

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

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

CASE NO. 14888
ORDER NO. R-13699

APPLICATION OF GEORGE ROSS RANCH,
LLC TO REVOKE ADMINISTRATIVE
ORDER SWD-380, EDDY COUNTY, NEW
MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on March 7, 2013, at Santa Fe, New Mexico, before Examiner David K. Brooks.

NOW, on this 17th day of April, 2013, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

(1) Due notice has been given, and the Division has jurisdiction of the subject matter of this case.

(2) George Ross Ranch, LLC ("Applicant") seeks an order vacating Administrative Order SWD-380 and terminating the authority of Cimarex Energy Co. of Colorado ("Respondent") to inject produced water for the purpose of disposal into its Amoco Federal Well No. 1 (API No. 30-015-24666) ("the subject well"), which is located 1665 feet from the North line and 330 feet from the East line (Unit I) of Section 27, Township 26 South, Range 29 East, NMPM, in Eddy County, New Mexico.

(3) The parties appeared at the hearing through counsel and stipulated to certain facts, including the following:

(a) The Division issued Administrative Order SWD-380 on October 27, 1989.

(b) Order SWD-380 purports to authorize Mallon Oil Company to inject produced water for disposal into the Delaware formation at a depth interval of 4022 to 4208 feet below the surface, through the subject well.

(c) Applicant is the successor in title to the owner of the surface estate at the site of the subject well.

(d) Respondent is the successor in title to Mallon Oil Company as to the subject well.

(e) The administrative record associated with Order SWD-380 contains no indication that any notice of Mallon Oil Company's application, or any copy of the Form C-108 filed by Mallon Oil Company, was ever served on, delivered to, or received by the surface owner at the location of the subject well.

(4) Applicant rested its case on the facts so stipulated. Respondent tendered evidence indicating the appropriateness of the subject well for injection of produced water as purportedly authorized by Order SWD-380. This evidence was admitted on the record over the Applicant's duly recorded objection.

(5) OCD Rule 701.B, which was in force and effect on October 27, 1989, provided as follows with regard to applications for authority to inject fluid into wells:

B. Method of Making Application

2. The Applicant shall furnish, by certified or registered mail, a copy of the application to the owner of the surface of the land on which each injection or disposal well is to be located and to each leasehold operator within one-half mile of the well. (OCD Rules pamphlet, 1985)

The Division concludes that:

(6) This case is controlled by the decision of the Supreme Court of New Mexico in *Johnson v. New Mexico Oil Conservation Com'n*, 1999-NMSC-021. In that case, as in this case, the Applicant did not comply with the notice requirements provided in the Division's rules, and the agency nevertheless issued an order without notice to, or participation of, the party to whom notice was required. The Supreme Court said:

Because Holders were not provided with actual notice under these circumstances, we conclude that Burlington and the Commission did not comply with the notice requirements of the OGA and its implementing regulations, and this failure to comply renders the Commission's order void with respect to Holders. 1999 NMSC, ¶30 (emphasis added).

(7) Respondent cited the case of *Uhden v. Oil Conservation Com'n*, 112 N.M. 528 (1991), wherein the Supreme Court voided an Oil Conservation Commission Order in which parties whom the Court found had a constitutional right to actual notice were served by publication as specifically authorized by then existing rules. Respondent pointed out that the *Uhden* Court declared that its holding would apply prospectively only, and therefore the 1999 *Uhden* decision would not control the validity of Order SWD-380.

(8) However, this argument is unavailing, in our view, because the present case is governed by *Johnson*, and not by *Uhden*. The *Johnson* decision was not in any way dependent upon *Uhden* as a precedent. In fact the *Johnson* Court expressly stated that it did not need to reach, and did not reach, the due process issue that was dispositive in *Uhden*.

(9) The general rule is that judicial opinions operate retrospectively, as well as prospectively. Since there is no indication in the *Johnson* opinion that the Court intended its decision in that case to have only prospective application, the Division should apply *Johnson* to this case for that reason only.

(10) However, it is also significant that *Uhden* voided an order where the Applicant and the Commission had followed the rules then in effect. Although the Court did not state why it limited its decision to prospective application, it seems reasonable to assume that a concern about voiding an unknown number of orders that were properly entered based on literal adherence to then-existing rules may have influenced the Court's decision. That concern does not militate in favor of a similar limitation of the holding in *Johnson* or here, where applicant and the agency disregarded specific requirements of applicable rules.

(11) Accordingly, Order SWD-380 is void as to Applicant. Since there is no way to separate the effect of the Order as to Applicant from its effect otherwise, the order should be rescinded.

IT IS THEREFORE ORDERED THAT:

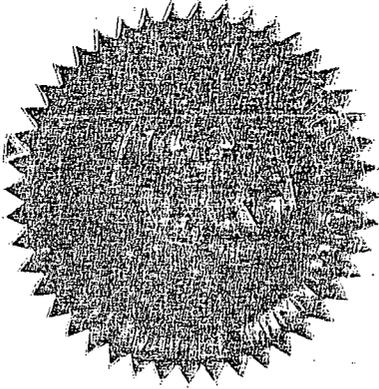
(1) Pursuant to the application of George Ross Ranch, LLC, Administrative Order SWD-380 is hereby rescinded.

(2) Respondent shall immediately cease injection operations into its Amoco Federal Well No. 1 (API No. 30-015-24666).

(3) This order is without prejudice to the right of Respondent to file an application to reinstate injection authority for the subject well as a new application, accompanied by a new Form C-108, with notice to all parties to whom notice of a new injection application is required.

(4) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

A handwritten signature in cursive script, appearing to read "Jami Bailey".

JAMI BAILEY
Director