

BEFORE THE NEW MEXICO OIL CONSERVATION COMMISSION

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**APPLICATION OF LOS LOBOS RENEWABLE
POWER, LLC TO PLACE GEOTHERMAL WELLS
LDG-55-7 AND LDG 53-7 ON INJECTION IN
SECTION 7, TOWNSHIP 25 SOUTH, RANGE 19
WEST, NMPM, HIDALGO COUNTY, NEW MEXICO**

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Case No. 14948

MOTION TO EXPEDITE DECISION

Los Lobos Renewable Power, LLC ("Los Lobos"), respectfully requests that the Oil Conservation Commission ("Commission") expedite its decision regarding Los Lobos' pending form G-112s. These Form G-112s request permission to use existing geothermal wells, LDG-55-7 and LDG 53-7, as injection wells in connection with Los Lobos' geothermal power plant project in Section 7, Township 25 South, Range 19 West, Hidalgo County, New Mexico. As grounds for this Motion, Los Lobos states:

1. Los Lobos is developing a utility-scale binary (two closed loops) geothermal power facility to provide base-load renewable electricity to Public Service Company of New Mexico (PNM).
2. Los Lobos' project involves drilling and utilizing wells for production from and re-injection of geothermal fluids into the Lightning Dock geothermal reservoir in Hidalgo County.
3. On or about December 13, 2012, Los Lobos submitted to the Oil Conservation Division Form G-112 applications seeking to place two existing geothermal wells (wells LDG 55-7 and LDG 53-7) on injection for well testing and potential future injection of geothermal fluids.
4. AmeriCulture, Inc. ("AmeriCulture"), wrote to the Division via letter dated December 26, 2012, protesting these Form G-112s. AmeriCulture did not request a hearing in its letter or any

time subsequent. AmeriCulture did not file an application for a hearing as required by 19.14.93.8 and 19.14.112.8 NMAC. Even if it had (it did not), AmeriCulture has no right to request a hearing.

5. The applicable regulation states: "In the event the form [G-112] is not approved because of objection from an affected geothermal lease owner or for other reason, the application will be set for public hearing, if the applicant so requests." 19.14.93.8(C).

6. The applicable regulation requires the Division to take action on Los Lobos' Form G-112s (i.e., approval or denial) and grants Los Lobos the right to a post-deprivation hearing if the Division does not approve the Form G-112s.

7. Instead of taking action on Los Lobos' Form G-112s, the Division scheduled a hearing.

A. The Division's action was motivated by language contained in the oil and gas regulations (not geothermal regulations) which expressly require a hearing for protested disposal wells.

B. This is not an oil and gas matter, and the subject wells are not disposal wells. The subject wells will reinject native, chemically unaltered, geothermal fluid back into the Lightning Dock geothermal reservoir so that the fluids can reheat and then run through the heat-exchanger portion of Los Lobos' closed-loop binary power plant over and over again.

C. Furthermore, Los Lobos researched the oil and gas regulation relied on by the Division. It is common knowledge that when the geothermal regulations were written in the early 1980s, they were based on the oil and gas regulations. Los Lobos verified that in the early 1980s, the oil and gas regulations expressly requiring a hearing for protested

disposal wells. Yet the drafters of the geothermal regulations chose to not require a hearing for protested geothermal injection wells. Instead, the drafters chose to allow an applicant a post-deprivation hearing if and only if the Division disapproved its Form G-112. This makes sense because there is a different *ratio legis* for disposal wells than geothermal reinjection wells.

8. It was an error for the Division to schedule a hearing. The Division should have immediately acted on Los Lobo's Form G-112.

9. The Division has twice stated in this proceeding that it does not oppose Los Lobos' application.

10. Los Lobos respectfully renews its request to the Oil Conservation Division Director that she act on Los Lobos' Form G-112 applications immediately because the hearing should have never been scheduled by the Division, there is time and expense in holding a hearing, and a hearing is not ripe under the regulations: "In the event the form [G-112] is not approved because of objection from an affected geothermal lease owner or for other reason, the application will be set for public hearing, if the applicant so requests." 19.14.93.8(C).

11. At the Division's request, Los Lobos and the protestant met on January 18, 2013 with Division Staff. At this meeting, there was no real inquiry from AmeriCulture into the matters stated in its protest. Instead, AmeriCulture argued issues that have already been heard by the Division and ruled on.¹

¹ AmeriCulture's protest asserts that AmeriCulture State Well No. 1 is in direct hydraulic connection with the production interval in well LDG-55-7. Even if these wells are in direct hydraulic connection, so what? Los Lobos' request is to inject into well LDG-55-7 which will result in augmenting, not depleting, the water table. AmeriCulture's protest also speculates regarding "migration" of disposed geothermal power plant "fluids." AmeriCulture likes to allege

12. It is clear to Los Lobos that AmeriCulture is using this hearing process *quo animo* to cause delay for Los Lobos in an attempt to ultimately obstruct Los Lobos from exercising its correlative right to develop 2,500+ acres of the Lightning Dock geothermal resource.

AmeriCulture has stated that it intends to build its own personal-use geothermal power plant. AmeriCulture's expert, Jim Witcher, has written a report that concludes, preliminarily (on the basis of one pump test), that the Lightning Dock geothermal resource is capable of generating 3-5MWh. Los Lobos' research shows a much larger resource. Nevertheless, if Mr. Witcher is right, this scenario would pit AmeriCulture in direct competition with Los Lobos for use of that 3-5MWh. This seems to be the real situation fueling AmeriCulture's continued opposition to Los Lobos' project: AmeriCulture is mis-using an agency process to gain a business advantage over a perceived competitor.

A. AmeriCulture filed its protest on December 26, 2012, but did not hire an attorney until February 11, 2013. AmeriCulture's attorney, Charles Lakins, then immediately asked for the hearing to be delayed until after March 7. Mr. Lakins later revealed that he would be on Spring Break between March 7 and March 17. In other words, it appears that AmeriCulture never had any intention of being present at a hearing prior to March 19—nearly two full months after the hearing had been originally scheduled on January 24.

B. When Los Lobos' undersigned counsel suggested that the parties file proposed Findings of Fact and Conclusions of Law prior to the hearing to expedite the process, Mr.

"copious quantities of cooling tower chemicals." Even if Los Lobos were to build a water-cooled cooling tower (which it no longer plans to do), the issue of cooling tower "chemicals" was already addressed during the December 2008 and April 2009 hearings on this project and the resulting Discharge Permit expressly addresses monitoring and mitigation measures. This issue is *res judicata*.

Lakins declined to do so unless counsel could “point out the NMAC section that requires this.” Los Lobos reminds the Commission that the regulations also do not require (or allow) post-hearing briefing.

C. Los Lobos intends to file proposed Findings of Fact and Conclusions of Law prior to the hearing so the Commission can act expeditiously. AmeriCulture has the opportunity to do so as well.

13. Delay is extremely prejudicial to Los Lobos. In January 2013, Congress extended deadlines for several of the federal renewable energy incentives when it passed the American Taxpayer Relief Act of 2012. However, Congress did not extend deadlines for the program in which the Lightning Dock Geothermal project is vested: Section 1603. This means that the Lightning Dock Geothermal project needs to be fully constructed, commissioned and actually delivering green baseload geothermal-generated electricity to PNM by December 31, 2013. Each day of continued delay increases the magnitude of harm for Los Lobos because it becomes further unlikely that the project can be built in time. Los Lobos is substantially harmed by continued delay.

14. The delay is also harmful to the state and to the citizens of New Mexico. Delays or cancelation of the first possible geothermal project in New Mexico will delay or eliminate any possibility of royalties and job opportunities in a nascent industry. Further delays also will send a significant and negative message to the geothermal industry about New Mexico’s competitiveness with other states which have successfully facilitated utility-scale electric generation from their geothermal resources.

15. Los Lobos has federal lease rights to develop 2,500+ acres of the Lightning Dock geothermal resource. Los Lobos has vested its right to Section 1603 incentives if it can deliver

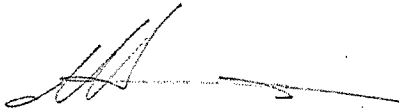
electricity by the deadline. Los Lobos has contractual obligations to timely deliver electricity to PNM. The Division does not oppose Los Lobos' G-112 applications to convert wells LDG 55-7 and LDG 53-7 into geothermal re-injection wells. The geothermal regulations do not give protestant the right to a hearing. Instead, the geothermal regulations require the Division to act on Los Lobos' pending G-112 applications. Delay damages Los Lobos' legal rights. Delay is prejudicial to Los Lobos.

16. Los Lobos asked counsel for the Protestant and counsel for the Division if they would object to a procedural motion that would (a) ask the Director for an order requiring the parties to submit any proposed form of order they want to tender (if any) prior to the hearing, and (b) asking the Commission to expedite the decision. Counsel for the Protestant does not agree.

Counsel for the Division does not oppose the motion. WHEREFORE, Los Lobos Renewable Power, LLC, respectfully renews its request to the Oil Conservation Division Director that she act on Los Lobos' Form G-112 applications immediately. In the alternative, Los Lobos respectfully asks the Commission to request proposed orders in advance of the hearing and to set aside sufficient time immediately after the hearing so that a final order can be entered immediately on March 19, 2013, or very soon after the hearing on March 19, 2013.

Respectfully Submitted,

MICHELLE HENRIE, LLC



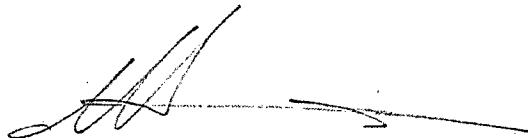
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Application was e-mailed to
the following on February 28th, 2013:

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Dated this 28th day of February, 2013.



Michelle Henrie