

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

**APPLICATIONS OF DELAWARE ENERGY, LLC  
FOR AUTHORIZATION TO INJECT SALT WATER  
FOR PURPOSES OF DISPOSAL, EDDY COUNTY,  
NEW MEXICO**

**CASE NO. 16258-16261**

**MINERAL COMPANIES' JOINT CLOSING STATEMENT**

COME NOW, Foundation Minerals, LLC, Mavros Minerals LLC, and Oak Valley Mineral and Land, L.P. (collectively, "Mineral Cos."), submits the following closing statement for the above-referenced cases that were consolidated for purposes of hearing by the New Mexico Oil Conservation Division ("Division") on November 13, 2018.

**BACKGROUND**

On May 29, 2018, Delaware Energy, LLC ("Delaware") filed its applications for its Kodiak SWD #1, Bear Trap SWD #1, Giant Panda SWD #1, and Grizzly SWD #1 (collectively the "SWD Wells") in the above matters. Mineral Cos. are individual entities each owning an interest in the minerals and surface estate of the Black River Ranch, which is located in Sections 3, 4, 9, 10 and 11, Township 24 South, Range 27 East, NMPM, Eddy County, New Mexico.

Mineral Cos. initially discussed with Delaware their own plans to drill and operate SWD wells near and on the Black River Ranch, but the parties were unable to come to agreement. Subsequently, Mineral Cos. entered into an agreement with 3Bear Delaware Operating - NM, LLC to drill and operate SWD wells on the Ranch. 3Bear had staked and was in the process of applying to the Division for a permit for the first of these planned wells when Mineral Cos. learned of Delaware's applications for these neighboring SWD Wells.

Delaware filed the instant applications shortly after Mineral Cos. proposed their SWD plans near and on the Black River Ranch to Delaware. In an apparent effort to interfere with Mineral Cos.' agreement with 3Bear, all four of Delaware's wells are sited in locations directly adjacent to the boundaries of the Black River Ranch, and close to 3Bear's proposed Foundation Minerals SWD #1 well. See Delaware's Exhibit 5. Applicant gave no notice to the Mineral Companies or 3Bear of the filing of its SWD applications. The Mineral Cos., as well as James Davis, Alisa Ogden and 3Bear Delaware Operating NM, LLC, (collectively "Protestants"), appeared at hearing on these matters on November 13, 2018, in opposition to the SWD Wells.

### **ARGUMENT**

#### **A. The Division properly dismissed the Kodiak SWD #1 well.**

At hearing, Delaware's Application for the Kodiak SWD #1 well, Case No. 16261, was dismissed by the Examiners, *sua sponte*. Tr. 277:12-279:16. The dismissal of Case No. 16261 is proper and within the discretion of the Division. 19.15.4.8 NMAC. The record of the hearing is clear that the Examiners dismissed the Kodiak SWD #1 because Applicant "mov[ed] it outside the area of review" to a new surface location "a mile and a half" from the location in the original application. Tr. 277:10-279:16.<sup>1</sup>

Further, Delaware did not have an approved location for this well and had not filed a C-108 for a new location by the time of hearing; rendering futile any efforts by the Division to assess the propriety of this Application or the Protestants to proffer appropriate testimony or evidence in opposition. This application was properly dismissed.

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<sup>1</sup> Any determination as to the intervention of Mineral Cos. and the other Protestants does not affect the Examiner's *sua sponte* dismissal of Case No. 16261 for the Kodiak SWD #1. See Mineral Companies' Joint Response to Delaware's Oral Motion to Dismiss, filed concurrently herewith.

**B. The Division properly continued the Bear Trap SWD #1 well.**

At hearing, Brian Arnold, Jr., Mineral Cos.' land expert, provided testimony and evidence to the Division that Applicants failed to properly give notice of the Bear Trap SWD #1 well to Matador Resources. Tr. 241:23-242:11; Mineral Companies' Exhibit 9. The Examiners properly deemed Applicant to have failed to give notice to Matador of the Bear Trap SWD #1 well. Continuance of the Bear Trap SWD #1 was proper for the failure to give proper notice.

**C. Delaware's Bear Trap SWD #1, Giant Panda SWD #1, and Grizzly SWD #1 notice exhibits should be closely scrutinized by the Division for additional defects.**

The Mineral Companies were not provided with Delaware's notice exhibits until the hearing date. Although consistent with rule, this approach gave the Protestants little time to examine Delaware's title and notice work. Nonetheless, the Mineral Companies were quickly able to determine and demonstrate by competent evidence a critical notice defect as to MRC Permian, leading to the continuance of the Bear Trap SWD #1 well pending Delaware's curing of this defect. Tr. 65:24-67:17; 240:18-242:11.

Delaware's notice problems may not end there, however. The Mineral Companies' land expert testified that she exclusively used the Midland Map Company in doing her land work. Tr. 46:7-8, 64:22-65:14. Delaware's witness admitted that she did not also confirm Midland Map's title work with reference to the records of either the Eddy County or BLM. Tr. 65:10-14. Delaware's lackadaisical land approach was reflected in its witness's general lack of basic knowledge in the area. For example, Delaware's witness could not testify on cross-examination to the Mineral Companies' ownership in the vicinity of the Giant Panda SWD #1 well. Tr. 76:8-19.

For the Mineral Companies' part, their expert land witness Mr. Arnold Jr. testified that although he references Midland Map Company in doing his land work, he "absolutely" will not

use it as his “be-all, end-all tool” because Midland Map “is, a lot of times, incorrect and only gets updated a few times a year.” Tr. 240:1-17. In Mr. Arnold Jr.’s expert opinion, Midland Map is a reliable reference tool for land work, but it is just that: a reference. “[I]t’s always wise to go to the county records and make sure that Midland Map is correct whenever sending out notice to parties.” Tr. 243: 6-15.

In fact, Mr. Arnold Jr. testified that he uncovered Delaware’s defect as to the Giant Panda SWD #1 well only by referencing the public land records. Tr. 241:7-242:11; *see also* Mineral Companies’ Exhibit 9. In sum, the Mineral Companies were able to demonstrate at hearing that relying on Midland Map for full and complete title work is unwise.

In light of a demonstrated notice defect, Delaware’s general lack of land knowledge in the vicinity of its proposed wells, and Delaware’s reliance on the demonstrably flawed Midland Map Company, Delaware’s title and notice must be closely examined by the Division in all cases for additional defects and oversights. Any additional defects identified should be made grounds for further continuance, or for dismissal.

**D. Mineral Cos. adopt by reference the testimony, evidence and arguments made by the other Protestants.**

Pursuant to 19.15.4.17 NMAC, Mineral Cos. incorporate by reference the testimony, evidence, and arguments made by the other Protestants to this proceeding, as if fully set forth herein.

WHEREFORE, Mineral Cos. respectfully request that the Division deny Delaware’s Applications in these matters.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on the following counsel of record by electronic mail on December 10, 2018:

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