE: Please.

11 MR. LARSON: When we served responses on  
12 behalf of Alpha to the subpoena, I asserted relevancy  
13 objections --

14 EXAMINER GOETZE: Uh-huh.

15 MR. LARSON: -- to the request and subject  
16 to those objections produced documents. I think that's  
17 a very valid relevance objection because the requests go  
18 to private-party contracts that are outside the scope of  
19 the legal claims in this case. I then had discussion  
20 with Mr. Rankin and Mr. Feldewert. I agreed to produce  
21 additional documents. We still felt that the purchase  
22 and sale agreement with Gateway was not relevant to the  
23 proceeding. Mr. Rankin called me yesterday, asked me to  
24 produce it, and I said, "Okay. I'm going to redact the  
25 price number in there. Will you agree not to continue

1 the case if we produce it?" So I produced it in good  
2 faith. My relevance objections apply to the other  
3 documents attached.

4 MR. FELDEWERT: I thought the relevancy  
5 objection had been withdrawn to the subpoena request.

6 MR. LARSON: No. I produced the documents  
7 that I withheld -- had withheld on the basis of the  
8 objection.

9 MR. FELDEWERT: I'm sorry. I thought you  
10 had filed amended answers that withdrew the relevancy  
11 objection to the paragraphs.

12 MR. LARSON: Do you have that? Well, I  
13 might --

14 MR. FELDEWERT: My point is, it seems to me  
15 that they produce a document that is responsive to our  
16 paragraphs, and they leave off an exhibit to that  
17 contract which in itself is responsive to the  
18 paragraphs. So --

19 EXAMINER GOETZE: Well, if the opportunity  
20 is to clear it up with testimony, let's resolve it that  
21 way, so we can close this case.

22 The next item -- and this is -- just before  
23 we get into cross, you have only one witness,  
24 Mr. Feldewert? So this will be the sole witness for  
25 Delaware Energy?

1 MR. FELDEWERT: This is the sole witness  
2 that I anticipate at this point, unless something comes  
3 up during their case.

4 EXAMINER GOETZE: Okay. Very good.

5 Mr. Larson, the floor is yours, sir.

6 CROSS-EXAMINATION

7 BY MR. LARSON:

8 Q. Good morning, Mr. McCurdy.

9 A. Morning, sir.

10 Q. Mr. Feldewert asked you some questions about  
11 communications with the OCD regarding your application,  
12 and he referred, with his questions, to "they." Can you  
13 tell me who you spoke to at the OCD about your  
14 application?

15 A. Yes. It was specifically Michael McMillan and  
16 Mr. Goetze.

17 Q. And when did those conversations take place?

18 A. They were in -- probably when I got the release  
19 from Randy Cate at Guardian.

20 Q. And when did you receive that?

21 A. To be specific --

22 MR. FELDEWERT: It's Exhibit Number 3.

23 THE WITNESS: It would have been around  
24 June the 27th, I believe.

25 Q. (BY MR. LARSON) Do you have any email

1     **correspondence regarding those communications?**

2           A.     I don't.  I only made phone calls.

3           **Q.     And you had communications with**

4     **Mr. Pickard and Mr. Knewitz about the well.  Do you have**  
5     **any email communications memorializing those**  
6     **conversations?**

7           A.     I have email correspondence between the two of  
8     them, but not -- or between Kurt and I, but not in  
9     regards to our conversations -- which time frame are we  
10    talking here?

11          **Q.     I'm specifically talking about your testimony**  
12    **regarding their alleged conversations with you about the**  
13    **Alpha SWD No. 1 well.**

14                   MR. FELDEWERT:  Let me lodge an objection  
15    on the grounds of vague.  There were a lot of  
16    communications about the Alpha SWD No. 1.

17                   Are you talking about in May?

18          **Q.     (BY MR. LARSON) I'm talking about the**  
19    **conversations where Mr. McCurdy said that Mr. Pickard**  
20    **and Mr. Knewitz told him about the Alpha well.**

21           A.     I have an email -- and I think it was dated in  
22    May of '17 -- that talks about the Alpha well.

23          **Q.     Okay.  Did you present that as an exhibit?**

24           A.     I believe it's on there.

25                   Isn't it, Mr. Feldewert?

1 MR. FELDEWERT: Hold on.

2 Exhibit 13, May 16th, 2017.

3 Q. (BY MR. LARSON) And this is the property  
4 description of the site location for the Alpha SWD  
5 No. 1?

6 A. That's correct.

7 Q. Actually, I was more specifically referring to  
8 conversations where -- that you testified where you said  
9 that you informed Alpha about the application for the  
10 Ruiz well.

11 A. I never informed them about the Ruiz well. I  
12 told them that we had a pending permit in the area  
13 directly offsetting them.

14 Q. Directing your attention to Exhibit 2, I  
15 believe this is a partial copy of the October 2016  
16 application.

17 EXAMINER GOETZE: Excuse me. That would be  
18 their Exhibit Number 2?

19 MR. LARSON: Yes, Delaware Exhibit Number  
20 2.

21 EXAMINER GOETZE: Delaware Exhibit Number  
22 2?

23 MR. LARSON: That's correct.

24 EXAMINER GOETZE: Thank you.

25 Q. (BY MR. LARSON) And if you'll look at the

1 **fourth page of that exhibit, it's the last page.**

2 A. Fourth to the last?

3 **Q. It is the last page of Exhibit 2, the fourth**  
4 **page of the exhibit. There is no well location**  
5 **indicated, is there?**

6 A. I'm sorry. Which page is it?

7 **Q. It's the C-102.**

8 A. Okay. Hold on.

9 MR. FELDEWERT: Object to the form of the  
10 question. It provides a surface location.

11 THE WITNESS: Are you talking about page  
12 11?

13 **Q. (BY MR. LARSON) No. I'm on your exhibit.**

14 A. I'm sorry. I'm sorry.

15 **Q. I'm on your exhibits.**

16 A. Sorry about that.

17 EXAMINER GOETZE: Let him get there, and  
18 then we'll have that discussion.

19 THE WITNESS: Okay.

20 **Q. (BY MR. LARSON) Mr. Feldewert's objection is**  
21 **well taken. It does have the well location. But was it**  
22 **signed by a surveyor?**

23 A. No. This is not an official survey.

24 **Q. Why didn't you include the official survey?**

25 A. Normally when submitting permits initially, we

1 submit them without an official survey in case something  
2 comes up where we need to move it. It creates  
3 redundancy and costs extra money. We get the approval,  
4 then do the survey.

5 Q. Do you know who Irma and James Phillips are?

6 A. I know of them. I've never met them  
7 personally. I've met them like only by verbal phone  
8 calls.

9 Q. Are you aware that they have a residence in  
10 this area?

11 A. I am.

12 Q. And are you aware that well location is less  
13 than 100 feet from their house?

14 A. I don't know the exact distance from their  
15 house.

16 Q. But it's close to their house?

17 A. I don't know.

18 Q. You mentioned during the meeting you attended  
19 in Dallas that you spoke to a gentleman who builds  
20 surface locations for SWD operators?

21 A. Yes, sir.

22 Q. Do you recall his name?

23 A. Eric Benavides.

24 Q. And did you talk to Mr. Benavides about  
25 building a well location for Delaware?

1           A.    We had discussed.  He never -- me and him had  
2 never came to an official design or anything with a well  
3 diagram for us.

4           **Q.    Did he inform you that because he was doing**  
5 **work for Alpha, he couldn't do a Delaware location?**

6           A.    He said that if we -- yes.  He said that if he  
7 were to build a SWD, he could only do it on the Gomez  
8 site.  And we met in my office about that.

9           **Q.    I believe you testified that on June 29th, you**  
10 **were at the Ruiz location to stake the well?**

11          A.    That's correct.

12          **Q.    Did you have an injection permit at that time?**

13          A.    No.  I had just gotten my clearing from  
14 Guardian.

15          **Q.    Okay.  So you didn't have a permit issued at**  
16 **this point?  Guardian had just spoken to you about their**  
17 **objections; is that correct?**

18          A.    No.  June 29th, you're asking --

19          **Q.    Correct.**

20          A.    -- of 2017?

21                        I was out there surveying it to be able to  
22 fulfill my documentation to the New Mexico OCD for my  
23 permit.

24          **Q.    Okay.  There's a stack of exhibits in front of**  
25 **you that are marked "Alpha SWD Operating" exhibits.  Do**

1     **you see those?**

2           A.     Yes, sir.

3           **Q.     And if you go to the back, you should see an**  
4 **Exhibit Number 14. Do you see that?**

5                   MR. FELDEWERT: Bottom of the stack?

6                   THE WITNESS: I got it right here.

7           **Q.     (BY MR. LARSON) Yeah. Do you have that in**  
8 **front of you?**

9           A.     Yes, sir.

10          **Q.     And I don't recall which Delaware exhibit it**  
11 **is, but there was an email from you to Kurt Knewitz that**  
12 **the list of properties was redacted. Do you recall that**  
13 **exhibit?**

14          A.     I don't. Oh, yes, the redacted exhibit on his  
15 sheet.

16          **Q.     Correct.**

17          A.     Yes, sir. Yes, sir.

18          **Q.     I'm sorry I don't have a number for you.**

19          A.     You're fine.

20                   What number was that, Mr. Feldewert?

21                   MR. FELDEWERT: 10.

22                   MR. LARSON: Thank you, Mr. Feldewert.

23          **Q.     (BY MR. LARSON) Now, if you'll look at Alpha**  
24 **Exhibit Number 14 --**

25          A.     Yes, sir.

1 Q. -- this is an email string, and if you look at  
2 the first email at the bottom of page 1, that appears to  
3 be the same email that is attached to Delaware Exhibit  
4 10.

5 A. Yes, sir.

6 Q. And then if you look up on March 4th,  
7 Mr. Knewitz asked Mr. Stein if he had filed permits on  
8 all these leases. And at the top, you see Mr. Stein's  
9 response, "No. The only permits filed on them are the  
10 Gomez and the Pardue...."

11 A. I see.

12 Q. "Everything else hasn't been touched/utilized."  
13 What does that tell you about the Ruiz?

14 A. It tells me that Preston made an error in his  
15 email to Mr. Knewitz.

16 Q. I would next direct your attention to Alpha  
17 Exhibit Number 1. And does that appear to you to be a  
18 copy of the C-108 that Delaware submitted to the OCD on  
19 October 24 --

20 A. Yes, it does.

21 Q. -- plus a letter and several emails toward the  
22 back? Do you see those?

23 A. Yes, sir.

24 Q. And obviously the handwriting on the first page  
25 wasn't there when you submitted it.

1                   And who signed the C-108 on behalf of  
2 Delaware, if you'll look at page 1, bottom of the page?

3           A.     Preston did.

4           Q.     And what is the application number that appears  
5 at the top of the page in the upper, right-hand corner?

6           A.     It's a long number.

7           Q.     Can you go ahead and read it into the record,  
8 please?

9           A.     1630053276.

10          Q.     And are there initials "PMAM" preceding the  
11 number?

12          A.     Yes. It looks like that.

13          Q.     Now, I'll next refer you to page 26 of the  
14 exhibit. Because it's multiple pages, we went ahead and  
15 numbered them at the bottom of the page. So it's an  
16 email correspondence with the added number 26 at the  
17 bottom of the page. Do you see those emails?

18          A.     Yes. I'm reading them now.

19          Q.     Okay. I'll give you a moment.

20          A.     Thank you (reading).

21                   EXAMINER BROOKS: By the way, we appreciate  
22 your attention to numbers.

23                   THE WITNESS: Sorry. I started from the  
24 bottom and I'm going up. Give me one second.

25          Q.     (BY MR. LARSON) Take your time.

1 MR. FELDEWERT: So we're on page 26 of  
2 Exhibit 1?

3 MR. LARSON: 1, yes.

4 THE WITNESS: Okay. Yes, sir. I've read  
5 it.

6 Q. (BY MR. LARSON) And if you look at the email  
7 that appears at the bottom of the page from Michael  
8 McMillan to Preston Stein dated October 26, 2016, did  
9 Mr. McMillan inform Mr. Stein there were deficiencies in  
10 the C-108 Delaware had submitted?

11 MR. FELDEWERT: Hold on. Object to the  
12 form of the question.

13 This particular email refers to the San  
14 Pounder Federal SWD No. 1 in the west half, I guess, or  
15 somewhere in Section 11?

16 MR. LARSON: And if you look at the  
17 subject -- I understand that's confusing. If you look  
18 at the subject, it's the Ruiz Well No. 1, and then if  
19 you look up at Mr. Stein's response, it appears that  
20 he's referring to the Ruiz.

21 MR. FELDEWERT: Well, he's following the  
22 email chain.

23 THE WITNESS: Wrong section.

24 Q. (BY MR. LARSON) Is the proposed Ruiz well in  
25 the west half of Section 11?

1 A. No.

2 Q. Where is it located?

3 A. Section 10.

4 Q. Are you aware of any requests by Mr. McMillan  
5 that Delaware supplement the C-108 submitted in October  
6 of 2016?

7 A. Can you repeat that, please?

8 Q. Sure. Are you aware of any requests by  
9 Mr. McMillan for Delaware to supplement the application  
10 it filed in October of 2016?

11 A. In what time frame?

12 Q. It would be after the OCD received the  
13 application. I believe it was October 24th.

14 A. No. I never was notified to resend anything at  
15 that time.

16 Q. Do you know if Mr. Stein was?

17 A. I don't.

18 Q. Would you next identify or look at the document  
19 marked as Exhibit 2?

20 EXAMINER GOETZE: That would be Alpha  
21 Exhibit 2?

22 MR. LARSON: Alpha Exhibit 2, yes. I will  
23 keep that in mind.

24 EXAMINER GOETZE: It's going to be Delaware  
25 or Alpha, please.

1 MR. LARSON: Understood.

2 Q. (BY MR. LARSON) Would you like a moment to look  
3 through it?

4 A. Please.

5 EXAMINER BROOKS: What exhibit are we  
6 looking at now?

7 MR. LARSON: We're looking at Alpha Exhibit  
8 2.

9 EXAMINER BROOKS: Oh, that's the C-108.

10 THE WITNESS: All right.

11 Q. (BY MR. LARSON) And could you read to the court  
12 reporter the application number that appears at the  
13 upper, right-hand corner of the application?

14 A. Yes, sir. It's PKSC1718735697.

15 Q. And is that a different number than the  
16 application number that appears on Alpha Exhibit Number  
17 1?

18 A. It is.

19 Q. Do you have any sense of why the C-108 received  
20 by the Division on July 3rd of 2017 was assigned a  
21 different application number?

22 A. I don't.

23 Q. And what was your purpose in submitting a new  
24 C-108 for the Ruiz well in July of this year?

25 A. I was requested by the Division to send an

1 updated C-108 that reflected our wellbore diagram.

2 **Q. Could you have just submitted the wellbore**  
3 **diagram and not the entire C-108?**

4 A. No. Mr. -- the Division was very clear that  
5 they wanted the wellbore diagram on the C-108 where you  
6 put the casing depths, sacks of cement, et cetera.

7 **Q. Is it your testimony they asked you to submit**  
8 **an entire new application?**

9 MR. FELDEWERT: Object to the form of the  
10 question.

11 EXAMINER GOETZE: I think we need an  
12 answer, what was your -- what the Division told you and  
13 make it part of the record.

14 THE WITNESS: They never -- sorry,  
15 Mr. Examiner.

16 EXAMINER GOETZE: No. Go ahead.

17 THE WITNESS: They never requested that I  
18 submit a new application -- a new complete application,  
19 no.

20 **Q. (BY MR. LARSON) I'll direct your attention to**  
21 **what's marked as page 32 at the bottom of Alpha Exhibit**  
22 **2. It shows, at the bottom of the page, Mr. McCurdy --**

23 A. Yes, sir.

24 **Q. Are you there, page 32?**

25 A. Yes, sir. It's an email.

1 Q. And do you know if June 27th, 2017 was the  
2 first time the OCD was informed that the protest to  
3 Delaware's October 2016 C-108 was being withdrawn?

4 A. I don't know.

5 Q. Would I be correct to say that it took Delaware  
6 approximately nine months to resolve the protests? That  
7 time frame being the submission of the application in  
8 October and this email of June 27th, 2016 -- 2017?

9 A. Yes, sir.

10 Q. Why did it take so long?

11 A. We were dealing with two different companies.  
12 We were dealing with Guardian, and we were also then  
13 being telephoned through to Matador. It just took time.  
14 And then we did not get the response as quickly as we  
15 expected from Matador, but at the same time, you don't  
16 want to become a nuisance. These are people that may  
17 end up bringing us water at some point. So it was very  
18 delicate to try to get a response, and so it took time  
19 to do so.

20 Q. I'll next direct your attention to page 26 of  
21 Alpha Exhibit Number 2. I'll ask you to look at the  
22 email from you to various parties on June 2nd, 2017.  
23 It's in the middle of the page there. Do you see that?

24 A. From Randy Cate to Preston, on 28?

25 Q. No. It's the middle one, from you to, looks

1 like, Guardian Corporation and Matador Resources.

2 A. What page number are we on?

3 Q. It's number 26. It appears at the bottom of  
4 the page of Alpha Exhibit 2.

5 A. Gotcha.

6 Q. And does that indicate that Delaware had a  
7 phone call with Matador in December of 2016 and came to  
8 an agreement on the Ruiz casing design?

9 A. It came to an agreement by telephone. Yes.

10 Q. So would it be correct to say, as of December,  
11 you had an agreement with Matador?

12 A. No, that's not correct. We had a verbal  
13 agreement with their engineers, but they still had --  
14 they needed to get an email of everything we talked  
15 about put into -- or get a -- get everything we talked  
16 about on the phone into an email and then sent for their  
17 approval. And that's what this block is, is from when  
18 that was sent initially. The underlined block is what  
19 was sent to Matador.

20 Q. So then it took you another six months to firm  
21 it up?

22 A. That's correct.

23 Q. I'll next direct your attention to page 40 of  
24 Alpha Exhibit 2. I'll give you a second to read the  
25 email.

1           A.   (Witness complies.)

2                       Yes.  I know this email.

3           **Q.   It's from Mr. McMillan to you?**

4           A.   Yes, sir.

5           **Q.   And would you read the second sentence in that**  
6 **email?**

7           A.   "Alpha SWD Operating, LLC has been identified  
8 as an affected person for the proposed salt-water  
9 disposal well."

10          **Q.   And did you ever notify Alpha of any of your**  
11 **submissions to the OCD regarding the Ruiz well?**

12          A.   We never notified them because we -- I believe  
13 I need to check, but I don't think that we knew that  
14 they -- when we were resubmitting this, we did  
15 not -- that was before the phone call when we found out  
16 that they had an approved permit there.

17          **Q.   If I understood your testimony correctly, you**  
18 **said that conversation happened on June 29th?**

19          A.   Right.  But I'm saying that when the -- what  
20 Mr. Feldewert --

21                       What was the date that I submitted all that  
22 stuff to the New Mexico OCD?

23                       MR. FELDEWERT:  July 2nd.

24                       THE WITNESS:  July 2nd.  Okay.

25                       Well, then no, I did not.

1 Q. (BY MR. LARSON) And, again, referring to  
2 Mr. McMillan's email of July 13, if you look in the RE  
3 column, what application is he referring to there?

4 EXAMINER BROOKS: What page?

5 MR. LARSON: Staying on page 40 of Alpha  
6 Exhibit 2.

7 Q. (BY MR. LARSON) It's the one we were just  
8 looking at.

9 A. It's the same -- it's the same one?

10 Q. Same page, yes.

11 Would you read that?

12 A. Read it out again?

13 Q. Please.

14 A. PKSC1718735697.

15 Q. I'll next refer your attention to Alpha Exhibit  
16 Number 3. And are you familiar with this document,  
17 Mr. McCurdy?

18 A. I'm sure I've looked at this document. I'm not  
19 recalling it off the top of my head.

20 Q. Is it the application to revoke Alpha's  
21 injection authority?

22 A. It is. I'm just letting you know I have not  
23 read in detail through it.

24 Q. Did you review it before it was filed by your  
25 attorney?

1           A.    Our team did, yes.

2           **Q.    I'll direct your attention to paragraph five on**  
3 **page 2 of the application.  And what is the basis of the**  
4 **assertion that Alpha knew as of the date it filed its**  
5 **application on June 12th that Delaware Energy had a**  
6 **pending C-108 application before the Division?**

7           A.    What is your question?

8           **Q.    What is the basis for the assertion in**  
9 **paragraph five?**

10          A.    The basis is that we had been saying we have a  
11 permit directly offsetting where they were looking to  
12 potentially put the Alpha permit, which would be the  
13 Ruiz SWD.

14          **Q.    And when did you communicate to Alpha that the**  
15 **Ruiz application was pending?**

16          A.    I never mentioned the Ruiz application  
17 specifically to them.

18          **Q.    So then how did they know about it?**

19          A.    Because they -- they did not know about the  
20 Ruiz.  They knew that we had a permit in the area  
21 directly offsetting their well.

22          **Q.    Could that have been the Gomez well?**

23          A.    No.

24          **Q.    Why didn't you tell them about the Ruiz**  
25 **application?**

1           A.    Not to completely show them everything that we  
2 had.

3           **Q.    So is this assertion true, that Alpha didn't**  
4 **know about the application when it filed its SWD**  
5 **application on June 20th?**

6           A.    They did not know the name of the application,  
7 but they were aware there was a well in the area, that  
8 we had permitted, pending.

9                           (Cell phone ringing.)

10                          MR. LARSON:   Cell phone faux pas.

11                          EXAMINER GOETZE:   That's okay.  It's his  
12 first time here.  Otherwise, we'll take it later.

13                           (Laughter.)

14           **Q.    (BY MR. LARSON) Okay.  Mr. McCurdy, I'll next**  
15 **direct your attention to page 3 of the application,**  
16 **paragraph 11.**

17           A.    Yes, sir.

18           **Q.    And what is the basis for the assertion that**  
19 **Alpha contacted Delaware about purchasing Administrative**  
20 **Order SWD-1680?**

21           A.    When they called -- when I had come back to the  
22 office from getting the staking set up at the Ruiz that  
23 day, I was in the office, and I was contacted by Jason  
24 Pickard and Kurt Knewitz.

25           **Q.    And I know you addressed this in response to**

1 your question by Mr. Feldewert. I'd just like to follow  
2 up. How did the subject of the injection authority for  
3 the Alpha SWD well come up during that conversation?

4 A. It was, "What do you think you're doing?" And  
5 I said, "What do you mean?" And they said, "Well,  
6 you're staking a well right offsetting our permit." I  
7 go, "Y'all don't have a permit." And they go, "Yeah,  
8 you [sic] do." And I went online while on the phone  
9 with them and looked, and sure enough, there was their  
10 order.

11 Q. And what about the assertion that during that  
12 conversation, Mr. Knewitz and Mr. Pickard offered to  
13 sell you their SWD permit?

14 A. They did.

15 Q. Was there a discussion about partnering on the  
16 well?

17 A. At one point, yes, we had talked about that.

18 Q. And what were the elements of that  
19 conversation?

20 A. Just that if we were to partner, we would have  
21 to operate based off of the people who would be paying  
22 the money on our side.

23 Q. So you were basically wanting Alpha to act as a  
24 non-op interest owner in the well?

25 A. Are you talking about the Alpha well, or are

1 you talking about --

2 **Q. I'm talking about the Alpha well.**

3 A. No. We had said that we were willing to  
4 partner with them in this vicinity over here  
5 (indicating) or in the Gomez vicinity as long as we were  
6 able to operate because we would not be able to take a  
7 non-op in the well.

8 **Q. I'll next direct your attention to page 4 of**  
9 **the application, specifically paragraph 13.**

10 EXAMINER BROOKS: What did you say?

11 MR. LARSON: I'm on page 4 of Alpha Exhibit  
12 2, paragraph 13.

13 EXAMINER BROOKS: 13. Thank you.

14 THE WITNESS: Okay.

15 **Q. (BY MR. LARSON) And do you see the assertion**  
16 **that Alpha had an intent to monetize its permit rather**  
17 **than drill the well and commence objection --**  
18 **injection -- that's a lawyer Freudian slip.**

19 EXAMINER BROOKS: Lawyers do it all the  
20 time. They don't commence. They just continue.

21 (Laughter.)

22 **Q. (BY MR. LARSON) What's the basis -- factual**  
23 **basis for that assertion, Mr. McCurdy?**

24 A. I'm not trying to be difficult, but I don't  
25 understand the question.

1 Q. Okay. I'm looking at the second sentence of  
2 paragraph 13 --

3 A. Okay.

4 Q. -- in particular the clause talking about an  
5 intent by Alpha to monetize its permit rather than drill  
6 the well and commence objection -- there I go again --  
7 commence injection. What is the factual basis for that  
8 assertion?

9 A. Okay. I'm assuming monetize means to sell and  
10 make money off of it. I want to make sure that's clear.

11 Q. It's your application, but we'll go with your  
12 interpretation.

13 A. Okay. Then I would say yes, because I was  
14 actually -- when I was on the phone with them that day,  
15 they told us a cash number that they wanted for their  
16 permit.

17 Q. And during the meeting you had in Dallas in  
18 May, did Mr. Knewitz and Mr. Pickard show you plans to  
19 design the surface or to install the equipment for the  
20 surface of the well?

21 A. They showed -- they showed plans, but the plans  
22 that they were showing, except for the overhead view, I  
23 would say were pretty much the same plans over on the  
24 Gomez. It was the same surface facility, just moved.  
25 That's my opinion.

1 Q. But did they convey to you that that would be  
2 the surface of the Alpha No. 1 well?

3 A. Yes.

4 Q. And are you aware of any prohibition of Alpha  
5 selling or assigning its authorization to inject?

6 A. Define what you mean by prohibition. I'm  
7 against it, or what is that saying?

8 Q. Is there a Division rule that prohibits Alpha  
9 from selling --

10 A. I have no idea.

11 Q. How many SWD well permits does Delaware  
12 currently have?

13 A. I would say more than eight. And it's not to  
14 be hidden but just because of the fact I would really  
15 need to go count and make sure I was right if I was  
16 going to go on record to say more than that.

17 Q. I don't know if you understand my question.  
18 How many administrative orders authorizing injection has  
19 Delaware received from the OCD?

20 A. Yeah. I don't know that number.

21 Q. Is it eight?

22 A. I don't know.

23 Q. How many SWD wells does Delaware currently have  
24 in operation?

25 A. None in operation at this point, but we will be

1 operational November 15th.

2 **Q. On which well?**

3 A. The Gomez SWD.

4 **Q. And where is the Gomez SWD well located?**

5 A. It's located approximately -- about .8 miles  
6 west on Black River Village Road from Malaga on 285.

7 **Q. Where is it located in relation to the proposed**  
8 **Ruiz well?**

9 A. I would say probably less than two miles, would  
10 be safe to say.

11 **Q. Has Delaware ever attempted to sell any of its**  
12 **SWD locations?**

13 A. We've had -- we have been in discussions but  
14 never sold.

15 **Q. And did you have discussions with Mr. Knewitz?**

16 A. I don't know what the discussions were between  
17 Preston and Mr. Knewitz with BuySWD, except for the  
18 emails, and I have not really read through all of those  
19 emails.

20 **Q. Do you recall whether Delaware entered into a**  
21 **fee agreement with BuySWD to market Delaware's SWD**  
22 **locations?**

23 A. I saw an agreement on one of the emails for  
24 Alpha -- or BuySWD and Preston, but I was forwarding all  
25 that to the attorneys and never sat to read it. We've

1     been doing other work.

2           **Q.     Going back to Alpha Exhibit 3, which is the**  
3     **application, why do you believe that you, Delaware,**  
4     **should have notified -- I'm sorry -- Alpha should have**  
5     **notified Delaware when it submitted its application on**  
6     **June 12th, 2017?**

7           A.     Because we had been in a lot of conversations,  
8     and, I mean, I would say business friends. I mean, we  
9     talked a lot. We had discussions. They showed us their  
10    economic models. I went back and forth with their  
11    economics, discussing and having questions on things.  
12    We were very involved with one another, and it sounded  
13    as though Kurt and Jason were really interested. We  
14    even spent time flying to Dallas to meet with them,  
15    thinking that these guys were really going to do what we  
16    were planning on doing. I mean, if the tables would  
17    have been turned, I mean, I definitely would have said,  
18    "Hey, guys, we're about to -- we've submitted this  
19    permit over here." We were talking too much to not be  
20    that open about that.

21           **Q.     Would it be fair to say you viewed it as a**  
22     **business courtesy?**

23                   MR. FELDEWERT: Object to the --

24                   Are you asking him why he personally  
25    believed they should have notified him? You're not

1 asking as a matter of law, correct?

2 MR. LARSON: That's correct.

3 MR. FELDEWERT: Okay.

4 THE WITNESS: Yes, as a business courtesy.

5 Q. (BY MR. LARSON) But, again, if I understand  
6 your testimony correctly, you had never told them about  
7 the application for the Ruiz well?

8 A. Are you referring to the July time frame when  
9 we submitted our --

10 Q. I'm talking about anytime.

11 A. Well, I told them that we were completing our  
12 permit in June, when we were on the phone, as a matter  
13 of fact, right, because they called and they go, "What  
14 are you doing?" "Well, we're finishing our permit. We  
15 finally got approval from Guardian." That's why Kurt  
16 made a protest.

17 Q. Okay. Is it your testimony that Delaware  
18 knew -- I'm sorry -- I'm confusing the parties again --  
19 that Alpha knew about a submission by Delaware in  
20 October of 2016 to the OCD?

21 A. They did not know the date. They just knew we  
22 had a pending permit.

23 Q. And when did they -- were they informed of  
24 that?

25 A. Via phone calls in May and in a meeting.

1           **Q.    Okay.  And I don't want to misstate your**  
2 **testimony, but I believe a few minutes ago you said you**  
3 **didn't inform them about that application.**

4           A.    No.  I did not --

5                       MR. FELDEWERT:  Object to the form of the  
6 question.  It's been asked many times now.

7                       EXAMINER BROOKS:  It was a leading  
8 question, but we normally are lax about that.  Was there  
9 some other objection to the form of the question?

10                      MR. FELDEWERT:  Well, he's been over this  
11 now three times.  He's testified three times now that he  
12 told them.

13                      MR. LARSON:  But he also said he didn't  
14 tell them.

15                      MR. FELDEWERT:  No, he didn't say that.

16                      EXAMINER BROOKS:  I'll let him answer the  
17 question.

18                      Overrule the objection.

19                      THE WITNESS:  In May and June, I did not  
20 tell them, "I have this Ruiz SWD that is pending with  
21 the OCD."  In May and June, I simply told them that I  
22 had a well directly offsetting their proposed location  
23 that they were interested in potentially permitting, and  
24 that's all I told them.

25           **Q.    (BY MR. LARSON) Thank you for that**

1 clarification.

2 A. Yeah.

3 Q. And at the time Alpha submitted its C-108 on  
4 June 12th of 2017, was Delaware an owner of the land on  
5 which Alpha's SWD well will be located?

6 A. We're not an owner.

7 Q. Was Delaware a leasehold operator of a well  
8 within a half-mile radius of the Alpha SWD Well No. 1  
9 location?

10 A. I don't know the answer to that.

11 Q. Okay.

12 A. I'm not trying to be difficult, but that could  
13 be construed different ways there.

14 Q. I understand.

15 Bear with me one moment, Mr. McCurdy.

16 A. Sure.

17 Q. I'll refer you to page 18 of the -- of the  
18 Alpha application, which is Exhibit B to the application  
19 to revoke, which is Alpha Exhibit Number 3.

20 A. Exhibit Number 3?

21 Okay. Exhibit 3.

22 Q. If you'll flip back, you'll see an Exhibit B.

23 A. I see it.

24 Q. Okay. And if you'll then go to numbered page  
25 18 of Exhibit B.

1           A.    I see it.

2           Q.    And does that circle appear to be a half-mile  
3 radius of the well location, which is the black dot in  
4 the middle?

5           A.    It says that.

6           Q.    And was Delaware a leasehold operator of a well  
7 within that half-mile radius indicated on the  
8 application?

9           A.    We were not.

10          Q.    Did Delaware have any knowledge about Alpha's  
11 plans to develop the Alpha SWD No. 1 prior to Alpha's  
12 submission of its administrative application on June  
13 12th, 2017?

14          A.    Yes.

15          Q.    I'll direct your attention to the document  
16 marked as Alpha Exhibit Number 4. Do you want a minute  
17 to look through it, or do you recognize --

18          A.    I recognize the email.

19          Q.    Do you recall this email correspondence between  
20 you and Mr. Knewitz?

21          A.    Absolutely.

22          Q.    And do the emails address the Alpha SWD Well  
23 No. 1, which is the subject of Administrative Order  
24 SWD-1680?

25          A.    They do, but that can be construed as

1 misleading, because technically the Gomez SWD plans and  
2 stuff for the saltwater disposal facility that Eric  
3 Benavides was drawing up for us, whenever we looked at  
4 the plans Preston had sent me, all set out the SWD No. 1  
5 as well. So, I mean, technically that word can be used  
6 for both locations.

7 **Q. Okay. I think I understand what you're saying.**

8 A. Okay.

9 **Q. So you're saying the communication addressed**  
10 **both the Alpha SWD and the Gomez; is that correct?**

11 A. No. Realistically, when this email was going  
12 around, I -- I was asking questions in relation to the  
13 Alpha SWD brochure, or it was in reference to that. And  
14 I believe the Alpha SWD, from conversations I had with  
15 Preston, was going to be the Gomez if we partnered.

16 **Q. Okay. So this email string does not address**  
17 **the Alpha SWD No. 1 well, or does it include it as well**  
18 **as the Gomez well?**

19 A. From my interpretation with Preston, I -- I was  
20 under the impression that this was the Gomez location  
21 and the economics we were running at the time -- this is  
22 prior to the May meeting -- that we were discussing  
23 potentially putting a well there.

24 **Q. But it wasn't the Ruiz well, was it?**

25 A. No, sir. This was in Section 9 of 24-28.

1           Q.    I'd next direct your attention to Alpha Exhibit  
2 Number 5. Do you recall receiving this email,  
3 Mr. Knewitz?

4           A.    I do. It was right before our meeting in  
5 Dallas.

6           Q.    And does the Google Earth map show a pin-drop  
7 location of the Alpha SWD No. 1 well?

8           A.    It sure does. It actually is the surface  
9 owner's location, but it's where the Alpha would go,  
10 yes.

11          Q.    And I'll next direct your attention to Alpha  
12 Exhibit Number 6. Do you recall receiving this email?

13          A.    I don't recall it, but I'm sure I did. I do  
14 remember these pictures on the back, though.

15          Q.    So you did receive the attachments to the  
16 email?

17          A.    Yes, sir. Absolutely.

18          Q.    And do you understand that location to be the  
19 Alpha SWD No. 1 well location?

20          A.    Yes. This is referring to that Alpha -- this  
21 is referring to the other Alpha SWD, as well, No. 1 well  
22 location.

23          Q.    And during the meeting that you had in Dallas  
24 with Mr. Knewitz and Mr. Pickard, were discussions had  
25 about the Alpha SWD No. 1 well?

1           A.     There were as we were leaving. That was not  
2 the nature of the meeting, though.

3           **Q.     What was the nature of the meeting?**

4           A.     To talk to Eric Benavides with Kurt and  
5 Jason -- or with Kurt Knewitz and Jason Pickard and  
6 myself and our team to discuss potentially partnering on  
7 a well and having Eric Benavides potentially provide us  
8 the facility design and contracting.

9           **Q.     Would it be fair to say that Delaware had**  
10 **knowledge about Alpha's plans for development of the**  
11 **Alpha SWD Well No. 1 as of the end of May of 2017?**

12          A.     Yes. It's fair to say that we had an idea.

13          **Q.     Did you ever have a conversation with Irma**  
14 **Phillips about purchasing surface acreage from her?**

15          A.     No. Just asked if it was under contract.

16          **Q.     And what did she tell you?**

17          A.     She said it was -- or first she said she  
18 couldn't talk to me about it.

19          **Q.     Did she say why she couldn't talk to you about**  
20 **it?**

21          A.     No. She just said she couldn't talk to me  
22 about it.

23          **Q.     And did you learn anything more after that**  
24 **conversation?**

25          A.     After I got the phone call from Kurt and

1 Jason -- or Kurt Knewitz and Jason Pickard, I had called  
2 to see if the surface was sold, and she said it was.

3 Q. Did she tell you who it was sold to?

4 A. She did not.

5 MR. LARSON: Would this be a good time for  
6 a break?

7 MR. FELDEWERT: Are you almost finished?

8 MR. LARSON: I'm close. Do you want me to  
9 go ahead and finish?

10 EXAMINER GOETZE: Yeah. Let's go ahead and  
11 finish.

12 Q. (BY MR. LARSON) If the Division denies  
13 Delaware's application to revoke Alpha's injection  
14 authority, will Delaware continue to pursue injection  
15 authority for the Ruiz SWD No. 1 well?

16 A. We will.

17 Q. Even though those wells are very close to each  
18 other?

19 A. Yes, because if the Division revokes their  
20 permit, well, then, they're not close anymore.

21 Q. Maybe you misunderstood the question.

22 A. Okay.

23 Q. The question was if the Division denies your  
24 application to revoke.

25 A. Gotcha.

1           Q.    The outcome of which would be Alpha can go  
2 forward with its well. In that set of circumstances,  
3 would you pursue the Ruiz well?

4           A.    We would not.

5                   MR. LARSON: I'll pass the witness.

6                   EXAMINER BROOKS: Well, your cross was not  
7 very long.

8                   EXAMINER GOETZE: No, it wasn't. I'm  
9 surprised.

10                   EXAMINER BROOKS: Do you want me to go  
11 first?

12                   EXAMINER GOETZE: Sure. You can go first.

13                   EXAMINER BROOKS: Okay. Thank you.

14                                   CROSS-EXAMINATION

15 BY EXAMINER BROOKS:

16           Q.    Mr. McCurdy, I am very confused. Hopefully  
17 when I read the transcript, I will be less so, but I'm  
18 going to try to get as unconfused as I can beforehand.

19                   Your attorney has written on the timeline  
20 that is Applicant's Exhibit 1, May 2017, "Delaware  
21 informs Alpha by telephone and at Dallas meeting of  
22 pending disposal well application and requests notice if  
23 Alpha files a competing application." Now, like  
24 Mr. Larson, I heard you say that that was true and that  
25 it referred to the subject application that -- the

1 Delaware application that is the subject to this  
2 proceeding. And then I heard you say no, it didn't  
3 refer to that application; you just told them you had a  
4 well in the vicinity. Now, which is it?

5 A. I think that I misspoke, then, because I've  
6 never told them specifically about a permit that I've  
7 had --

8 Q. Well, a permit application.

9 A. Permit application.

10 Q. You don't have a permit for this well --

11 A. I do not.

12 Q. -- that we're talking about?

13 A. No, sir.

14 Q. Okay. Go ahead.

15 A. But I had a permit application. I never told  
16 them I had a permit application with the name "Ruiz SWD"  
17 attached. I told them I had a permit application  
18 pending in the general vicinity of the well that they  
19 were interested in potentially submitting to the OCD.

20 Q. Did you tell them the specific location or just  
21 in the general vicinity?

22 A. I just said -- I said in the general vicinity.

23 Q. Okay. What I copied down here, you said in  
24 your last response to Mr. Larson, that it was a direct  
25 offset. So I was going to ask you what you meant by

1 direct offset, but if you didn't use those words, then  
2 it's not relevant.

3 A. Right. I said offsetting. Direct offset would  
4 not be correct. I was just trying to relay the fact  
5 that if I'm standing here (indicating) and you're  
6 standing here (indicating), well, I'm directly  
7 offsetting you; I'm close by.

8 Q. Yeah. But you never told him where the --  
9 where the -- where the well is? You never told him the  
10 location you had specified in your application to the  
11 Division?

12 A. I never did. No, sir.

13 Q. Okay. Thank you.

14 A. Yes, sir.

15 Q. That clears up most of it.

16 Now, you asked about this -- you were asked  
17 about this question of Alpha having an attempt to, to  
18 quote Mr. Feldewert, "monetize" -- I say quoting  
19 Mr. Feldewert because the application, I'm assuming, he  
20 is the author of it -- by selling their permit. Now,  
21 did -- does -- does Delaware -- has it ever bought or  
22 sold a saltwater disposal permit as distinguished from  
23 an existing saltwater disposal well?

24 A. No, sir.

25 Q. But you had some interest in -- you had some

1 interest in co-participation with Alpha in this well --  
2 proposed well, right?

3 A. In ours, not in -- not in, necessarily, the one  
4 that they have that we're talking -- the 1680 that they  
5 asked for the --

6 Q. Okay. So that was before you knew about the  
7 permit that you had an interest in co-participating in?

8 A. That's correct. Yes, sir.

9 Q. But you did not have an interest in purchasing  
10 their permit once you learned about it?

11 A. No.

12 Q. Okay.

13 A. Could I say too, though, that we -- I don't  
14 know. Through negotiations on both sides prior to  
15 coming here, you know, we had discussed potentially  
16 purchasing at that point, but that was just to avoid  
17 having to come here and do this.

18 Q. Okay. Now, you said you weren't aware of  
19 whether there was any Division rule prohibiting buying  
20 and selling permits, and I will represent to you that  
21 there is not. But are you aware of any Division rule  
22 that says that a permit cannot be transferred without  
23 the approval of the Division?

24 A. Yes, sir. And that was -- and we put that in  
25 our negotiations, that it would pend that approval.

1 Q. Okay. Would you characterize -- well, this is  
2 actually asking you for a legal conclusion. That's not  
3 something I should do. So I will address that to  
4 Mr. Feldewert at a later time.

5 I think that's all I have. Thank you.

6 EXAMINER GOETZE: Okay.

7 CROSS-EXAMINATION

8 BY EXAMINER GOETZE:

9 Q. I only have two follow-up questions.

10 Delaware Energy, LLC, are they an operator  
11 of a producing oil and gas well in New Mexico?

12 A. No, sir.

13 Q. Do you know if they are an owner of leases in  
14 New Mexico --

15 A. Not oil and gas leases.

16 Q. -- for mineral estate?

17 And no ownership of mineral property in the  
18 state of New Mexico?

19 A. Not that I know of, no, sir.

20 EXAMINER GOETZE: Other than that, I have  
21 no further questions for this witness.

22 Do you wish to redirect?

23 REDIRECT EXAMINATION

24 BY MR. FELDEWERT:

25 Q. If you take a look at Alpha Exhibit Number 2 --

1 so it would be Alpha Exhibit Number 2. It looks like  
2 this (indicating).

3 A. Okay. Okay.

4 Q. And you -- I think there were questions about  
5 page 26. Can you go to that?

6 A. Yes, sir.

7 Q. Okay. Do you remember that you had some  
8 discussions about -- Mr. Larson asked you after I asked  
9 you about why it took so long to get these objections  
10 resolved?

11 A. I do.

12 Q. Does this reflect your efforts, Mr. McCurdy,  
13 throughout this time to try to push things along with  
14 Matador and Mr. Cate and Guardian and those objecting  
15 parties?

16 A. That's correct.

17 Q. Okay. And you know there has to be two to  
18 tango, right?

19 A. That's right.

20 Q. So in other words, you can -- as you point out,  
21 you can delicately try to push the thing along, but  
22 they're the ones that eventually have to respond to you?

23 A. That's right.

24 Q. Okay. And in your opinion, did you do your  
25 utmost effort to try to move it along as quickly as

1 possible?

2 A. We did.

3 Q. Okay. And did it take so long simply because  
4 Matador and Guardian apparently had other things to do  
5 and couldn't get back to you as quickly as you wanted  
6 them to?

7 A. That's exactly right.

8 Q. Eventually, did they get back to you and reach  
9 a resolution and then they notified the Division?

10 A. That's correct.

11 Q. All right. There was also a lot of discussion  
12 about whether you were aware of Alpha's plans to  
13 potentially develop their own disposal well, correct?  
14 You testified you were aware of those plans?

15 A. Right.

16 Q. And they shared some of their plans with you;  
17 they shared their location with you. As a result of  
18 that, is that why you asked them that if they pursue it,  
19 that they tell you if they file a permit?

20 A. Yes.

21 Q. Okay. And you made that request of them three  
22 different occasions?

23 A. That's correct.

24 Q. And for whatever reason, they tell you about  
25 all their plans and they show you their design, and then

1 don't tell you when they file a permit?

2 A. That's right.

3 Q. Okay. And I guess they think even legally or  
4 as a matter of courtesy, they don't have to?

5 A. Right.

6 MR. LARSON: Object to form.

7 EXAMINER GOETZE: He got it out, so --

8 Q. (BY MR. FELDEWERT) When they called you when  
9 you were out there permitting your well and expressed  
10 anger at that, okay, and then eventually asked whether  
11 you would be interested in buying their permit, okay,  
12 how much did they ask for?

13 A. \$500,000.

14 Q. And what did they tell you if you guys didn't  
15 do it?

16 A. That they had other people interested and they  
17 would be able to sell it elsewhere; they had quite a few  
18 other commercial properties.

19 Q. And have you had an opportunity to examine  
20 arrangements briefly between Alpha SWD and a company  
21 called Gateway Permian Operating?

22 A. I skimmed through it.

23 Q. And does it appear to you that Alpha SWD is  
24 trying to sell their permit to Gateway Permian  
25 Operating?

1 A. It looked they might have.

2 Q. Just like they said they were going to do if  
3 you didn't buy it?

4 A. Correct.

5 Q. Trying to monetize that permit.

6 And when you had these discussions with  
7 Mr. Knewitz as a broker of SWDs, was the company  
8 interested in whether he had investors that were willing  
9 to partner with you to help with the cost of drilling  
10 and operating these SWDs?

11 A. That was what was relayed to me from Preston  
12 who was having direct dealings with Kurt.

13 Q. Okay. In fact, if you look at Exhibit --

14 EXAMINER GOETZE: Whose exhibit?

15 Q. (BY MR. FELDEWERT) -- Delaware Exhibit Number  
16 7 --

17 EXAMINER GOETZE: Thank you.

18 Q. (BY MR. FELDEWERT) -- it reflects, does it not,  
19 that Mr. Knewitz, in his capacity as a broker of SWDs,  
20 informed Mr. Stein that indeed he had an investor that  
21 would be willing to assist in the cost of these wells?

22 A. That's right.

23 Q. And that's what he was offering to you-all  
24 during this period of time?

25 A. That's right.

1           **Q.    Okay.**

2                           MR. FELDEWERT:  That's all the questions I  
3    have.

4                           EXAMINER GOETZE:  Very good.

5                           MR. LARSON:  I have nothing further.

6                           EXAMINER GOETZE:  I was hoping you were  
7    going to say that.

8                           Since we have reached this point, let's  
9    take a break for lunch, an hour and a half.  Let's get  
10   back here by 1:00.

11                          EXAMINER BROOKS:  1:00 is good for me.

12                          EXAMINER GOETZE:  Yeah.  Get everyone back  
13   here by 1:00 and start back again.

14                          MR. LARSON:  Since this is Santa Fe.

15                          (Recess, 11:25 a.m. to 1:02 p.m.)

16                          EXAMINER GOETZE:  Okay, folks.  Let's go  
17   back on the record.  I believe at this time is the  
18   presentation of Mr. Larson and his case or his portion.

19                          MR. LARSON:  I call Mr. Knewitz.

20   KURTIS O. KNEWITZ,  
21                    after having been previously sworn under oath, was  
22                    questioned and testified as follows:

23   DIRECT EXAMINATION

24    BY MR. LARSON:

25           **Q.    Good afternoon, Mr. Knewitz.**

1 A. Good afternoon.

2 Q. Would you state your full name for the record?

3 A. Kurtis O. Knewitz.

4 Q. And where do you reside?

5 A. Dallas, Texas.

6 Q. And are you a member of Alpha SWD Operating,  
7 LLC?

8 A. Yes, sir.

9 Q. And do you take an active role in Alpha's  
10 day-to-day operations?

11 A. Yes, I do.

12 Q. Are you testifying today as a fact witness?

13 A. Yes, sir.

14 Q. And what is your experience in the  
15 produced-water disposal business?

16 A. I am a -- I was the founding partner of  
17 5 Star -- it's number five -- SWD. We owned and  
18 operated seven saltwater disposal wells in Texas, the  
19 Eagle Ford Shale.

20 Q. When did you form Alpha SWD Operating?

21 A. I don't recall the exact date, but it was early  
22 2017, probably March -- April. April.

23 Q. Of 2017?

24 A. April 2017.

25 Q. And what is the nature of Alpha's business?

1           A.    Alpha was developed or was launched to develop  
2 commercial saltwater disposal wells and produced-water  
3 gathering systems in New Mexico specifically.

4           **Q.    Has Alpha commenced the drilling of the Alpha**  
5 **SWD Well No. 1, which is the subject of Administrative**  
6 **Order SWD-1680?**

7           A.    No, we have not.

8           **Q.    And did Alpha intend to commence drilling the**  
9 **well when it was served with Delaware's application to**  
10 **revoke Alpha's injection authority?**

11          A.    Yes, we were.

12          **Q.    And since the Division's emergency order**  
13 **expired, has Alpha voluntarily agreed to postpone the**  
14 **drilling of the well until this case is resolved?**

15          A.    Yes, we have.

16          **Q.    And are you the principal of another business**  
17 **entity?**

18          A.    Yes, sir.

19          **Q.    And what is the name of that entity?**

20          A.    BuySWD.com, LLC.

21          **Q.    And what is the nature of BuySWD's business?**

22          A.    BuySWD is the largest broker of commercial  
23 saltwater disposal properties and permits in the U.S.

24          **Q.    When did Alpha begin to focus on the**  
25 **development of the Alpha SWD well that is the subject of**

1 **Administrative Order SWD-1680?**

2 A. In May.

3 **Q. May of 2017?**

4 A. 2017.

5 **Q. And what was Alpha's original plan for**  
6 **developing the well?**

7 A. We were going to develop it and operate it.

8 **Q. With private equity money?**

9 A. Correct.

10 **Q. And under that scenario, Alpha would have been**  
11 **the operator of the well?**

12 A. Yes, sir.

13 **Q. And why did that plan change?**

14 A. At the end of our negotiations with our private  
15 equity group, we realized that the terms were not as  
16 favorable, and we decided to abandon that plan.

17 **Q. So it was on to Plan B?**

18 A. On to Plan B.

19 **Q. What was Plan B?**

20 A. We had a lot of options at the time, but we  
21 elected to partner with Gateway Midstream or Gateway  
22 Permian to co-develop locations.

23 **Q. And will Mr. Pickard go into greater detail**  
24 **about the nature of Alpha's business relationship?**

25 A. Yes, he will.

1 Q. And starting in September of this year, have  
2 you conducted an Internet research regarding the status  
3 of the C-108 that Delaware submitted to the OCD in  
4 October of 2016?

5 A. Yes, sir.

6 Q. Would you identify the document that's been  
7 marked as Alpha Exhibit 8?

8 A. Let's see. This is the Administrative  
9 Applications Not Approved dated Wednesday, April 19th,  
10 2017.

11 Q. And is Exhibit 8 a true and correct copy of the  
12 list that you found on the Internet?

13 A. Yes, sir.

14 Q. And on page 5 of Exhibit 8, is that a true and  
15 correct copy of the list --

16 A. Yes.

17 Q. -- for Delaware Administrative application  
18 number pMAM1630053278 for the Ruiz SWD No. 1 well?

19 A. 3276. You said 3278.

20 Q. 3275. Thank you.

21 A. 6. Yes. This is correct.

22 Q. And what does the list show for the -- I won't  
23 go -- the whole number for the application of the Ruiz  
24 SWD No. 1 well under the Status column?

25 A. It shows "canceled."

1 Q. Would you next identify the document marked as  
2 Exhibit 9?

3 A. This is the Administration Applications Not  
4 Approved dated Tuesday, May 16th, 2017.

5 Q. And is this exhibit a true and correct copy of  
6 the list that you found on the Internet?

7 A. Yes, sir.

8 Q. And does Delaware application number pMAM  
9 1630053278 appear on this list?

10 A. Let me look at it one more time.

11 No, sir, it does not show.

12 Q. Would you next identify the document marked as  
13 Alpha Exhibit 10?

14 A. This is the Administrative Applications Not  
15 Approved dated Friday, July 14th, 2017.

16 Q. And is Exhibit 10 a true and correct copy of  
17 the list that you found on the Internet?

18 A. Yes.

19 Q. And does Delaware application pMAM1630053278  
20 appear on the list?

21 A. No, sir.

22 Q. Is there a Delaware application number  
23 pKSC1718735697 on the list?

24 A. Yes, there is.

25 Q. And is that highlighted on the list?

1 A. Yes, sir.

2 Q. On what page?

3 A. Page 3 of 5.

4 Q. And what does that show in the Status column?

5 A. "Suspended."

6 Q. And staying with Exhibit 9, specifically page

7 3 --

8 A. 9 or 10?

9 Q. I'm sorry. 10.

10 What does the list show as the date the  
11 Division received the Delaware application?

12 A. July 3rd, 2017.

13 Q. And would you next identify the document marked  
14 as Alpha Exhibit Number 11?

15 A. This is the Administrative Applications Not  
16 Approved list dated Friday, October 20th, 2017.

17 Q. And did you obtain this from the OCD's Web  
18 site?

19 A. Yes.

20 Q. And is Exhibit 11 a true and correct copy of  
21 the list that appears on the OCD's list?

22 A. Yes, sir.

23 Q. And does Delaware application number  
24 pMAM1630053278 reappear on this list?

25 A. Yes, sir.

1 Q. Is that on page 11?

2 A. Yes, sir.

3 Q. And what is indicated in the Status column for  
4 that application?

5 A. "Canceled."

6 Q. Does Delaware application number pKSC1718735697  
7 also appear on this list?

8 A. Yes, sir.

9 Q. And is it highlighted?

10 A. Yes, sir.

11 Q. And what is shown as the status of that  
12 application?

13 A. "Suspended."

14 Q. And based on the list that is Alpha Exhibit 11,  
15 does it appear to you that the Division has treated them  
16 as two separate applications?

17 A. It appears so, yes.

18 Q. Did Alpha hire a consultant to prepare the  
19 C-108 administrative application for the Alpha SWD  
20 No. 1?

21 A. Yes, Lonquist & Company, specifically Chris  
22 Weyand.

23 Q. And prior to Lonquist's submission of a C-108  
24 to the OCD on June 12th of this year, what actions has  
25 Alpha taken to develop the well?

1           A.    Oh, that's a good list.  We had worked to  
2 negotiate -- or identify land for purchase, negotiate  
3 with landowners.  We got started working on getting  
4 power delivered to the location.  We worked on our DOT  
5 permit, our driveway permit.  We had discussions with  
6 area operators regarding potential pipeline water.  We  
7 had worked to develop plans for the surface facilities.  
8 We had talked to pipeline companies or contractors to  
9 install pipelines on behalf of our potential customers.  
10 We did a lot of feasibility studies for the area with a  
11 ten-mile radius.  We did geological, geophysical work.  
12 We did a lot of research, a lot of work.

13           **Q.    And did you receive a permit from the**  
14 **Department of Transportation?**

15           A.    Yes, sir.

16           **Q.    Would it be fair to say when Alpha received**  
17 **Administrative Order SWD-1680, it was Alpha's intention**  
18 **that the well would be drilled?**

19           A.    Absolutely.

20           **Q.    Now, moving over to your other entity, BuySWD,**  
21 **on behalf of BuySWD, did you enter into a written**  
22 **agreement with Delaware to market and sell its New**  
23 **Mexico injection permits?**

24           A.    Yes, sir.

25           **Q.    When did you enter into that agreement?**

1           A.    I believe it was -- I don't have the document,  
2 I don't think, in front of me, but I think it was around  
3 March something.

4           **Q.    March of 2017?**

5           A.    2017.

6           **Q.    And were these permits, or was this acreage**  
7 **that you were --**

8           A.    These were permits they wanted to unload.

9           **Q.    Were they approved injection permits?**

10          A.    They were approved permits.

11          **Q.    How many permits was Delaware putting on the**  
12 **market?**

13          A.    There were eight in total.

14          **Q.    And in the month prior to Lonquist's submission**  
15 **of the C-108 for the Alpha SWD No. 1 well, did you have**  
16 **any communications with Delaware representatives about**  
17 **Alpha's plans for the SWD No. 1 well?**

18          A.    Yes.

19          **Q.    Would you identify the document marked as Alpha**  
20 **Exhibit Number 4?**

21          A.    Got it.

22          **Q.    Is Exhibit 4 a true and correct copy of your**  
23 **email correspondence with Mr. McCurdy on May 9 and 10,**  
24 **2017?**

25          A.    Yes, sir.

1           **Q.    And looking at page 2 of the exhibit, what**  
2 **documents were included at the link that's identified in**  
3 **the email?**

4           A.    "Alpha SWD #1 Permian Project."

5           **Q.    And what types of documents would be found on**  
6 **that link?**

7           A.    This was a brochure -- an investor brochure  
8 that I had prepared for our project in Eddy County.

9           **Q.    Would you next identify the document marked as**  
10 **Alpha Exhibit Number 5?**

11          A.    Yes, sir.

12          **Q.    Would you identify it, please?**

13          A.    This is an email that I sent to Mr. McCurdy on  
14 May 16th of 2017 that shows a Drop'pin of our Alpha SWD  
15 No. 1 location, and I also attached a PDF that shows our  
16 site layout for our facility design.

17          **Q.    This is for the Alpha SWD No. 1?**

18          A.    For the Alpha SWD No. 1, 1680.

19          **Q.    Would you identify the Alpha exhibit document**  
20 **identified as Number 6?**

21          A.    Yes, sir. This is an email I sent to Mike  
22 McCurdy on May 16th. Actually, is this the same email  
23 string? Yeah, same email string on May 16th and -- do  
24 you want me to tell you exactly what it is?

25          **Q.    Sure.**

1           A.    This is -- well, it's an email from me to Mike  
2   telling him that we had -- we had initiated our traffic  
3   study with O'Kane [phonetic] Engineering to get our  
4   driveway permit, and we were waiting to hear back on  
5   power from Xcel.  And then the following pages are  
6   printouts of the actual PDF attached showing our site  
7   design, our layout, our driveway, truck off-loading, et  
8   cetera.

9           **Q.    Those were assigned to Alpha?**

10          A.    For our facility, correct.

11          **Q.    And did you hear Mr. McCurdy's testimony about**  
12 **a meeting that was held in Dallas in late May of 2017?**

13          A.    Yes, sir.

14          **Q.    Were you present at that meeting?**

15          A.    I was.

16          **Q.    And who else attended the meeting?**

17          A.    Jason Goss and Jason Pickard and two of  
18 Delaware's investors and Eric Benavides.

19          **Q.    And that would be Justin Pickard about the**  
20 **SWD --**

21          A.    Correct.

22          **Q.    Did you and Mr. Pickard discuss Alpha's plans**  
23 **for developing Alpha's SWD No. 1 well?**

24          A.    Yes, sir.

25          **Q.    And did the subject of the Delaware's Ruiz SWD**

1 No. 1 come up during the meeting?

2 A. No, sir.

3 Q. And is there any doubt in your mind that  
4 Delaware knew about Alpha's plans for the Alpha SWD Well  
5 No. 1 before Lonquist submitted the C-108 to the  
6 Division on June 12 of 2017?

7 A. No doubt.

8 Q. And during the course of your communications  
9 with Delaware about various matters, in both of your  
10 roles as a principal of Alpha SWD Operating and a  
11 principal of BuySWD, was the subject of Delaware's  
12 proposed Ruiz well ever discussed?

13 A. I never heard the word "Ruiz."

14 Q. I'll next direct your attention to Delaware's  
15 application to revoke injection authority, which is  
16 Alpha Exhibit Number 3. And is Exhibit 3 a true and  
17 correct copy that Delaware's counsel served on Lonquist?

18 A. Yes, sir.

19 Q. Specifically, I'd like you to look at paragraph  
20 five on page 2. Is the assertion that Delaware knew, as  
21 of the date Lonquist filed its application on June 12,  
22 that Delaware had a pending C-108 application before the  
23 Division? Is that accurate?

24 A. It is not accurate. Alpha did not know of  
25 Delaware's pending C-108 -- well, technically, canceled

1 C-108. But no, we did not know.

2 Q. So you personally had no knowledge whatsoever  
3 about a C-108 that Delaware submitted to the OCD in  
4 October of 2016?

5 A. No, sir.

6 Q. And how did you learn that Delaware had, in  
7 fact, submitted a C-108 for the Ruiz well in October of  
8 2016?

9 A. Well, how I found out was there was a survey  
10 crew on location next door to our Alpha SWD No. 1, and  
11 our landowner, Ms. Irma Phillips, called us and said  
12 there was a survey crew out. And she thought it was  
13 ours, and we said, "No, we've already surveyed our  
14 property." We do that when we file our initial  
15 application. And we said, "We're not sure who it is,  
16 but put them on the phone." And so Irma walked outside  
17 and put them on the phone with Jason, and Jason asked an  
18 individual -- I don't know what his name was, but he  
19 asked what company he was there working for, and he said  
20 he was there on behalf of Delaware Energy.

21 Q. And just so the record is clear, you said  
22 Mrs. Phillips is your landowner?

23 A. Correct.

24 Q. What is your business relationship with  
25 Mrs. Phillips?

1           A.    We are purchasing her property.

2           **Q.    For the well site of the Alpha SWD No. 1?**

3           A.    Yes, sir.

4           **Q.    And after receiving a call from Mrs. Phillips,**  
5 **did you contact Mr. McCurdy?**

6           A.    Yes, we did.

7           **Q.    And what did you discuss with him on that call?**

8           A.    We were shocked to find out that he was  
9 attempting to apply for a permit right next door to our  
10 location.  And we confronted him about it, and he said  
11 that he had no intentions to develop that location, and  
12 it was not high on his priority list.  And we had  
13 instructed him that if he decided to move forward with  
14 it, we warned him that we would be protesting it.

15          **Q.    And during that conversation, did you offer to**  
16 **sell your injection authority to Delaware?**

17          A.    Never once.

18          **Q.    I'll next direct your attention to the second**  
19 **sentence in paragraph 11 in Delaware's application,**  
20 **which is page 3 of Alpha Exhibit -- whatever exhibit**  
21 **we're on.  Do you see the assertion there that Alpha**  
22 **submitted a protest on July 13, 2017 to retaliate**  
23 **against Delaware for not first -- for not selling**  
24 **Alpha's injection authority?  Do you see that?**

25          A.    I see this, yeah.

1           **Q.    Is there any validity to that assertion?**

2           A.    Absolutely not.

3           **Q.    And why did Alpha submit its protest?**

4           A.    Their application was on the property right  
5 next door to ours, and that would have placed the  
6 wellbore well within a quarter mile.  And it's just too  
7 close.

8           **Q.    I have several more questions regarding the**  
9 **assertions in Delaware's application.  Would you look at**  
10 **paragraph 13 on page 4?  And could you read into the**  
11 **record the second sentence in paragraph 13?**

12          A.    Beginning with "Alpha's offer"?

13          **Q.    Yes.**

14          A.    "Alpha's offer to sell its SWD permit to  
15 Delaware almost immediately after it was improperly  
16 approved demonstrates not only Alpha's knowledge of  
17 Delaware's previously filed C-108 application, but also  
18 an intent to monetize its improperly obtained permit  
19 rather than to drill the well and commence injection."

20          **Q.    Let's break down the assertions that are packed**  
21 **into that sentence.  First, did Alpha offer to sell its**  
22 **SWD permit to Delaware?**

23          A.    Never has.

24          **Q.    Second, did Alpha have any prior knowledge of**  
25 **Delaware's October 2016 C-108?**

1           A.    We never did.

2           **Q.    And lastly, is there validity to the assertion**  
3           **that Alpha intended to monetize its permit rather than**  
4           **drill the Alpha SWD 1 well and commence injection?**

5           A.    No.  That is incorrect.

6           **Q.    And has Alpha been prejudiced by Delaware's**  
7           **applications?**

8           A.    Yes.

9           **Q.    How so?**

10          A.    We have had numerous discussions with various  
11          E&P companies about their produced-water needs, and we  
12          have -- we had a timeline we were supposed to adhere to  
13          in order to support one of those potential customers.  
14          And because of Delaware's application to revoke our  
15          injection authority, that caused us to delay our  
16          project.

17          **Q.    And has it also delayed the closing of the**  
18          **purchase of the Phillips' property?**

19          A.    Yes, it has.

20          **Q.    Has Alpha entered into any written contracts**  
21          **with operators to take their produced water?**

22          A.    We have not.  And in good faith, we can't  
23          execute a contract if we're unable to perform because of  
24          the uncertainties that are pending with this case.

25          **Q.    Does Alpha oppose Delaware's alternative**

1 request for relief that the Division reduce the two-year  
2 deadline for Alpha to commence injection to one year?

3 A. We don't oppose that at all. We're ready to  
4 get going now.

5 Q. So should the Division deny Delaware's  
6 application? Alpha will be ready to commence injection  
7 within one year from the date the Division serves its  
8 order?

9 A. We're ready to go within one week.

10 MR. LARSON: Mr. Examiner, at this time I  
11 move the admission of Alpha Exhibits 3 through 11 and  
12 14.

13 EXAMINER GOETZE: Exhibits 1 and 2?

14 MR. LARSON: Those will be authenticated  
15 through Mr. Weyand.

16 EXAMINER GOETZE: 3 through 11 and 14?

17 MR. FELDEWERT: No objection.

18 EXAMINER GOETZE: Exhibits 3 through 11 and  
19 Number 14 are so entered into the record.

20 MR. LARSON: I pass the witness.

21 (Alpha SWD Operating, LLC Exhibit Numbers 3  
22 through 11 and 14 are offered and admitted  
23 into evidence.)

24 EXAMINER GOETZE: Mr. Feldewert.

25

CROSS-EXAMINATION

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BY MR. FELDEWERT:

Q. Mr. Knewitz, if I understand your testimony, this company, Alpha SWD Operating, LLC, was formed shortly before you actually filed your application for a disposal well?

A. That's correct.

Q. Okay. Who are the members of this Alpha SWD Operating, LLC?

A. Myself and Mr. Jason Pickard.

Q. Anyone else?

A. No, sir.

Q. And do you have any investors?

A. No, sir.

Q. Do you have any money under Alpha SWD Operating to drill a well?

A. We have our own money, but we're not drilling the well. Our partner, Gateway, is.

Q. So when you say somebody's ready to drill a well, it's not Alpha SWD Operating, the approved operator under the order?

A. That's correct.

Q. It's somebody else?

A. Correct. Our partner, correct.

Q. Under some arrangement?

1 A. That's correct.

2 Q. Okay. Does Alpha SWD Operating, LLC operate  
3 any wells in New Mexico?

4 A. Not currently, no.

5 Q. Have they drilled any wells in New Mexico?

6 A. No, sir. It's a new entity.

7 Q. And aside from the permit that they received  
8 under SWD-1680, does Alpha SWD Operating, LLC hold any  
9 other permit?

10 A. No, sir.

11 Q. Any other drilling permit?

12 A. Outside of this?

13 Q. Yeah.

14 A. No. This is it.

15 Q. Could you turn to what's been marked as  
16 Delaware Exhibit 17?

17 A. Delaware Exhibit 17.

18 Q. It's in that packet of material right there.

19 A. Okay.

20 Q. This is an application to drill for Alpha SWD  
21 Operating, Inc.; is that right?

22 A. It shows "Alpha SWD Operating, Inc." That is  
23 correct.

24 Q. Okay. That's not the right entity, though,  
25 right?

1           A.    You are correct.

2           Q.    Okay.  And is this the only permit to drill  
3   that you have for the Alpha SWD?

4           A.    That's correct.

5           Q.    And if I look at the second page of this filed  
6   permit -- when you say, "This well's ready to be drilled  
7   within a week" -- I think were your terms -- the  
8   surveyor certification hasn't even been signed, has it?

9           A.    No.  Not on this copy, it was not.

10          Q.    Okay.  Is there any copy where it was signed?

11          A.    Yes.

12          Q.    Is it on file with the Division?

13          A.    Yes.

14          Q.    Because we went to the files in the Division's  
15   Web site and didn't see it, Mr. Knewitz.  Can you  
16   explain that?

17          A.    It's signed.

18          Q.    The surveyor's certificate is?

19          A.    It is.

20          Q.    So you're saying that in the Division files,  
21   there is an approved permit that has a surveyor  
22   certification signed?

23          A.    That would be a question for Chris Weyand of  
24   Lonquist.  I didn't file this application.

25          Q.    You didn't file, and you didn't look?

1 A. Well, I've looked at this.

2 Q. But have you looked at the Division's files and  
3 see what's on file with the Division for this well that  
4 you say you're ready to drill within a week?

5 A. Yeah. I've looked at this.

6 Q. You've looked at -- have you looked at the  
7 Division's files to see what has been filed with the  
8 Division?

9 A. Yes.

10 Q. You did?

11 A. We have copies of all of that. Yes. It is  
12 certified. It is signed.

13 Q. Do you have it here today?

14 A. I would have to ask Chris or our attorney. I  
15 don't know what we brought.

16 Q. Okay. Have you -- is it your testimony that  
17 the company has gone out to the well location and  
18 actually surveyed the well?

19 A. My company doesn't survey. We hire someone to  
20 do the survey.

21 Q. Is it your testimony that your company's gone  
22 out and actually hired somebody to survey the well?

23 A. Yes. The property has been surveyed and the  
24 wellbore has been located, identified.

25 Q. Has it been staked?

1 A. Yes.

2 Q. It's your testimony it's been staked?

3 A. I don't know if it's been staked.

4 Q. So that would be part of the survey, right?

5 A. (No response.)

6 Q. Has it been staked, Mr. Knewitz?

7 A. I don't know if there is a stake in the ground  
8 today, but I say yes.

9 Q. But you don't know?

10 A. I'm saying yes.

11 Q. Do you know if it's been staked?

12 A. Yes, it has been staked.

13 Q. Okay. Has the company visited with Matador at  
14 all about its concerns with the well location for  
15 disposal wells in this area?

16 A. We've had lengthy discussions with Matador  
17 regarding disposal in this area.

18 Q. Have you had discussions with Matador about the  
19 proposed location for your disposal wells?

20 A. Yes. And they have no problems with it.

21 Q. You've had conversations with them?

22 A. Yes.

23 Q. That's your testimony?

24 A. We have.

25 Q. Who is the "we"?

1           A.    Alpha SWD Operating.

2           **Q.    Has had discussions -- your testimony is Alpha**  
3           **SWD Operating has had discussions with Matador about the**  
4           **location of this SWD No. 1?**

5           A.    100 percent guaranteed.

6           **Q.    And who did you speak with at the company?**

7           A.    Matt Spicer and Vinay Mahadevan,  
8           M-A-H-A-D-E-V-A-N, I believe.  Not 100 percent sure.

9           **Q.    What gives you the right to access the acreage**  
10          **that is the subject of your proposed well?**

11          A.    We have it under contract to purchase, and we  
12          have authority from the landowners, Irma and James  
13          Phillips.

14          **Q.    Do you have an easement from them.**

15          A.    We are purchasing the property, and we have the  
16          rights to access the property for whatever purpose we  
17          need to.

18          **Q.    Do you have a current right to access?  Is that**  
19          **your testimony?**

20          A.    We can go out there today and do whatever we  
21          want.

22          **Q.    Under what agreement?**

23          A.    Our agreement to purchase the property.

24          **Q.    So if I turn to what's been marked as Delaware**  
25          **Exhibit Number 18, is that the agreement you're talking**

1 about?

2 A. If this is the purchase and sale agreement,  
3 yes.

4 Q. Is this the purchase and sale agreement you're  
5 talking about?

6 A. Correct.

7 Q. And isn't this agreement contingent upon the  
8 purchase of your saltwater disposal well injection  
9 permit by another entity?

10 A. That is correct.

11 Q. Okay. So if I look at paragraph B, it reflects  
12 that this agreement is contingent upon the purchase of  
13 your saltwater disposal permit by a company called  
14 Gateway Permian Operating, LLC; is that correct?

15 A. That's correct.

16 Q. And you have not closed on this agreement?

17 A. It is not closed yet. Nope.

18 Q. And this agreement is contingent upon reaching  
19 a purchase and sale agreement of your permit with  
20 Gateway?

21 A. That is correct.

22 Q. And it's your position that this agreement --  
23 even though it's not closed upon and even though it's  
24 contingent upon this other matter, that gives you the  
25 right to access the property? Is that your testimony?

1 A. Yes, sir.

2 Q. Okay.

3 A. Irma and James Phillips have told us we can do  
4 whatever we need to do. They've given us carte blanche.

5 Q. Now, if you don't sell that permit to Gateway,  
6 then this purchase and sale agreement goes away, right?

7 A. That is correct.

8 Q. Now, is there an agreement under which your  
9 saltwater disposal well is being sold to Gateway?

10 A. Yes.

11 Q. Okay. And has that been marked as Delaware  
12 Exhibit Number 20?

13 A. Yes.

14 Q. So this expresses an intent by Alpha SWD  
15 Operating to sell its Division-issued permit to Gateway  
16 Permian Operating, LLC, correct?

17 A. That is correct.

18 Q. Just like you told Delaware you would do back  
19 in June if they didn't buy it from you?

20 A. That is incorrect.

21 Q. You didn't tell Delaware that if they didn't  
22 buy it, you would sell it to somebody else?

23 A. We never offered -- offered it to Delaware.

24 Q. But under this agreement, you are then  
25 monetizing your permit that you received from the

1 **Division, right? You're selling it to Gateway?**

2 MR. LARSON: Object to the form of the  
3 question.

4 EXAMINER BROOKS: What's your objection to  
5 the form of the question?

6 MR. LARSON: He's using the term  
7 "monetize." I'd like clarification of what that term  
8 means.

9 EXAMINER BROOKS: Well, I think it's pretty  
10 obvious. I'll overrule the objection.

11 **Q. (BY MR. FELDEWERT) You're selling this permit**  
12 **to Gateway?**

13 A. Yes, sir, we are.

14 **Q. You're monetizing the permit?**

15 A. And we are partnering with them. Let's make  
16 that very clear.

17 **Q. Partnering in what way?**

18 A. We have a 50-mile AMI where any property that  
19 we develop, that we choose to purchase and permit, they  
20 will have the first right of refusal to purchase from us  
21 or, in your words, monetize, and we will jointly develop  
22 the property leveraging our relationships, using our  
23 facility design, and work collectively to install  
24 produced-water gathering systems. Pretty cut-and-dry.

25 **Q. Who are the entities that are involved in**

1 Gateway Permian Operating, LLC.

2 A. Who are the entities?

3 Q. Who is involved with Gateway Permian?

4 A. Some individuals that have extensive saltwater  
5 disposal experience in east Texas and south Texas.

6 Q. Does that include either you or Mr. Pickard?

7 A. We are not partners in Gateway.

8 Q. Okay. And is there an agreement under which  
9 you say you are partnering with Gateway Permian  
10 Operating?

11 A. We have an agreement with Gateway.

12 Q. Is that -- is that the purchase and sale  
13 agreement that is marked as Exhibit 20?

14 A. That is the official purchase and sale  
15 agreement, correct.

16 Q. And is that the agreement under which you are  
17 suggesting you are partnering with Gateway to drill an  
18 and operate disposal wells?

19 A. We have a lease agreement also.

20 Q. Let's talk about that a minute.

21 But is this the agreement that you're  
22 suggesting -- under which you're suggesting, in your  
23 words, you are partnering with Gateway Permian to drill  
24 and operate the well?

25 A. Yes.

1 Q. And have you reviewed this agreement,  
2 Mr. Knewitz?

3 A. I have.

4 Q. And isn't it true that under this agreement,  
5 you are selling to Gateway your permit?

6 A. Yes, we are. It's very clear.

7 Q. And Gateway is going to drill and operate the  
8 well?

9 A. That is correct.

10 Q. And isn't it true that under this agreement,  
11 that the only partnering going on here is that you are  
12 going to lease to them the property that you hope to  
13 eventually acquire from Mrs. Phillips?

14 A. Yes, and anything within a 50-mile radius.

15 Q. Uh-huh. In other words, if you get another  
16 saltwater disposal permit under this agreement, you're  
17 required to sell it to them?

18 A. That's correct, and co-develop it.

19 Q. And isn't it true, Mr. Knewitz, that the  
20 entity -- that you're actually forming another entity to  
21 hold and lease the property to Gateway?

22 A. The actual surface ownership will be held under  
23 Alpha Properties, LLC. That is who will actually be  
24 executing the lease agreement with Gateway Permian.

25 Q. So who is -- and so if I'm understanding

1 this -- and I haven't had a chance to read all this.  
2 But under this -- these agreements -- let's see -- Alpha  
3 Properties, LLC is going to buy the property from  
4 Mrs. Phillips?

5 A. That's correct.

6 Q. Correct?

7 A. Correct.

8 Q. And then the next step is Alpha Properties, LLC  
9 is going to lease the property to Gateway for purposes  
10 of Gateway drilling and operating the disposal well?

11 A. That is correct.

12 Q. Okay. And Alpha SWD Operating, the permitted  
13 operator under the Division's permit, is going to do  
14 what?

15 A. Continue developing locations to expand our  
16 footprint. It's pretty simple.

17 Q. But not drill this well?

18 A. We won't be the operator of record. Gateway  
19 Permian will be the operator. They will contract the  
20 drilling.

21 Q. And what are the terms of the lease between  
22 Alpha Properties, LLC and this new operator and drilling  
23 entity, Gateway Permian?

24 A. They will pay us a royalty.

25 Q. Pay you a royalty in addition to purchasing

1 your permit?

2 A. Our lease agreement, you asked specifically.  
3 They're paying us a royalty.

4 Q. Okay. So lease agreement pays you a royalty.  
5 And what is that royalty?

6 A. I don't think that's really important, but it's  
7 8 percent, if you want to know.

8 Q. 8 percent --

9 A. 8 percent of the gross.

10 Q. Gross what?

11 A. Revenue.

12 Q. And then Gateway is purchasing the permit  
13 issued by the Division for Alpha SWD Operating for how  
14 much?

15 A. I don't see where that really matters.

16 Q. So what's the number?

17 A. It's more than \$1.00. I really don't see what  
18 that matters.

19 Q. I understand your opinion, but what -- what --  
20 you're under oath. What's the -- what's the amount that  
21 Gateway is paying to purchase the permit from the  
22 Division?

23 A. 450,000.

24 Q. And is Gateway then also purchasing your DOT  
25 permit?

1 A. Yes. That's included.

2 Q. That's included in that?

3 A. Correct.

4 Q. So the DOT permit and the permit from the  
5 Division, you're selling that to Gateway for \$450,000?

6 A. That is correct.

7 Q. Okay. All right. Okay. Now, Mr. Knewitz, did  
8 you -- I want you to turn to Delaware Exhibit Number 19.

9 A. Okay.

10 Q. This is a subpoena that was issued by the  
11 Division to the operator under the Division's permit,  
12 Alpha SWD Operating, LLC, correct?

13 A. Yes, sir.

14 Q. And that would involve you?

15 A. Yes, sir.

16 Q. And were you responsible for gathering the  
17 documents that were responsive to this subpoena?

18 A. Yes, sir.

19 Q. And have you produced all the responsive  
20 documents?

21 A. We sent quite a bit of information to you,  
22 4-, 5-, 6-, 700 pages. I don't know exactly. It was a  
23 lot.

24 Q. Okay. So your testimony is you sent 4-, 5-,  
25 6-, 700 pages to your attorney?

1           A.    We sent you a lot of them.  I don't know  
2 exactly how many.

3           Q.    Okay.  Let's step back.

4                    You get the subpoena sent to you by your  
5 attorney.  You gathered the responsive documents.

6           A.    We responded to this.

7           Q.    You gathered the responsive documents?

8           A.    Yes, sir.

9           Q.    Okay.  And did you provide them to your  
10 attorney?

11          A.    Yes, sir.

12          Q.    And you're saying that you provided to your  
13 attorney 4-, 500, 600 pages of responsive documents?

14          A.    I don't know how many pages it was.  It doesn't  
15 matter.  It was a lot.

16          Q.    You don't know?

17          A.    I didn't count each page, no.

18          Q.    You're the one that threw out the number, not  
19 me.

20          A.    Correct.

21          Q.    Okay.  Now, the first thing that we requested  
22 is, under paragraph number one, "All contracts, letter  
23 agreements, emails, communications or other written  
24 instruments" involving the drilling of the Alpha SWD  
25 No. 1.  Do you see that?

1 A. Yes, sir.

2 Q. Okay. Now, I didn't see -- you didn't produce  
3 any contracts involving the drilling of the Alpha SWD,  
4 did you?

5 A. No, sir.

6 Q. In fact, you had no contracts for the drilling  
7 of the Alpha SWD?

8 A. No, sir.

9 Q. You didn't have any agreements for the drilling  
10 of the Alpha SWD?

11 A. No, sir.

12 Q. Okay. And Alpha SWD Operating currently has no  
13 agreements or contracts?

14 A. No, sir.

15 Q. All right. Paragraph number two, "Contracts,  
16 letter agreements, emails," et cetera, involving the  
17 "right to access the surface." And in paragraph three,  
18 I state the same thing, to purchase the acreage,  
19 correct?

20 A. Yes, sir.

21 Q. And the only agreements that you had that were  
22 responsive are the two agreements that we just went  
23 through?

24 A. Yes, sir.

25 Q. No other access agreements, no other rights to

1     **access the acreage --**

2           A.    No, sir.

3           **Q.    -- that were in the contracts?  None of that?**

4           A.    No.  We sent you everything.

5           **Q.    Okay.  Paragraph number four.  You mentioned**  
6 **about all this effort to try to line up disposal**  
7 **contracts for produced water.  We asked you to produce**  
8 **all contracts and letter agreements involving the**  
9 **disposal of produced water through the Alpha SWD o. 1.**  
10 **Do you see that?**

11          A.    Yes, sir.

12          **Q.    Isn't it true you said no contracts?**

13          A.    There were no contracts.

14          **Q.    No agreements?**

15          A.    They would be executed if it weren't for this.

16          **Q.    But you don't have any contracts?**

17          A.    We don't have any at present.  No, sir.

18          **Q.    And you didn't have any drafts f contracts?**

19          A.    No, sir.

20          **Q.    Nothing like that?**

21          A.    No, sir.

22          **Q.    No agreements, no drafts of agreements?**

23          A.    Merely discussions.

24          **Q.    Merely discussions.  Okay.  All right.**

25                       **Paragraph five.  This goes to whether you**

1 were ready to drill, right, Mr. Knewitz? Wouldn't you  
2 have an insurance policy if you were ready to drill?

3 A. Keep in mind, we weren't going to drill this.  
4 Our partner was.

5 Q. So Alpha --

6 A. Originally --

7 Q. Alpha SWD Operating, LLC was never going to  
8 drill this well?

9 A. We originally were, Plan A.

10 Q. But you didn't have any general liability  
11 insurance or other insurance in place to actually go out  
12 and drill a well?

13 A. When it switched to Plan B, no.

14 Q. Okay. When did it switch to Plan B?

15 A. I don't remember the exact date.

16 Q. Roughly?

17 A. Probably May, I'm assuming.

18 Q. May of 2017?

19 A. Yes, sir.

20 Q. That's when it switched to Plan B to where  
21 Alpha SWD Operating, LLC was not going to drill the  
22 well?

23 A. We were going to partner with Gateway, and they  
24 would drill the well.

25 Q. But Alpha SWD was not going to drill the well?

1 A. Correct.

2 Q. Okay. So that was May of 2017. Okay.

3 MR. FELDEWERT: Approach the witness?

4 EXAMINER GOETZE: Pardon? Oh, yeah.

5 MR. FELDEWERT: May I approach the witness?

6 EXAMINER GOETZE: Sure.

7 Q. (BY MR. FELDEWERT) Mr. Knewitz, I'm going to  
8 hand you what's been marked previously as Alpha SWD  
9 Operating, LLC Exhibit F for their filings with the  
10 Division. Okay? And it reflects the VSL confirmed  
11 statement of Kurt Knewitz. Mr. Knewitz, is this a  
12 self-affirmed statement that you signed --

13 A. Yes, sir.

14 Q. -- in October of 2017, just about a month ago?

15 A. Yes, sir.

16 Q. That's your signature?

17 A. Yes, sir.

18 Q. Did you forego through the formality of getting  
19 this notarized as an affidavit?

20 A. It doesn't appear to be notarized, no.

21 Q. Okay. Did you intend for this to convey  
22 truthful statements at the time you signed it?

23 A. Yes, sir.

24 Q. In fact, in the last paragraph, don't you state  
25 that I understand this self-affirmed statement will be

1 used as written testimony in this case, and I affirm  
2 that my testimony in paragraphs 1 through 8 above is  
3 true and correct. Right?

4 A. That is correct.

5 Q. That's what you intended to do --

6 A. Yes, sir.

7 Q. -- is make true and correct statements?

8 And "is made under penalty of perjury"?

9 A. Say that one more time.

10 Q. I'm reading your paragraph, that this statement  
11 "is made under penalty of perjury."

12 A. Oh, in that -- yes. Correct.

13 Q. Okay. Now, if I go to paragraph six, is that  
14 paragraph intended to reflect a true and correct  
15 statement under penalty of perjury?

16 A. Yes, sir.

17 Q. Okay. And in the second-to-the-last statement,  
18 you state to the Division that Alpha -- you're talking  
19 about Alpha SWD Operating, LLC, right?

20 A. Alpha and our partner, Gateway.

21 Q. Let's go back to the paragraph two of this  
22 affidavit, Mr. Knewitz. It says, "I am a member of  
23 Alpha SWD, LLC"?

24 A. Yes, sir.

25 Q. You shorten it by Alpha?

1 A. Correct.

2 Q. When you use Alpha in here, you're talking  
3 about Alpha SWD Operating, LLC?

4 A. Yes, sir.

5 Q. And you representing that Alpha SWD Operating,  
6 LLC had a rig schedule to commence drilling the Alpha  
7 SWD Well No. 1 on September 14th, 2017?

8 A. In conjunction with our partner, yes.

9 Q. You don't say that in here. You acted like  
10 you're going to drill, correct?

11 A. I understand what you're trying to do here, but  
12 yes.

13 Q. It's not what I was trying to do. It's what  
14 you were trying to do.

15 A. That's a true and correct statement. We had  
16 plans to --

17 Q. Mr. Knewitz, Alpha SWD Operating, LLC did not  
18 have a rig schedule to drill this well, correct?

19 A. Our plan had a rig scheduled to move on  
20 location.

21 Q. But Alpha SWD did not have a rig schedule to  
22 drill?

23 MR. LARSON: Objection. Asked and  
24 answered.

25 EXAMINER BROOKS: Sustained.

1 Q. (BY MR. FELDEWERT) And you say Alpha was  
2 constrained to release the rig.

3 A. Because of this.

4 Q. Did you have a rig under contract?

5 A. Alpha did not. Gateway does.

6 Q. Okay. And Gateway is not an approved operator  
7 of this well?

8 A. We haven't conveyed the permit yet.

9 Q. And Gateway does not have any authorization or  
10 a permit to drill?

11 A. They are a bonded operator in the state of New  
12 Mexico.

13 Q. They do not have a permit to drill this well?

14 A. We are going to be transferring our permit,  
15 assigning it, with the OCD's approval.

16 Q. Okay. So to get back to my question -- I want  
17 to make sure I don't miss anything. The entity that you  
18 say is going to drill this well, Gateway, does not have  
19 an approved permit to drill the well?

20 A. No, they do not. It is our permit.

21 Q. Okay. As a result, Gateway could not have  
22 drilled this well in September of 2014. Are you aware  
23 of that?

24 A. Absolutely. That's why we don't have it  
25 drilled right now.

1 Q. Paragraph eight. You say Alpha SWD Operating,  
2 LLC has been prejudiced by the postponement of the  
3 drilling -- you already covered that, right -- as well  
4 as the postponement of the closing on its purchase of  
5 acreage. Do you see that?

6 A. Yes, sir.

7 Q. Isn't it true that there is no -- what's  
8 postponing the drilling here is that there's been no  
9 transfer of the SWD permit to Gateway?

10 A. That's correct.

11 Q. Because that's what the contract is contingent  
12 upon --

13 A. Yeah.

14 Q. -- for that well to be operational. It has to  
15 be approved by the Division.

16 A. Absolutely, 100 percent.

17 Q. Are you aware that Gateway has to file its own  
18 drilling permit?

19 A. This well would be drilled right now if we  
20 weren't dealing with this.

21 Q. I see.

22 And then you go on to say in this  
23 paragraph -- again, under oath, right -- that "Alpha has  
24 been negotiating contracts with operators." Do you see  
25 that?

1           A.    Yes, sir.

2           Q.    But we don't have any contracts?

3           A.    We've been negotiating.

4           Q.    And you go on to say -- here's what I found  
5 curious -- "and is in dangerous of losing" -- you see  
6 that -- "those contracts"?

7           A.    That is correct.

8           Q.    There are no contracts?

9           A.    We couldn't execute a contract because of this  
10 pending matter. We can't perform. If we can't drill  
11 our well and lay a pipeline because of the uncertainties  
12 due to this case, we can't in good faith execute a  
13 contract. I would think as an attorney you could  
14 appreciate that.

15          Q.    But you didn't say that in here. You said you  
16 were in danger of losing those contracts, Mr. Knewitz,  
17 but there are no contracts signed to lose.

18          A.    That's correct.

19          Q.    And didn't you mean -- one can read this as you  
20 trying to give the impression, Mr. Knewitz, very  
21 carefully that you had a drilling agreement to drill  
22 this well, that Alpha had an agreement in place to  
23 purchase it and it was ready to move forward with it and  
24 that you had contracts in place for the disposal?

25                   MR. LARSON: Object to form. He's

1 providing his testimony for him.

2 EXAMINER BROOKS: Well, he's a hostile  
3 witness, and it's cross-examination. He can lead the  
4 witness if he wants to.

5 Mr. Knewitz can explain his answers.

6 I'm sorry, Mr. Knewitz. I don't want to  
7 mispronounce your name.

8 THE WITNESS: However you want to pronounce  
9 is fine.

10 EXAMINER BROOKS: Well, mispronouncing  
11 names is a no-no if you know how people pronounce them  
12 themselves.

13 THE WITNESS: Gotcha.

14 Go ahead.

15 **Q. (BY MR. FELDEWERT) Mr. Knewitz, to suggest in**  
16 **this affidavit that Alpha SWD had a contract in place**  
17 **for the disposal well would be a pure fabrication,**  
18 **correct?**

19 A. Alpha does not have an executed contract.  
20 Alpha and our partner, Gateway, have contracts to  
21 develop this location, and they're just out there  
22 pending, ready to go as soon as the OCD makes their  
23 ruling on this case.

24 **Q. Do you have contracts?**

25 A. We do not, no.

1 Q. Okay. Thank you.

2 Does Gateway have contracts?

3 A. Nothing is executed at this moment.

4 Q. You don't even have drafts?

5 A. You have to ask Gateway.

6 Q. But you didn't produce any drafts in response  
7 to the subpoena?

8 A. You requested Alpha's documents.

9 Q. Yeah, because that's what you said in your  
10 affidavit, Mr. Knewitz.

11 A. Yes, sir.

12 Q. If that's what you intended to convey, that  
13 would be a pure fabrication, correct?

14 A. It's not a fabrication, sir. You're not  
15 understanding the context of our relationship.

16 Q. Oh, I think I am understanding the context, and  
17 I think I also understand what you tried to sell the  
18 Division under this affidavit.

19 Now, in early 2017, isn't it true that you  
20 had discussions with Delaware about partnering for  
21 disposal wells?

22 A. Yes, sir.

23 Q. Okay. So you are aware that Delaware Energy  
24 was seeking disposal wells in this area?

25 A. State the question again.

1 Q. Seeking to permit disposal wells in this area,  
2 you were aware of that?

3 A. What was your whole question?

4 Q. You were aware in early 2017 that Delaware was  
5 in the process of permitting disposal wells in this  
6 area, correct?

7 A. I was aware that they were permitting  
8 disposals. Yes.

9 Q. And, in fact, isn't it true that as of April of  
10 2017, you had -- you had known that they had actually  
11 filed a permit for a disposal well for the Ruiz acreage?

12 A. Incorrect.

13 Q. Incorrect.

14 What's your Exhibit Number 8?

15 A. That's a list that's dated April. That's not  
16 when I discovered that document.

17 Q. That's when you printed it out?

18 A. No, sir.

19 Q. Mr. Knewitz, isn't this a printout that  
20 occurred in April?

21 A. That is a document from the OCD dated April.

22 Q. Isn't that when you printed it out?

23 A. I didn't print it out in April.

24 Q. When did you print this out?

25 A. October or September.

1 Q. You're saying you printed out this April --

2 A. October.

3 Q. You're saying you printed out this April list  
4 in October or September from the OCD Web site?

5 A. It's not from the OCD Web site. You can't find  
6 that April document on the OCD Web site. You have to do  
7 an Internet search to try and find it. The only  
8 document like that is this current month.

9 Q. That's my point. The only document like this  
10 is the current month.

11 A. Correct, which shows -- go ahead. Sorry.

12 Q. So this would have been printed out in April,  
13 right, Mr. Knewitz?

14 A. No, sir. Incorrect.

15 Q. Can you identify where you got this document?

16 A. You can go and do a Google search for that  
17 document and you can find it.

18 Q. A Google search on this document?

19 A. You can type in admin pending, not approved,  
20 type in the month, and you'll find that list from the  
21 OCD.

22 Q. And do you know when you printed this out?

23 A. I don't know the exact day, no, but it was  
24 recent.

25 Q. Do you remember why you printed it out?

1           A.    Yeah, specifically to show that the Ruiz  
2 application had been canceled according to the CD.

3           Q.    Well, let's be fair here.  If I go to --

4           A.    That is fair.

5           Q.    -- to page 5 -- go to page 5 of Exhibit Number  
6 8.

7           A.    Whose exhibit?

8           Q.    Your exhibit.

9           A.    My Exhibit 8?

10          Q.    Exhibit 8.

11          A.    Okay.

12          Q.    Go to page 5.

13          A.    Okay.

14          Q.    Go to the range -- under Comments.  Do you see  
15 that?

16          A.    Yes, sir.

17          Q.    Do you see the word "suspended"?

18          A.    I do.

19          Q.    Okay.  Did you notice that at the time you  
20 printed this out?

21          A.    I did, but the current status shows it's  
22 canceled, so it was irrelevant.

23          Q.    Okay.  Prior to filing your application in June  
24 of 2017, did you have anyone review the Eddy County  
25 records to ascertain whether there were any saltwater

1 **disposal leases within the area of review?**

2 A. That's a question for Chris Weyand.

3 **Q. You don't know?**

4 A. I don't search for saltwater disposal leases.  
5 We look for existing saltwater disposal wells.

6 **Q. Did you do a search?**

7 A. For existing saltwater disposal wells, yes.

8 **Q. Did you have anybody review the Eddy County**  
9 **records for saltwater disposal leases within the area of**  
10 **review?**

11 A. We looked in a two-mile radius of our location  
12 and found every saltwater disposal well with a valid  
13 API.

14 **Q. I must be miscommunicating. Did you review the**  
15 **Eddy County records to determine whether there were any**  
16 **saltwater disposal leases --**

17 A. No, sir.

18 **Q. -- within the area of review?**

19 A. (Indicating.)

20 **Q. Okay. Why not?**

21 A. That's a question for Lonquist.

22 **Q. Weren't you aware, though, Mr. Knewitz, that**  
23 **Delaware had saltwater disposal leases in Section 10?**

24 A. Delaware had 1,500 acres worth of leases. I  
25 don't know exactly where all of their acreage was

1 leased. No.

2 Q. Is it your testimony that you were not made  
3 aware that they had saltwater disposal leases from  
4 Mr. Ruiz in Section 10?

5 A. No. At the time I was merely hoping to help  
6 them sell their permits. The approved permits was all I  
7 was focused on.

8 Q. Or as you say, trying to find investors?

9 A. No. I was trying to help them sell their  
10 permits.

11 Q. If I look at Exhibit Number --

12 A. According to the fee agreement with BuySWD,  
13 which was executed.

14 Q. Do you have that fee agreement here today?

15 A. We do.

16 Q. Are you going to produce it?

17 A. I don't have a copy on me.

18 Q. Why not?

19 A. I'm sure --

20 Do we have one, Gary?

21 MR. LARSON: (Indicating.)

22 THE WITNESS: No. We don't have one today.

23 Q. (BY MR. FELDEWERT) Huh. If I go to Delaware  
24 Exhibit Number 7 -- Delaware Exhibit Number 7 --

25 A. Yes, sir.

1           **Q.    -- Delaware Exhibit Number 7 in the notebook,**  
2           **sir.**

3           A.    Oh, this is mine.  Sorry.  I'm getting them  
4           confused.  Okay.

5           **Q.    This indicates that you're communicating with**  
6           **Delaware about investors, correct?**

7           A.    Yeah.  Correct.  That's correct.

8           **Q.    And as part of this process, if I turn to**  
9           **Delaware Exhibit Number 10, this is an email from**  
10          **Mr. Stein to yourself back in March of 2017, correct?**

11          A.    That's correct.

12          **Q.    Before -- months before you filed your permit?**

13          A.    That's correct.

14          **Q.    And doesn't he inform you in this email that he**  
15          **had saltwater disposal leases from Mr. Ruiz in Section**  
16          **10?**

17          A.    He sent me the attachment, which was an Excel  
18          spreadsheet showing all of their surface acreage that  
19          they had leased.  Yes.  And I specifically asked if they  
20          had permits filed, and he replied, "No.  They hadn't  
21          been touched or utilized except on the Gomez and the  
22          Pardue."  That's it.

23          **Q.    But he informed you that they had leases?**

24          A.    Not as --

25          **Q.    I'm sorry?**

1           A.    I never looked at the leases.  I was only  
2 concerned about permits.

3           Q.    But you were aware -- made aware that they had  
4 a saltwater disposal lease from Mr. Ruiz in Section 10?

5           A.    Yes.

6           Q.    And you were aware that Mr. Ruiz owns property  
7 right next to your proposed location?

8           A.    I didn't even look at the leases to see where  
9 they were located.

10          Q.    Huh.  Okay.

11                                You knew they were in Section 10?

12          A.    Didn't even look at it.

13          Q.    And you testified that you communicated with  
14 Delaware about your proposed well location for your SWD  
15 well, right?

16          A.    For the Alpha well, yes.

17          Q.    And talked to them about facility design?

18          A.    Correct.

19          Q.    Talked about your traffic study to get a DOT  
20 permit?

21          A.    Correct.

22          Q.    Shared all that information?

23          A.    Correct.

24          Q.    But when it came time to actually filing the  
25 application for permit, you chose not to inform them of

1     **that action?**

2           A.     That's correct.

3           **Q.     Why?**

4           A.     Didn't need to.

5           **Q.     Okay. Did you seek the advice of an attorney**  
6 **before deciding that you weren't going to notify**  
7 **Delaware of your pending disposal application?**

8           A.     No, sir.

9           **Q.     You don't recall being asked three times by**  
10 **Delaware to inform them if you actually did file a**  
11 **competing disposal application?**

12          A.     No, sir.

13                   MR. FELDEWERT:   That's all the questions I  
14 have.

15                   EXAMINER GOETZE:   Thank you.

16                   Mr. Brooks?

17                   EXAMINER BROOKS:   Okay. Thank you.

18                                   CROSS-EXAMINATION

19 BY EXAMINER BROOKS:

20           **Q.     The correct pronunciation of your name is**  
21 **Knewitz?**

22          A.     Knewitz, yes, sir.

23           **Q.     Okay. Mr. Knewitz, you have testified rather**  
24 **unequivocally that you did not offer to sell the Alpha**  
25 **No. 1 permit to Delaware?**

1           A.    That's correct.

2           Q.    Have you ever had negotiations about selling  
3 any permit where you've discussed that possibility with  
4 Delaware?

5           A.    About Alpha selling a permit --

6           Q.    Yeah.

7           A.    -- to Delaware?

8           Q.    Yes.

9           A.    Never any discussions, no, sir.

10          Q.    Never any discussions.

11                    Any discussions regarding the value of your  
12 permit as being?

13          A.    Not with Delaware, no, sir.

14          Q.    Okay. Thank you.

15                    Let's see. When did you say you first  
16 became aware that Delaware had filed a permit before you  
17 filed the Alpha permit? Did you testify to a date?

18          A.    Are you referring to their Ruiz application?

19          Q.    Well, to the location of it, whatever they may  
20 have called it, the specific location. That seems to me  
21 that that's material.

22          A.    We weren't aware of any application that  
23 Delaware had filed in the vicinity of our Alpha No. 1  
24 location other than their Gomez permit.

25          Q.    Okay. And where is that? How far is that?

1           A.     .8 miles away.

2           Q.     And the Alpha -- the Ruiz well -- the proposed  
3 Ruiz location is?

4           A.     800 feet.

5           Q.     Okay. Very good. That clarifies things a  
6 little better.

7                         When did you first find out that they had  
8 filed an application at this location 800 feet away from  
9 you?

10          A.     When they were -- when Delaware had hired a  
11 survey crew in June -- end of June to survey their  
12 location. That's when we first were aware of it.

13          Q.     Okay.

14          A.     Or we thought they were attempting to file a  
15 new permit. We didn't know.

16          Q.     And they have represented -- or Mr. Feldewert  
17 has represented, at least in this timeline -- I don't  
18 know who prepared this timeline specifically -- but  
19 Delaware's representative, that they first found out  
20 about your permit on June 29th. Is that approximately  
21 the same time that you found out about their application  
22 that had been previously filed?

23          A.     I believe so, yes, sir.

24          Q.     Thank you. I think that's all I have.

25          A.     Oh, yeah. Never mind.

1 EXAMINER BROOKS: Mr. Goetze, you may take  
2 over.

3 CROSS-EXAMINATION

4 BY EXAMINER GOETZE:

5 Q. I only have one question. Gateway Permian,  
6 LLC, are they an operator in the state of New Mexico?

7 A. Yes, sir. I couldn't tell you what their OGRID  
8 number is.

9 Q. Do they have an OGRID number and a bond in  
10 place?

11 A. Yes, sir.

12 Q. Okay. That's the only a question I have.  
13 Thank you.

14 A. You're welcome.

15 MR. LARSON: Nothing further.

16 EXAMINER GOETZE: Redirect?

17 Sorry. I didn't mean to --

18 MR. LARSON: I know what you meant.

19 EXAMINER GOETZE: Please proceed.

20 MR. LARSON: I have nothing further for  
21 Mr. Knewitz.

22 THE WITNESS: I'm done.

23 EXAMINER GOETZE: That's fine for you, but  
24 we get to choose.

25 So your next witness, please.

1 Thank you for your patience.

2 EXAMINER BROOKS: I would request a  
3 five-minute recess.

4 EXAMINER GOETZE: Yeah. Since we've been  
5 dualing, we'll take time off and come back in about --  
6 20 after, about 11 minutes.

7 EXAMINER BROOKS: Okay. That's good for  
8 me.

9 (Recess, 2:08 p.m. to 2:20 p.m.)

10 EXAMINER GOETZE: We'll go back on the  
11 record.

12 And, Mr. Larson, please continue.

13 CHRISTOPHER B. WEYAND,  
14 after having been previously sworn under oath, was  
15 questioned and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. LARSON:

18 Q. Good afternoon, Mr. Weyand.

19 A. Good afternoon.

20 Q. State your full name for the record, please.

21 A. Christopher Bell Weyand.

22 Q. And where do you reside?

23 A. Austin, Texas.

24 Q. Who are you employed with and in what capacity?

25 A. Lonquist & Company as a staff engineer.

1 Q. Do your responsibilities at Lonquist include  
2 the permitting and development of produced-water  
3 disposal wells in New Mexico?

4 A. Yes, sir.

5 Q. And did Alpha SWD Operating retain Lonquist &  
6 Company to prepare the C-108 administrative application  
7 for the Alpha SWD No. 1 well?

8 A. Yes.

9 Q. And did you prepare the C-108?

10 A. Yes, sir.

11 Q. Are you familiar with Delaware's application  
12 that seeks the revocation of Alpha's injection authority  
13 under Administrative Order SWD-1680?

14 A. Yes, sir.

15 Q. Have you previously testified at a Division  
16 hearing?

17 A. I have not.

18 Q. And given that, can you briefly summarize for  
19 the Examiner your educational background and your  
20 experience in the oil and gas industry?

21 A. Yes, sir. I graduated in 2010 with an  
22 engineering degree from Texas A & M University. I've  
23 been working for Lonquist & Company since November 2012  
24 providing a variety of oil and gas engineering  
25 consulting services, specifically -- or including filing

1 C-108 applications with the OCD in New Mexico.

2 MR. LARSON: Mr. Examiner, I tender  
3 Mr. Weyand as an expert in oil and gas engineering.

4 EXAMINER GOETZE: Mr. Feldewert?

5 MR. FELDEWERT: No objection.

6 EXAMINER GOETZE: He is so qualified.

7 Q. (BY MR. LARSON) And, Mr. Weyand, before we  
8 start with your testimony, I have a couple of exhibit  
9 matters to address with you.

10 A. Yes, sir.

11 Q. Did you receive the documents marked as Alpha  
12 Exhibit 1 from the Division via email?

13 A. Yes, sir.

14 Q. And are those documents otherwise available on  
15 the OCD's Web site?

16 A. No, sir.

17 Q. And are the documents constituting Exhibits 1  
18 and 3, are they true and correct copies of the documents  
19 you received from the Division?

20 A. Yes, sir.

21 Q. And did you also receive the documents marked  
22 as Alpha Exhibit Number 2, the email from the Division?

23 A. Yes.

24 Q. And, again, are those documents otherwise  
25 available on the OCD Web site?

1 A. No, they are not.

2 Q. And are the documents comprising Exhibit 2 true  
3 and correct copies of the documents you received from  
4 the Division?

5 A. Yes, sir.

6 Q. And in the process of preparing the C-108 for  
7 the Alpha SWD Well No. 1, did you research wells in the  
8 half-mile area of review?

9 A. Yes, sir.

10 Q. And how many wells are there in the AOR?

11 A. There were four wells at the time the permit  
12 was filed.

13 Q. And moving to Alpha Exhibit Number 3, do you  
14 have that in front of you?

15 A. Yes, sir.

16 Q. And I believe it's Exhibit B, a copy of Alpha's  
17 C-108.

18 A. Okay.

19 Q. And if you turn to page 16 of Exhibit B --

20 A. Yes, sir.

21 Q. -- did you identify each of those four wells on  
22 your AOR map there?

23 A. Yes, sir.

24 Q. And are they also listed on page 17 of Exhibit  
25 B?

1           A.    Yes, sir.

2           Q.    And were you responsible for complying with the  
3    Division's requirements for providing notification of  
4    the Alpha C-108 administrative application?

5           A.    Yes, sir.

6           Q.    Now, I'd direct your attention to page 19 of  
7    Exhibit B and ask you to identify it.

8           A.    That is a copy of the notice list sent out for  
9    the Alpha SWD No. 1 application.

10          Q.    And just so the record's clear, that's page 19  
11   of Exhibit B to Alpha Exhibit 3.

12                        Did you send a certified mail letter  
13   enclosing the C-108 to each of the individuals and  
14   entities identified on your list?

15          A.    Yes, sir.

16          Q.    And did you receive returned green cards for  
17   all of those letters?

18          A.    Yes, sir.

19          Q.    And turning to page 26 of Exhibit B to Alpha  
20   Exhibit 3, does it contain copies of the green cards?

21          A.    Yes, sir.

22          Q.    Does page 26 include a copy of the green card  
23   for the letter you sent to Matador?

24          A.    Yes, sir.

25          Q.    Would you identify the document marked as Alpha

1 **Exhibit 12?**

2 A. It's a copy of the returned green card received  
3 back from Matador Production Company.

4 **Q. And is Exhibit 12 a true and correct copy of**  
5 **the green card that you received for the notice letter**  
6 **you sent to Matador Production?**

7 A. Yes, sir.

8 **Q. What's your understanding of the Division's**  
9 **notice requirements for SWD well administrative**  
10 **applications?**

11 A. Notice should be provided to surface owner,  
12 to -- and to leasehold operators or other affected  
13 parties within a quarter mile or within -- sorry --  
14 within a half mile.

15 **Q. And is that the surface owner of the well**  
16 **location?**

17 A. Yes, sir.

18 **Q. And how did you determine the identity of the**  
19 **owners of the surface where the Alpha SWD Well No. 1**  
20 **will be located?**

21 A. That information was provided by Alpha SWD  
22 Operating through a property record report card.

23 **Q. And who are the owners of the surface of the**  
24 **well location?**

25 A. Mr. and Mrs. James Phillips.

1 Q. Is that James and Irma Phillips?

2 A. Yes, sir.

3 Q. And when did you submit the C-108 for the Alpha  
4 SWD Well No. 1 to the Division?

5 A. It was received by the Division per the green  
6 card on June 12th, 2017.

7 Q. And at that time, did you know that Delaware  
8 had submitted a C-108 application for the Ruiz SWD No. 1  
9 well in October of 2016?

10 A. No, sir.

11 Q. Even if you had known, based on your experience  
12 in preparing and submitting C-108 applications, would  
13 the Division's rules require you to send a notice letter  
14 to Delaware?

15 A. No, sir.

16 Q. And did you publish notice of Alpha's  
17 application?

18 A. Yes, sir.

19 Q. And does the Affidavit of --

20 A. Let me -- let me restate. Let me go back a  
21 couple of questions. I wouldn't have sent them a  
22 C-108 -- a copy of the C-108 application via certified  
23 mail.

24 Q. Okay. We'll push the reset button.

25 A. Sure.

1 Q. Did you publish notice about the application?

2 A. Yes, sir.

3 Q. And does the Affidavit of Publication appear on  
4 page 27 of Exhibit B to Alpha Exhibit Number 3?

5 A. Yes, sir.

6 Q. And after you submitted the C-108 application  
7 on June 12th, did anybody at the Division contact you  
8 about the application?

9 A. Yes, sir. Michael McMillan did.

10 Q. And what additional information did  
11 Mr. McMillan ask you for?

12 A. He requested a copy of the Affidavit of  
13 Publication, the returned green cards and a signed  
14 statement affirming that there were no open faults in  
15 the area.

16 Q. Did he ask you for any additional information  
17 regarding the technical aspects of the application such  
18 as the well casing?

19 A. No, sir. No, sir. No.

20 Q. In your experience, is it commonplace for the  
21 Division to request additional information in relation  
22 to a C-108?

23 A. Yes, sir.

24 Q. And did you timely provide to Mr. McMillan the  
25 additional information he requested?

1 A. Yes, sir.

2 Q. And did Mr. McMillan inform you of any protests  
3 about the application?

4 A. No, he did not.

5 Q. Did Alpha ask you to submit a protest of  
6 Delaware's July 3rd, 2017 submission to the OCD?

7 A. Yes, sir.

8 Q. And would you identify the document marked as  
9 Alpha Exhibit Number 13?

10 A. That's the protest letter in response to that  
11 Ruiz SWD No. 1 application.

12 Q. And is Exhibit 13 a true and correct copy of  
13 the letter you sent to the Division?

14 A. Yes, sir.

15 Q. And what is the stated basis for Alpha's  
16 protest that's included in your letter?

17 A. That the Ruiz SWD No. 1 is approximately a  
18 quarter mile from the permitted Alpha SWD No. 1.

19 Q. And in your opinion, would it be advisable to  
20 have two commercial produced-water disposal wells within  
21 a quarter mile of each other?

22 A. No, sir.

23 MR. LARSON: Mr. Examiner, I move the  
24 admission of Alpha Exhibits 1, 2, 12 and 13.

25 MR. FELDEWERT: Mr. Examiner, no objection.

1 EXAMINER GOETZE: Very good. Thank you,  
2 Mr. Feldewert.

3 Exhibits 1, 2, 12 and 13 are so entered.  
4 (Alpha SWD Operating, LLC Exhibit Numbers  
5 1, 2, 12 and 13 are offered and admitted.  
6 into evidence.)

7 MR. LARSON: And I will pass the witness.

8 CROSS-EXAMINATION

9 BY MR. FELDEWERT:

10 Q. Mr. Weyand, there was some confusion about your  
11 testimony. You said you wouldn't send a C-108 to  
12 Delaware?

13 A. Yes, sir.

14 Q. Why?

15 A. Because they were not an affected party.

16 Q. In your opinion, they're not an affected party  
17 under the rule?

18 A. Per the OCD rules.

19 Q. So you're talking about -- you're interpreting  
20 what's been marked as Delaware Exhibit Number 15? Would  
21 you turn to what's been marked as Delaware Exhibit  
22 Number 15?

23 A. Yes, sir.

24 Q. And what are you referring to?

25 A. I'm referring to -- bear with me. It's Section

1 B(2), "The applicant shall furnish, by certified mail or  
2 registered mail, a copy of the application to each owner  
3 of the land surface on which the injection or disposal  
4 well is to be located and each leasehold or other  
5 affected person within any tract wholly or partially  
6 contained within one-half mile of the well."

7 **Q. And it's just your opinion that "other affected**  
8 **person" would not include a company like Delaware?**

9 A. Well, you -- is there a reason that the  
10 definitions are not included here?

11 **Q. I didn't write the rule.**

12 A. Okay.

13 **Q. But that's your opinion?**

14 A. Well, the definition of affected party says  
15 that leasehold operators of the tract and only in the  
16 absence thereof, but it's unnecessary anyway because  
17 they're not a leasehold operator.

18 **Q. So in your opinion, even if the company had**  
19 **known of the exact location of the Ruiz Well No. 1 and**  
20 **the fact that there was a pending application before the**  
21 **Division for the Ruiz No. 1, in your opinion, you still**  
22 **wouldn't have to give them notice?**

23 A. That's correct. They wouldn't be a  
24 Division-designated operator.

25 **Q. Even if you're filing a competing pooling**

1 appli- -- or a competing disposal application right next  
2 door, you wouldn't give them notice?

3 A. No, sir, not if it was pending.

4 Q. And even if I had -- even if a company has a  
5 recorded saltwater disposal agreement with acreage right  
6 next door to the proposed location, you wouldn't give  
7 them notice?

8 A. That's correct.

9 Q. You don't think they're affected?

10 A. No, sir.

11 Q. Huh. Okay.

12 A. I'll restate that. I don't think that it's  
13 required by the rules.

14 Q. Do you think they're affected?

15 A. No.

16 Q. So, Mr. Weyand, if you file -- if you have a  
17 pending application before the Division for a disposal  
18 well --

19 A. Uh-huh.

20 Q. Okay? The process for putting together a C-108  
21 application takes some time, right?

22 A. Yes, sir. Absolutely.

23 Q. Costs a lot of money?

24 A. Yes, sir.

25 Q. And somebody then files a competing --

1 A. Uh-huh.

2 Q. -- disposal application right next to you --

3 A. Uh-huh.

4 Q. -- you wouldn't want to get notice?

5 A. Well, unfortunately, I don't think that's  
6 required by the rules.

7 Q. If someone asked you to provide them notice if  
8 they [sic] filed a competing disposal application in the  
9 area, would you give them notice?

10 A. If someone asked me?

11 Q. Yeah.

12 A. Well, if they were an affected party and were  
13 deserving of notice, I would definitely provide the  
14 notice. I would have to -- that situation would have to  
15 be presented. I'd have to know more specifics about the  
16 situation.

17 Q. Well, let's say that you had a -- you had filed  
18 a disposal application in Section 10 and you were aware  
19 that someone else was thinking about filing another  
20 disposal application in that area and that first company  
21 asked you to give them -- or you asked them to give you  
22 notice in the event they filed a competing application.  
23 Wouldn't you want to get notice so you could protect  
24 your interest?

25 A. If I -- yeah. Sure. I would want to. But

1 that doesn't mean that it's -- that I'd expect it.

2 Q. Okay. But if someone had requested of you --

3 A. Sure.

4 Q. -- to give them notice so that they could  
5 protect their interest, wouldn't you have given them  
6 notice? You seem like a straight-up guy to me.

7 A. That's funny.

8 (Laughter.)

9 Q. Wouldn't you give them notice if they asked  
10 you?

11 A. Again, I would have to -- I'd have to evaluate  
12 the situation.

13 Q. Okay. All right. If you turn to Exhibit B --

14 A. That's -- okay. Of Exhibit 3.

15 Q. I'm sorry. Actually, the easiest one would be  
16 to go to ours, Exhibit 14.

17 A. Yes, sir.

18 Q. Turn to page -- I think you were there, page  
19 25. This is an email directed to you by Mr. McMillan?

20 A. Yes, sir.

21 Q. Okay. And he's informed you that the  
22 application was received on June 12th, 2017?

23 A. Yes, sir.

24 Q. And he goes on to tell you that it will not be  
25 placed into the administrative review process. Do you

1 see that?

2 A. Yes, sir.

3 Q. And then he indicates the information must be  
4 required -- be submitted?

5 A. Yes, sir.

6 Q. Did you understand the information that had to  
7 be submitted for it to be placed into the administrative  
8 review process?

9 A. Sure, per -- this was actually addressed to  
10 Steve, but yes.

11 Q. Aren't you Chris? Oh, no. I'm sorry. But you  
12 are aware of this?

13 A. Yes, sir.

14 Q. Okay. And would you read this as him  
15 indicating the information that must be submitted for it  
16 to be placed into the administrative review process?

17 A. That's what it says here.

18 Q. Okay. And now you offered an interpretation of  
19 the OCD rule, which is Exhibit Number 15. Would you go  
20 to that for me, please?

21 A. Yes, sir.

22 Q. And let's go to paragraph C(2).

23 A. Okay. Yes, sir.

24 Q. And are you familiar with this rule?

25 A. Yes, sir.

1           Q.    And it indicates that the Division shall not  
2 approve an application for administrative approval until  
3 15 days following the Division's receipt of a Form C-108  
4 complete with all attachments included, right?

5           A.    Sure.

6           Q.    Okay. That means you've got to file a complete  
7 C-108 with all the attachments and all the required  
8 information. Isn't that what it says?

9           A.    That's your legal opinion. I don't have a  
10 legal opinion. I'm an engineer.

11          Q.    You just gave one on the other one.

12          A.    Okay.

13          Q.    In your opinion, having dealt with this, don't  
14 you have to file a complete application with all the  
15 attachments and all the information necessary before it  
16 is put into the administrative review process?

17          A.    Well, in my experience, this is not always --  
18 that's not always the case.

19                       MR. FELDEWERT: That's all the questions I  
20 have.

21                       EXAMINER GOETZE: Mr. Brooks?

22                                       CROSS-EXAMINATION

23 BY EXAMINER BROOKS:

24          Q.    I'm sorry. I'm not clear on the pronunciation  
25 of your name.

1 A. We've heard a few today. It's okay. Weyand.

2 Q. Weyand.

3 A. Yes, sir.

4 Q. Very good, Mr. Weyand.

5 You said you're an engineer, and you're not  
6 a lawyer; is that correct?

7 A. That's correct. Yes, sir.

8 Q. Okay. Well, I understand that not being a  
9 lawyer, you would not be expected to have opinions about  
10 things that would require the expert -- or -- well, I  
11 hate to say we require the expertise of a lawyer. I'm  
12 not sure that lawyers have any expertise on anything.

13 MR. LARSON: Objection.

14 (Laughter.)

15 Q. (BY EXAMINER BROOKS) But assuming that lawyers  
16 assume certain things, you may assume certain things --  
17 and you would presumably not have an opinion on things  
18 that lawyers would assume, correct?

19 A. Yes, sir.

20 Q. Well, to establish the facts that would be  
21 relevant, I believe that Mr. Feldewert has offered in  
22 evidence a copy of a lease agreement. And I'm not sure  
23 which -- well, somebody did. Oh, Delaware.

24 MR. FELDEWERT: I believe, Mr. Examiner --  
25 I think it would be Exhibit 11.

1 EXAMINER BROOKS: Exhibit 11. Thank you,  
2 Mr. Feldewert.

3 Q. (BY EXAMINER BROOKS) This is a lease agreement  
4 between Reyes Ruiz and Delaware Energy, LLC. It's dated  
5 the 6th day of September 2016. This is a memorandum of  
6 a saltwater disposal lease, so it's not the lease  
7 itself. However, we are in New Mexico and not in  
8 Colorado. Did you have any knowledge at any time of  
9 this, Defendant's [sic] Exhibit 11? Did it ever come to  
10 your attention?

11 A. No, sir, not until recently.

12 Q. I'm sorry. Applicant's Exhibit 11.

13 A. Not until recently.

14 Q. And that was not until this -- after this  
15 application was filed?

16 A. Since the application to revoke.

17 Q. So you would not have had to address the -- you  
18 would not have had to consider the question of whether  
19 the lease agreement that this memorandum was a part  
20 of -- was a memorandum of would have made Delaware  
21 Energy, LLC a lessee of the tract on which the Ruiz well  
22 was proposed to be located?

23 A. Yes, sir. That's correct.

24 Q. Okay. Because you didn't know anything about  
25 this lease; is that correct?

1           A.    That's correct.

2           Q.    Okay.  You also would not be expected to be  
3 really knowledgeable about the legal -- about the  
4 judicial decisions of the Supreme Court of New Mexico, I  
5 would expect?

6           A.    Well, no, I would hope not.

7           Q.    Well, sometimes I wish I wasn't.

8                               And have you ever heard of the case of  
9 Uhden -- H-U-D-E -- U-H-D-E-N -- versus the Oil  
10 Conservation Commission, which was decided by the  
11 Supreme Court of New Mexico in 1991?

12          A.    No, sir.

13          Q.    So you wouldn't have any basis for having any  
14 kind of opinion as to what the complications of that  
15 decision might be in this situation?

16          A.    No, sir.

17          Q.    Okay.  I won't harass you further about legal  
18 issues.  I'll turn you over to Mr. Goetze, who is  
19 also -- well, no, Mr. Goetze is not an engineer.  He's a  
20 geologist.

21                               **EXAMINER GOETZE:  No.**

22                               EXAMINER BROOKS:  He seems pretty competent  
23 as an engineer but seems competent to me as a lawyer.

24                               EXAMINER GOETZE:  No, no, no.

25                               EXAMINER BROOKS:  Go ahead.

1 EXAMINER GOETZE: With all that, I don't  
2 have any questions. The testimony you presented covers  
3 all the issues I have, concerns.

4 Back to you, Mr. Larson.

5 MR. LARSON: I have nothing further for  
6 Mr. Weyand.

7 EXAMINER GOETZE: We're done with you.  
8 Thank you very much.

9 JASON L. PICKARD,  
10 after having been previously sworn under oath, was  
11 questioned and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. LARSON:

14 Q. Good morning, Mr. Pickard.

15 A. Good afternoon.

16 Q. Would you state your name for the record?

17 A. Jason Lee Pickard, Argyle, Texas, A-R-G-Y-L-E.

18 Q. Are you a member of Alpha SWD Operating, LLC?

19 A. Yes, sir. Yes, sir, I am.

20 Q. And do you have direct involvement with the  
21 day-to-day operations of Alpha SWD Operating, LLC?

22 A. Yes, sir, I do.

23 Q. Are you testifying today as a fact witness?

24 A. Yes, sir, I am.

25 Q. Have you reviewed and are you familiar with

1 Delaware's application to revoke Alpha's injection  
2 authority?

3 A. Absolutely. Yes, sir.

4 Q. And could you briefly describe your role in the  
5 day-to-day operations of Alpha SWD Operating?

6 A. You know, primarily I'm focused on land  
7 acquisition negotiations, as well as business  
8 development.

9 Q. In that role, have you been directly involved  
10 with the development of the Alpha SWD No. 1 well?

11 A. Yes, sir.

12 Q. And were you involved in negotiations with  
13 private equity investors that Mr. Knewitz described as  
14 Plan A?

15 A. Yes, sir, I was.

16 Q. And under the Plan A scenario, what was Alpha's  
17 role going to be?

18 A. Well, to act as the operator to, you know,  
19 design, build and operate multiple saltwater disposal  
20 facilities in New Mexico.

21 Q. And why did Alpha move to Plan B?

22 A. Long story short, the terms just aren't near as  
23 favorable whenever you're dealing with private equity  
24 money.

25 Q. And were you directly involved in negotiating

1 **implementing Plan B which involves a working**  
2 **relationship with Gateway Permian Operating, LLC?**

3 A. Yes, sir, I was.

4 **Q. And when did you commence your negotiations**  
5 **with Gateway?**

6 A. Oh, gosh. I don't know an exact date, but we  
7 started -- we had begun conversations, I would say, back  
8 in May. You know, Gateway has actually been a long-time  
9 friend of ours. Kurt's known a gentleman over there at  
10 Gateway for many years. And so while they knew that we  
11 were, you know, actively pursuing Eddy County, they, at  
12 the same time, were actively pursuing. So we told them  
13 that we had found a great piece of property, we had  
14 filed a permit. They said, "Hey, why don't we just join  
15 forces; it makes sense?" And, you know, we came to a  
16 strategic arrangement, and that's when we went with that  
17 plan.

18 **Q. I'm going to refer you to Delaware Exhibit**  
19 **Number 20 in in book.**

20 A. Exhibit Number 1?

21 **Q. 20.**

22 A. 20. Here we go. Okay.

23 **Q. And that's the purchase and sale agreement**  
24 **between Alpha SWD Operating, Alpha Properties, LLC and**  
25 **Gateway Permian, LLC?**

1           A.    That's correct.

2           **Q.    And how is that deal structured?**

3           A.    In terms of the actual -- you know, how  
4 everything flows or what the -- how we work in capacity  
5 and --

6           **Q.    Both.**

7           A.    Both.  Okay.  So I'll just lay it out for you  
8 guys so everybody can get the picture of what's going on  
9 here because there's obviously some confusion.

10                        So whenever we formed this agreement, we  
11 decided Alpha and Alpha Properties would act as the  
12 developers of the deals.  Right?  We have the intel.  
13 We've done the feasibility analysis.  We know where we  
14 want to be at.  They rely on, you know, where we want to  
15 be.  And so, essentially, we find the land, acquire the  
16 land, form the negotiations, close the deal with the  
17 landowners, permit, you know, handle any kind of  
18 protests such as this.  And, in turn, they purchase the  
19 permit from us to obviously help compensate for our cost  
20 in that, which is continually ticking.  And then all the  
21 while, we execute a lease agreement with them, and they  
22 pay us a landowner royalty.

23                        Now, with that landowner royalty, we give  
24 them the opportunity to buy that land from us, or we can  
25 convert into equity after a two-year period.  So it

1 gives the operator an opportunity to not have that  
2 landowner royalty burden. That's how we structured  
3 this.

4 **Q. I'm focusing here on Delaware Exhibit 20.**  
5 **Mr. Feldewert raised the issue of the lease, which is an**  
6 **attachment --**

7 A. Uh-huh.

8 **Q. -- to this document.**

9 A. Yes, sir.

10 **Q. Could you list for me the attachments you see**  
11 **there to the agreement?**

12 A. Off the top of my head, the attachments to  
13 the -- oh, does it have it on the back? You're talking  
14 about -- could you rephrase the question so I know what  
15 I'm looking for?

16 **Q. Sure. Okay.**

17 A. Are you saying there are missing documents or  
18 something?

19 **Q. Yes. If you look at page --**

20 A. Oh, okay.

21 **Q. -- 16.**

22 A. Okay. So what this is -- so the document that  
23 I sent you, it doesn't have the properties' description.  
24 So, essentially, it was just the property description,  
25 where the property is located, the real estate purchase

1 contract, what you guys have. You've got the -- that's  
2 what -- Irma Phillips and James Phillips; the disposal  
3 permit, which we all have, and the access permit, which  
4 we have.

5 MR. FELDEWERT: That's the DOT permit?

6 THE WITNESS: Yes, sir, the DOT.

7 Okay? And then the lease agreement.

8 MR. FELDEWERT: Which we don't have.

9 THE WITNESS: Which was not included.

10 Q. (BY MR. LARSON) Is it a standard lease  
11 agreement?

12 A. Just a standard lease agreement, yes.

13 Q. So when this transaction, if it ever is  
14 concluded, Alpha Properties, LLC will purchase the 7.9  
15 acres from Irma and James Phillips?

16 A. That is correct.

17 Q. It will then lease that 7.9 acres to Gateway  
18 Permian?

19 A. That is correct.

20 Q. And what do you see as the advantage of Alpha  
21 SWD partnering with Gateway?

22 A. Well, there are a lot of advantages. Other  
23 than, you know, Gateway being a great group of guys,  
24 they've got a ton of experience. They've owned and  
25 operated wells in south Texas, east Texas. They've got

1 a lot of midstream experience, which we would like to,  
2 you know, obviously own the gathering system, so we  
3 wanted a partner that had that kind of experience.

4           Having the type of arrangement that we  
5 have, it frees them up to -- to, you know, focus  
6 primarily on the operational side, securing contracts,  
7 working with pipeline. They don't have time to sit and  
8 have Lonquist run all the feasibility analysis and, you  
9 know, pinpoint where we want to go with the next  
10 location, you know. So we have the first location.  
11 We've just filed for our second location, and they've  
12 agreed to, you know, a number of other ones as well. So  
13 we have a 50-mile AMI with this group. And so anything  
14 we do within a 50-mile AMI, they get first right of  
15 refusal to partner with us, in which they're committed  
16 to do. But they're not locked into having to do that.  
17 That's why we created that.

18           **Q. And is Alpha Properties developed to be**  
19 **affiliated with Alpha SWD Operating, LLC?**

20           A. Yes, sir.

21           **Q. Why was that created?**

22           A. So Alpha Properties is essentially the  
23 landowner for our properties going forward, while Alpha  
24 SWD Operating is the entity with the OGRID number.

25           **Q. And who are the members of Alpha Properties,**

1     **LLC?**

2           A.     Mr. Kurt Knewitz and myself.

3           **Q.     And did you negotiate the land purchase**  
4 **contract with Irma and James Phillips?**

5           A.     Yes, sir, I did.

6           **Q.     And are Mr. and Mrs. Phillips still committed**  
7 **to selling their acreage to Alpha?**

8           A.     Absolutely. Absolutely. I've just -- they've  
9 just signed -- I believe you guys have the extension  
10 until December 31st. They're willing to keep extending  
11 it if need be, but hopefully we'll get through this.

12          **Q.     And is Gateway Permian Operating still**  
13 **committed to partnering with Alpha to operate the Alpha**  
14 **SWD No. 1?**

15          A.     I just spoke with them on our break. They --  
16 he sent me the contract that they have with Patriot to  
17 drill the well and -- which is dated two days ago, so  
18 we're waiting on this to get taken care of so we can  
19 sign it and get going.

20          **Q.     I'll direct your attention now to Alpha Exhibit**  
21 **3, which is Delaware's application to revoke Alpha SWD**  
22 **Operating's injection authority.**

23          A.     Okay. Where am I looking at again? Say it  
24 again.

25          **Q.     It's Alpha Exhibit 3.**

1 A. Alpha exhibit. Okay. Okay.

2 Q. And I'll direct your attention to page 2,  
3 paragraph five.

4 A. Uh-huh.

5 Q. And do you agree with the assertion that on  
6 June 12th, 2017 Alpha knew that Delaware had a C-108  
7 pending before the Division?

8 A. No, we did not. No.

9 Q. You did not agree?

10 A. Say that again.

11 Q. Okay. The question was: Do you agree with the  
12 assertion that on June 12, 2017, Alpha knew that  
13 Delaware had a C-108 pending before the Division?

14 A. No, absolutely not. No.

15 You know, in fact, I wanted to add  
16 something to that. You know, so I'm actually the one  
17 that finds the land that we buy, and I actually utilize  
18 the OCD's Web site, which I applaud you guys for keeping  
19 everything up-to-date because it helps make my life a  
20 lot easier. But one thing that I look for is -- the  
21 first thing I look for is where are the other SWD  
22 facilities. Is there any new facilities permitted? Are  
23 there any existing permitted? And if I see anything  
24 within a half mile -- even a half-mile radius to me is  
25 too close. You know, I try to be at least a mile if I'm

1 going to permit anything within that vicinity.

2                   And so whenever I found James and Irma's --  
3 that's why this is such a shock to me after we get this  
4 permit and then we find out these guys are permitting  
5 right next to us. We had zero knowledge this entire  
6 time of any permit until we got the call from Irma  
7 Phillips, or we never would have -- if there was an  
8 applicable API number, we would have never filed right  
9 there. But it was just nowhere to be found. We had  
10 zero only knowledge of it. Sorry. I know that was a  
11 long-winded answer.

12           **Q. And when did you first learn that Delaware had**  
13 **submitted a C-108 to the Division in October of 2016?**

14           A. That was whenever we got the call from Irma  
15 Phillips asking if the guys that were on her property  
16 surveying were with us, because they said they were the  
17 saltwater disposal company. I said -- I was like, "No,  
18 that's not us. Put the guy on the phone because I think  
19 he's lost. I said, "Well, who are you working with?"  
20 The guy said, "Delaware Energy." You've got to be  
21 kidding me? And so obviously that was a shocker. So,  
22 you know, I told him I didn't know where they were  
23 talking about, so that was it for that conversation.

24           **Q. Have you discussed produced water disposal**  
25 **agreements with oil and gas operators in the vicinity of**

1     **the Alpha SWD No. 1 well?**

2           A.     A number of them, yes.

3           **Q.     And how long have you been engaged in those**  
4 **negotiations?**

5           A.     Since before we permitted the wells.  So I  
6 would say May.

7           **Q.     And has Alpha entered into any contracts with**  
8 **any of those operators?**

9           A.     Unfortunately, not, you know.

10          **Q.     Are they still in the negotiation phase?**

11          A.     Some are.  Some we've -- that ship has sailed.

12          **Q.     And is Alpha facing the prospect of losing**  
13 **business because of Delaware's application to revoke its**  
14 **injection authority?**

15          A.     Absolutely.  Yes.

16          **Q.     And you've stated you already have lost some**  
17 **business?**

18          A.     We have lost, yeah.

19          **Q.     How about future business?**

20          A.     We're on the verge of it if this gets drug out  
21 any longer.  Yeah.

22                         MR. LARSON:  I'll pass the witness.

23                         EXAMINER GOETZE:  Mr. Feldewert?

24

25

CROSS-EXAMINATION

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BY MR. FELDEWERT:

**Q. Mr. Pickard --**

A. Yes, sir.

**Q. -- can you identify any contracts that the company has lost?**

A. I would rather not give the name of them because there is nothing keeping Delaware Energy from being able to secure those contracts.

**Q. Can you identify any contracts that the company has lost?**

A. Although, to go back to your question, I believe you have that information -- the information we sent you in the subpoena. If you go back through there, you'll see all the trail of the pipeline conversations, and you'll see who it was.

**Q. No contracts?**

A. No contracts. We couldn't sign the contracts.

**Q. No draft contracts?**

A. Say again.

**Q. No draft contracts.**

A. No draft contract. Why would we draft a contract if we had a motion to stay -- a motion to revoke?

**Q. No draft agreement?**

1           A.    How would we end up looking? We drop the ball,  
2 fall flat on our face first time we're out in the field?

3           **Q.    Do you have draft contracts?**

4           A.    No, I do not.

5           **Q.    Okay.**

6           A.    Give me a little time, with the grace of the  
7 OCD, by the way.

8           **Q.    So your permit was approved in June of 2017,  
9 and you have no draft contracts?**

10          A.    No, we do not.

11          **Q.    Okay. You also mentioned that you moved to  
12 Plan B in May of 2017?**

13          A.    It would have been around there.

14          **Q.    Okay. And that's the plan under which Gateway  
15 was going to drill --**

16          A.    Right.

17          **Q.    -- and operate the well?**

18          A.    Correct.

19          **Q.    Can you explain, then, why the company filed in  
20 June of 2017, a month later, an application representing  
21 that Alpha SWD Operating, LLC was going to drill and  
22 operate the well?**

23          A.    Can you rephrase or say the question again?

24          **Q.    You moved to Plan B in May of 2017 --**

25          A.    We had not -- we had talk- -- we had started

1 negotiations. We never said we moved to Plan B.

2 Q. Your testimony was you moved to Plan B in May  
3 of 2017.

4 A. Whoa, whoa, whoa.

5 Q. That was his (indicating) testimony as well.

6 A. Well, we began negotiations with Gateway at  
7 that point. The deal wasn't cut until we signed the  
8 agreement right here (indicating), which is the purchase  
9 sale agreement that you have. What's the date on that?

10 Q. So your testimony was, both you and  
11 Mr. Knewitz --

12 A. Uh-huh. It was in May --

13 Q. -- that you moved to Plan B in May of 2017  
14 under which Gateway was going to drill and operate the  
15 well.

16 A. We hadn't moved to Plan B until we cut the deal  
17 with Gateway, but we had -- we had -- let me finish.

18 Q. No. Let me finish.

19 When you file your application in June of  
20 2017, you still represented that Alpha SWD Operating,  
21 LLC --

22 A. That's correct.

23 Q. -- was going to operate the well, correct?

24 A. That's right.

25 Q. Okay.

1 A. Yeah.

2 Q. Now, if I go to the purchase and sale  
3 agreement --

4 A. Where was that at?

5 Q. Exhibit 20.

6 A. Keep this together here.

7 Okay. Fire away.

8 Q. On page 2 --

9 A. Uh-huh.

10 Q. -- this is the paragraph that identifies the  
11 purchase price. That would be for Gateway's purchase of  
12 your permit from the Oil Conservation --

13 A. For our negotiated -- negotiated terms, yes.

14 Q. And you recall that Mr. McCurdy testified that  
15 you had offered him, at the time in June, that you would  
16 sell it to him for \$500,000?

17 A. False.

18 Q. You heard his testimony?

19 A. I heard his testimony. I'm saying that was  
20 false. We never offered to sell our permit to Delaware  
21 Energy.

22 Q. And the number that I understand that we would  
23 put in here in Section 3.1 is \$450,000; is that correct?

24 A. That is correct. Yes, sir.

25 Q. And then you mentioned that there was a -- what

1     **you call just a standard lease agreement --**

2           A.    Uh-huh.

3           **Q.    -- that was attached to this particular matter?**

4           A.    That's correct.

5           **Q.    Okay.**

6           A.    Giving them rights to, you know, carry on their  
7     operations of saltwater disposal.

8           **Q.    And under that, what you call a standard lease**  
9     **agreement, one of the Alpha entities would get a royalty**  
10    **of 8 percent of the gross revenue?**

11          A.    That's correct.  That would be Alpha  
12    Properties.

13          **Q.    Is there any -- any other consideration?**

14          A.    No.  There is no other -- well, the other  
15    consideration is we have an opportunity -- after two  
16    years, they can either buy the land from us, or we can  
17    convert to equity in the company.  Now, that is the  
18    setup that we chose rather than taking equity in the  
19    company.  So, you know, going back to one of  
20    Mr. Larson's questions --

21          **Q.    Hold on.  This is my question.**

22          A.    Okay.  Go ahead.

23          **Q.    Is Mr. -- Mrs. Phillips aware that you -- how**  
24    **much are you paying her to buy her property?**

25          A.    I'll ask Mr. Larson.  I'd rather not go into

1 that. What's to say -- Delaware Energy has already  
2 contacted them numerous times to buy it. What's to say  
3 they don't come around us and say, "Hey, let it ride  
4 out; we'll give you half a million dollars for it."

5 **Q. You're not trying to hide anything from**  
6 **Mrs. Phillips, are you?**

7 A. No, I'm not.

8 **Q. What did you not fill in on Exhibit 18 for this**  
9 **purchase price from Mrs. Phillips' property?**

10 A. I don't think it's relevant.

11 **Q. Do you know the answer?**

12 A. Absolutely I know the answer.

13 **Q. What's the number?**

14 A. But I don't think it's relevant.

15 **Q. So you're refusing to answer?**

16 A. I'll have the OCD have me answer that or not.

17 I think that personally there is nothing stopping these  
18 guys from going around us and trying to make a bigger  
19 offer.

20 EXAMINER BROOKS: Well, I have to agree.  
21 It's not very relevant.

22 THE WITNESS: Thank you, sir.

23 EXAMINER BROOKS: I'll sustain the  
24 objection.

25 **Q. (BY MR. FELDEWERT) Is Mrs. Phillips aware that**

1 you are buying her property and then turning around and  
2 leasing it to Gateway for 8 percent gross royalty?

3 A. Yes, she is.

4 Q. You told her it was going to be 8 percent gross  
5 royalty?

6 A. Yes, it is. And plus, I don't think it's  
7 relevant either. What does any of this matter?

8 Q. You mention that you do your homework and you  
9 try to ascertain whether there is any potential for  
10 disposal wells within a half mile of the area you're  
11 selecting, correct?

12 A. That's correct. I do my best. That's for  
13 sure.

14 Q. As part of the diligence that you do, did you  
15 look in the county records to ascertain whether there  
16 was an agreement of record --

17 A. We enlist Lonquist & Company to do that.

18 Q. Excuse me. Let me finish my question.

19 A. Oh, I thought you were done. I apologize.

20 Q. Is part of your due diligence that you say you  
21 do --

22 A. Uh-huh.

23 Q. -- to examine the county records to ascertain  
24 whether there is a commercial saltwater disposal lease  
25 agreement of record in the area where you're looking?

1 A. No. No. I personally did not.

2 Q. Did you instruct anybody, as part of your due  
3 diligence, to ascertain whether there is anyone that  
4 held a commercial -- or saltwater disposal agreement in  
5 the area that you're looking at?

6 A. Well, if you're asking if I called Lonquist &  
7 Company and told Chris to go look for that specific  
8 document, no, because we trust Lonquist & Company --

9 Q. Listen to my question. Listen to my question.

10 A. Uh-huh.

11 Q. Did you instruct anyone, as part of your due  
12 diligence --

13 A. Uh-huh.

14 Q. -- to look into the county records --

15 A. No.

16 Q. -- in the area where you were looking -- hold  
17 on -- to ascertain whether there was a saltwater  
18 disposal agreement of record?

19 A. No, sir, I did not.

20 Q. Okay. And as part of your due diligence that  
21 you say you do, did you examine the Division records for  
22 the area in which you are examining or inquire with the  
23 Division examiners as to whether there was any pending  
24 application for a saltwater disposal well in the area in  
25 which you were looking?

1           A.    I performed a search for the information that's  
2    on the OCD, and there is nothing for the Ruiz.  And  
3    there is still nothing for the Ruiz.

4           **Q.    Did you call the Division and ask if there were**  
5    **any pending applications?**

6           A.    No, I didn't ask.

7           **Q.    Did you come and look at the Division files to**  
8    **ascertain if there were any pending applications?**

9           A.    No, I did not.  You know, I figured the  
10   reason -- if there was an application that was approved,  
11   it would have showed up on the OCD, or Lonquist &  
12   Company would have found it.

13                   MR. FELDEWERT:  That's all the questions I  
14   have.

15                   EXAMINER GOETZE:  Very good.

16                   Well, you have one question?

17                                   CROSS-EXAMINATION

18   BY EXAMINER BROOKS:

19           **Q.    You didn't have any personal knowledge that**  
20    **this -- Defendant's [sic] Exhibit 11 was filed in the**  
21    **county records?**

22           A.    Absolutely not.  No, sir.  No.

23           **Q.    But you said you relied on Lonquist & Company**  
24    **to find things in the county records.  So I suppose you**  
25    **expected them to know what was in the county records**

1     **that might be relevant, correct?**

2           A.     Well, you know, I don't know exactly what  
3     their, you know, formula is as to, you know, how they go  
4     about noticing the affected parties, but I do know that  
5     they've been around a long time, done a lot of them, so  
6     we just trust their -- you know, what their thoughts are  
7     and go with it.

8           **Q.     Well, Mr. Weyand said he's not a lawyer.**  
9     **Perhaps he does need the expertise in his job. Thank**  
10    **you.**

11          A.     Yes, sir.

12                   EXAMINER GOETZE:   And I have no questions  
13    for this witness.

14                   THE WITNESS:    Okay. Thank you.

15                   EXAMINER GOETZE:   Mr. Larson, any  
16    follow-up?

17                   MR. LARSON:    I have no further questions.

18                   EXAMINER GOETZE:   This concludes your  
19    presentation?

20                   MR. LARSON:    Yes, Mr. Examiner.

21                   EXAMINER GOETZE:   Okay. At this time we  
22    would offer the ability for rebuttal if you wish. If  
23    you wish to do that --

24                   MR. FELDEWERT:   Can we take a five-minute  
25    break?

1                   EXAMINER GOETZE:  Yes.  Let's take another  
2   ten-minute break.  And at that time, we also need to  
3   address exhibits by Delaware.  Since you've referred to  
4   17, 18, 19 and 20 as part of the testimony, we ought to  
5   talk about whether they're going to be entered into the  
6   record.

7                   MR. FELDEWERT:  I have two notes, one of  
8   which was those, but we can handle that before the  
9   break.

10                  EXAMINER GOETZE:  Okay.

11                  MR. FELDEWERT:  I would move admission into  
12   evidence of Delaware Exhibits 17, 18, 19 and 20, which  
13   have been discussed with the witnesses here today.

14                  EXAMINER GOETZE:  Mr. Larson, since you  
15   used them as part of your record, it would be  
16   beneficial, I think.

17                  And then we still have Exhibit F.

18                  MR. FELDEWERT:  That is already in the  
19   Division's record.  It was an attachment to their -- one  
20   of their files.

21                  EXAMINER GOETZE:  On 17, 18, 19 and 20,  
22   Delaware's exhibits?

23                  MR. LARSON:  I have no objection.

24                  EXAMINER GOETZE:  Very good.  Thank you.

25                  Then Delaware Exhibits 17, 18, 19 and 20

1 are part of the record.

2 (Delaware Energy, LLC Exhibit Numbers 17  
3 through 20 are offered and admitted into  
4 Evidence.)

5 EXAMINER GOETZE: Let's take a ten-minute  
6 break.

7 (Recess, 3:09 p.m. to 3:22 p.m.)

8 EXAMINER GOETZE: Okay. We're back on the  
9 record.

10 And the decision for rebuttal?

11 MR. FELDEWERT: Mr. Examiner, we don't feel  
12 the need to have any rebuttal. We're fine.

13 I do have a matter we need to address.

14 EXAMINER GOETZE: That's fine.

15 Mr. Larson, any other -- anything else you  
16 want to add to this case? A closing statement?

17 MR. LARSON: Sure.

18 EXAMINER GOETZE: Okay. So yes, sir. You  
19 have an item.

20 MR. FELDEWERT: I do have an item.

21 As you know, there was an emergency order  
22 that was issued by the Division staying the authority  
23 under SWD-1680 that has since expired pending the  
24 hearing and receipt of evidence. I know it does take  
25 the Division time to get the orders out.

1 EXAMINER GOETZE: That's being very kind.

2 Thank you, Mr. Feldewert.

3 MR. FELDEWERT: Well, it's no fault of the  
4 Division. You guys are very busy.

5 My point is we would renew our motion to  
6 stay the effect of SWD-1680 so that the equities of the  
7 parties remain the same until the Division is able to  
8 rule on this particular matter and decide whether it  
9 should be rescinded and so that we would go back to an  
10 examination of the applications, as it should have  
11 happened the first time around, or, you know, we have a  
12 decision the other way. So we would renew our motion  
13 for a stay.

14 EXAMINER BROOKS: In view of Mr. Knewitz'  
15 testimony that he would voluntarily refrain from any  
16 operations under the permit until this concluded, I'll  
17 ask Mr. Larson: Would you oppose such an order?

18 MR. LARSON: I wouldn't oppose it. I think  
19 it's unnecessary. I think we have a strong commitment  
20 from Alpha that the well will not be drilled.

21 EXAMINER BROOKS: Well, apparently that is  
22 not assurance to satisfy.

23 MR. FELDEWERT: Things happen.

24 EXAMINER BROOKS: If you're not going to do  
25 it anyway, I think it would be appropriate. I think we

1 don't have to spend a lot of time on it, but I do think  
2 that we can enter an order now because we've heard the  
3 evidence, and we know that there is a possible cause or  
4 causes for issuing an order in this case, and,  
5 therefore, we're not in a situation where the statute  
6 prevents us from staying it. Therefore, we will prepare  
7 a stay order. It may not get done until Friday, but --

8 EXAMINER GOETZE: You're not going to get  
9 it done until Friday --

10 EXAMINER BROOKS: Until Thursday.

11 EXAMINER GOETZE: You can donate some time,  
12 and you can sign it yourself on Friday.

13 EXAMINER BROOKS: Friday -- we'll try to  
14 get it done. It's basically just be an extension of the  
15 emergency order until the Division order is issued in  
16 this case. And, of course, the Division issues an order  
17 and if someone -- either party wants temporary relief in  
18 that order pending by the Commission, that'll be an  
19 entirely separate matter. The Division order will take  
20 effect of the issuance -- effect from the date of the  
21 issuance.

22 EXAMINER GOETZE: Is that agreeable to both  
23 parties?

24 MR. FELDEWERT: Yes. Thank you. That's  
25 agreeable.

1 MR. LARSON: That's agreeable.

2 EXAMINER GOETZE: So no rebuttal.

3 Closing statements?

4 CLOSING STATEMENT

5 MR. FELDEWERT: You know, I don't have  
6 much. You heard what I said the first time around. I  
7 think, you know, again, clearly -- and you-all interpret  
8 your own rule. But I don't know how you can read your  
9 rules of -- procedural rule here, which is Exhibit 15 --  
10 I don't know how you can read C(2) as anything other  
11 than what it says, and that is a 15-day period of review  
12 doesn't commence until you have a complete application  
13 on file with the Division, period. And when you apply  
14 that to the timeline, that means that this application  
15 wasn't even ripe for the issuance of an order until July  
16 4th, and it was issued on June 28th.

17 And there are a couple of things that  
18 happened during that July 4th period of time that is  
19 undisputed that we went through here today that perhaps  
20 may have caused the Division to say, "Wait a minute.  
21 We've got some competing applications here. We should  
22 address them prior to issuing an order." And that's  
23 what we're asking for here today -- nothing more than  
24 that -- to rescind this order so that we can go back and  
25 look at these competing disposal applications, just like

1 you do for competing pooling applications. It's the  
2 same concept.

3 We also have a good reason to do it. We  
4 have some notice issues here. You mentioned the Uhden  
5 case. And here's a company, Delaware, that went out and  
6 recorded their water disposal agreement. Why do you do  
7 that? You do that to give notice to everybody that  
8 we're thinking about -- we want to put a disposal out  
9 here. Therefore, we're an affected party; give us  
10 notice before -- if you file an application. That's why  
11 you do it. So unless you're willing to say Uhden is  
12 pretty narrow and technically we don't have to -- I  
13 don't know how you can sit here and say that they are  
14 not an affected party when they had a pre-existing  
15 application on file with the Division, when they had  
16 recorded their disposal agreement for the very purpose  
17 of letting everybody know we have this property; we're  
18 going to put a disposal well on this property; give us  
19 notice if you have a competing application. That is why  
20 it is done.

21 So I don't know how -- to me, if I'm  
22 reading the Uhden case, they qualify as an affected  
23 party. They should have gotten notice of this pending  
24 application, and they didn't. And we can cure all that.  
25 All you've got to do is rescind the order, go back to

1 square one, and we can look at these applications at a  
2 hearing together and decide which one should proceed.  
3 That's the simple thing.

4           And there is no prejudice to these guys.  
5 They've got no contracts. They've got no disposal  
6 agreements. All these contracts that they've talked  
7 about out here, this complicated structure, number one,  
8 I think it's kind of inconsistent with what the Division  
9 wants to see here. Number two, they can't go out and  
10 drill a well. Gateway doesn't have a drilling permit.  
11 Gateway is not approved under this order. That all has  
12 to be sorted out anyway. And, quite frankly, they don't  
13 have -- they keep saying business prejudice. Well, they  
14 have no contracts. They couldn't come up with any draft  
15 agreements. So there is no prejudice to them here.

16           By curing the procedural defect and the  
17 notice defect, by rescinding this order and having this  
18 set for hearing where both applications are considered  
19 and the Division makes a decision as to which one should  
20 go forward, it's that simple.

21           EXAMINER BROOKS: Yeah. The Uhden case  
22 appears to depend upon the right of the party that is  
23 claiming a right to notice, does it rise to the level of  
24 the property rights. And, of course, in that very  
25 different context, the Court found that they did. I'm

1 not aware of any other authority that gives us any  
2 particular guidance on whether some other situation is  
3 analogous to that or not.

4 MR. FELDEWERT: Well, the only thing I  
5 would add is, as you know, Mr. Brooks, the Division has  
6 always had this "other affected parties" in their rules.

7 EXAMINER BROOKS: Yes.

8 MR. FELDEWERT: And why do you guys do  
9 that? You guys do that so that you have the ability to  
10 require notice --

11 EXAMINER BROOKS: Right.

12 MR. FELDEWERT: -- of two parties who will  
13 be impacted on particular cases.

14 EXAMINER BROOKS: But ordinarily we  
15 exercise that right before we issue an order.

16 MR. FELDEWERT: So, you know, for whatever  
17 reason, it didn't happen here. They didn't get notice.

18 EXAMINER BROOKS: No, it did not.

19 MR. FELDEWERT: I would submit to you that  
20 when you wrote the language of "other affected parties,"  
21 I don't know how you cannot consider them an affected  
22 party when you look at this timeline and you look at  
23 what occurred here.

24 EXAMINER GOETZE: Mr. Larson?

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CLOSING STATEMENT

MR. LARSON: I'm going to circle back to my opening statement that there were three fundamental issues presented. The first is whether the C-108 that Delaware submitted in October of 2016 had been canceled. And if it was, there was no pending application, and there would be no prejudice to Delaware because its application had been canceled. It then submits a new application in July after Alpha's authorization to inject had been issued.

EXAMINER BROOKS: I thought it was merely suspended. Did I misinterpret the evidence?

MR. LARSON: The Status column says "canceled."

EXAMINER BROOKS: Which date is that?

MR. LARSON: On the April 19th date. And it doesn't show up in the next two.

EXAMINER BROOKS: Okay. There are two separate order numbers, and I never was clear why there were two separate order numbers.

EXAMINER GOETZE: There are two separate administrative application tracking numbers.

EXAMINER BROOKS: That's what I mean. I'm sorry. I meant to say.

EXAMINER GOETZE: There are not two orders

1 out there.

2 EXAMINER BROOKS: Applications.

3 EXAMINER GOETZE: Don't take me there.

4 EXAMINER BROOKS: Well, what I never got --  
5 maybe I wasn't listening at the right time. That's  
6 quite probable. But I never figured out when each of  
7 these applications was filed, because I assume if they  
8 got two separate tracking numbers, they were filed at  
9 different times. And we, of course, could find out what  
10 our records show. If we were in court, we wouldn't be  
11 allowed to consider that because it wasn't presented in  
12 the hearing, but the OCD has done it before, and  
13 whatever's been done before can legally be done again.  
14 However, we will give you notice of what we find out, if  
15 we're going to consider it.

16 EXAMINER GOETZE: Continue, Mr. Larson.

17 MR. LARSON: Thank you.

18 The second issue was whether Alpha had  
19 knowledge of Delaware's October 2016 submission and even  
20 if it did, was it required to notify Delaware. I think  
21 the record's clear. Alpha had no knowledge. Mr.  
22 McCurdy acknowledged he never told them about the Ruiz  
23 application. Alpha's witnesses said they didn't learn  
24 about the day after their Administrative Order was  
25 issued. And, secondly, even if they did, it's our

1 position that the rules did not require notice to be  
2 given to Delaware.

3                   And onto the third issue, which  
4 Mr. Feldewert has touched on, is whether the Division  
5 violated its rules to not require Alpha to provide  
6 notice to Delaware of Alpha's application or  
7 self-providing notice, and by issuing Administrative  
8 Order SWD-1680 15 days after Alpha submitted its C-108.  
9 Well, on the first point, if the application had been  
10 canceled, the notice issue is moot.

11                   On the second issue, I think  
12 Mr. Feldewert's conflating 19.15.6.8C(2) and (3) because  
13 (3) talks about a 15-day period for protests. And if  
14 there were no protests, there is no reason to wait for  
15 15 days, and the application was approved on the 16th  
16 day after the Division received it.

17                   And finally with regard to the prejudice, I  
18 certainly think there has been and continues to be  
19 prejudice to Alpha. The fact that it doesn't have  
20 signed contracts was explained by its witnesses, that  
21 they were in negotiations and they could not in good  
22 faith sign a contract because they didn't have the well  
23 dug. There is testimony that they have lost business  
24 from operators who needed produced-water disposal on a  
25 timely basis, and they were unable to provide it to

1     them.

2                     So for these reasons, I would request that  
3     Delaware's application be denied.

4                     EXAMINER GOETZE: Thank you very much.

5                     For all those who have attended, we  
6     appreciate your effort, and thank you for coming to the  
7     special hearing. And welcome to the club, those who did  
8     their first round.

9                     And we will try to get this out in a most  
10    speedy manner. We will request the court reporter to  
11    provide us a transcript in the best amount of time  
12    available in her schedule, since she will be busy for  
13    the next two days.

14                    And we will pursue the extension of the  
15    stay and provide that notice to both parties here.

16                    Thank you very much. And this is the end  
17    of the hearing.

18                    MR. FELDEWERT: Thank you for your time.

19                    EXAMINER GOETZE: Oh, I get paid for it.

20                    (The proceedings conclude, 3:35 p.m.)

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1 STATE OF NEW MEXICO  
2 COUNTY OF BERNALILLO

3

4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, Certified Court  
6 Reporter, New Mexico Certified Court Reporter No. 20,  
7 and Registered Professional Reporter, do hereby certify  
8 that I reported the foregoing proceedings in  
9 stenographic shorthand and that the foregoing pages are  
10 a true and correct transcript of those proceedings that  
11 were reduced to printed form by me to the best of my  
12 ability.

13 I FURTHER CERTIFY that the Reporter's  
14 Record of the proceedings truly and accurately reflects  
15 the exhibits, if any, offered by the respective parties.

16 I FURTHER CERTIFY that I am neither  
17 employed by nor related to any of the parties or  
18 attorneys in this case and that I have no interest in  
19 the final disposition of this case.

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