

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

**IN THE MATTER OF THE APPLICATION OF
CIMAREX ENERGY CO. OF COLORADO TO
REINSTATE INJECTION AUTHORITY, EDDY
COUNTY, NEW MEXICO**

CASE # 14994

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**GEORGE ROSS RANCH'S MOTION TO REQUIRE
CIMAREX'S COMPLIANCE WITH CURRENT
REQUIREMENTS FOR OBTAINING A SWD PERMIT**

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COMES NOW Applicant, George Ross Ranch, LLC, by and through its attorney, W. T. Martin, Jr., and moves the Hearings Examiner and the Oil Conservation Division ("OCD") to require Cimarex to comply with all currently applicable state and federal laws and regulations applicable to obtaining a permit for injection authority. As grounds for the Motion, the Applicant states:

1. In Case No. 14888, in Order No. R-13699, the OCD entered an Order in which it found OCD Order SWD-380 void and rescinded the Order. Order No. R-13699 was entered on April 17, 2013. *(Since the Order is a part of official OCD Records, the equivalency of judicial notice may be taken of Order No. R-13699.)*
2. Cimarex has since filed an Application to "...Reinstate Injection Authority...".
 - a. Cimarex's Application asks for reinstatement of Order SWD-380, originally granted on October 27, 1989, and not for a new Order authorizing injection authority.
 - b. From its Application, as well as its Pre-Hearing Statement, it appears Cimarex is relying in part, or in whole, on data developed and used in 1989 to support the void Order SWD-380.
3. George Ross Ranch submits Cimarex cannot rely upon data that is over 20 years old to support a 2013 application for authority to inject. George Ross Ranch further submits that the current Cimarex Application must be treated as a brand new application for brand new authority under current standards and not simply a reinstatement of a void order.
4. Existing legal authority supports George Ross Ranch's position.
 - a. In Wheeler v. John Deere Co., 935 F.2d 1090, 1096 (10th Cir. 1991), the Tenth Circuit, which New Mexico is in, held that:

"To "reverse" a judgment means to "overthrow, vacate, set aside, make void, annul, repeal, or revoke it." *Black's Law Dictionary* 1319 (6th ed. 1990). A judgment reversed by a higher court is "without any validity, force or effect, and ought never to have existed." *Butler v. Eaton*, 141 U.S. 240, 244, 11 S.Ct. 985, 987, 35 L.Ed. 713 (1891). See *Leroy v. City of Houston*, 906 F.2d 1068, 1076 (5th Cir.1990); *Riha v. Int'l Tel. & Tel. Corp.*, 533 F.2d 1053, 1054 (8th Cir.1976). Reversal of a judgment and remand for a new trial places the parties in the same position, insofar as relief is concerned, as if the case had never been tried. See *Gospel Army v. Los Angeles*, 331 U.S. 543, 546, 67 S.Ct. 1428, 1430, 91 L.Ed. 1162 (1947)."

b. State Court's have adopted the Tenth Circuit ruling. By way of example, in

Gluscic v. Avera St. Luke's, 2002 S.D. 93, 649 N.W.2d 916, 920, the South

Dakota Court reasoned:

... it is well-established that a "judgment reversed by a higher court is 'without any validity, force or effect, and ought never to have existed.' " *Wheeler v. John Deere Co.*, 935 F.2d 1090, 1096 (10th Cir.1991) (quoting *Butler v. Eaton*, 141 U.S. 240, 244, 11 S.Ct. 985, 35 L.Ed. 713 (1891)). The *Wheeler* Court further stated that "[t]o 'reverse' a judgment means to 'overthrow, vacate, set aside, make void, annul, repeal, or revoke it.' " *Id.* (quoting *Black's Law Dictionary* 1319 (6th ed 1990)).

[¶ 18.] The United States Court of Appeals for the Eighth Circuit has addressed the effects of an erroneous judgment stating that "[a] judgment vacated on appeal is of no further force and effect." *Riha v. International Tel. & Tel. Corp.*, 533 F.2d 1053, 1054 (8th Cir.1976)(citing *Simpson v. Motorists Mut. Ins. Co.*, 494 F.2d 850 (7th Cir.), *cert. denied*, 419 U.S. 901, 95 S.Ct. 184, 42 L.Ed.2d 147 (1974)).

[¶ 19.] The United States Supreme Court has also addressed the resolution of erroneously issued judgments by stating that:

[T]he principle, long established and of general application, that a party against whom an erroneous judgment or decree has been carried into effect is entitled, in the event of a reversal, to be restored by his adversary to that which he has lost thereby. This right, so well founded in equity, has been recognized in the practice of the courts of common law from an early period....

That a course of action so clearly consistent with the principles of equity is one proper to be adopted in an equitable proceeding goes without saying. It is one of the equitable powers, inherent in every court of justice so long as it retains control of the subject-matter and of the parties, to correct that which has been wrongfully done by virtue of its process.

Arkadelphia Milling Co. v. St. Louis Southwestern Ry. Co., 249 U.S. 134, 145-146, 39 S.Ct. 237, 63 L.Ed. 517 (1919); *See also Bank of the United States v. Bank of Washington*, 6 Pet. 8, 31 U.S. 8, 8 L.Ed. 299, 304 (1832); *Erwin v. Lowry*, 7 How. 172, 48 U.S. 172, 12 L.Ed. 655, 660 (1849); *Northwestern Fuel Co. v. Brock*, 139 U.S. 216, 11 S.Ct. 523, 35 L.Ed. 151 (1891).

[¶ 20.] This Court has spoken on the issue by holding that “[t]he mandate of this court ordering a reversal of a judgment without other direction nullifies the judgment, findings of facts, and conclusions of law, and *leaves the case standing as if no judgment or decree had ever been entered.*” *Janssen v. Tusha*, 67 S.D. 597, 601, 297 N.W. 119, 120 (1941)(emphasis added). *See also 5 AmJur2d Appellate Review* § 861 (2002) (“A complete reversal generally annuls the judgment below, and the case is put in the same posture in which it was before the judgment was entered. Thus, after the reversal on appeal, the parties’ rights are left wholly unaffected by any previous determination that was reversed, so that a judgment that is reversed and remanded stands as if no trial has yet been held.”).

5. The treatise in CJS at 60 C.J.S **Motions and Order** §76 instructs that:

A void court order is a complete nullity and of no force and effect. ... A void order is not susceptible of ratification or confirmation. ... A void order may not change the status of a case, and an order which is a nullity and void confers no rights. Proceedings based on a void order are themselves invalid. A void order is not made valid by lapse of time and ever remains without effect as completely as if it were never entered; it cannot be enlivened by waiver or any other method to suit the convenience of a party.

6. The law cited above is fundamental jurisprudence in the United States. There is no reason that a different standard would apply to a void administrative order from an administrative agency. The OCD is legally obligated to follow applicable law.
7. There is no provision in OCD Regulations that allow an application for injection authority to not comply with current state and federal requirement but simply rely on 20+ year old data used to support a void Order.
8. To save time, avoid a waste of administrative time as well as the time of the parties, the OCD should rule on this matter before any hearing on the Cimarex Application. If necessary the OCD should vacate the August 19, 2013 hearing to allow for full response and briefing on a controlling issue in this matter.

9. Because of the nature of this Motion, it should be deemed opposed.

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By

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CERTIFICATE OF SERVICE

Martin, Dugan & Martin certifies that on the 3rd day of July 2013 a copy of the foregoing *Motion to Require Compliance* was served on the following persons or entities:

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