

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

**APPLICATION OF DELAWARE ENERGY LLC TO REVOKE THE INJECTION  
AUTHORITY GRANTED UNDER SWD-1680 FOR THE ALPHA SWD NO. 1 WELL  
OPERATED BY ALPHA SWD OPERATING LLC, EDDY COUNTY, NEW MEXICO.**

**Case No. 15855 (*de novo*)  
Order No. R-14484-D**

**ALPHA SWD OPERATING, LLC'S MOTION FOR DISMISSAL OF DELAWARE  
ENERGY LLC'S APPLICATION BASED ON A LACK OF STANDING**

In accordance with the Oil Conservation Commission's ("the Commission's") directive at the October 11, 2018 hearing, *de novo* applicant Alpha SWD Operating, LLC ("Alpha SWD") submits this motion requesting the Commission to enter an order dismissing Delaware Energy LLC's ("Delaware's") application because Delaware does not have standing to request the revocation of Administrative Order SWD-1680 ("SWD-1680"). In support of its motion, Alpha SWD states:

1. The Commission's rules require that Delaware must have standing to seek the relief requested in its application to revoke SWD-1680. *19.15.4.8(A) NMAC*. Because the right to file such an application arises under the Oil and Gas Act, standing a jurisdictional prerequisite. *Deutsche Bank Nat. Fr. Co. v. Johnston*, 2016-NMSC-013, ¶ 11, 369 P.2d 1046; *ACLU of New Mexico v. City of Albuquerque*, 2008-NMSC-045, n. 1, 144 N.M. 471. Stated another way, the Commission lacks jurisdiction to consider Delaware's application if Delaware does not have standing to file it.

2. Based on the circumstances presented, the Commission should conclude that Delaware has not established - and cannot establish - that it has the requisite standing to seek the relief that it requests in its application seeking the revocation of SWD-1680.

3. Throughout this *de novo* proceeding, Alpha SWD has alerted the Commission to Delaware's inability to establish standing based solely on the contention in its application that the application for its Ruiz SWD #1 well submitted to the Oil Conservation Division ("Division") in October 2016 ("the October 2016 application") remained pending when Alpha SWD filed the application for its SWD Well No. 1 in June 2017. *See Alpha SWD's Response In Opposition to Delaware's Motion for Judgment Based on the Division Record ("Response")* at 3-4; *Alpha SWD Pre-Hearing Brief* at 6-7. And as the Commission has noted, Alpha SWD has previously submitted Division records indicating that the Division had cancelled Delaware's October 2016 application prior to Alpha SWD's submission of its application. *Order No. R-14484-B* at 3, ¶18; *see Response, Exhibits ("Exs.") B and C*.

4. The Commission has also been apprised of the chronology of events that preceded the filing of Delaware's application seeking the revocation of SWD-1680. *See Alpha SWD Response* at 3-5; *Alpha SWD Pre-Hearing Brief* at 2-3. The following recounts the chronology that is pertinent to this motion.

- Delaware submitted its initial application for its Ruiz SWD Well #1 on October 24, 2016. The Division assigned No. pMAM1630053276 to the October 2016 application. *See Response, Ex. B* at 2.

- The Division's April 19, 2017 list of administrative applications that had not been approved indicates that the Division had cancelled Delaware's 2016 application (No. pMAM1630053226). *Response, Ex. B* at 2. The Division's similar list dated October 20, 2017 likewise indicates that Delaware's October 2016 application had been cancelled. *Id., Ex. C* at 3.

- Alpha SWD filed its application for administrative approval of its SWD Well No. 1 on June 12, 2017.

- After the Division issued SWD-1680 approving Alpha SWD's application, Delaware made a second submission for approval of its Ruiz SWD Well No. 1 on July 3, 2017 (the July 2017 application). The Division assigned application No. pKSC1718735697 to that submission. *Response, Ex. C* at 2.

5. Standing would be conferred to Delaware if it were an affected party with a cognizable interest within the one-half mile area of review ("AOR") for Alpha SWD's Well No. 1. But Delaware is not an affected party within the meaning of 19.15.26.7(A) NMAC because it does not operate a permitted well, and does not own a working or unleased mineral interest, within the AOR. *19.15.26.7(A) NMAC; see Transcript of 9.23.18 Commission hearing* at 16-17 (Commission counsel recognizing that Delaware is not an operator, a working interest owner, or a mineral interest owner within the AOR).

6. Implicitly acknowledging that it is not an affected party, Delaware has attempted to manufacture standing by asserting in its application that, because its October 2016 application remained pending when Alpha SWD filed its application in June 2017, Alpha SWD should have notified Delaware of the filing when it submitted its SWD application to the Division. *Response, Ex. 1* at 2. Delaware further asserts that the Division should have required Alpha SWD to notify Delaware or, alternatively, should have notified Delaware itself. *Id.* at 3.

7. Delaware's attempt to manufacture standing would be tenuous at best even if its characterization of the status of its October 2016 application were accurate, as it offers no legal basis for its assertion that Alpha SWD and the Division would have been obligated to notify Delaware of Alpha SWD's application if Delaware's October 2016 submission remained pending. The absence of a legal basis aside, Delaware's futile attempt to establish standing finds no evidentiary support in the administrative record.

8. Division records that Alpha SWD previously provided to the Commission demonstrate that (i) as of April 19, 2017, *before* Alpha SWD submitted its application, the Division considered Delaware's October 2016 application to have been cancelled, and (ii) Delaware submitted its 2017 application to the Division *after* the Division had issued SWD-1680. To reinforce the conclusion that Delaware's October 2016 application had been cancelled, Alpha SWD is now providing the Commission with an additional Division record containing handwritten notations that Delaware's October 2016 application had been "cancelled", that the application was administratively incomplete, that the application had been "withdrawn", and that Delaware "will reapply". *Administrative Application Checklist page for Application No. pMAM1630053276, attached hereto as Ex. A.*

9. Thus, there is no factual basis for Delaware's contention that it has standing to challenge SWD-1680 based solely on its inaccurate characterization of the status of its October 2016 application and the alleged failures of Alpha SWD and the Division to provide notice. Consequently, the Commission should conclude that Delaware does not have standing to request the revocation of SWD-1680 and, as a result, the Commission lacks jurisdiction to consider Delaware's application.

WHEREFORE, Alpha SWD requests that the Commission: (1) grant its motion; and (2) enter an order (a) concluding that Delaware lacks standing to request the relief it seeks; (b) concluding that Commission has no jurisdiction over Delaware's application (c) dismissing Delaware's application based on a lack of standing; and (d) reversing Order No. R-14484-A.

Respectfully submitted,

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*Counsel for Alpha SWD Operating LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5<sup>th</sup> day of November, 2018 I served a true and correct copy of the foregoing *Alpha SWD Operating, LLC's Motion for Dismissal of Delaware Energy LLC's Application Based on A Lack of Standing* via email to:

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Gary W. Larson

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**NEW MEXICO OIL CONSERVATION DIVISION**  
- Engineering Bureau -  
1220 South St. Francis Drive, Santa Fe, NM 87505



**ADMINISTRATIVE APPLICATION CHECKLIST**

THIS CHECKLIST IS MANDATORY FOR ALL ADMINISTRATIVE APPLICATIONS FOR EXCEPTIONS TO DIVISION RULES AND REGULATIONS WHICH REQUIRE PROCESSING AT THE DIVISION LEVEL IN SANTA FE

**Application Acronyms:**

- [NSL-Non-Standard Location] [NSP-Non-Standard Proration Unit] [SD-Simultaneous Dedication]
- [DHC-Downhole Commingling] [CTB-Lease Commingling] [PLC-Pool/Lease Commingling]
- [PC-Pool Commingling] [OLS - Off-Lease Storage] [OLM-Off-Lease Measurement]
- [WFX-Waterflood Expansion] [PMX-Pressure Maintenance Expansion]
- [SWD-Salt Water Disposal] [IPI-Injection Pressure Increase]
- [EOR-Qualified Enhanced Oil Recovery Certification] [PPR-Positive Production Response]

- [1] **TYPE OF APPLICATION - Check Those Which Apply for [A]**
- [A] Location - Spacing Unit - Simultaneous Dedication  
 NSL  NSP  SD
- Check One Only for [B] or [C]
- [B] Commingling - Storage - Measurement  
 DHC  CTB  PLC  PC  OLS  OLM  ULK-910-245-28E
- [C] Injection - Disposal - Pressure Increase - Enhanced Oil Recovery  
 WFX  PMX  SWD  IPI  EOR  PPR
- [D] Other: Specify \_\_\_\_\_

Ruiz SWD #1 (API Testing)  
 Delaware Energy  
 Deviation 96101  
 Admin. Incomplete  
 Withdrawn

- [2] **NOTIFICATION REQUIRED TO: - Check Those Which Apply, or  Does Not Apply**
- [A]  Working, Royalty or Overriding Royalty Interest Owners
- [B]  Offset Operators, Leaseholders or Surface Owner
- [C]  Application is One Which Requires Published Legal Notice
- [D]  Notification and/or Concurrent Approval by BLM or SLO  
U.S. Bureau of Land Management - Commissioner of Public Lands, State Land Office
- [E]  For all of the above, Proof of Notification or Publication is Attached, and/or,
- [F]  Waivers are Attached

will reapply  
 [Signature]

[3] **SUBMIT ACCURATE AND COMPLETE INFORMATION REQUIRED TO PROCESS THE TYPE OF APPLICATION INDICATED ABOVE.**

[4] **CERTIFICATION:** I hereby certify that the information submitted with this application for administrative approval is accurate and complete to the best of my knowledge. I also understand that no action will be taken on this application until the required information and notifications are submitted to the Division.

Note: Statement must be completed by an individual with managerial and/or supervisory capacity.

Preston Stein Preston Stein Vice-President 10/10/2016  
 Print or Type Name Signature Title Date

preston@delawareenergyllc.com  
 e-mail Address

