

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

IN THE MATTER OF THE APPLICATION OF RASER POWER SYSTEM, LLC
FOR APPROVAL OF A DISCHARGE PLAN PURSUANT TO THE NEW
MEXICO WATER QUALITY ACT, HIDALGO COUNTY, NEW MEXICO

CASE NO. 14246

OIL CONSERVATION DIVISION'S
REVISED PRE-HEARING STATEMENT

The Oil Conservation Division submits this entry of appearance and
revised pre-hearing statement pursuant to OCD Rule 1211 [19.15.14.1211 NMAC].

APPEARANCES

APPLICANT

RASER POWER SYSTEM, LLC

COUNSEL/REPRESENTATIVES

OCEAN MUNDS-DRY
Holland and Hart, LLP
110 North Guadalupe
Suite 1
Santa Fe, NM 87501
(505) 988-4421
(505) 983-6043
omundsdry@hollandhart.com

OTHER INTERESTED PARTIES

OIL CONSERVATION DIVISION

COUNSEL/REPRESENTATIVES

MIKAL ALTOMARE
Oil Conservation Division
Energy, Minerals and Natural
Resources Department
1220 S. St. Francis Drive
Santa Fe, NM 87505
(505) 476-3451
FAX: 476-3480
Mikal.Altomare@state.nm.us

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AMERICULTURE

DAMON E. SEAWRIGHT, PhD, VICE PRES.
25 Tilapia Trail
Animas, NM
(505) 548-2328
FAX: (505) 548-2631
damon@vtc.net, damon@americulture.com

STATEMENT OF THE CASE

As previously noted:

- Applicant Raser Power System, LLC ("Raser"), also known or referenced as "Los Lobos" or "Lightning Dock Geothermal," submitted an application for a discharge permit for the Lightning Dock Geothermal No. 1 geothermal power plant to the Oil Conservation Division ("OCD") on May 13, 2008. The discharge permit application specifically seeks approval for three, Class-V injection wells. The injection wells proposed by Raser will be used to re-inject spent the water produced by five proposed geothermal wells, once that water has been routed through the power generation units and cooling towers in the geothermal plant.
- Raser intends to drill five geothermal production wells, from which high-temperature geothermal water will be produced and routed through a series of power-generation units. The water will then be cycled through a cooling tower, after which Raser intends to re-inject the water. Raser intends to perform the re-injection of the produced water through use of the three proposed Class-V injection wells described in its discharge permit application.
- Prior to the first hearing in this matter, Raser had provided the OCD with some information in its application regarding well construction, operation, monitoring, testing and surface facilities, and provided a contingency plan in the event of an accidental spill or other accidental discharge into the environment in order to protect fresh water. While the application appeared to adequately address many of the potential Water Quality Act concerns, the OCD had identified a few additional issues for which requested supplemental information or clarification. In particular, additional information was requested regarding well construction, water quality monitoring and protection of freshwater. (Based on available information, fresh water appears to be present at this location from water table to the proposed depth of injection.)

- The draft discharge permit necessarily also includes specific information regarding the proposed geothermal production/development wells for purposes of ensuring that it is clear from where the water/material being discharged into the subject injection wells is coming. Inclusion, identification and description of the production wells in the discharge permit is for reference purposes only, and only to the extent that they relate to the Class-V disposal wells and the approval of discharge into those wells. Specific regulation of those geothermal production/development wells (including the drilling, testing, operation, monitoring, well construction and production of those wells) falls under the purview of the Oil and Gas Act and the Geothermal Resource Conservation Act, and is not relevant to a determination regarding issuance of this discharge permit under the Water Quality Act.
- Prior to the December 1, 2008 hearing, in the form of a letter dated July 11, 2008, the OCD received formal, written public comment regarding Raser's application from AmeriCulture in which AmeriCulture raised a number of concerns. The majority of the issues raised by AmeriCulture relate primarily to water rights or mineral/geothermal resource rights, and therefore do not fall within the scope of these proceedings. AmeriCulture did, however, raise a few concerns relating to water quality, which the Oil Conservation Division acknowledged through testimony at the December hearing. These concerns were further discussed at a meeting conducted subsequent to the December hearing on January 27, 2009, and have been addressed through the permit language in the revised draft of the permit now presented for review by the Examiner.
- The OCD participated in the December hearing specifically for the purpose of advising the Hearing Examiner, participants and attendees regarding the scope of the OCD's regulatory authority under the Water Quality Act with regard to discharge permits, clarifying the distinction between this type of regulation and the regulation performed by the OCD under the Oil and Gas Act or the Geothermal Resource Conservation Act, or by the Office of the State Engineer regarding water rights issues, advising all parties as to those portions of the Application that are acceptable to the OCD and those portions for which additional information will be needed, and to apprise itself of any additional concerns of the public raised in the course of the hearing relating to this proposed project.

On January 27, 2009, a meeting was held to discuss the pending discharge permit application with the Oil Conservation Division's Acting Bureau Chief, a

hydrology expert. The meeting was attended by technical advisors/representatives of AmeriCulture, Inc., Los Lobos Renewable Power, LLC/ Raser and members of the Environmental Bureau of the OCD. At that meeting, Raser delivered a plan (dated December 2008) for ground and surface water quality monitoring and sampling relating to the injection of cooling tower water. The OCD also presented an updated draft discharge permit, including the addition of water quality monitoring conditions for review and discussion by the group. Concerns were expressed by AmeriCulture, were discussed and were noted by the OCD.

Following the January 27, 2009 meeting, the OCD performed further revisions to the draft discharge permit, incorporating additional language regarding the water quality monitoring and sampling plan discussed at the January 27, 2009 meeting.

OCD Environmental Engineer Carl Chavez will provide testimony at the April 7, 2009 hearing regarding the OCD's review of the applicant's discharge permit application, the January 27, 2009 meeting and the review and consideration of information and materials provided at that meeting, consideration of water quality issues relating to this proposed project and the revisions to the draft permit application submitted for Examiner review and approval.

APPLICANT'S PROPOSED EVIDENCE

WITNESS:

ESTIMATED TIME:

- Carl Chavez, OCD (Environmental Engineer) *or*
Glenn von Gonten (acting Environmental Bureau Chief)

1 hour

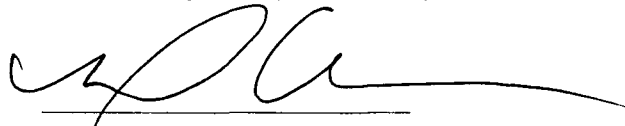
PROCEDURAL MATTERS

As with the previous hearing, the Oil Conservation Division anticipates that it may still be unclear to some of the attendees and participants at the scheduled hearing that the scope of the hearing is limited only to Water Quality Act issues arising out of and relating to the Application for a Discharge Permit for the Lightning Dock Geothermal No. 1 and regarding the three Class-V injection wells proposed by the Applicant. Issues having to do with water rights or geothermal/mineral rights under either the Oil and Gas Act or the Geothermal Resources Conservation Act, and any issues relating to the five proposed production wells will require a separate hearing at a later time (if such issues and parties with standing to raise them are ultimately determined to exist). Likewise, issues relating to water rights and falling within the regulatory

authority of the Office of the State Engineer must be brought before that agency for resolution, and are not proper issues to be presented at this hearing.

The Oil Conservation Division therefore anticipates that it may be necessary for the Hearing Examiner to remind and/or educate the attendees and participants of the limited scope of issues to be addressed at the hearing.

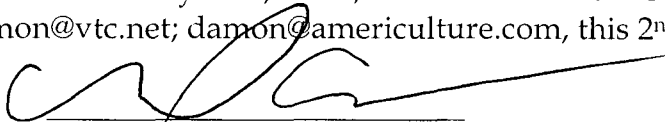
Respectfully submitted
this 2nd day of April 2009 by:



MIKAL ALTOMARE
Oil Conservation Division
Energy, Minerals and Natural
Resources Department
1220 S. St. Francis Drive
Santa Fe, NM 87505
(505) 476-3480
mikal.altomare@state.nm.us

CERTIFICATE OF SERVICE

I certify that I e-mailed a copy of this Pre-Hearing Statement to Ocean Munds-Dry, Holland & Hart PA, omundsdry@hollandhart.com, counsel for Raser Power System, LLC, and Dr. Damon Seawright, PhD, Americulture, damon@vtc.net; damon@americulture.com, this 2nd day of April, 2009.



Mikal Altomare