

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

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION COMMISSION
FOR THE PURPOSE OF CONSIDERING:

APPLICATION OF DUKE ENERGY FIELD SERVICES, LP FOR AN ACID GAS
INJECTION WELL, LEA COUNTY, NEW MEXICO

CASE NO. 13589
ORDER NO. R-12546-A

ORDER OF THE OIL CONSERVATION COMMISSION

BY THE COMMISSION:

THIS MATTER came before the Oil Conservation Commission (the Commission) for consideration of Respondents' and Intervenors' Application for Rehearing on June 5, 2006, and the Commission, having carefully considered the matter, now, on this 5th day of June, 2006,

FINDS:

1. Although the Commission concludes that the Application for Rehearing in this case should be denied, it concludes that this supplemental order should be issued to obviate any possible misunderstanding of the Commission's findings in Order R-12546.

2. In Finding 26 of Order R-12546, the Commission observed that:

26. Although there is some evidence that fluids injected pursuant to the license granted by this order might migrate beyond the lateral limits of the particular tract on which the injection facility will be located, the Commission concludes that it is unnecessary that the Commission make a finding with respect to that possibility. The New Mexico Supreme Court in *Snyder Ranches, Inc. v. Oil Conservation Commission*, 789 P.2d 587 (NM Sup 1990) indicated that the Commission's issuance of an injection permit constitutes only a license to engage in activities otherwise within the property rights of the Applicant. If, at some future time, activity conducted within the scope of the permit exceeds those property rights, this would be a matter for adjudication in the courts, and not within the jurisdiction or competence of the Commission.

4. The *Snyder Ranches* decision indicates that migration of affected substances may implicate property rights of adjacent landowners in the pore-spaces underlying their land. Finding 26 acknowledges that this Commission does not have jurisdiction to determine any resulting issues concerning the extent of such property rights or whether injection may constitute a trespass.

5. The Commission does, of course, have the jurisdiction and duty to determine if correlative rights of adjacent owners to produce oil or gas will be affected by injection of substances into a common reservoir. The Commission determined ⁽ⁱⁿ⁾ Finding 22 of Order R-12546 that such rights would not be affected. That finding is in accord with the uncontroverted geologic testimony presented by Applicant to the effect that no realistic prospects exists for hydrocarbon production in this vicinity from the proposed injection formation or any lower formation, and that the injection reservoir is well sealed to prevent escape of injected fluids to shallower reservoirs or to the environment.

6. Having concluded in Finding 22 that correlative rights of adjacent owners would not be affected, it was unnecessary for the Commission, in the discharge of its limited statutory functions, to address the issue whether some of the injected substances might migrate underneath adjacent lands.

IT IS THEREFORE ORDERED THAT:

- A. The Application for Rehearing in this case is denied.
- B. Order No. R-12546, as supplemented and explained by this Order, is and shall remain in full force and effect.
- C. Jurisdiction of this case is retained for entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION



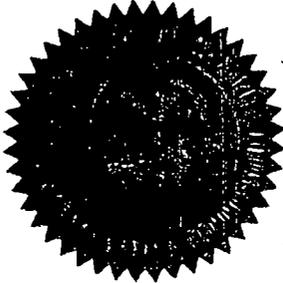
MARK E. FESMIRE, P.E. CHAIRMAN



JAMI BAILEY, C.P.G., MEMBER



WILLIAM OLSON, MEMBER



SEAL