

**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**

*De novo* applicant Alpha SWD Operating, LLC ("Alpha SWD") submits this Reply to Delaware Energy LLC's ("Delaware's") Response to Alpha SWD's Motion for Dismissal ("Delaware Response").

**FACTUAL BACKGROUND**

The only factual issue that is pertinent to the Oil Conservation Commission's ("Commission's") consideration of Alpha SWD's Motion for Dismissal of Delaware's Application Based On A Lack of Standing ("Motion") is whether Delaware's application for its Ruiz SWD No. 1 well submitted on October 24, 2016 ("the October 2016 application") was active and pending when the Oil Conservation Division ("Division") issued Administrative Order SWD-1860 ("SWD-1860"). Delaware's Response contains two unrelated factual statements, as well as other factual statements that do pertain to the standing issue, and characterizes all of them as being "undisputed." *Delaware Response at 1-2*. Alpha SWD is constrained to respond to the factual statements because they are very much in dispute, as they are either incorrect or unsupported by the evidentiary record.

**A. Unrelated Factual Statements That Actually Are In Dispute**

*Factual Statement No. 2:* The assertion that, before it filed the application that resulted in the issuance of SWD-1680, Alpha SWD “was informed” that Delaware had previously filed the October 2016 application has no bearing on the standing issue and is contradicted by the testimony of Delaware’s own witness at the November 7, 2017 Division hearing in this case. *See Response at 2, ¶2.* Delaware’s Vice President of Operations, Michael McCurdy, testified during cross-examination by Alpha SWD’s counsel and questioning by Examiner David Brooks that he never informed Alpha SWD about the October 2016 application. *Excerpts of Transcript of 11.07.17 Division hearing, attached hereto as Exhibit (“Ex.”) 1, at 62, 77, 94-95.* Mr. McCurdy also acknowledged that Alpha SWD did not know about Delaware’s October 2016 application. *Id. at 77.*

*Factual Statement No. 3:* The assertion that Alpha SWD “never informed” Delaware of Alpha SWD’s permit application fails to present the complete context of Delaware’s prior knowledge about Alpha SWD’s plans for requesting Division authorization for its SWD well. On May 16, 2017, Kurt Knewitz of Alpha SWD engaged in email correspondence with Mr. McCurdy in which Mr. Knewitz (i) identified the exact location of Alpha SWD’s well, (ii) related that Alpha SWD was having a traffic study done and was making arrangements for electrical power, and (iii) included a site plan for the well site. *5.16.17 email correspondence, attached hereto as Ex. 2.* Mr. McCurdy responded to the emails, but made no mention of the Delaware’s 2016 application. *See id.* And during the Division hearing, Mr. McCurdy admitted that Delaware knew about Alpha’s plans for its SWD well in May 2016. *Ex. 1 at 91.* Alpha SWD’s application certainly did not come as a surprise to Delaware.

**B. Factual Matters That Pertain to the Issue of Standing**

*Factual Statement Nos. 1 and 4-7:* Delaware's remaining "undisputed" factual statements are all based, to varying degrees, on the assumptions that (i) Delaware's 2016 application remained active and pending in early July 2017 and (ii) its submission to the Division on July 2, 2017 was an "amendment" to the 2016 application rather than a new application. *See Delaware Response at 1-2.* Those assumptions are incorrect and unsupported by the evidentiary record.

The Division records that Alpha SWD has previously submitted to the Commission plainly reveal that the Division deemed Delaware's 2016 application to be cancelled as of April 19, 2017, that the application had been "withdrawn", and that Delaware would "reapply." *Exs. B and C to Alpha SWD's Response In Opposition to Delaware's Motion for Judgment Based on the Division Record ("Alpha SWD Response"); Ex. A to Motion.* Those records further reveal that the Division assigned a different application number to the new C-108 that Delaware submitted on July 2, 2017. *Ex. C to Alpha SWD Response.*

Because those Division documents are public record, Delaware had constructive notice that its October 2016 application had been cancelled (or withdrawn) before Alpha SWD filed its application on June 12, 2017. Delaware does not dispute the authenticity or correctness of the Division records, and relegates its discussion of the documents to a footnote in which it claims that the Division's issuance of Order No. R-14484-A somehow negates the Division's previous designation of the Delaware 2016 application as cancelled. *Delaware Response at 2.* Order No. R-14484-A does not address the issue of the Division's cancellation of Delaware's 2016 application, nor does it find that Delaware's 2016 application remained pending. *See Order No. R-14484-A.* In any event, because this is a *de novo* appeal, what the Division did or did not do has no bearing on the Commission's independent determination regarding the issue of Delaware's

standing. *See Clayton v. Farmington City Council*, 1995–NMCA-079, ¶ 16, 120 N.M. 448; (the Commission must independently consider all issues pertaining to Delaware’s application to revoke SWD-1680); *see also Southern Union Gas Co. v. Taylor*, 1971-NMSC-067, ¶ 6, 82 N.M. 670 (same).

The evidentiary record also raises the question whether Delaware could have had a reasonable expectation that its October 2016 submission would still be suspended and pending when it submitted a new C-108 and a new C-102 to the Division on July 2, 2017. Attached to Delaware’s response is an October 31, 2016 email from Michael McMillan of the Division which states that Delaware’s application submitted six days earlier had been suspended. *Attachment 1 to Delaware Response*. Mr. McMillan had previously deemed the application incomplete and had requested additional information from Delaware. His October 31, 2016 also requests that Delaware contact the Division regarding the application “within the next 30 days”, and informs Delaware that, if the protest remains after 30 days, the Division would set the matter for hearing. On November 3, 2016, Phillip Goetz of the Division sent a similar email to Delaware requesting contact with Division about the application within thirty days. *11.03.16 P. Goetz email, attached hereto as Ex. 3*. And the Division’s records also include email correspondence that appears to indicate that the Division informed Delaware on October 26, 2016 that its 2016 application would be cancelled if it did not submit additional information within ten days. *See 10.26.16 Mr. McMillan email, attached hereto as Ex. 5*, at 1.<sup>1</sup>

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<sup>1</sup> Alpha SWD recognizes that the subject line identifies the well that is the subject of the 2016 application while the text of Mr. McMillan’s email references another well. However, the well referenced in the text is a significant distance away from Delaware’s proposed Ruiz SWD Well No. 1, and the reference in Mr. McMillan’s email to an affected party in the W/2 of Section 11 would be offset to the Ruiz SWD No. 1. *See id.* at 2-5.

Delaware did not timely respond to the requests made by Messrs. McMillan and Goetz. Rather, Delaware waited nine months to communicate with the Division again. That lapse of time is not explained by Delaware, which had reached an agreement with protestant Matador in December 2016 but waited more than a month after Mr. Knewitz informed Mr. McCurdy of the status of Alpha SWD's plans to inform the Division that the protests to its application had been resolved. *See* 6.02.17 Mr. McCurdy email, attached hereto as Ex. 4.<sup>2</sup> *Ex. 1.* Given that, it is not surprising that the Division cancelled the application and assigned a new application number to Delaware's submission on July 2, 2017.

The evidentiary record reveals that Delaware should not have reasonably expected that its October 2016 application remained pending in early July 2017 when all the Division got from Delaware during the nine-month interim was radio silence. Delaware's expectations aside, the Division's records plainly demonstrate that the Division (i) considered Delaware's October 2016 application to have been cancelled as of April 2017, (ii) deemed Delaware's July 2, 2017 submission to be a new application, and (iii) assigned a new application number to that submission. Based on the unrefuted Division records, and the inordinate amount of time that elapsed between Delaware's submission of its October 2016 application and its next submission to the Division on July 2, 2017, the Commission should conclude that Delaware's October 2016 application was not active and pending when Alpha SWD submitted its application on June 12, 2017.

#### **LEGAL STANDARD FOR STANDING**

Delaware's legal arguments to support its position that it has standing to seek the revocation of SWD-1680 are misplaced. Initially, Delaware contends that Alpha SWD has waived its right to challenge Delaware's standing based on the proceedings before the Division. *Delaware*

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<sup>2</sup> Exhibit 4 appears in the Division's file for Delaware's July 2, 2017 submission.

*Response at 3-4.* Again, whatever happened or did not happen at the Division level can have no bearing on the Commission's independent consideration of the standing issue because this is a *de novo* appeal. *Clayton*, 1995-NMCA-079, ¶ 16; *Southern Union*, 1970-NMSC-067, ¶ 6. Moreover, because the New Mexico courts deem standing to be a jurisdictional prerequisite for an application based on the Oil and Gas Act, the issue of standing *cannot be waived*. *Deutsche Bank Nat. Fr. Co. v. Johnston*, 2016-NMSC-013, ¶ 11, 369 P.3d 1046; *ACLU of N.M. v. City of Albuquerque*, 2008-NMSC-045, ¶ 9, 144 N.M. 471.

The case cited in Delaware's Response, *Deutsche Bank Nat'l Tr. Co. v. Johnston*, distinguishes between two types of standing in New Mexico, jurisdictional standing for causes of action created by statute and non-jurisdictional standing in cases involving common law claims. *See Delaware Response at 3.* Delaware has made no argument, and there is no suggestion, that this case is anything other than a dispute arising under the Oil and Gas Act. The Supreme Court in *Deutsche Bank* made clear that in a dispute arising pursuant to a statute, standing is a jurisdictional prerequisite and, therefore, cannot be waived. *Deutsche Bank*, 2016-NMSC-013, ¶ 11; *accord Allred v. New Mexico Department of Transportation*, 2017-NMCA-019, ¶ 20, 388 P.3d 998.

Secondly, Delaware focuses exclusively on the injury prong of the legal standard for demonstrating standing without establishing that it has a legally protectable interest that would be entitled to protection. *See Delaware Response at 4-5.* Rather, Delaware relies on assumptions that (i) its October 2016 submission remained pending in June 2017, (ii) Delaware had informed Alpha SWD about its October 2016 submission, and (iii) the Division treated Delaware's July 2017 submissions as amendments to its October 2016 submission rather than a new application. *See id.* As demonstrated above, these assumptions find no factual support in the evidentiary record.

Regardless of any harm that Delaware believes it has suffered, Delaware is unable to demonstrate that it has standing to request the revocation of SWD-1680 because it does not have a legally protectable interest. In order to establish that it has a legally protected interest sufficient to confer standing, Delaware would have to demonstrate that it has an interest that is “(a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.” *ACLU, 2008-NMSC-045*, ¶ 7. As Alpha SWD has previously pointed out, Delaware is unable to demonstrate an invasion of a legally protectable interest as an “affected party” within the area of review (“AOR”) of Alpha SWD’s well. *See* 19.15.26.7(A) NMAC. Instead, Delaware relies on an application that Division had taken no action on, thereby rendering the harm it allegedly has suffered “conjectural or hypothetical.” *ACLU, 2008-NMSC-045*, ¶ 7.

The standing case cited in Delaware’s Response offers no support for its position. *See Delaware Response at 4.* In *De Vargas and Loan Association of Santa v. Campbell*, 1975-NMSC-026, 87 N.M. 469, the Supreme Court held that an association of Santa Fe banks had standing to challenge the approval of a new bank in Santa Fe because of the negative effect on business created by the new competition. *Id.*, ¶ 16. The challengers were *existing* businesses – they were not banks hoping to open a branch sometime in the future. *Id.* Here, Delaware is not an existing operator but a *would-be* operator whose application had in fact been cancelled. Delaware is not alleging an actual, concrete harm to its existing business: it is a prospective operator with hopes of operating an SWD well within the AOR. Its hypothetical claim is not sufficient to confer standing. *See ACLU, 2008-NMSC-045*, ¶ 7.

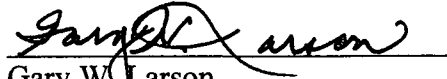
### **CONCLUSION**

For the reasons set forth above and in its Motion, Alpha SWD submits that the Commission should: (1) conclude that Delaware lacks standing to pursue the revocation of SWD-1680 and,

therefore, the Commission lacks jurisdiction to consider Delaware's application for revocation of the order; and (2) enter an order dismissing Delaware's application.

Respectfully submitted,

HINKLE SHANOR LLP



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Santa Fe, NM 87504-2068

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Facsimile: (505) 982-8623

[glarson@hinklelawfirm.com](mailto:glarson@hinklelawfirm.com)

*Counsel for Alpha SWD Operating LLC*

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 3<sup>rd</sup> day of December, 2018 I served a true and correct copy of the foregoing *Alpha SWD Operating, LLC's Reply in Support of Its Motion for Dismissal of Delaware Energy LLC's Application Based on A Lack of Standing* via email to:

Michael H. Feldewert, Esq.

Adam G. Rankin, Esq.

Holland & Hart LLP

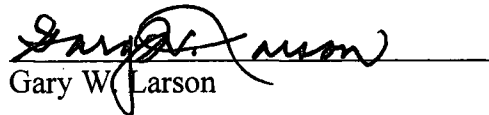
Post Office Box 2208

Santa Fe, NM 87504-2208

[mfeldewert@hollandhart.com](mailto:mfeldewert@hollandhart.com)

[agrarkin@hollandhart.com](mailto:agrarkin@hollandhart.com)

*Counsel for Delaware Energy LLC*



Gary W. Larson



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:

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

November 7, 2017

Santa Fe, New Mexico

BEFORE: PHILLIP GOETZE, CHIEF EXAMINER  
WILLIAM V. JONES, TECHNICAL EXAMINER  
DAVID K. BROOKS, LEGAL EXAMINER

This matter came on for hearing before the  
New Mexico Oil Conservation Division, Phillip Goetze,  
Chief Examiner, William V. Jones Technical Examiner, and  
David K. Brooks, Legal Examiner, on Tuesday, November 7,  
2017, at the New Mexico Energy, Minerals and Natural  
Resources Department, Wendell Chino Building, 1220 South  
St. Francis Drive, Porter Hall, Room 102, Santa Fe, New  
Mexico.

REPORTED BY: Mary C. Hankins, CCR, RPR  
New Mexico CCR #20  
Paul Baca Professional Court Reporters  
500 4th Street, Northwest, Suite 105  
Albuquerque, New Mexico 87102  
(505) 843-9241

**Exhibit**

**1**

1 MR. FELDEWERT: Hold on.

2 Exhibit 13, May 16th, 2017.

3 Q. (BY MR. LARSON) And this is the property  
4 description of the site location for the Alpha SWD  
5 No. 1?

6 A. That's correct.

7 Q. Actually, I was more specifically referring to  
8 conversations where -- that you testified where you said  
9 that you informed Alpha about the application for the  
10 Ruiz well.

11 A. I never informed them about the Ruiz well. I  
12 told them that we had a pending permit in the area  
13 directly offsetting them.

14 Q. Directing your attention to Exhibit 2, I  
15 believe this is a partial copy of the October 2016  
16 application.

17 EXAMINER GOETZE: Excuse me. That would be  
18 their Exhibit Number 2?

19 MR. LARSON: Yes, Delaware Exhibit Number  
20 2.

21 EXAMINER GOETZE: Delaware Exhibit Number  
22 2?

23 MR. LARSON: That's correct.

24 EXAMINER GOETZE: Thank you.

25 Q. (BY MR. LARSON) And if you'll look at the

1           A.    Our team did, yes.

2           Q.    I'll direct your attention to paragraph five on  
3           page 2 of the application.  And what is the basis of the  
4           assertion that Alpha knew as of the date it filed its  
5           application on June 12th that Delaware Energy had a  
6           pending C-108 application before the Division?

7           A.    What is your question?

8           Q.    What is the basis for the assertion in  
9           paragraph five?

10          A.    The basis is that we had been saying we have a  
11          permit directly offsetting where they were looking to  
12          potentially put the Alpha permit, which would be the  
13          Ruiz SWD.

14          Q.    And when did you communicate to Alpha that the  
15          Ruiz application was pending?

16          A.    I never mentioned the Ruiz application  
17          specifically to them.

18          Q.    So then how did they know about it?

19          A.    Because they -- they did not know about the  
20          Ruiz.  They knew that we had a permit in the area  
21          directly offsetting their well.

22          Q.    Could that have been the Gomez well?

23          A.    No.

24          Q.    Why didn't you tell them about the Ruiz  
25          application?

1           A.     There were as we were leaving. That was not  
2     the nature of the meeting, though.

3           **Q.     What was the nature of the meeting?**

4           A.     To talk to Eric Benavides with Kurt and  
5     Jason -- or with Kurt Knewitz and Jason Pickard and  
6     myself and our team to discuss potentially partnering on  
7     a well and having Eric Benavides potentially provide us  
8     the facility design and contracting.

9           **Q.     Would it be fair to say that Delaware had**  
10    **knowledge about Alpha's plans for development of the**  
11    **Alpha SWD Well No. 1 as of the end of May of 2017?**

12          A.     Yes. It's fair to say that we had an idea.

13          **Q.     Did you ever have a conversation with Irma**  
14    **Phillips about purchasing surface acreage from her?**

15          A.     No. Just asked if it was under contract.

16          **Q.     And what did she tell you?**

17          A.     She said it was -- or first she said she  
18     couldn't talk to me about it.

19          **Q.     Did she say why she couldn't talk to you about**  
20    **it?**

21          A.     No. She just said she couldn't talk to me  
22     about it.

23          **Q.     And did you learn anything more after that**  
24    **conversation?**

25          A.     After I got the phone call from Kurt and



1 Delaware application that is the subject to this  
2 proceeding. And then I heard you say no, it didn't  
3 refer to that application; you just told them you had a  
4 well in the vicinity. Now, which is it?

5 A. I think that I misspoke, then, because I've  
6 never told them specifically about a permit that I've  
7 had --

8 Q. Well, a permit application.

9 A. Permit application.

10 Q. You don't have a permit for this well --

11 A. I do not.

12 Q. -- that we're talking about?

13 A. No, sir.

14 Q. Okay. Go ahead.

15 A. But I had a permit application. I never told  
16 them I had a permit application with the name "Ruiz SWD"  
17 attached. I told them I had a permit application  
18 pending in the general vicinity of the well that they  
19 were interested in potentially submitting to the OCD.

20 Q. Did you tell them the specific location or just  
21 in the general vicinity?

22 A. I just said -- I said in the general vicinity.

23 Q. Okay. What I copied down here, you said in  
24 your last response to Mr. Larson, that it was a direct  
25 offset. So I was going to ask you what you meant by

1 direct offset, but if you didn't use those words, then  
2 it's not relevant.

3 A. Right. I said offsetting. Direct offset would  
4 not be correct. I was just trying to relay the fact  
5 that if I'm standing here (indicating) and you're  
6 standing here (indicating), well, I'm directly  
7 offsetting you; I'm close by.

8 Q. Yeah. But you never told him where the --  
9 where the -- where the well is? You never told him the  
10 location you had specified in your application to the  
11 Division?

12 A. I never did. No, sir.

13 Q. Okay. Thank you.

14 A. Yes, sir.

15 Q. That clears up most of it.

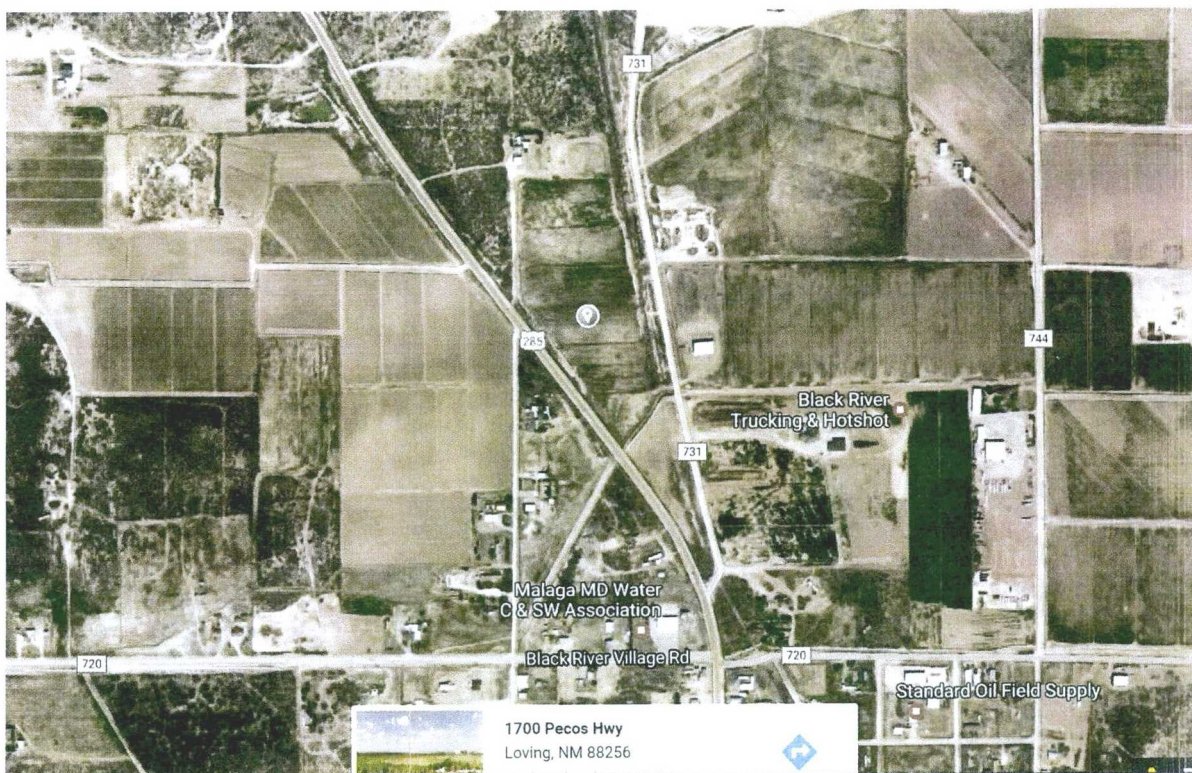
16 Now, you asked about this -- you were asked  
17 about this question of Alpha having an attempt to, to  
18 quote Mr. Feldewert, "monetize" -- I say quoting  
19 Mr. Feldewert because the application, I'm assuming, he  
20 is the author of it -- by selling their permit. Now,  
21 did -- does -- does Delaware -- has it ever bought or  
22 sold a saltwater disposal permit as distinguished from  
23 an existing saltwater disposal well?

24 A. No, sir.

25 Q. But you had some interest in -- you had some

From: Kurt Knewitz  
To: ["Mike McCurdy"](#)  
Subject: property  
Date: Tuesday, May 16, 2017 9:13:50 PM  
Attachments: [ALPHAS SWD #1 - SITE LAYOUT.pdf](#)

See attached site layout. Property is below. 7.9 acres



Kurt Knewitz  
P: 214-418-1177  
[kurt@alphaswd.com](mailto:kurt@alphaswd.com)  
[www.alphaswd.com](http://www.alphaswd.com)

Exhibit  
2



**From:** Mike McCurdy  
**To:** [Kurt Knewitz](#)  
**Subject:** Re: property  
**Date:** Tuesday, May 16, 2017 9:51:32 PM

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Thank you for the info!

Get [Outlook for iOS](#)

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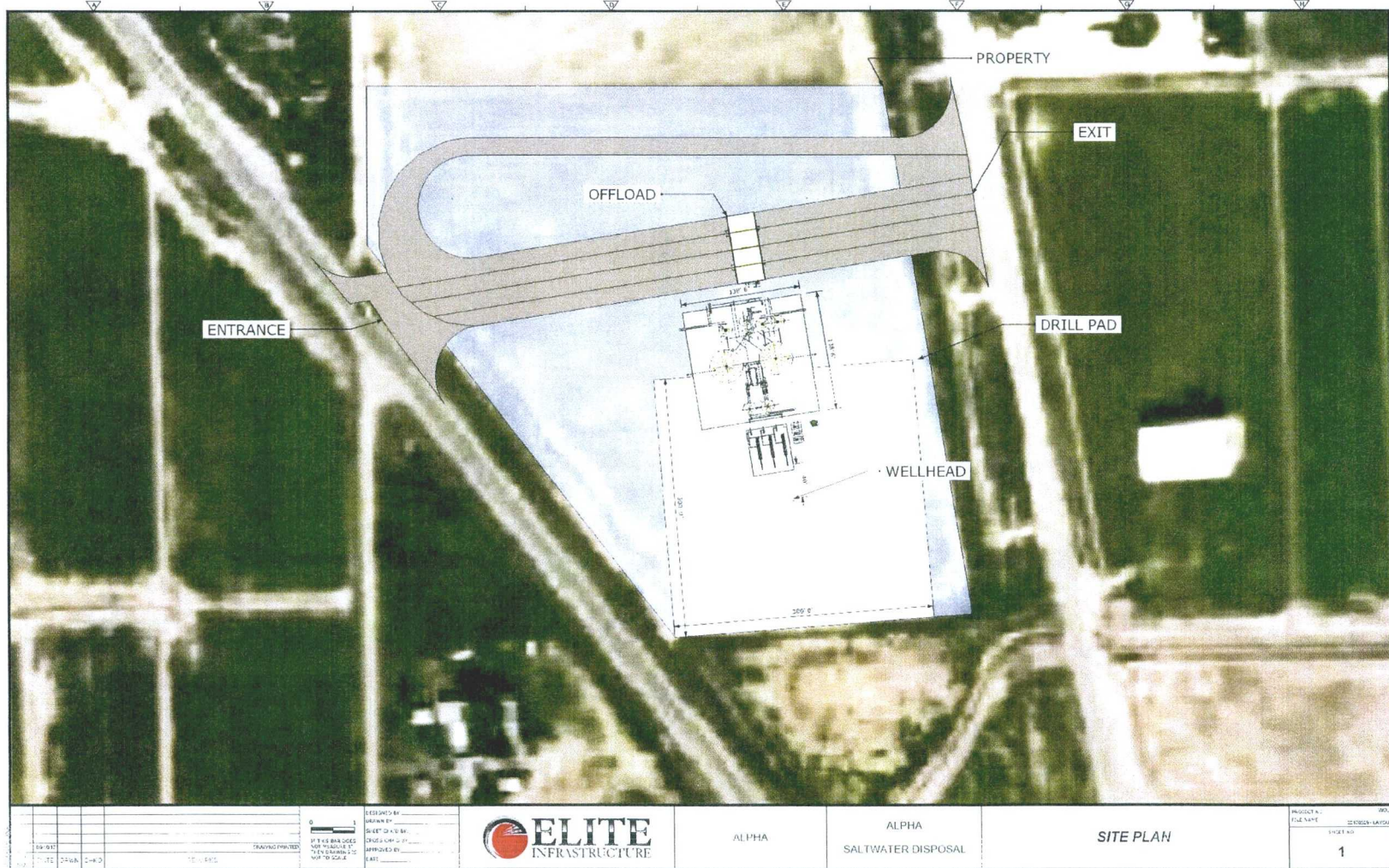
**From:** Kurt Knewitz <kurt@alphaswd.com>  
**Sent:** Tuesday, May 16, 2017 9:15:26 PM  
**To:** Mike McCurdy  
**Subject:** property

We are having a traffic study done now for the driveway permit and waiting to hear back on power.



Kurt Knewitz  
P: 214-418-1177  
[kurt@alphaswd.com](mailto:kurt@alphaswd.com)  
[www.alphaswd.com](http://www.alphaswd.com)







**Goetze, Phillip, EMNRD**

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**From:** Goetze, Phillip, EMNRD  
**Sent:** Thursday, November 3, 2016 1:43 PM  
**To:** 'Preston Stein'  
**Cc:** Jones, William V, EMNRD; McMillan, Michael, EMNRD; 'jamesbruc@aol.com'; Lowe, Leonard, EMNRD  
**Subject:** Second Protest for Application to Inject - Ruiz SWD Well No. 1

RE: Ruiz SWD Well No. 1 (API 30-015-pending; Appl. No. pMAM1630053276) – Sec 10, T. 24 S., R. 28 E., NMPM, Eddy County.

Mr. Stein

OCD was notified through counsel that Matador Production Company and MRC Permian Company (collectively referred to as "Matador") are protesting this application for approval of a salt water disposal well. Matador has stated that the proposed injection well's proposed casing programs is inadequate. Therefore, you are being notified that if Delaware Energy, LLC wishes for this application to be considered, it must either go to hearing or may be reviewed administratively if the protest is withdrawn as a result of a negotiated resolution with these parties. The application will be retained by OCD, but suspended from further administrative review. Please contact OCD once you have made a decision regarding the application within the next 30 days. If the protest remains after 30 days, OCD will initiate the process for the application to be reviewed at hearing. Please contact me with any questions regarding this matter. PRG

Counsel for Matador Production Company and MRC Permian Company

Jim Bruce, Attorney  
P.O. Box 1056  
Santa Fe, NM 87504  
Phone: 505.928.2043  
E-mail: [jamesbruc@aol.com](mailto:jamesbruc@aol.com)

Phillip Goetze, PG  
Engineering Bureau, Oil Conservation Division  
New Mexico Energy, Minerals and Natural Resources Department  
1220 South St. Francis Drive, Santa Fe, NM 87505  
Direct: 505.476.3466  
E-mail: [phillip.goetze@state.nm.us](mailto:phillip.goetze@state.nm.us)



Exhibit  
3

**Subject:** Re: Protest of Application to Inject- Ruiz SWD Well No. 1  
**Date:** Tuesday, June 6, 2017 at 11:26:48 AM Central Daylight Time  
**From:** Randy Cate  
**To:** telsener@matadorresources.com, Chris Carleton  
**CC:** Preston Stein, Mike McCurdy

Chris & Tom,

It appears Delaware Energy has satisfied my initial concerns on casing design. I also believe their well will be needed and will be cheaper than going to Matador's Black River system. I plan to withdraw my objection by Friday. Since I have been deferring to Matador, Please let me know if there are reasons not to allow them to go forward on their project.

Randy Cate Guardian Operating Corp. RSC Resources, L.P. 432-553-1849

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**From:** Mike McCurdy <mmccurdy@delawareenergyllc.com>  
**To:** "guardianopcorp@yahoo.com" <guardianopcorp@yahoo.com>; "telsener@matadorresources.com" <telsener@matadorresources.com>  
**Cc:** "ccarleton@matadorresources.com" <ccarleton@matadorresources.com>; Preston Stein <Preston@delawareenergyllc.com>  
**Sent:** Friday, June 2, 2017 9:02 AM  
**Subject:** FW: Protest of Application to Inject- Ruiz SWD Well No. 1

Randy/Tom,

My name is Mike McCurdy and I'm an engineer with Delaware Energy. I was wanting to follow-up with you regarding our SWD permit (Ruiz SWD #1, Sec. 10 T24S R28E) we filled with the NMOCD last November 2016. The permit was protested by Guardian and deferred to Matador's judgement as operators (email history below). In December of 2016 we had a phone call with Matador and came to an agreement on the Ruiz SWD casing design (I have the email history on a different chain, please let me know if you need me to send it). If Guardian/Matador agrees with the new casing design then we would appreciate an email or letter stating that we have come to an agreement. If there are still concerns I would like to set up another call/meeting and discuss a way we can come to a resolution. Below is a summary of what was agreed upon during the meeting with Matador last December 2016 (wellbore and C-108 attached with changes).

**Ruiz SWD #1 (Casing design after meeting with Matador)**

Wellbore surface location is approximately 70ft south of the East/West mid-section line of section 10, 24S, 28E. Delaware Energy LLC agrees to drill the Ruiz directionally controlled so that the path of the wellbore is located at the mid point of the section (+/- 2,640 FSL, 2,584' FWL) through all of the productive intervals: Top of the Delaware Mountain group to total depth (approx. 2,500' - 14,650'). Delaware Energy will provide Matador Resources with the final certified directional survey data following drilling and submit to the OCD as required. This will provide 330ft of distance to both the legal oil well setbacks north and south of the wellbore. Delaware Energy agrees to install 9-5/8" OD intermediate casing that is sufficient strength to prevent failure: greater than 40 lb./ft. wall thickness, semi-premium threads, high collapse rated pipe, high strength grade, equal to or greater than of wellbore construction of Black River SWD #1 drilled by Matador Resources. Cement will be circulated to surface on all casing strings.

Best Regards,

Mike McCurdy  
Operations Engineer

Exhibit  
4



## McMillan, Michael, EMNRD

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**From:** Preston Stein <Preston@delawareenergyllc.com>  
**Sent:** Wednesday, October 26, 2016 7:53 PM  
**To:** McMillan, Michael, EMNRD  
**Cc:** Goetze, Phillip, EMNRD  
**Subject:** RE: Ruiz SWD Well No. 1

Mike,

The party in W/2 of 11 is actually COG. They are operating the CNB Com #1 in there producing gas out of Morrow. There was an inadvertent color-coding error made when our guys were putting this together. If you'll count the parties we listed, it's accurate numerically as to all the colored tracts.

Sorry for the trouble on that one. I'll provide you all the other info you need ASAP.

Best Regards,

Preston M. Stein  
Vice President  
Delaware Energy, LLC  
3001 W. Loop 250 N  
Suite C-105-318  
Midland, TX 79705  
(214) 558-1371

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**From:** McMillan, Michael, EMNRD [mailto:Michael.McMillan@state.nm.us]  
**Sent:** Wednesday, October 26, 2016 3:54 PM  
**To:** Preston Stein <preston@delawareenergyllc.com>  
**Cc:** Goetze, Phillip, EMNRD <Phillip.Goetze@state.nm.us>  
**Subject:** Ruiz SWD Well No. 1

Preston:

The administrative SWD application for the San Pounder Federal SWD Well No. 1 was received on October 24, 2016

I need the following information:

Affidavit of publication

Return/receipt for affected parties and the surface owner

Wellbore diagram

The affected party in the W/2 of Section 11 was not notified (the affected party that was colored green)

Your application is suspended, and it will be cancelled within 10-days if the required information is not received

Thank You

**MICHAEL A. MCMILLAN**

Engineering Bureau, Oil Conservation Division  
1220 south St. Francis Dr., Santa Fe NM 87505  
O; 505.476.3448

Exhibit  
5

State of New Mexico  
Energy, Minerals and Natural Resources Department

Susana Martinez  
Governor

Tony Delfin  
Acting Cabinet Secretary

David R. Catanach, Division Director  
Oil Conservation Division



Administrative Order SWD-1659  
December 5, 2016

**ADMINISTRATIVE ORDER  
OF THE OIL CONSERVATION DIVISION**

Pursuant to the provisions of Division Rule 19.15.26.8B. NMAC, Delaware Energy, LLC (the "operator") seeks an administrative order for its Sand Pounder Federal SWD Well No. 1 (subject well) with a location of 660 feet from the North line and 1980 feet from the East line, Unit B of Section 29, Township 20 South, Range 29 East, NMPM, Eddy County, New Mexico, for the purpose of commercial disposal of produced water.

**THE DIVISION DIRECTOR FINDS THAT:**

The application has been duly filed under the provisions of Division Rule 19.15.26.8B. NMAC and satisfactory information has been provided that affected parties as defined in said rule have been notified and no objections have been received within the prescribed waiting period. The applicant has presented satisfactory evidence that all requirements prescribed in Rule 19.15.26.8 NMAC have been met and the operator is in compliance with Rule 19.15.5.9 NMAC.

**IT IS THEREFORE ORDERED THAT:**

The applicant, Delaware Energy, LLC (OGRID 371195), is hereby authorized to utilize its Sand Pounder Federal SWD Well No. 1 (API 30-015-32552) with a location of 660 feet from the North line and 1980 feet from the East line, Unit B of Section 29, Township 20 South, Range 29 East, NMPM, Eddy County, for disposal of oil field produced water (UIC Class II only) through an open hole interval consisting of the Devonian formation from 12650 feet to approximately 13750 feet. Injection will occur through internally-coated, 4-1/2-inch or smaller tubing and a packer set within 100 feet of the top of the open-hole interval.

*This permit does not allow disposal into the Ellenburger formation (lower Ordovician) or lost circulation intervals directly on top and obviously connected to this formation. The operator shall provide logs and a mudlog over the proposed interval which verify that only the permitted interval is completed for disposal.*

*Prior to commencing disposal, the operator shall submit mudlog and geophysical logs information, to the Division's District geologist and Santa Fe Bureau Engineering office, showing evidence agreeable that only the permitted formation is open for disposal including a summary of*



*depths (picks) for contacts of the formations which the Division shall use to amend this order for a final description of the depth for the injection interval.*

**IT IS FURTHER ORDERED THAT:**

The operator shall take all steps necessary to ensure that the disposed water enters only the approved disposal interval and is not permitted to escape to other formations or onto the surface. This includes the completion and construction of the well as proposed in the application and, if necessary, as modified by the District Supervisor.

*The operator shall run the 6-5/8-inch casing from at least the top of the Devonian formation to the surface.*

*The operator shall circulate the cement behind the 6-5/8-inch casing to surface.*

*The operator shall run a CBL (or equivalent) across the 6-5/8-inch casing from approximately 12650 feet to 3000 to demonstrate a good cement across the casing and good cement bond across the 9-5/8-inch casing. Further, this will ensure that the Capitan Reef is fully protected.*

*The operator shall supply the Division with a copy of a mudlog over the permitted disposal interval and an estimated insitu water salinity based on open-hole logs. If significant hydrocarbon shows occur while drilling, the operator shall notify the Division's District II and the operator shall be required to receive written permission prior to commencing disposal.*

*Operator shall submit the results of the swab test which shall include formation water analysis and hydrocarbon potential of the injection interval to the Division's District geologist and Santa Fe Bureau Engineering office prior to commencing injection.*

*Within two years after commencing disposal, the operator shall conduct an injection survey, consisting of a temperature log or equivalent, over the entire injection interval using representative disposal rates. Copies of the survey results shall be provided to the Division's District I office and Santa Fe Engineering Bureau office.*

After installing tubing, the casing-tubing annulus shall be loaded with an inert fluid and equipped with a pressure gauge or an approved leak detection device in order to determine leakage in the casing, tubing, or packer. The casing shall be pressure tested from the surface to the packer setting depth to assure casing integrity.

The well shall pass an initial mechanical integrity test ("MIT") prior to initially commencing disposal and prior to resuming disposal each time the disposal packer is unseated. All MIT procedures and schedules shall follow the requirements in Division Rule 19.15.26.11A. NMAC. The Division Director retains the right to require at any time wireline verification of completion and packer setting depths in this well.

The wellhead injection pressure on the well shall be limited to **no more than 2530 psi, but**

may be modified by the Division Director following the completion of the initial Step-Rate Test. In addition, the disposal well or system shall be equipped with a pressure limiting device in workable condition which shall, at all times, limit surface tubing pressure to the maximum allowable pressure for this well. The operator shall install and maintain a chart recorder showing casing and tubing pressures during disposal operations.

The Director of the Division may authorize an increase in tubing pressure upon a proper showing by the operator of said well that such higher pressure will not result in migration of the disposed fluid from the target formations. Such proper showing shall be demonstrated by sufficient evidence including but not limited to an acceptable Step-Rate Test.

The operator shall notify the supervisor of the Division's District II office of the date and time of the installation of disposal equipment and of any MIT so that the same may be inspected and witnessed. The operator shall provide written notice of the date of commencement of disposal to the Division's District II office. The operator shall submit monthly reports of the disposal operations on Division Form C-115, in accordance with Division Rules 19.15.26.13 and 19.15.7.24 NMAC.

The injection authority granted under this order is not transferable except upon Division approval. The Division may require the operator to demonstrate mechanical integrity of any injection well that will be transferred prior to approving transfer of authority to inject.

The Division may revoke this injection order after notice and hearing if the operator is in violation of Rule 19.15.5.9 NMAC.

The disposal authority granted herein shall terminate two (2) years after the effective date of this Order if the operator has not commenced injection operations into the subject well. One year after the last date of reported disposal into this well, the Division shall consider the well abandoned, and the authority to dispose will terminate *ipso facto*. The Division, upon written request mailed by the operator prior to the termination date, may grant an extension thereof for good cause.

Compliance with this Order does not relieve the operator of the obligation to comply with other applicable federal, state or local laws or rules, or to exercise due care for the protection of fresh water, public health and safety and the environment.

Jurisdiction is retained by the Division for the entry of such further orders as may be necessary for the prevention of waste and/or protection of correlative rights or upon failure of the operator to conduct operations (1) to protect fresh or protectable waters or (2) consistent with the requirements in this order, whereupon the Division may, after notice and hearing, terminate the disposal authority granted herein.



Administrative Order SWD-1659  
Delaware Energy, LLC  
December 5, 2016  
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**DAVID R. CATANACH**  
Director

DRC/mam

cc: Oil Conservation Division – Artesia District Office  
Bureau of Land Management – Carlsbad  
Well file – 30-015-32552