

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

APPLICATIONS OF SELECT WATER
SOLUTIONS, LLC FOR APPROVAL
OF A SALTWATER DISPOSAL WELL,
LEA COUNTY, NEW MEXICO.

CASE NOS. 25547, 25548,
25899 & 25900

**DESERT RAM'S RESPONSE IN OPPOSITION TO SELECT WATER
SOLUTIONS, LLC'S MOTION TO STRIKE AND MOTION FOR LIMITED
EVIDENTIARY HEARING ON STANDING**

Desert Ram South Ranch, Inc. (Desert Ram), by and through undersigned counsel, submits this Response in Opposition to Select Water Solutions, LLC's (Select) Motion to Strike Desert Ram's Entry of Appearance, Notice of Intervention, and Objection (Motion to Strike). Desert Ram also incorporates herein a Motion for Limited Evidentiary Hearing on Standing and respectfully requests that the Division deny Select's Motion or, at minimum, defer ruling until a limited factual record is developed.

I. INTRODUCTION

These proceedings present a narrow but important threshold question: whether a surface owner with active freshwater interests and reliance may be categorically excluded from participation in produced water disposal proceedings involving novel-to-New Mexico high-volume shallow injection, based solely on radius-based notice rules, before any factual record pertaining to standing or intervention is developed. Select's Motion asks the Hearing Examiner to answer that question by treating these applications as routine saltwater disposal matters and collapsing the standing inquiry into the Division's radius-based notice provisions. The Division's statutes, rules, and delegated responsibilities to protect public health, the environment, and freshwater resources do not permit that result.

These cases involve high-volume produced water disposal by injection into relatively shallow intervals, with Select's own modeling indicating pressure propagation approaching two miles over a multi-decade injection life at rates up to 20,000 barrels per day. (See *Select Applications, Case Nos. 25899, 25900, 25548, and 25547 at Appendix B*). Desert Ram is a surface owner and ranching operation that maintains

freshwater wells and water rights essential to its ongoing agricultural operations within that vicinity. Desert Ram does not seek to litigate the merits at this stage.

The Legislature has expressly directed that produced water disposal by injection be regulated “pursuant to authority delegated under the federal Safe Drinking Water Act” and “in a manner that protects public health, the environment and freshwater resources.” NMSA 1978, § 70-2-12(A)(15). Select’s effort to foreclose participation by a surface owner with freshwater interests and reliance—before a factual record is developed and before key site-specific injection constraints are established—conflicts with that mandate.

II. THE DIVISION’S RULES DO NOT LIMIT STANDING OR INTERVENTION TO “AFFECTED PERSONS”

Select’s Motion rests on the premise that because Desert Ram is not an “affected person” entitled to notice under 19.15.26.8 NMAC, it necessarily lacks standing and must be excluded. The Division’s rules do not support that conclusion.

Under 19.15.4.11(C) NMAC, a notice of intervention may be stricken only if the intervenor fails to show standing, unless the intervenor shows that its participation will contribute substantially to the prevention of waste, protection of correlative rights, or protection of public health or the environment. The rule thus expressly contemplates participation by persons who are not otherwise entitled to notice as “affected persons”, particularly where environmental and groundwater protection concerns are implicated.

Select’s attempt to convert the notice provision into a categorical standing bar improperly narrows the Division’s adjudicatory framework and undermines the Division’s ability to satisfy its statutory obligations. Being an “affected person” may be sufficient to achieve standing, but the rules make it clear that it is not necessary.

III. DESERT RAM HAS STANDING BASED ON CONCRETE, LEGALLY PROTECTED FRESHWATER AND PROPERTY INTERESTS

Desert Ram is a surface owner and ranching operation that maintains freshwater wells and water rights critical to its agricultural operations. These are legally protected property interests. Desert Ram’s interests and concerns are not competitive, speculative, or generalized; they are grounded in the potential for pressure-driven impacts, migration pathways through legacy wellbores, surface uplift, and impairment

of freshwater resources associated with high-volume shallow injection.

At the standing stage, Desert Ram is not required to prove that harm will occur. Desert Ram must demonstrate a concrete interest subject to a real, non-speculative risk that is fairly traceable to the challenged action and redressable through the Division's authority to deny, condition, or require additional process. *See* 19.15.4.11(C) NMAC; *ACLU of N.M. v. Santillanes*, 2008-NMSC-045, ¶ 11; *see also* Commission Order No. R-10987-A(2), ¶¶ 13, 22–24. Given the scale, duration, and shallow nature of the proposed injection operations, Desert Ram easily meets that standard—or, at minimum, has demonstrated the need for limited factual development before standing is foreclosed. At minimum, these facts warrant limited factual development before Desert Ram's participation is foreclosed.

IV. THESE ARE NOT ROUTINE SWD APPLICATIONS; SHALLOW INJECTION TRIGGERS HEIGHTENED SCRUTINY

A central flaw in Select's Motion is its insistence that these applications be treated as routine and interchangeable with the deep disposal wells the Division has permitted for years. They are not.

Select seeks approval to inject produced water at very high daily volumes into relatively shallow formations for decades all within the same township. Shallow injection inherently reduces the margin of confinement between the injection interval and usable groundwater and increases reliance on accurate identification of fracture behavior, pressure limits, and the integrity of legacy penetrations.

Critically, Select's own application materials acknowledge that key subsurface safety parameters—most notably the actual fracture gradient and maximum allowable injection pressure—have not yet been confirmed and will be determined only after permit approval through step-rate testing. (See *Select Applications, Case Nos. 25899, 25900, 25548, and 25547*, at C-108 pgs 3-7). Until those parameters are established, the true pressure envelope and fracture response of the injection interval remain unverified.

Real-world experience underscores why this matters. In recent years, regulators and operators in Texas have documented flowbacks at the surface, surface uplift, and groundwater contamination associated with shallow or inadequately constrained injection. Desert Ram does not cite these examples to suggest inevitability of harm here, but to emphasize a well-recognized principle: shallow injection behaves

differently than deep disposal and carries greater consequences if assumptions prove incorrect. Accordingly, shallow injection should trigger heightened scrutiny, not abbreviated process.

V. THE DIVISION'S RESPONSIBILITY UNDER UIC PRIMACY REQUIRES RISK-RESPONSIVE REVIEW

Select's Motion appears to ignore that the statutes and rules governing these applications implement New Mexico's delegated primacy under the federal Underground Injection Control ("UIC") program. NMSA 1978, § 70-2-12(A)(15). The central purpose of the UIC program is the protection of underground sources of drinking water.

While federal law establishes minimum requirements, it is the Division—not EPA—that determines the appropriate area of review, the scope of investigation, and the conditions necessary to protect groundwater in any particular case. The half-mile AOR used for notice and baseline review is a regulatory tool, not a liability shield or safe harbor.

If shallow injection results in groundwater contamination because pressure effects or migration pathways extend beyond the area examined during permitting, the fact that the Division adhered to a minimum radius would not constitute a defense of the program's effectiveness. Shallow injection magnifies the consequences of error, and the Division's discretion under UIC primacy must be exercised in a risk-responsive manner.

Excluding a surface owner with freshwater wells reliant on the aquifer at-risk from the Select applications from participation at the threshold—before a factual record is developed and before fracture gradients are established—is inconsistent with that responsibility.

Select's Motion further relies on the premise that Desert Ram's freshwater wells are too distant from the proposed injection sites to be at risk. (*See Select Motion* at p.5). That premise misappreciates how groundwater systems function and how the UIC program defines protected resources. Freshwater aquifers are laterally continuous hydrogeologic units that underlie broad areas—often entire townships—and necessarily overlie the projected injection pressure plume. Desert Ram's agricultural operations occur across the entirety of the township within which Select is proposing to locate the four wells, on private or

leased federal and state lands.

If contamination or pressure-induced migration were to occur nearer to the injection wells, the fact that Desert Ram's fee surface interests and water wells are located further away would not sever the hydrologic connection. To the extent Select contends otherwise, that assertion presents a factual question that can only be resolved through development of an evidentiary record. Because Desert Ram's freshwater wells draw from the same aquifer, any impairment within that aquifer has the potential to migrate toward pumping wells through normal groundwater flow and cone-of-depression effects. The relevant question is not simply how far the surface owner is from the injection well, but whether the owner relies on the same underground source of drinking water the UIC program is designed to protect.

For these reasons, the protection of groundwater under the Safe Drinking Water Act and its implementing state statutes is aquifer-based, not parcel-based. Excluding a surface owner with freshwater reliance from participation based solely on surface distance ignores the hydrogeologic reality that contamination within a connected aquifer can propagate and affect users well beyond an arbitrary half-mile radius. In the context of the aquifer potentially affected by the Select applications, Desert Ram is uniquely situated as a surface owner with active freshwater wells to assist the Division in ensuring that aquifer-level impacts are adequately considered in these proceedings.

VI. SELECT OVERSTATES THE EXTENT OF ITS SUBSURFACE INVESTIGATION

Select repeatedly asserts that it has conducted a "thorough" subsurface or hydrologic investigation and that Desert Ram's concerns are therefore "dispensed with." (See *Select Motion at pg. 7 and Exhibit 1*). That assertion overstates the record and conflates preliminary screening with well-specific subsurface confirmation.

The application materials reflect regional mapping, literature review, seismic interpretation, and reservoir modeling based on offset data. Select's "No Hydrologic Connection Statement" focuses primarily on vertical separation between the proposed injection interval and the Rustler Formation USDW and the absence of mapped faults enabling direct communication. These materials may be sufficient to satisfy baseline administrative filing requirements, but they do not establish site-specific injection constraints or

confirm safe operating limits for the proposed shallow wells.

Critically, Select acknowledges that essential well-specific parameters governing injection safety—most notably the formation fracture gradient and the maximum allowable surface injection pressure—will not be determined until *after* the well is drilled, through a step-rate test conducted prior to commencing injection. While Select provides modeled fracture gradient estimates for confining layers, the Applications do not provide a transparent, well-specific showing tying the requested maximum surface injection pressure of 1,035 psi to a confirmed fracture limit for the injection interval itself.

In a conventional deep saltwater disposal context—where injection occurs thousands of feet below any usable groundwater and long-standing operational experience has established wide margins of confinement—this type of modeling and deferred confirmation may be sufficient at the permitting stage. But these applications do not present that scenario.

Here, Select seeks approval of unusually shallow, high-volume commercial disposal wells in formations significantly closer to the base of the groundwater relied on by Desert Ram, with injection pressures and fracture limits that have not yet been empirically established. Shallow injection materially narrows the margin of confinement, increases sensitivity to legacy wellbores and historic penetrations, and elevates the consequences of error if fracture pressures are exceeded or pressure communication occurs outside modeled assumptions. In this context, reliance on generalized modeling and post-approval testing is not sufficient to foreclose standing at the threshold as a matter of law or to dismiss the concerns of a surface owner with active freshwater reliance.

Further, Select's own reservoir performance modeling anticipates pressure effects approaching approximately two miles from the wellbore under sustained injection at 20,000 barrels per day over a 20-year period. (*See Select Applications, Case Nos. 25899, 25900, 25548, and 25547, at Appendix B*). This projection directly undermines Select's assertion that impacts can be categorically excluded based on surface-distance thresholds alone and underscores why Desert Ram's interests cannot be dismissed as speculative at the standing stage.

Select's merits assertions regarding injectate confinement and modeling outcomes cannot substitute

for a standing analysis and cannot justify striking Desert Ram’s intervention without affording any opportunity to develop a factual record. Where the proposed operations are novel in depth, scale, and risk profile, the Division’s obligation to protect groundwater and freshwater resources warrants a measured, fact-based evaluation—not categorical exclusion based on assumptions drawn from materially different disposal scenarios.

VII. SELECT’S “SURFACE-RELATED” PRECEDENT IS NOT ON-POINT

Select relies on Commission precedent addressing surface owners’ objections in *drilling, spacing, or density* proceedings—most notably Application of Hilcorp Energy Co., Order No. R-10987-A(2) (Dec. 4, 2018), and Application of Gandy Corp., Order No. R-12811 (Sept. 24, 2007)—to argue that Desert Ram’s concerns fall outside the “zone of interests” protected by the statutes and rules governing these cases. Those authorities are not applicable to the present cases.

In *Hilcorp*, surface owners sought to intervene in a proceeding to amend well density requirements, raising generalized concerns about surface disturbance, property impacts, and speculative environmental effects. The Commission concluded that those alleged injuries were “surface-related issues” not implicated by the spacing and density order at issue and were instead addressed through separate drilling and operational permitting processes. Order No. R-10987-A(2) at ¶¶ 23–24. Likewise, *Gandy* addressed standing in the context of spacing and operational interests confined to the half-mile affected-party framework applicable to that proceeding.

These cases do not concern produced water disposal by injection, nor do they address the statutory and regulatory framework governing underground injection control. By contrast, the Legislature has expressly placed groundwater protection and environmental integrity squarely within the Oil Conservation Division’s mandate for produced water disposal operations. See NMSA 1978, § 70-2-12(A)(15) (authorizing the Division to regulate produced water disposal by injection “in a manner that protects public health, the environment and freshwater resources”).

Desert Ram’s concerns are not limited to surface disturbance or generalized land-use impacts. They go to the integrity of subsurface containment, pressure propagation, and the protection of groundwater

resources—the very interests the UIC program exists to protect. Unlike the spacing and density proceedings at issue in *Hilcorp* and *Gandy*, these proceedings involve high-volume shallow injection into subsurface formations under state-delegated UIC authority, where risks to freshwater aquifers and confinement integrity are central to the Division’s statutory responsibilities.

Accordingly, precedent addressing surface owners’ participation in drilling or spacing matters does not foreclose intervention here, where the alleged injury arises from subsurface injection operations and implicates groundwater protection duties expressly assigned to the Division by statute.

VIII. DESERT RAM’S PARTICIPATION WILL CONTRIBUTE SUBSTANTIALLY EVEN IF STANDING WERE DISPUTED

Even if standing were disputed, Desert Ram’s participation independently satisfies the “substantial contribution” standard in 19.15.4.11(C) NMAC. A surface owner with freshwater reliance brings a perspective directly relevant to the Division’s statutory duties, particularly where applications involve high-volume shallow injection and unresolved site-specific constraints. In fact, there may not be a party better-positioned than a surface owner agricultural producer with freshwater interests to substantially contribute to the Division satisfying its statutory obligations in this case.

IX. MOTION FOR LIMITED EVIDENTIARY HEARING ON STANDING

Standing is a threshold issue that turns on case-specific facts, not categorical rules. Select’s Motion challenges Desert Ram’s factual assertions while simultaneously asking the Hearing Examiner to resolve disputed technical questions without a record.

Accordingly, Desert Ram respectfully requests that the Hearing Examiner set a limited evidentiary hearing confined to standing, or, in the alternative, permit Desert Ram to submit an affidavit within a brief preparation window addressing the factual basis for standing, prior to ruling on the Motion to Strike. As a surface owner—not a repeat operator steeped in injection mechanics—Desert Ram reasonably relies on the Division’s process to both understand and assess technically complex risks associated with novel shallow injection proposals.

X. CONCLUSION

For the foregoing reasons, Desert Ram respectfully requests that the Hearing Examiner:

1. DENY Select's Motion to Strike; or
2. In the alternative, DEFER ruling and set a limited evidentiary hearing on standing.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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