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RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL AND GAS DOCKET NO. 08-0320752

APPLICATION OF REEVES COUNTY SWD, LLC (698562) PURSUANT TO STATEWIDE RULE 46 FOR A COMMERCIAL PERMIT TO DISPOSE OF OIL AND GAS WASTE INTO A RESERVOIR PRODUCTIVE OF OIL OR GAS FOR THE SOCKS SWD LEASE, WELL NO. 1, REEVES-BLOCK 4 (DEL. 4430) FIELD, REEVES COUNTY, TEXAS

OIL AND GAS DOCKET NO. 08-0320772

APPLICATION OF REEVES COUNTY SWD, LLC (698562) PURSUANT TO STATEWIDE RULE 46 FOR A COMMERCIAL PERMIT TO INJECT FLUID INTO A RESERVOIR PRODUCTIVE OF OIL OR GAS FOR THE BEAR SWD LEASE, WELL NO. 1, REEVES-BLOCK 4 (DEL. 4430) FIELD, REEVES COUNTY, TEXAS

HEARD BY: Petar Buva – Technical Examiner
Ezra A. Johnson – Administrative Law Judge

PROCEDURAL HISTORY:

Application Filed:	May 29, 2018
Protest Received:	June 12, 2018 and April 12, 2019
Request for Hearing Received:	May 6, 2019
Prehearing Conference:	September 18, 2019
Hearing on the Merits:	November 7 and 8, 2019
Record Closed:	January 31, 2020
Transcript Received:	April 3, 2020
Proposal for Decision Issued:	May 21, 2020
Conference Date:	June 16, 2020

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APPEARANCES:

APPLICANT:

Reeves County SWD, LLC

Jay B. Stewart, Attorney
Wesley P. McGuffey, Attorney
Carter N. Davis, P.G.
John W. Wilson

PROTESTANTS:

PDC Permian, Inc.

Kelli Kenney, Attorney
Sara J. Davis
Collin M. Placke, P.E.

Ysidro and Diamantina Renteria

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I. Statement of the Case

Applicant Reeves County SWD, LLC (“Reeves” or “Applicant”), filed two applications seeking authority pursuant to 16 Tex. Admin. Code § 3.46 (“SWR 46”) to dispose of oil and gas waste by injection into a formation productive of oil or gas on the Socks SWD Lease, Well No. 1, and Bear SWD Lease, Well No. 1, in the Reeves-Block 4 (Del. 4430) Field, in Reeves County, Texas. The proposed Well No. 1 on Socks SWD Lease is located approximately 4.9 miles Northwest of Pecos, Texas, which is the nearest town in Reeves County. The proposed location of Well No. 1, Bear SWD Lease is approximately 4.4 miles Northwest of Pecos, Texas.

For the Socks SWD Lease, Well No. 1 (“Socks Well”), Reeves requests authority to dispose of 35,000 barrels per day of produced water (“bwpd”) and RCRA exempt waste, into the Bell Canyon, Cherry Canyon, and Brushy Canyon formations from a depth of 4,300 feet to 6,500 feet, with a maximum surface injection pressure at 2,150 pounds per square inch (“psig”). Reeves agreed to reduce its maximum daily disposal volume to 20,000 bwpd and its maximum surface injection pressure to 1,075 psig, equivalent to .25 psi per foot of depth.

For the Bear SWD Lease, Well No. 1 (“Bear Well”) Reeves requests authority to dispose of 35,000 barrels per day of produced water and RCRA exempt waste, into the Bell Canyon, Cherry Canyon, and Brushy Canyon formations from a depth of 4,325 feet to 6,500 feet, with a maximum surface injection pressure at 2,163 psig. Reeves agreed to reduce its maximum daily disposal volume to 20,000 bwpd and its maximum surface injection pressure to 1,081 psig, equivalent to .25 psi per foot of depth. Commission staff (“Staff”) has determined that both applications to be administratively complete.

Both applications were protested by Ysidro Renteria and Diamantina Renteria, who are adjacent landowners. The Renterias operate an RV park approximately 120 feet from the proposed Socks Well, and approximately 3/4ths of a mile from the proposed Bear Well. At the hearing, Mr. Renteria expressed his concern with the potential safety issues these wells may create for his patrons.

PDC Permian, Inc. (“PDC”), filed a protest as to the Bear Well application only. PDC is the operator of seven wells within one-half mile of the proposed Bear Well. Protestant contends that there is no industry need for the Bear Well and that the approval of the proposed well will result in waste and harm correlative rights. PDC also disputes that the Reeves has a Good Faith Claim to operate the well.

Based on the evidence in the record, the Administrative Law Judge and Technical Examiner (collectively “Examiners”) recommend the two applications be granted.

II. Notice and Jurisdiction

Sections 81.051 and 81.052 of the Texas Natural Resources Code provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating

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oil or gas wells in Texas, and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission.

Reeves published a notice of application for Socks Well in the *Pecos Enterprise*, a newspaper of general circulation in Reeves County, Texas, on April 26, 2018, as required by SWR 9. Reeves published a notice of application for Bear Well in the same publication on May 10, 2018, as required by SWR 9. On or about those dates, Reeves also provided notice of the subject applications to the Reeves County Clerk, offset operators, and each affected person described in SWR 9.¹ The proposed injection wells are not within the corporate limits of a city or town.

On August 20, 2019, the Hearings Division of the Commission sent an individual Notice of Prehearing Conference (“Notice”) for each of the subject applications via first-class mail to Applicant and all affected persons setting a pre-hearing conference date of September 17, 2019 for Oil and Gas Docket No. 08-0320772 and September 18, 2019 for Oil and Gas Docket No. 08-0320752. The Notices contain (1) a statement of the time, place, and nature of the pre-hearing conference; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and rules involved; and (4) a short and plain statement of the matters asserted.² The pre-hearing conferences were held on September 17 and 18, 2019. Applicant and Protestants appeared and participated. The hearing on the merits was set for November 7 and 8, 2019 and the parties were provided notice. Applicant and Protestants appeared and participated in the hearing on the merits. Consequently, all parties received more than 10 days’ notice of the hearing and an opportunity for hearing.

III. Applicable Law

The Commission may grant an application for a disposal well permit under Texas Water Code § 27.051(b) and 16 Tex. Admin. Code § 3.46 may issue the permit if it finds:

- (1) that the use or installation of the injection well is in the public interest;
- (2) that the use or installation of the injection well will not endanger or injure any oil, gas, or other mineral formation;
- (3) that, with proper safeguards, both ground and surface fresh water can be adequately protected from pollution; and
- (4) that the applicant has made a satisfactory showing of financial responsibility if required by Section 27.073.³

¹ Ex. Nos. 4 & 14.

² See Tex. Gov’t Code §§ 2001.051, .052; 16 Tex. Admin. Code §§ 1.41, 1.42, 1.45, 3.46.

³ Section 27.073 of the Texas Water Code authorizes the Commission to require financial assurance in order to issue an injection well permit. Statewide Rule 78 does require financial assurance for operators of disposal wells. See, e.g., Tex. Admin. Code § 3.78(a)(6), (d), (g).

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IV. Discussion of the Evidence⁴

At the hearing, Carter N. Davis, Petroleum Engineer, and John W. Wilson, president of Wilson Systems and part owner of Reeves County SWD, LLC, appeared on behalf of Reeves to offer sworn expert testimony and to sponsor documentary evidence. Sara J. Davis, Regional Landman, and Collin M. Placke, Petroleum Engineer, appeared on behalf of PDC to offer sworn expert testimony and to sponsor documentary evidence. Mr. Ysidro Renteria appeared before the Commission *pro se* and offered sworn testimony and sponsored documentary evidence.

A. Applicant's Evidence

1. Application

The proposed Socks SWD Lease, Well No. 1, in the Reeves-Block 4 (Del. 4430) Field, Reeves County, Texas, would be a newly drilled injection well. Reeves proposed the following design and operation limitations:⁵

1. Drilled to a total depth of 6,550 feet;
2. Long string (7 - inch) set at 6,550 feet with top of the cement at 1,000 feet;
3. 4 1/2" tubing and a packer at 4,250 feet;
4. Surface casing (9 5/8-inch) to 2,350 feet, cemented to the surface;
5. Disposal interval of 4,300-6,500 feet, which includes the Bell Canyon, Cherry Canyon, and upper Brushy Canyon formations;
6. A maximum daily injection volume equal to 20,000 bwpd; and
7. A maximum surface injection pressure equal to 1,075 psig.

The proposed Bear SWD Lease, Well No. 1, in the Reeves-Block 4 (Del. 4430) Field, Reeves County, Texas, would be newly drilled injection well. Reeves proposed the following design and operation limitations:⁶

1. Drilled to a total depth of 6,550 feet;
2. Long string (7 - inch) set at 6,550 feet with top of the cement at 1,000 feet;

⁴ The hearing transcript in this case is referred to as "Tr. Vol. [volume 1 or 2], Pg.[page(s)], Ln. [line(s)]." Applicant's exhibits are referred to as Ex. No. in order they have been presented. Prefix "B" to the exhibit number stands for the Bear Well, and "S" for the Socks Well. Protestant's exhibits are referred to as *Protestant's Name* Exhibit No. in order they have been presented.

⁵ Ex. Nos. S-18 and S-21; Tr. Vol. 1, Pg. 104-5, Ln. 17-4.

⁶ Ex. Nos. B-2 and B-5; Tr. Vol. 1 Pg. 40-41, Ln. 23-18, and Pg. 33, Ln. 14-19.

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3. 4 1/2" tubing and a packer at 4,300 feet;
4. Surface casing (9 5/8-inch) to 2,450 feet, cemented to the surface;
5. Disposal interval of 4,325-6,500 feet, which includes the Bell Canyon, Cherry Canyon, and upper Brushy Canyon formations;
6. A maximum daily injection volume equal to 20,000 bwpd; and
7. A maximum surface injection pressure equal to 1,081 psig.

Originally, Reeves requested maximum daily disposal volume of 35,000 bwpd, with a maximum surface injection pressure at 2,150 psig for the Socks Well, and 35,000 bwpd, with a maximum surface injection pressure at 2,163 psig for the Bear Well.⁷ However, the Underground Injection Control Section ("UIC Section") requested that Reeves amend its applications due to the seismic events in the area of the proposed wells.⁸ Reeves agreed to reduce its maximum daily disposal volume for each well to 20,000 bwpd and its maximum surface injection pressure to 1,075 psig and 1,081 psig for the Socks and Bear well respectively. Reeves also agreed to perform a step-rate test and measure the initial bottom hole pressure for both wells prior to injection.⁹

a. Geology and Area of Review

The proposed disposal zone for Socks and Bear wells is in the Delaware Mountain Group that includes the Bell Canyon, Cherry Canyon, and Brushy Canyon.¹⁰ Statewide Rule 3.46(e)(1) provides:

Except as otherwise provided in this subsection, the applicant shall review the data of public record for wells that penetrate the proposed disposal zone within a 1/4 mile radius of the proposed disposal well to determine if all abandoned wells have been plugged in a manner that will prevent the movement of fluids from the disposal zone into freshwater strata. The applicant shall identify in the application any wells which appear from such review of public records to be unplugged or improperly plugged and any other unplugged or improperly plugged wells of which the applicant has actual knowledge.¹¹

Reeves performed a 1/4-mile and 1/2-mile area of review study of active and plugged wells surrounding each of the proposed wells. Reeves's witness, Mr. Carter N. Davis, petroleum engineer and consultant, presented the review studies. The 1/4-mile area of review for the Socks Well shows a single wellbore, Well T-45H, Strong Fundamental A Lease.¹² Well T-45H is a producing well from an interval in the Wolfcamp

⁷ Ex. Nos. B-2 and S-18.

⁸ Ex. Nos. B-3 and S-19.

⁹ Ex. Nos. B-4 and S-20.

¹⁰ Tr. Vol. 1, Pg. 27, Ln. 20-22, and Pg. 93, Ln. 20-21; Ex. Nos. B-2 and S-18.

¹¹ 16 Tex. Admin. Code § 3.46(e)(1).

¹² Ex. No. S-26.

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formation. Mr. Davis testified that this well is cased and cemented such that the proposed injection interval for the Socks Well is isolated from the wellbore and could not serve as a possible conduit for the injected fluid.¹³ Mr. Carter also identified wells in the 1/2-mile radius from the proposed Socks Well¹⁴. This area shows two additional producing wells, one operated by Centennial Resource Production, LLC and the other operated by PDC. All operators within half-mile radius from the proposed Socks Well have been notified as required by Statewide Rule 46.¹⁵

Mr. Davis also presented 1/4-mile and 1/2-mile area of review studies for the Bear Well. The 1/4-mile area of review for the Bear Well shows two active and one inactive well, all of which operated by PDC.¹⁶ The evidence shows that PDC filed Form W3-A, an intent to plug, for the inactive Well No. 1, Yost Trust Lease, on July 8, 2019.¹⁷ The inactive well used to produce from the Delaware formation and is the lone reason why the subject application was filed under Statewide Rule 46.¹⁸ The two producing wells, Well No. 1H, Lost Saddle 45 Lease, and Well No. 1H, Lost Saddle 46 Lease, are producing from the deeper Wolfcamp formation. These producing wells are cased and cemented across the proposed injection interval of the subject application and could not serve as a possible conduit for the injected fluid. The 1/2-mile area of review for the proposed Bear Well shows one injection well and four additional producing wells operated by PDC.¹⁹ The injection well, Well No. 1, SBHES Pecos Lease, has been transferred from PDC to Waterbridge Texas Operating LLC (“Waterbridge”) effective May 30, 2019.²⁰ All operators within half-mile radius from the proposed Bear Well have been notified as required by the Statewide Rule 46.²¹

Mr. Davis further presented a cross section that extends from Southwest through Bear Well and then North through the Socks Well.²² The cross section shows the proposed injection interval and corresponding correlation on the well logs. The correlations displayed the Castile anhydrite section situated immediately above the top of the requested disposal interval.²³ Mr. Davis proceeded to offer his expert opinion on the presence of the lower confining interval, stating that the fluids injected in the proposed interval will stay within the interval.²⁴

b. Public Interest

Reeves analyzed current water production within a 10 and 25-mile radius around the proposed wells.²⁵ The analysis shows continuous increase in the number of drilling

¹³ Ex. No. S-24, Tr. Vol. 1, Pg. 112, Ln. 12-13.

¹⁴ Ex. No. S-25.

¹⁵ Tr. Vol. 1, Pg. 113, Ln. 11-19.

¹⁶ Ex. No. B-8.

¹⁷ Ex. No. B-8.

¹⁸ Tr. Vol. 1, Pg. 64-5, Ln. 19-15.

¹⁹ Ex. No. B-9.

²⁰ Ex. No. B-10

²¹ Tr. Vol. 1, Pg. 63, Ln. 10-15.

²² Ex. No. B-12.

²³ Tr. Vol. 1, Pg. 76, Ln. 22-25.

²⁴ Tr. Vol. 1, Pg. 77, Ln. 11-21 and Pg. 128, Ln. 3-9.

²⁵ Ex. Nos. 32 and 33.

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permits issued in the four-county area of Reeves, Ward, Loving, and Winkler Counties, with significant increase in drilling activity since 2017. Within ten miles of the proposed wells, the Applicant testified to 58, 224, and 285 drilling permits issued in 2016, 2017, and 2018, respectively.²⁶ Through October 2019, there were 203 drilling permits issued and 11 active drilling rigs operating within ten miles of the wells as of the date of the hearing.²⁷ In March 2018 the average fracture treatment volume per well in the four-county area was 240,000 bbls.²⁸ Mr. Davis also used the Form W-10, *Oil Well Status Report* data for the wells drilled in the-county area to estimate their total water production.²⁹ According to Mr. Davis, water production in the 25-mile area of review increased from 600,000 barrels per day at the beginning of 2019 to over 5 million barrels per day in July.³⁰ Mr. Davis concluded from this data that that the observed increase in development of oil and gas resources in the area resulted in an increased need to dispose of associated frac flowback and produced water in the analyzed area.³¹

Mr. John Wilson, owner of several oil and gas companies operating in west Texas, including part owner of Reeves County SWD, LLC, offered further testimony on disposal need in Reeves County based upon personal experience with operations on the Reeves 43 Lease Well No. 1 located approximately one mile from the Bear Well. This is a disposal well operated by Reeves County SWD, LLC that is currently operating at full capacity.³² As the operator of the Well No. 1, Reeves 43 Lease, Mr. Wilson maintained that he has been forced to turn away customers due to lack of capacity at this site.³³ He further testified to his belief that this suggests a need for additional disposal capacity in the area of the proposed wells.

c. Protection of Useable Quality Water Aquifers

For the Socks Well, the Commission's Groundwater Advisory Unit ("GAU") determined that the Base of Usable Water Quality ("BUWQ") at the proposed location is from the land surface to a depth of 1,400 feet. The water-bearing strata from the land surface to a depth of 1,400 feet, as well as the Rustler Formation, which is estimated to occur from 1,800 - 2,200 feet, must be protected. The Base of Underground Sources of Drinking Water ("BUSDW") is estimated to occur at a depth of 2,300 feet at the site of the referenced well.³⁴ For the Socks Well Reeves proposes to run 9 5/8-inch casing to 2,350 feet, cement it back to surface and then run 7-inch string to 6,550 feet, with top of cement at 1,000 feet.³⁵

For the Bear Well, the GAU determined that the BUWQ at the proposed location is from the land surface to a depth of 1,350 feet. The water-bearing strata from the land surface to a depth of 1,350 feet, as well as the Rustler Formation, which is estimated to

²⁶ Tr. Vol. 1, Pg. 137, Ln. 12-19.

²⁷ Ex. No. 36.

²⁸ Ex. No. 35.

²⁹ Tr. Vol. 1, Pg. 147-8, Ln. 19-7.

³⁰ Ex. No. 37; Tr. Vol. 1, Pg. 149, Ln. 2-6.

³¹ Tr. Vol. 1, Pg. 150, Ln. 15-25 and Pg. 149, Ln. 13-22.

³² Tr. Vol. 1, Pg. 157, Ln. 4-5; Ex. No. 39.

³³ Tr. Vol. 1, Pg. 159, Ln. 13-15.

³⁴ Ex. No. S-23.

³⁵ Ex. No. S-21.

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occur from 1,900 - 2,300 feet, must be protected. The USDW is estimated to occur at a depth of 2,400 feet at the site of the referenced well.³⁶ For the Bear Well Reeves run 9 5/8-inch casing to 2,450 feet, cement it back to surface and then run 7-inch string to 6,550 feet, with top of cement at 1,000 feet.³⁷

d. Financial Assurance

Reeves has an active Form P-5 Organization Report. As required by Statewide Rule 78, Reeves demonstrated financial responsibility in the form of a \$25,000 cash deposit.³⁸

B. Protestant's Evidence

a. Mr. and Mrs. Renteria

Ysidro Renteria testified to his concerns about the safety of Reeves's nearby operations. Mr. Renteria is the owner of an RV Park approximately 120 feet from the proposed Socks Well. Another Reeves disposal facility that is located approximately one-half mile from Mr. Renteria's home was recently struck by lightning. According to Mr. Renteria, this caused his house to rattle perceptibly.³⁹ Mr. Renteria offered three photographs of the explosion resulting from the lightning strike, which showed extensive and substantial damage to the facility.⁴⁰ Since the RV park is only 120 feet away, Mr. Renteria stated his belief that a lightning strike at the proposed Socks Well could potentially endanger the patrons and residents of his RV park. In addition to these safety concerns, Diamantina Renteria testified that the proposed wells could potentially threatened the supply of drinking and farming water in the area.⁴¹

b. PDC Permian, Inc.

The protest of PDC Permian, Inc. is limited to the Bear Well. PDC is the operator of 7 existing wells in the half-mile radius from the proposed Bear Well, and a leasehold operator in approximately 13,000 net acres in the proximity of the proposed well.⁴² PDC contends that, (i) there is no industry need for the proposed well; (ii) if approved, the well will cause waste and harm correlative rights; and (iii) Reeves does not have a good faith claim to dispose into the proposed injection interval.

Mr. Collin Placke, petroleum engineer, testified for PDC that there are 22 active disposal wells within seven miles of the proposed Bear Well with a total permitted capacity of over 552,000 bwpd.⁴³ Mr. Placke testified that ten additional disposal wells have been approved by the Commission within seven miles of the proposed wells, though they not

³⁶ Ex. No. B-7.

³⁷ Ex. No. B-5.

³⁸ Ex. No. B-14.

³⁹ Tr. Vol. 2, Pg. 12, Ln. 23-25.

⁴⁰ Renteria Exhibits 1, 2, and 3.

⁴¹ Tr. Vol. 2, Pg. 14, Ln. 12-21.

⁴² PDC Exhibit 2 and 7; Tr. Vol. 2, Pg. 25, Ln. 5-8.

⁴³ PDC Exhibit 12; Tr. Vol. 2, Pg. 54. Ln. 6-9.

yet drilled or completed.⁴⁴ The approved disposal capacity of those permitted wells is an additional 235,000 bwpd.⁴⁵ PDC maintains that the disposal volumes reported for the active disposal wells within seven miles of the Bear Well have never exceeded 40% aggregate capacity in a given year.⁴⁶

PDC asserts that the number of drilling permits in Reeves County has steadily declined in the past year.⁴⁷ According to PDC, economic conditions are forcing more operators to focus on cash flow as opposed to production growth. Less development and fewer new drills equates to less water needing to be disposed of and less need for additional commercial disposal wells.⁴⁸ PDC also contends that while the volumes of water that are used for frac operations in the area may be high, this does not directly correlate with actual volumes that require disposal. PDC, like other operators in the area, recycles up to 75% of the water produced during completion to be treated and reused for frac operations as opposed to being immediately disposed.⁴⁹ According to Mr. Placke, Reeves has failed to account for any volumes of water that will be reused or recycled in its public need analysis. PDC maintains that declines in production and drilling permits⁵⁰ coupled with excess disposal capacity⁵¹ clearly demonstrates that there is no evidence of industry need for the Bear Well.

PDC further claims that injection into the Bear Well will result in increased bottomhole pressures and injection formation pressures, which in turn will result in increased drilling hazards for new oil and gas producing wells.⁵² Since PDC has plans for future development of oil and gas producing wells in the area⁵³, it maintains that drilling through an active saltwater disposal zone will force PDC to run a 4-string instead of 3-string casing design.⁵⁴ Running 4-string casing due to an increased formation pressure has a potential to increase well construction costs by \$500,000-\$700,000, add rig time due to drilling delays, limiting production casing size from 5.5" to 4.5", reduce hydraulic stimulation rates and effectiveness which may degrade the well's EUR, and creating an inefficient manufacturing process.⁵⁵

PDC is leasehold operator in approximately 13,000 net acres in the proximity of the Bear Well.⁵⁶ That acreage includes rights to the Delaware formation in Section 46 where Bear Well proposed to dispose fluids.⁵⁷ The shallow rights to the Delaware formation, in which the Bear Well is proposed to inject fluids into, are currently unleased.⁵⁸ According to PDC, Reeves failed to provide an oil and gas lease or any evidence of the

⁴⁴ PDC Exhibit 13; Tr. Vol. 2, Pg.

⁴⁵ Tr. Vol. 2, Pg. 63-3, Ln. 20-4.

⁴⁶ PDC Exhibit 14.

⁴⁷ PDC Exhibit 19.

⁴⁸ Tr. Vol 2, Pg. 81-2, Ln. 18-6.

⁴⁹ Tr. Vol. 2, Pg. 86, Ln. 1-16.

⁵⁰ PDC Exhibit 12.

⁵¹ PDC Exhibit 14.

⁵² PDC Exhibit 20 and 21.

⁵³ PDC Exhibit 19, Tr. Vol 2, Pg. 83, Ln. 3-9.

⁵⁴ PDC Exhibit 22; Tr. Vol. 2, Pg. 92, Ln. 2-19.

⁵⁵ PDC Exhibit 23; Tr. Vol. 2, 95-97.

⁵⁶ Tr. Vol. 2, Pg. 25, Ln. 5-8.

⁵⁷ Tr. Vol. 2, Pg. 25, Ln. 20-25.

⁵⁸ Tr. Vol. 2, Pg. 31, Ln. 24-25.

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right to use the proposed injection interval which is productive of oil or gas, and therefore the Bear application should be denied.

V. Examiners' Analysis of the Evidence

The Examiners conclude that the evidence demonstrates that Reeves's proposed injection wells meet the requirements of the Texas Water Code and Statewide Rule 46.

A. Protection of Oil, Gas and Geothermal Resources

The evidence presented demonstrates that the proposed injection wells will be drilled, completed, and operated in a manner that will not endanger or injure any oil, gas, or geothermal resource, as required by the Texas Water Code and SWR 46. According to the evidence, the Castile anhydrite section at roughly 4,350 feet going up to 2,000 feet will act as an upper confining interval, while the lower Brushy Canyon along with the upper part of the Bone Springs will represent the lower confining layer.⁵⁹ The Examiners maintain that there is no conduit that would allow injected fluids to migrate outside of the proposed injection zone.

PDC expressed concerns that the approval of Bear Well would result in waste and harm correlative rights. PDC plans for future development of 28 oil and gas producing wells within the one-half mile radius of Bear Well.⁶⁰ The planned development is in the Wolfcamp formation, which is below the proposed injection well.⁶¹ According to the protestant, injecting into Bear Well will increase bottomhole pressure, which in turn will result in increased drilling hazards, increased drilling time and cost, limit production casing size, and reduce hydraulic stimulation rates and effectiveness.

The Examiners agree that, as a general principle, higher formation pressures carry the potential for causing drilling hazards, resulting in longer drilling times and higher costs when developing deeper depths. Other than raising formation pressure as a potential concern, however, PDC did not present evidence sufficient to show that waste of hydrocarbons is likely to occur due to overpressure if the Bear Well is placed in operation. The Delaware Mountain Group is the preferred interval for injection disposal in this area. It is quite common to encounter higher pressures in the Delaware Mountain Group and this has not prevented wells from being drilled into deeper formation. PDC conceded that substantial volumes of water have been injected into the Delaware Mountain Group near their leasehold in the area of review, including water produced from PDC wells.⁶² There was no indication in the record, however, that any wells previously drilled by PDC or neighboring producers required a protection casing string. In addition, given the fact that pressure tends to dissipate over time and distance from its source, it is possible that PDC may not experience high pressure effects while drilling through the Delaware Mountain

⁵⁹ Ex. No. B-12.

⁶⁰ PDC Exhibit 7.

⁶¹ Tr. Vol. 2, Pg. 37-8, Ln. 20-3.

⁶² Tr. Vol. 2, Pg. 128, Ln. 23 – Pg. 129, Ln. 5.

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Group in the vicinity of the proposed Bear Well, as those planned wells may be drilled much later in time or further away for the Bear Well.

Historic production from the Delaware Mountain Group, which is the proposed injection interval for the Bear Well, is minimal. Both proposed wells were filed as Statewide Rule 46 applications because there is one well, the Yost Trust Lease Well No. 1, that is listed as a producer in the proposed injection zone within two miles of the Bear Well.⁶³ The Yost Trust Lease well has been inactive for over one year, and the operator of the well, PDC Permian, Inc., filed Form W3-A on July 8, 2019, with the intention of plugging the well.⁶⁴ Accordingly, it is unlikely that the proposed injection operations will harm potential production from the Delaware formation or affect the correlative rights of PDC.

B. Protection of Ground and Surface Fresh Water

The evidence presented demonstrates the wells will be operated in a manner that will adequately protect ground and surface fresh water from pollution. At the proposed location for injection Well No. 1, Socks SWD Lease, the base of UQGW is estimated to occur at approximately 1,400 feet, with the Rustler Formation occurring from 1,800 - 2,200 feet, and the Base of Underground Sources of Drinking Water at approximately 2,300 feet.⁶⁵ The water-bearing strata will be protected by the surface casing installed to a depth of 2,350 feet, which is 50 feet below the base of water bearing zone, and cemented to the surface.⁶⁶

Similarly, at the proposed location for Well No. 1, Bear SWD Lease, the base of UQGW estimated at approximately 1,350', with the Rustler Formation occurring from 1,900 - 2,300 feet and the Base of Underground Sources of Drinking Water at approximately 2,400 feet, will be adequately protected by the surface casing set 50 feet below the base of the deepest water zone and cemented to the surface.⁶⁷

There are no plugged and abandoned wells in the half-mile radius from either of the subject wells. All active wells within one half mile of the proposed wells are cemented and cased such that they will not become a conduit for injected fluids to leave the permitted injection interval.

C. Financial Responsibility

Reeves has an active Form P-5 Organization Report. As required by Statewide Rule 78, Reeves demonstrated financial responsibility in the form of a \$25,000 cash deposit.⁶⁸

⁶³ Ex. No. B-8.

⁶⁴ Tr. Vol. 1, Pg. 64, Ln. 22-24.

⁶⁵ Tr. Vol 1, Pg. 109, Ln. 14 – Pg. 110, Ln. 5.

⁶⁶ Ex. No. S-21.

⁶⁷ Ex. No. B-7 and B-5.

⁶⁸ Ex. No. 20.

D. Public Interest

Section 27.051 of the Texas Water Code requires that the use or installation of a proposed injection well or facility be in the “public interest.”⁶⁹ Neither Chapter 27 of the Water Code nor Statewide Rule 9 defines the term, “public interest,” however. In the absence of a statutory definition, the Commission is tasked with interpreting the meaning of “public interest” in the Water Code.⁷⁰ Because traffic, noise, dust, smells and other generalized matters of public concern are outside the Commission’s jurisdiction, the focus of a “public interest” analysis in this context is limited to matters related to oil and gas production, i.e., an “industry need” to prevent waste of hydrocarbons caused by excessive disposal costs in a particular area.⁷¹ If an operator does not have reasonable access to safe disposal options for produced water, additional costs must be incurred or producing wells must be shut in. “Industry need” is demonstrated when it is shown that the economic life of a producing well will be extended, and more hydrocarbons produced, if a proposed facility would allow operators in the area to reduce the expense of safe water disposal.

Evidence showing that excessive wait times at disposal facilities in a particular area are causing increases in disposal costs and lower hydrocarbon recovery is some evidence of industry need.⁷² There is also a recognized industry need for reliable access to safe disposal services.⁷³ Disposal system reliability has a direct impact on cost and the ability to produce hydrocarbons in a given area.⁷⁴ Evidence showing that an additional facility is needed to improve disposal system reliability during planned or unplanned service interruptions can also be considered as evidence of industry need.⁷⁵ The Commission has further recognized an applicant’s willingness to incur the expense of drilling and operating a disposal well based upon a factually supported market assessment of area industry need as evidence of public interest.⁷⁶ These demonstrations of industry need can be bolstered with evidence of industry support for the proposed facility in the form of contracts for additional service or testimony from operators in the area.⁷⁷

PDC protested the application for the Bear Well based on alleged lack of industry need. PDC claims that there is a surplus of disposal capacity in the area of the proposed Bear Well, with 22 active disposal well in the 7-mile radius.⁷⁸ Those 22 wells have disposal capacity of approximately 550,000 bwpd. The cumulative permitted capacity of 10 additional disposal wells that have been approved by not yet drilled is 235,000 bwpd.⁷⁹

⁶⁹ Tex. Water Code §27.051(b)(1).

⁷⁰ See *Railroad Comm’n v. Citizens for Safe Future*, 336 S.W.3d 619, 625 (Tex. 2011).

⁷¹ See *Id.*

⁷² See, e.g., Oil and Gas Docket No. 06-0273122, *Application of Chireno Disposal, LLC*, Examiners’ Proposal for Decision (10-10-2012) p. 6 (adopted by Commission).

⁷³ Oil and Gas Docket No. 01-0282833, *Application of MKS Servs.*, Examiners’ Report and Proposal for Decision (10-30-13) p. 6 (adopted by Commission).

⁷⁴ *Id.*

⁷⁵ *MKS Servs* at 6.

⁷⁶ Oil and Gas Docket No. 08-0289657, *Application of Lotus LLC*, Examiners’ Proposal for Decision (1-27-2015) p. 12 (accepted by Commission).

⁷⁷ *Chireno Disposal* at 6.

⁷⁸ PDC Exhibit 12.

⁷⁹ PDC Exhibit 13.

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PDC further asserts that the number of drilling permits in the area has been steady declining since 2018.⁸⁰ PDC claims that there is an increasing tendency among oil and gas producers to recycle water produced during completion,⁸¹ which in turn reduces the need for disposal capacity.

The Examiners agree that there is sufficient permitted disposal capacity to address the current needs of oil and gas operators within seven miles of the proposed Bear Well. However, 10 miles is the generally accepted reasonable limit for the transportation of produced salt water. Restricting the area of review to seven miles from the proposed well leaves out more than half of the area that could reasonably be serviced by an additional facility. In addition, proof of excess disposal capacity in the area of review is not proof that the proposed well is not in the public interest.⁸²

Evidence submitted by Reeves demonstrates significant additional drilling activity within ten miles of the proposed well. Eleven active drilling rigs were operating in this area in October 2019. Drilling activity within 25 miles of the proposed well is expected to continue at a substantial rate. 203 drilling permits were issued in the first 10 months of 2019 alone. PDC's own plans for future development include 28 oil and gas wells to be drilled within one mile from the Bear Well. Based upon its review of the current market for disposal capacity in the area, Reeves is willing to incur the expense of drilling and operating the Bear Well.

Further, Reeves presented evidence tending to show that it is not currently able to provide reliable disposal service to all of its existing customers in the area. The Reeves Lease Well No. 1 is located one mile from the proposed Bear Well and is currently injecting at its permitted capacity. Long wait times for trucks seeking to dispose of produce water have been observed at this facility and customers have been turned away when capacity is reached. An additional well is needed by Reeves to provide reliable disposal services to its customers, which have included PDC from time to time. Providing more reliable disposal service will reduce disposal costs for Reeves's customers and prevent waste of recoverable hydrocarbons. Accordingly, Reeves provided evidence sufficient to show that there is industry need for the proposed wells in this area.

Mr. and Mrs. Renteria protested both Applications due to concerns about lightning strikes and the potential deleterious effect of disposal operations on surface and groundwater. As the owners of an RV park approximately 120 feet from the proposed Socks Well, their concern is not only for their own safety, but the safety of the RV Park residents and patrons. The Examiners note that the prevention of a lightning strike does not fall within the requirements of the Texas Water Code or Rule 46. In spite of this, Reeves recognized a need to protect the wells and disposal facilities against lightning strikes. Reeves stated that it will make commercially reasonable efforts to install lightning

⁸⁰ PDC Exhibit 19.

⁸¹ Tr. Vol. 2, Pg. 86, Ln. 1-16.

⁸² See Discussions of Law Practice and Procedure (1992) p. 67.

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prevention equipment and perhaps relocate the Socks well further away from the RV park to mitigate any possible risk.

Mr. and Mrs. Renteria did not offer any evidence tending to show that the drilling or operation of the proposed wells would result in the pollution of surface or groundwater. Taking the body of evidence into consideration, the Examiners find that the proposed Well No. 1, Bear SWD Lease, as well as Well No.1, Socks SWD Lease, are in the public interest.

E. Good Faith Claim

According to PDC, Reeves failed to provide an oil and gas lease or any evidence of the right to use the proposed injection interval, which is productive of oil or gas, and therefore the Bear Well application should be denied. PDC's position is based on the principle that in order to inject into a formation productive of oil or gas, one must have a good faith claim to the minerals in the formation or must have permission from a party holding such rights. In support of this argument, PDC cites to findings of fact and conclusions of law accepted by the Commission by final order in Oil and Gas Docket No. 06-0264337 ("*Wilson*").⁸³ In *Wilson*, the Commission found that the applicant, who was the surface owner of the tract on which the well was located, did not have a good faith claim to inject water into a productive reservoir because it did not secure the consent of the mineral interest owner.⁸⁴ However, PDC misapplies the legal reasoning employed by the examiners in this prior proceeding.

In Texas, the owner of the surface holds the right to possess the physical space in which minerals may be located.⁸⁵ The right of the surface owner to use this physical space does not include the right to unreasonably interfere with the mineral lessee's ability to access the minerals, however.⁸⁶ The mineral owner in *Wilson* protested the application because the proposed injection operations would "water out" all of the minerals on the tract where the well was located without his consent.⁸⁷ This contributed to a finding by the examiners that disposal of water into that well would endanger or injure the mineral formation that was proposed as the injection interval.⁸⁸

Here, PDC is not the owner of any mineral interest in the proposed injection interval of the tract the Bear Well is proposed to be located. In addition, historic production from

⁸³ *Application of Don H. Wilson, Inc.*, Examiners' Proposal for Decision (7-13-2010) p. 5 (adopted by Commission).

⁸⁴ *Id.*

⁸⁵ *Lightning Oil Co. v. Anadarko E&P Onshore, LLC*, 520 S.W.3d 39, 49 (Tex. 2017). See also *Humble Oil & Refining Co. v. West*, 508 S.W.2d 812 (Tex. 1974, reh'g denied) (characterizing the surface owner's interests as ownership of the reservoir storage space, as the surface owner's property, and those ownership rights include the geological structures beneath the surface and distinguishing between the earth surrounding hydrocarbons and earth embedded with hydrocarbons); and *Springer Ranch, Ltd. v. Jones*, 421 S.W.3d 273, 283 (Tex. App.—San Antonio 2013, no pet.) (stating ownership of the hydrocarbons does not give the mineral owner ownership of the earth surrounding those substances).

⁸⁶ See *Lightning Oil Co.*, 520 S.W.3d at 49 ("[A]n unauthorized interference with the place where the minerals are located constitutes a trespass as to the mineral estate only if the interference infringes on the mineral lessee's ability to exercise its rights.").

⁸⁷ *Application of Don H. Wilson, Inc.*, Examiners' Proposal for Decision (7-13-2010) p. 5 (adopted by Commission).

⁸⁸ See *id.*

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the proposed injection interval is minimal. As noted above, the Yost Trust Lease Well No. 1 is the only well currently listed as producing from the Delaware Mountain Group within two miles of the proposed Bear Well. The Yost Trust Lease well has been inactive for over one year, and PDC, as operator of record, intends to plug it. Accordingly, it is unlikely that the proposed injection operations will harm potential production from the Delaware Mountain Group. Under the legal precedents cited above, therefore, Reeves only needs the consent of the surface owner of the tract on which the Bear Well is to be located to establish a factually supported claim based upon a recognized legal theory to the reservoir space within the proposed injection interval.

At the hearing, Reeves produced a copy of a recorded surface lease from the surface owner of the tract on which the Bear Well is to be located.⁸⁹ Accordingly, the Examiners find that Reeves has a good faith claim right to operate the proposed wells.

VI. Findings of Fact and Conclusions of Law

The Examiners recommend that the Commission adopt the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. On April 26, 2018, Reeves published notice of the application for Well No. 1, Socks SWD Lease in the *Pecos Enterprise*, a newspaper of general circulation in Reeves County, Texas.
2. On May 10, 2018, Reeves published notice of the application for Well No. 1, Bear SWD Lease in the *Pecos Enterprise*, a newspaper of general circulation in Reeves County, Texas.
3. On May 29, 2018, Reeves provided notice of the application for Well No. 1, Socks SWD Lease, and Well. No. 1, Bear SWD Lease, to the Reeves County Clerk, operators of wells within 1/2-mile of the proposed locations, and all other affected persons, as required by 16 Tex. Admin. Code § 3.46.
4. On April 12, 2019, Mr. Ysidro Renteria, and adjacent landowner, filed with the Commission a protest of the applications for Well No. 1, Socks SWD Lease, and Well No. 1, Bear SWD Lease.
5. On June 11, 2018, PDC Permian, Inc. filed with the Commission a protest of the application for Well No. 1, Bear SWD Lease.
6. On May 3, 2019, Reeves filed a request for hearing on Statewide Rule 46 for a Permit to dispose of oil and gas waste by injection into a reservoir productive of oil or gas. On June 7, 2019, Injection-Storage Permits Unit (“UIC”) proceeded to forward Reeves’s hearing request on Statewide Rule 46. The application is

⁸⁹ Reeves Ex. 44.

administratively complete, and the hearing was requested because the application is protested.

7. On August 20, 2019, the Hearings Division of the Commission sent separate Notice of Prehearing Conference (“Notice”) for each application via first-class mail to Applicant and all affected persons setting a pre-hearing conference date of September 17, 2019 for Oil and Gas Docket No. 08-0320772, and September 18, 2019 for Oil And Gas Docket No. 08-0320752. The Notices contain (1) a statement of the time, place, and nature of the pre-hearing conference; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and rules involved; and (4) a short and plain statement of the matters asserted. The pre-hearing conferences were held on September 17 and 18, 2019. Applicant and Protestants appeared and participated. The hearing on the merits was set for November 7 and 8, 2019 and the parties were provided notice. Applicant and Protestants appeared and participated in the hearing on the merits. Consequently, all parties received more than 10 days’ notice of the hearing and an opportunity for hearing.
8. The proposed location for Well No. 1 on Socks SWD Lease is located approximately 4.9 miles Northwest of Pecos, Texas, which is the nearest town in Reeves County. The proposed location of Well No. 1, Bear SWD Lease is approximately 4.4 miles Northwest of Pecos, Texas.
9. The proposed Well No.1, Socks SWD Lease will be completed and operated as follows:
 - a) Drilled to a total depth of 6,550 feet;
 - b) Long string (7 - inch) set at 6,550 feet with top of the cement at 1,000 feet;
 - c) 4 1/2" tubing and a packer at 4,250 feet;
 - d) Surface casing (9 5/8-inch) to 2,350 feet, cemented to the surface;
 - e) Disposal interval of 4,300-6,500 feet, which includes the Bell Canyon, Cherry Canyon, and upper Brushy Canyon formations;
 - f) A maximum daily injection volume equal to 20,000 barrels of water per day (“bwpd”); and
 - g) A maximum surface injection pressure equal to 1,075 pounds per square inch (“psig”).
10. The proposed Well No.1, Bear SWD Lease will be completed and operated as follows:
 - a) Drilled to a total depth of 6,550 feet;

- b) Long string (7-inch) set at 6,550 feet with top of the cement at 1,000 feet;
 - c) 4 1/2-inch tubing and a packer at 4,300 feet;
 - d) Surface casing (9 5/8-inch) to 2,450 feet, cemented to the surface;
 - e) Disposal interval of 4,325-6,500 feet, which includes the Bell Canyon, Cherry Canyon, and upper Brushy Canyon formations;
 - f) A maximum daily injection volume equal to 20,000 bwpd ; and
 - g) A maximum surface injection pressure equal to 1,081 psig.
11. On February 1, 2019, the UIC Section requested that Reeves amend its applications due to the seismic events in the area of the proposed wells. On April 17, 2019, Reeves agreed to reduce its maximum daily disposal volume for Well No. 1, Socks SWD Lease, from 35,000 bwpd to 20,000 bwpd and its maximum surface injection pressure from 2,150 psig to 1,075 psig. On the same date Reeves agreed to reduce its maximum daily disposal volume for Well No. 1, Bear SWD Lease, from 35,000 bwpd to 20,000 bwpd and its maximum surface injection pressure from 2,163 psig to 1,081 psig. Reeves also agreed to perform a step-rate test and measure the initial bottom hole pressure for both wells prior to injection.
12. GAU determined the base of usable quality ground water at the proposed location of Well No. 1, Socks SWD Lease, to occur at a depth of approximately 1,400'. The water-bearing strata from the land surface to a depth of 1,400', as well as the Rustler Formation, which is estimated to occur from 1,800 - 2,200 feet, must be protected in accordance with GAU letter No. 196040. The Base of Underground Sources of Drinking Water at this location is estimated to occur at a depth of 2,300 feet.
13. GAU determined the base of usable quality ground water at the proposed location of Well No. 1, Bear SWD Lease, to occur at a depth of approximately 1,350 feet. The water-bearing strata from the land surface to a depth of 1,350 feet, as well as the Rustler Formation, which is estimated to occur from 1,900- 2,300 feet, must be protected in accordance with GAU letter No. 196031. The Base of Underground Sources of Drinking Water at this location is estimated to occur at a depth of 2,400 feet.
14. The proposed injection wells will be sufficiently cased and cemented to protect groundwater resources.
15. A 1/4-mile area review from the Socks Well shows Well T-45H, Strong Fundamental A Lease, as the only well within that distance. The 1/2-mile radius area of review for the proposed Socks Well shows two additional producing wells,

- one operated by Centennial Resource Production, LLC and the other operated by PDC.
16. A 1/4-mile area review from the Bear Well shows two active wells and one inactive well, all of which operated by PDC. The 1/2-mile area of review map for proposed Bear Well shows four additional producing wells operated by PDC, and one injection well.
 17. There are no plugged and abandoned wells in the half-mile radius from either of the subject wells.
 18. Historic production from the proposed injection interval within two miles of the proposed wells is minimal.
 19. Only one well, the Yost Trust Lease Well No. 1, is listed as a producing well in the proposed injection zone within two miles of the proposed Bear well. The Yost Trust Lease well has been inactive for over one year, and PDC intends to plug the well.
 20. The use or installation of the proposed injection wells will not endanger or injure any oil, gas, or other mineral formation.
 21. Within ten miles of the proposed wells, 58, 224, and 285 drilling permits were issued in 2016, 2017, and 2018, respectively. Eleven active drilling rigs were operating within 10 miles of the proposed wells in October 2019.
 22. The Reeves Lease, Well No. 1, operated by Reeves, is located one mile from the proposed Bear Well. The Reeves Lease facility has reached its permitted capacity, affecting the ability of Reeves to provide reliable disposal services to its customers.
 23. Based upon its review of the current market for disposal capacity in the area, Reeves is willing to incur the expense of drilling and operating the proposed wells.
 24. Installation of the proposed well would extend the economic life of nearby wells and prevent waste of recoverable hydrocarbons for Ruger's customers that are currently experiencing long wait times and intermittent access to disposal services.
 25. The use or installation of the proposed injection wells is in the public interest.
 26. Reeves has an active Form P-5 Organization Report.
 27. Reeves has made a satisfactory showing of financial responsibility required by Tex. Water Code § 27.073 in the form of a \$25,000 cash deposit.
 28. PDC is not the owner of any mineral interest in the proposed injection interval of the tract the Bear Well is proposed to be located.

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29. Reeves produced a copy of a recorded surface lease from the surface owner of the tract on which the Bear Well is to be located.

Conclusions of Law

1. Resolution of the Application is a matter committed to the jurisdiction of the Commission. Tex. Nat. Res. Code § 81.051.
2. All notice requirements have been satisfied. 16 Tex. Admin. Code § 3.46.
3. Reeves holds a good faith claim right to operate the proposed wells.
4. Reeves met its burden of proof, and the subject applications satisfied the requirements of Chapter 27 of the Texas Water Code and Commission Statewide Rule 46.
 - a. The use or installation of the proposed injection wells is in the public interest. See Texas Water Code § 27.051(b)(1); 16 Tex. Admin. Code § 3.46.
 - b. The proposed injection well will not endanger oil, gas, or geothermal resources or cause the pollution of freshwater strata unproductive of oil, gas, or geothermal resources. Texas Water Code § 27.051(b)(2); 16 Tex. Admin. Code § 3.46.
 - c. With proper safeguards, both ground and surface fresh water can be adequately protected from pollution, Texas Water Code § 27.051(b)(3); 16 Tex. Admin. Code § 3.46.
 - d. Reeves has made a satisfactory showing of financial responsibility. Texas Water Code § 27.051(b)(4); 16 Tex. Admin. Code § 3.46.


VII. Examiners' Recommendation

Based on the evidence presented at the hearing, the Examiners recommend approval of the Applications of Reeves County SWD, LLC for commercial permits to dispose of oil and gas waste by injection into the Cherry Canyon, Brushy Canyon and Bell Canyon Formations, porous formations productive of oil and gas, for the Socks SWD Lease, Well No. 1, and Bear SWD Lease, Well No. 1, in the Reeves Block-4 (Del. 4430) Field, in Reeves County, Texas.

Respectfully submitted,



Petar Buva
Technical Examiner

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Ezra A. Johnson
Administrative Law Judge