

Affidavit of Publication

State of New Mexico,
County of Eddy, ss.

Kathy McCarroll, being first duly sworn,
on oath says:

That she is the Classified Supervisor of the Carlsbad Current-Argus, a newspaper published daily at the City of Carlsbad, in said county of Eddy, state of New Mexico and of general paid circulation in said county; that the same is a duly qualified newspaper under the laws of the State wherein legal notices and advertisements may be published; that the printed notice attached hereto was published in the regular and entire edition of said newspaper and not in supplement thereof on the date as follows, to wit:

January 29 _____ 2011

That the cost of publication is **\$72.06** and that payment thereof has been made and will be assessed as court costs.

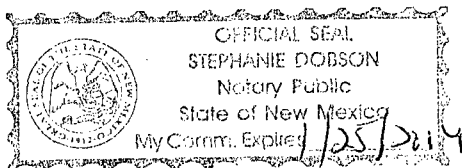
Kathy McCarroll

Subscribed and sworn to before me this

31 day of January, 2011
Stephanie Dobson

My commission Expires on 1/25/2014

Notary Public



January 29, 2011

Agave Energy Company, located at 105 S. Fourth Street, Artesia, NM 88210, has applied to the New Mexico Oil Conservation Division (NMOCD) for approval to inject acid gas and carbon dioxide (CO2) from Agave Energy's Dagger Draw Processing Plant into its Metropolis Disposal #001 well (API NO. 30-015-31905). The well is located in Section 36, Township 18 South, Range 25 East, NMPM, in Eddy County, New Mexico, approximately eight (8) miles southeast of Artesia. Agave Energy seeks approval to recompleat the well and inject acid gas and CO2 into the basal Devonian, Tusselman and Montoya formations in an injection interval from 9,930 feet to 10,500 feet, and further seeks approval of a maximum injection pressure of 3,300

psi and a maximum daily injection rate of 205 barrels. The NMOCD has assigned Case No. 14601 to Agave Energy's application and has set the matter for hearing on February 17, 2011 in Porter Hall at the NMOCD's Santa Fe office located at 1220 S. St. Francis Drive, Santa Fe, New Mexico 87505. All affected persons, which include all operators, surface owners, residents, business facilities, lease owners, and mineral interest owners within a one-mile radius of the well, have a right to enter an appearance and participate in the NMOCD hearing. Failure to become a party of record in Case No. 14601 will preclude a challenge to Agave Energy's application at a later date. Affected persons who wish to participate in

the case are required to file a Pre-hearing Statement with the NMOCD's Santa Fe office, and submit a copy to Agave Energy, no later than February 10, 2011.

OCD Case No. 14601

AGAVE ENERGY
Exhibit # 5