

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

CASE NO. 14948

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2013 APR 11 5:47 PM

**APPLICATION OF LOS LOBOS RENEWABLE POWER, LLC (FORMS G-112) FOR APPROVAL TO INJECT INTO A GEOTHERMAL AQUIFER THROUGH TWO PROPOSED GEOTHERMAL INJECTION WELLS AT THE SITE OF THE PROPOSED LIGHTNING DOCK GEOTHERMAL POWER PLANT, HIDALGO COUNTY, NEW MEXICO.**

**MOTION TO CONSIDER LATE-FILED RESPONSE**

The New Mexico Oil Conservation Division respectfully moves the Commission to consider its Closing Argument and Response to Proposed Changes to Conditions of Approval filed on April 11, 2013, at 5:26 p.m.

In support of this Motion, the Division would show that this pleading was filed late due to inadvertence of counsel. Though filed 26 minutes late, it was filed before the Commission or any party could have changed their position in any way in reliance upon its not having been timely filed.

Accordingly, the Division requests that, in the interest of justice, the pleading be considered notwithstanding its having been late-filed.

Respectfully Submitted



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David K. Brooks  
Attorney for The New Mexico Oil Conservation  
Division

## CERTIFICATE OF SERVICE

Copies of this Motion to Consider Late-Filed Response were served on Ms. Henrie and Mr. Larkin by email on April 11, 2013.

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David K. Brooks

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

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2013 APR 11 PM 3:44  
CASE NO. 14948

**APPLICATION OF LOS LOBOS RENEWABLE POWER, LLC (FORMS G-112) FOR APPROVAL TO INJECT INTO A GEOTHERMAL AQUIFER THROUGH TWO PROPOSED GEOTHERMAL INJECTION WELLS AT THE SITE OF THE PROPOSED LIGHTNING DOCK GEOTHERMAL POWER PLANT, HIDALGO COUNTY, NEW MEXICO.**

**OIL CONSERVATION DIVISION'S CLOSING ARGUMENT  
AND RESPONSE TO PROPOSED CHANGES TO CONDITIONS OF APPROVAL**

Pursuant to the Commission's directive at the close of the hearing on March 26, 2013, the New Mexico Oil Conservation Division (the Division) submits its closing argument. Included are the Division's responses to Applicant's proposed changes to the Conditions of Approval recommended by the Division, as set forth in Division Exhibits A and B.

**1. Applicable Water Quality Standards**

As stated in opening statement, the Division does not take a position on whether or not the requested injection permits should be granted. In the opening statement, we indicated that an issue might arise regarding the Protestant's particular water quality requirements for aquaculture, which might require lower concentrations of certain constituents than the applicable Water Quality Control Commission (WQCC) standard. Had the evidence raised that issue, the Commission would have been confronted with a fundamental legal issue.

However, the Division believes the evidence did not raise that issue. The only constituent for which Protestant offered evidence of a particular requirement involved fluoride. The testimony indicated that the background concentration of fluoride at Protestant's State No. 2 well (10 mg/l) substantially exceeds the WQCC fluoride drinking water standard of 1.6 mg/l.

Thus the legal issue whether the Commission can or should deny an injection permit based on a Protestant's requirement to maintain existing water quality that is better than the applicable WQCC standard is not presented. If the Commission applies WQCC standards to this application, the issue is instead whether the proposed injection will cause the concentration of any constituent at the place of withdrawal to exceed the applicable WQCC standard. There was also no issue raised which would require the Commission to enter the quagmire of what constitutes a "place of withdrawal for present or reasonably foreseeable future use" [NMSA 1978, Section 74-6-5.E(3), as amended], because there is no evidence regarding any place of withdrawal for present or future use other than Protestant's wells.

## 2. Temporary or Permanent Permit

The Applicants requests for approval to inject into two wells filed on Forms C-112 constitute applications for general authority to inject geothermal fluids into the geothermal reservoir, and presumably, unless otherwise specifically limited by the Commission, would permit injection into Wells 53-07 and 55-07, in accordance with the terms of the previously approved Discharge Plan, for geothermal production as well as testing. However, the immediate purpose of the applications is to enable Applicant to conduct tests which, presumably, will provide additional information about the geothermal reservoir. The Division believes that the Commission has discretion to issue a limited injection permit for purposes of the presently contemplated tests only, or a general permit that would continue in force unless and until revoked. The Commission may be inclined to issue a limited permit because of the paucity of information about the reservoir. That however, would likely require further hearings before production could commence. If a general permit is issued, either Protestant or the Division could subsequently petition for modification or revocation if evidence from tests, or from future

production, indicates a probability that operations under the permit would cause pollution, waste geothermal resources or impair of correlative rights.

3. Response to Comments on the Division's Proposed Conditions of Approval.

The Division submits the following comments regarding the changes Applicant proposed to the Division's requested Conditions of Approval (Division Exhibits A and B):

Paragraphs 3, 4 and 5: These conditions would have required the Applicant to assess, and provide evidence concerning, the water quality of fluids produced from the source wells from which the Division understood water to be injected would be derived. Applicant has proposed that the references in each of these paragraphs to specific source wells be changed to read "any Production Well." This change would appear to be warranted if the Commission decides to issue a permanent permit because the evidence indicated that during the production phase injection into the wells being permitted will not necessarily be derived only from the identified source wells. However, the evidence also made clear that, at least during testing, the immediate source of the injected water would be a pit or pond into which the water withdrawn from a production well would first be discharged. Since Applicant's witnesses conceded that water quality might be affected by this temporary deposition into a pit or pond, it would seem that water quality in the pit or pond should be assessed during the time periods when a pit or pond is in use. To address both of these issues, the Division proposes that the language "any Production Well" suggested by Applicant for Paragraphs 3, 4 and 5 of the Conditions of Approval be changed to read "any source of injected fluids".

Paragraph 6: Applicant's proposed change to Paragraph 6 of the Conditions of Approval is acceptable to the Division.

Paragraph 7: Applicant's proposed changes to Paragraph 7 of the Conditions of Approval are acceptable to the Division.

Paragraph 8: Applicant proposes to revise the first grammatical paragraph of Paragraph 8 of the Conditions of Approval to make annual well tests optional rather than mandatory. The Division opposes this change because Rule 19.14.62.8 NMAC requires annual well tests.

Applicant proposes to revise the second grammatical paragraph of Paragraph 8 to limit the requirement for reporting pond/pit volumes such that the requirement will apply only "during well tests." The Division recognizes that such reporting would not be necessary unless a pond or pit is being used, and that the testimony was that during commercial operations the normal flow would be directly from a production well to an injection well without circulation through a pond or pit. However, there was also testimony that a pond or pit might be used for particular operations after commercial operation commences. Therefore, the Division requests substitution of "whenever a pond or pit is in use" in lieu of "during wells tests."

Applicant's proposed changes to the third grammatical paragraph of Paragraph 8 are acceptable to the Division.


Paragraph 9: The Division requests that Paragraph 9 require at least three business days' notice to the Division's Artesia District Office prior to any required MIT.

Paragraph 11: The Division requests that the Commission retain Paragraph 11 with the exception of the language deletion of which the Division requested on the record at the March 26 hearing. The Division concedes that the relationship of the procedure provided in NMSA 1978 71-5-2.1, as amended, to the proposed injection wells is very indirect. However, in order to fulfill its responsibilities to provide information to the Office of the State Engineer (OSE), and to protect water rights by requiring a Water Replacement Plan if the OSE deems it necessary, the

Division must obtain the necessary information, which it can only obtain from the operator. NMSA 71-5-2.1 does not require the operator to furnish such information, and the Commission has not made any rules to implement this statute, which was enacted in 2012. Because the information is necessary for the Division to fulfill its regulatory duties in connection with the geothermal project of which this permit is a part, the Division believes a requirement for furnish such information to the Division is an appropriate condition for any permit or approval that is part of the project.

The Division accordingly asks that the Commission, if it decides to grant the permits requested by Applicant, adopt the Conditions of Approval set forth in Division Exhibits A and B with only those changes approved by the Division, as set forth in this Argument.

Respectfully Submitted

  
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David K. Brooks  
Attorney for The New Mexico Oil Conservation  
Division

#### CERTIFICATE OF SERVICE

Copies of this Amended Closing Argument and Response to Proposed Changes were served on Ms. Henrie and Mr. Larkin by email on April 11, 2013.

  
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David K. Brooks