

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

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**APPLICATION OF LIGHTNING DOCK
GEOTHERMAL HI-01, LLC FOR APPROVAL
TO INJECT INTO A GEOTHERMAL AQUIFER
THROUGH THREE PROPOSED GEOTHERMAL
INJECTION WELLS AT THE SITE OF THE
PROPOSED LIGHTNING DOCK GEOTHERMAL
POWER PROJECT, HIDALGO COUNTY, NEW
MEXICO**

CASE NO. 15357

**APPLICATION OF LIGHTNING DOCK
GEOTHERMAL HI-01, LLC TO PLACE WELL
NO. 63A-7 ON INJECTION-GEOTHERMAL
RESOURCES AREA, HIDALGO COUNTY, NEW
MEXICO**

**CASE NO. 15365
Order No. R-14021-B**

**HIDALGO SOIL & WATER CONSERVATION DISTRICT'S POSITION WITH
RESPECT TO STANDING DUE TO INTEREST IN THE CASE'S SUBJECT MATTER**

COMES NOW, the Hidalgo Soil & Water Conservation District ("HSWCD") by and through their counsel of record, the Domenici Law Firm, PC (Pete V. Domenici, Jr., Esq.) and for their Position regarding Standing states:

The Geothermal Resources Conservation Act, 71-5-1 NMSA 1978 and the regulations 19.14.1 NMAC does not have provisions dealing directly with standing or parties. 71-5-8.M NMSA 1978 sets forth statutory requirements that regulations be established assuring that disposal of geothermal resources be in a manner to protect against contamination of fresh water or the environment. As set forth below, 19.14.93.8.C incorporates such requirements.

The Procedural Order in this matter indicates that the Adjudicatory Rules 19.15.4.1 should be guidance. Pursuant to those rules, a party to an adjudicatory proceeding includes; "a person who properly intervenes in the case." 19.15.4.10.A(3). A party may intervene so long as they have "standing with respect to the case's subject matter" by filing a written notice of

intervention at least one business day before the date for filing a pre-hearing statement. The Notice of Intervention was timely.

HSWCD has standing with respect to the case's subject matter. Pursuant to 19.14.93.8.C, the standard for approving the disposal of geothermal waters into a zone or formation not classified as geothermal appears to be that "the proposal is in the interest of conservation and will prevent waste and protect correlative rights and the well is cased, cemented and equipped in such a manner that there will be no danger to any natural resource, including geothermal resources, useable underground water supplies and surface water resources." Accordingly, the applicant should be required to demonstrate that the disposal will not be a danger to any natural resource, including geothermal resources, useable underground water supplies and surface resources.

The Notice for the hearing identifies the issues to be addressed as "whether the proposed injection will contaminate any underground source of drinking water or otherwise cause waters of the State of New Mexico to exceed applicable water quality standards..."

The mission of the HSWCD is to address soil and water resource conservation within its boundaries. See Soil & Water Conservation District Act, 73-20-25 NMSA 1978 including but not limited to, sections 26, 27, 44 and 45. The purpose of the HSWCD includes furthering the "conservation, development, beneficial application and proper disposal of water." 73-20-26.B(c) NMSA 1978. The requirements for the disposal permit include a showing that the proposal will not impact the very natural resources, underground waters and surface waters that is HSWCD's mission to address.

Because the application raises concerns about the protection of water supplies, the HSWCD clearly has an interest in the subject matter of the application and therefore, is entitled to intervene. Upon intervention, the HSWCD is allowed the rights of a party, which includes the

right to present evidence if it so chooses and the right to cross examine witnesses, to propose findings, and to participate in motions. The HSWCD expects to make only minimal statements which would be in the form of public comments, legal argument or very limited factual statements. HSWCD's main objective to being a party to the hearing is to be able to question witnesses, including witnesses from OCD, the applicant and the protestant, as is appropriate, to ensure the record includes sufficient information regarding the protection of natural resources, useable underground water supplies and surface resources.

Under the Procedural Order in this matter, as well as the rules, which incorporate any applicable rules for geothermal power and the applicable case law, statutes and rules on standing, the HSWCD should be allowed to intervene in this matter and therefore, be treated as a party. There is a possibility that HSWCD's interests in protecting soil and water resources in Hidalgo County could be directly injured if there are not sufficient requirements in place to protect these vital natural resources. The potential injuries to natural resources are directly related to the injection application and any potential injuries are not only likely to be redressed but must be redressed as part of the hearing. *ACLU of N.M. v. City of Albuquerque*, 2008-NMSC-045, ¶1, 144 N.M. 471 (setting forth requirements for standing). The extent of actual or imminent injury need only be slight. *Id.* At ¶11. The potential injury to natural resources that HSWCD is seeking to protect is with the zone of interests to be protected by the applicable regulations, as evidenced by the requirements of 19.14.93.8.C. *N.M. Cattle Growers' Ass'n v. N.M. Water Quality Control Comm'n*, 2013-NMCA-046, ¶10, 299 P.3d 436.

Upon information and belief, it is quite typical that parties proceeding like this do not present expert testimony but actively and meaningfully participate in the hearing as parties through use of cross examinations and discussion as appropriate on motions and other procedural and substantive matters.

WHEREFORE, HSWCD should be treated as a party in this matter pursuant to its intervention.

Respectfully submitted,

/s/Pete V. Domenici, Jr.
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I certify that a copy of the foregoing
was sent to counsel of record on this 9th
day of September 2015.

/s/Pete V. Domenici, Jr.
Pete V. Domenici, Jr., Esq.