STATE OF LOUISIANA
OFFICE OF CONSERVATION
BATON ROUGE, LOUISIANA

December 19, 2014

ORDER NO. 1577-1

Pursuant to the authority of the Commissioner and the Office of Conservation under the laws of the State of Louisiana, and particularly La. R.S. 30:6(F), and after a public hearing held under Docket No. 14-0626, in St. Tammany Parish, Louisiana, on November 12, 2014, upon the application of the Town of Abita Springs ("Abita Springs") and the Concerned Citizens of St. Tammany following legal publication of notice and notice provided to the Town of Abita Springs, the Concerned Citizens of St. Tammany ("CCST"), Helis Oil and Gas ("Helis" or "permit applicant") , St. Tammany Parish, St. Tammany Parish President Patricia Brister, the City of Covington, the village of Folsom, the Town of Madisonville, the City of Mandeville, the Town of Pearl River, the City of Slidell, the Village of Sun, Senator Jack Donahue, and Representative Timothy Burns, the following decision with incorporated order (and attached permit) is issued and is reasonably necessary to conserve the natural resources of the State, to prevent waste as defined by law, and to otherwise carry out the provisions of the laws of this State.

La. R.S. 30:6 provides that "[u]pon receiving the request [for a hearing] the commissioner shall promptly call a hearing. After the hearing, and with all convenient speed and in any event within thirty days after the conclusion of the hearing the commissioner shall take whatever action he deems appropriate with regard to the subject matter." Given the unique nature of this hearing, and the limited time in which a decision shall be made, the Commissioner of Conservation found it reasonable to adapt the unitization hearing rules contained in the Louisiana Administrative Code (LAC 43, Part. XIX, § 3901, *et. seq*) and prescribed the rules for the hearing conducted on November 12, 2014.

As a result of the hearing, the testimony received, and all statements received in association with the hearing, the Commissioner makes the following findings of fact:[1]

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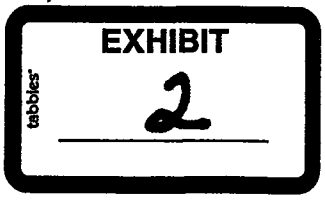
[1] It should be noted that much "technical" information was submitted during the statement period subsequent to the actual date of the hearing. While this information was reviewed and considered in preparing this decision, under the rules, this information is unsworn testimony wherein the opposing side was unable to cross-examine said testimony. Further, under LAC 43, Part. XIX, § 3929 (F), the rule actually states that "statements shall not include technical matters which have not been presented by sworn testimony." Therefore, while these statements were considered (in addition to what the rule literally requires), they were not considered to be on a level equal to that of sworn testimony. Also, it should be noted that counsel for Abita Springs/CCST have made statements that the permit applicant's exhibits were not provided until the night of the hearing. Since the hearing at issue is administrative in nature, it is understood that the rules of evidence are relaxed in administrative proceedings. Further, given the fact that Abita Springs/CCST initiated its opposition to the manner in which the well was to be drilled, Abita Springs/CCST had adequate notice that



FINDINGS OF FACT:

The Commissioner finds as follows:

1. That experts for Helis and Abita Springs/CCST have agreed that the deepest freshwater in the area of the above-referenced drilling permit is between 2300 and 3400 feet below the surface.[2]

2. Uncontroverted testimony established that the target zone (Tuscaloosa Marine Shale) is approximately 13000 feet below the surface and approximately 1.8 miles below the deepest freshwater aquifer in this area.[3]

3. Uncontroverted testimony established that approximately 1700 oil and gas wells have been previously drilled through the area referred to as the Southern Hills Aquifer system in search of oil and gas.[4]

4. Uncontroverted testimony established that over 76 oil and gas wells have been drilled in St. Tammany Parish.[5]

5. Uncontroverted testimony established that there are no structures within a one-mile radius of the proposed drill site.[6]

6. Uncontroverted testimony was presented along with aerial photography to support that the property at issue has been a pine tree farm for at least the past thirty (30) years. [7]And further that the property at issue remains under a long-term timber lease now operated by Weyerhaeuser.[8] Written statements were also made by counsel for the landowner which also supports these facts.

7. Testimony was presented stating that the proposed bottom-hole location for the well is 12773 feet below the surface (approximately 2.4 miles).[9]

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exactly what the permit applicant proposed (See Conservation Exhibit 1) and had the opportunity to cross-examine the permit applicant's witnesses and/or put on evidence supporting their position.

[2] Transcript, page 91, 130, 235-236, 239. Helis' experts testified around 3400 feet, while Abita Springs/CCST's expert, Mark Quarles, testified that the deepest he had seen in St. Tammany was about 2300 feet for a ten mile radius of the proposed project. While the testimony used the term "deepest freshwater," this Office acknowledges that for the purposes of this testimony the term "deepest freshwater" is synonymous with "Base of USDW [Underground Source of Drinking Water]" which is located at the base of the sand unit that contains the lowermost USDW with an isolating shale beneath it.

[3] Transcript, page 91. Abita Springs/CCST's expert did no calculations on depth of pipe between target zone and deepest freshwater Transcript, page 239, 240.

[4] Transcript, page 92, 164.

[5] Transcript, page 92.

[6] Transcript, page 94.

[7] Transcript, page 95. Abita Springs/CCST do not appear to contest this fact. It should be noted that counsel for Abita Springs/CCST did ask Helis' expert, Bill Dale of he had a degree in Forestry or in land use planning. The testimony presented relied on aerial photography and the witnesses experience with the same, not upon educational qualifications. Transcript, page 164.

[8] Transcript, page 98.

[9] Transcript, page 99. Abita Springs/CCST do not appear to contest this fact.

8. Uncontroverted testimony supports that the chosen well site is at an optimum location to efficiently and economically drain the unit and to minimize the environmental impact and disruption or inconvenience to the public.[10]

9. Expert testimony supports that hydraulic fracturing is necessary to complete the proposed well so that it will have enough flow to produce commercially.[11]

10. Expert testimony supports that hydraulic fracturing would only be necessary if initial vertical well results show promising data.[12]

11. The proposed well plan includes three concentric strings of casing/pipe, one inside the other, each with about a one-half inch thick steel wall casing/pipe with cement grouting between each of these independent concentric strings.[13]

12. The proposed well would be drilled using "closed-loop solids control systems, and there will be no pits, no earthen pits, either lined or unlined. Steel tanks will be used in the closed-loop solids control system with all the waste mud and rock cuttings being generated being removed as they are drilled."[14]

13. The proposed well is to be constructed with surface casing to a depth of 4000 feet.[15]

14. Helis has stated that it intends to secure water (for hydraulic fracturing purposes) from private ponds, and not scenic bayous, or groundwater wells.[16]

15. Expert testimony supports that the proposed drilling plan uses the best available and safest technology.[17]

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[10] Transcript, page 99. Abita Springs/CCST presented no testimony to contest this fact. While no testimony was presented to the contrary, Abita Springs/CCST (via unsworn statements submitted after the hearing) do appear to contest whether this technology is the best method of obtaining the mineral reserves along with questioning the proposed location of the well at issue. See Footnote 1. Further, it should be noted that Abita Springs/CCST's expert, Mark Quarles, stated that he was a licensed geologist, but who offered no opinions on the reserves beneath the property at issue or the optimum location for the well at issue.

[11] Transcript, page 113. Expert for Abita Springs and the Concerned Citizens of St. Tammany, Mark Quarles, testified that he is not a petroleum engineer. Transcript, page 239. While no testimony was presented to the contrary, Abita Springs/CCST (via unsworn statements submitted after the hearing do appear to contest whether this technology is the best method of obtaining the mineral reserves along with questioning the proposed location of the well at issue. *See* Footnote 1.

[12] Transcript, page 116. Abita Springs/CCST do not appear to contest this fact, aside from the unsworn statements referenced above.

[13] Transcript, pages 117, 143, 144. As noted above, Abita Springs/CCST presented no engineering evidence, nor did their expert provide any testimony to controvert this fact. See Footnote 12 above.

[14] Transcript, page 114.

[15] Transcript, page 115, 130. As noted above, Abita Springs/CCST presented no engineering evidence, nor did their expert provide any testimony to controvert this fact.

[16] Transcript, page 133,184 - 186.

[17] Transcript, page 118. Abita Springs/CCST offered no testimony to controvert the things contained in Helis' drilling plan. The testimony of Abita Springs/CCST's witness, Mark Quarles, provided generalized concerns as to the

16. Expert testimony was presented to explain how hydraulically fracturing the Tuscaloosa Marine Shale in this area would not inadvertently contaminate the fresh water supply and that this this "absolutely can't happen here," explaining in his professional opinion that it is physically impossible to create enough pressure to hydraulically fracture outside of a 300 foot radius surrounding the horizontal well bore.[18] Further, if the hydraulic fracture encounters a sand unit, the fracture can continue no further through said sand unit.[19]

17. Expert testimony was presented to support that "every day 22.7 million gallons of water are extracted from the Southern Hills Aquifer and the different layers of the Southern Hills Aquifer.[20]

18. Expert testimony and statements submitted by the public suggest that Louisiana's regulations are not sufficient to protect the environment from hydraulic fracturing activities.[21] Expert testimony also supports that the Office of Conservation created additional regulations in response to a report referenced in both testimony and statements (STRONGER report).[22]

19. On cross-examination, and in many statements submitted by the public, it was requested that Helis put its proposed plans (for the proposed well and any future wells) into a legally enforceable document.[23]

20. In reviewing the public's statements, testimony from both parties, and independently confirming the same, there are many water wells located in St. Tammany Parish. There were many statements submitted that hydraulically fracturing the Tuscaloosa Marine Shale in this area will inadvertently contaminate the fresh water supply.

21. In reviewing the public's statements and those submitted by Abita Springs/CCST the following additional issues and concerns were raised in opposition to the permit application filed by Helis:[24]

    a. La. Const. Art. IX, § 1, which states that "[t]he natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people. The legislature shall

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possibility for well failures generally (citing to environmental studies from other states), the weakness of Louisiana's regulations, and other concerns not specifically related to the proposals contained in the project at issue.

[18] Transcript, page 141, 142.

[19] *Id.*

[20] Transcript, page 215.

[21] Transcript, page 209-214

[22] Transcript, page 233.

[23] Transcript, page 175-182, 192.

[24] This items contained in this list have been summarized and/or paraphrased for purposes of brevity. As this information was included in the statements themselves, some of the things listed are simply statements and may or may not include accurate information.

enact laws to implement this policy." And that the permit should be denied for this reason.

b. La. Const. Art. I, § 4, which states that "[e]very person has the right to acquire, own, control, use, enjoy, protect, and dispose of private property. This right is subject to reasonable statutory restrictions and the reasonable exercise of the police power." And that granting the permit is a "taking" of everyone else in St. Tammany's property.
c. La. R.S. 33:109.1 which states that "Whenever a parish or municipal planning commission has adopted a master plan, state agencies and departments shall consider such adopted master plan before undertaking any activity or action which would affect the adopted elements of the master plan."
d. That the project at issue is not zoned for the drilling of an oil and gas well, pursuant to St. Tammany Parish's zoning ordinance. And that St. Tammany Parish's zoning authority stems from La. Const. Art. VI, § 17.
e. That there is faulting in St. Tammany Parish.
f. The project's proximity to neighborhoods, schools, etc.
g. The possibility of potential accidents, casing failure, explosions, fire, toxic gas releases, foul smells, crime, earthquakes, as well as a plethora of other religious, social, and psychological issues.
h. Additional traffic, large trucks, and/or heavy equipment on nearby roads and the increased potential for automobile accidents.
i. The increased possibility of air pollution, noise,
j. The increased possibility of chemicals leeching into streams and/or the water table.
k. That the landowner who owns the property at issue owns large amounts of land in St. Tammany Parish.
l. That one successful well will lead to many more wells.
m. That this project will result in financial loss to the community and potentially impact real estate values negatively.
n. The composition of the chemicals used in hydraulic fracturing and those contained in drilling muds.
o. That the soil contained in St. Tammany Parish is unstable (i.e. that it is comprised of marsh and/or flood plains).
p. That the State may not collect adequate or any severance taxes from production that results from the current project. And that taxes may increase as a result of the necessity of more fire department training and equipment.
q. That the Southern Hills Aquifer system is the primary source of water for St. Tammany Parish and that the aquifer is a "sole source aquifer."
r. That Louisiana law and the Office of Conservation's regulations are insufficient.
s. That the federal government's laws and/or regulations are insufficient.
t. The possibility of earthquakes.
u. That the permit applicant should provide bonding to cover any unforeseen damages to be caused.
v. That accidents and other negative consequences have occurred due to hydraulic fracturing operations and/or similar activities in other states.
w. That EPA studies, and/or studies from other states may indicate environmental concerns associated with hydraulic fracturing.

x. That the project will require large amounts of water.
y. That the Deepwater Horizon/BP oil spill occurred in 2010 and oil spills are a concern.
z. That the beauty and children of St. Tammany Parish should be considered.
aa. That the permit applicant has had legal issues involving other regulatory agencies in the past. And that the permit applicant has recently changed its business format to a limited liability company.
bb. That the Louisiana Legislative Auditor conducted a recent audit of the Office of Conservation related to enforcement, inspections, and orphaned wells.
cc. That the Office of Conservation should enforce the regulations and/or consider issues within the regulatory jurisdiction of agencies including but not limited to the United States Army Corps of Engineers, the United States Environmental Protection Agency, the United States Fish and Wildlife Service, the Louisiana Department of Environmental Quality, the Louisiana Department of Wildlife and Fisheries.
dd. That no other community has objected to other projects like this community has objected to this one.
ee. That the Office's mission statement requires denial of the permit.
ff. That this permit decision should be postponed pending the resolution of St. Tammany Parish's declaratory judgment action.
gg. That the permit applicants will escape liability before they can be sued for any damages caused.
hh. That the issues contained in the documentary entitled "Split Estate" should be considered.
ii. That the project site sits atop a wetland habitat.

22. In reviewing the public's statements and those submitted by Helis Oil and Gas the following additional issues and concerns were raised in support of the permit application filed by Helis:[25]

a. La. Const. Art. I, § 4, which states that "[e]very person has the right to acquire, own, control, use, enjoy, protect, and dispose of private property. This right is subject to reasonable statutory restrictions and the reasonable exercise of the police power." And that denying the permit will be a "taking" of Helis' property and mineral rights as well as those of the surface owner.
b. The project increases the possibility of economic development, increased employment, increased governmental revenues, taxes, ad valorem taxes, infrastructure, more money for education, and more money for health care.
c. That risks may only occur if wells have a shallow casing that is not properly cemented.
d. That there are no shallow methane accumulations in St. Tammany Parish.
e. That the well at issue will be drilled using three concentric layers of pipe with three concentric layers of cement as well.
f. That the occurrence of earthquakes is rare in Louisiana.
g. That there are over one thousand oil and gas wells already drilled through the Southern Hills Aquifer.

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25 *Id.*

h. That there are interstate pipelines that traverse St. Tammany Parish.
i. That becoming dependent on foreign oil is dangerous.
j. That the Northshore Business Council, which is comprised of sixty businesses and thousands of employees, supports the permit application.
k. That the West St. Tammany Chamber of Commerce, which is comprised of thousands of members and over thirty thousand employees, supports the permit application.
l. That the permit applicant has been operating in the state for over eighty years and has received many commendations.
m. That St. Tammany Parish zoning regulations are preempted by La. R.S. 30:28 (F) and Title 30 of the Louisiana Revised Statutes generally.
n. That this permit application exceeds regulatory requirements by having an extra string of casing.
o. That over 2700 wells have been safely hydraulically fractured in Louisiana.
p. That 35 wells have been safely hydraulically fractured in Tangipahoa Parish (which also sits above the Southern Hills Aquifer system).
q. That many of the chemicals in the fluids used in hydraulic fracturing are also found in ice cream, laxatives, toothpaste, hair color, IV fluids, laundry detergents, cosmetics, and household cleaners.
r. That the land at issue is open land and that this project will not cause undue inconvenience to anyone.
s. That a significant segment of the citizens believe that encouraging oil and gas exploration is not only good for the local economy, but also the state, and ultimately the nation.
t. That thousands of jobs in St. Tammany stem from the oil and gas industry and hundreds of millions of dollars flow into the state's budget.
u. That the Commissioner and Office of Conservation must follow the law and the regulations and that the project meets or exceeds all legal requirements.
v. That those in opposition to the permit have presented no credible information, data, or scientific studies in support of their position.
w. That there are 73 oil and gas wells already drilled in St. Tammany Parish.
x. That there are 124 oil and gas wells already drilled into or through the Tuscaloosa Marine Shale.
y. That the property at issue and large amounts of property surrounding the project site are subject to a ninety year timber lease.
z. That hydraulic fracturing is already occurring forty miles away in nearby parishes.
aa. That any potential risks of corrosion will only occur long after the hydraulic fracturing has occurred.

23. That some testimony presented at the hearing and written statements submitted addressed issues that are outside the scope of the Office of Conservation's legal authority. While the Office of Conservation considered all testimony and written statements, the decision below is limited only to the matters within the jurisdiction of the Office of Conservation and the scope of the hearing that was held pursuant to La. R.S. 30:6.

24. In reviewing the entirety of the record (including but not limited to the exhibits submitted at the hearing, the testimony, and the statements received after the hearing), there were no credible assertions made that the permit application was not in compliance with Conservation regulations.

25. In reviewing the entirety of the record (including but not limited to the exhibits submitted at the hearing, the sworn testimony, and the statements received after the hearing, there were no credible assertions made that the permit application was not in compliance with the Louisiana Constitution and/or Louisiana law, with the exception of the items listed below (which are addressed specifically in the reasons for decision):

    a. That La. Const. Art. IX, § 1 mandates permit denial.
    b. That granting the permit will be a "taking" under La. Const. Art. I, § 4.
    c. That St. Tammany Parish's zoning authority stems from La. Const. Art. VI, § 17 and that the Parish's zoning plan shall be considered pursuant to La. R.S. 33:109.1.

DECISION:

Permit Application Approved (as filed and supplemented by presentation at hearing), and in accordance with the supplemental conditions stated in the Order below.

REASONS:

Pursuant to the factual findings made above, the permit application as filed complies with the requirements set forth in the applicable regulations and law, and as supplemented at the public hearing (via testimony and evidence) exceeds the requirements contained in the applicable regulations and law.

However, while the permit application (as supplemented) meets or exceeds the regulatory requirements, in considering the concerns of the parish, one nearby city, and the general public, this permit application is approved in accordance with the additional measures included in the Order below. Since these measures were voluntarily offered by the permit applicant and are now part of the permit application, the permit application is approved.

While the qualifications of both side's witnesses were recognized and found to be experts before the Commissioner of Conservation, the educational background and work history of each expert was considered with regard to what each of these witnesses testified.

Uncontroverted expert testimony supports that the chosen well site is at an optimum location to efficiently and economically drain the unit and to minimize the environmental impact and disruption or inconvenience to the public. Expert testimony also supports that hydraulic fracturing is necessary to complete this well so that it will have enough flow to produce commercially.

That, <u>if</u> hydraulic fracturing is deemed necessary after the vertical well is drilled, the hydraulic fracturing will only occur approximately no less than 1.8 miles below the deepest freshwater aquifer

in this area. Further, there was uncontroverted expert testimony that it is unlikely that enough pressure could be generated to hydraulically fracture outside of a 300 foot radius surrounding the horizontal well bore and that if a hydraulic fracture encounters a sand unit, the fracture can continue no further through said sand unit.

This undoubtedly brings the issue back to the construction, engineering, and drilling of the vertical portion of the well, which has been designed to meet or exceed the regulatory requirements. Further, the well will be drilled using a closed-loop solids control system, which will maximize protection against the risks the associated with contamination from the actual drilling, and also maximize protection against the all risks associated with potential leeching, spills, or other risks associated with the usage of pits.

The final issues to be considered were the legal ones, namely those contained in Finding of Fact No. 26 (and the other full explanations and text cited in the individual factual findings above).

With regard to the duty contained in La. Const. Art. IX, § 1, in quoting the opposition to the permit application:

> First, have the potential and real adverse environmental effects of the proposed facility been avoided to the maximum extent possible? Second, does a cost benefit analysis of the environmental impact costs balanced against the social and economic benefits of the proposed facility demonstrate that the latter outweighs the former? Third, are there alternative projects which would offer more protection to the environment than the proposed facility without unduly curtailing non-environmental benefits? Fourth, are there alternative sites which would offer more protection to the environment than the proposed facility site without unduly curtailing non-environmental benefits? Fifth, are there mitigating measures which would offer more protection to the environment than the facility as proposed without unduly curtailing non-environmental benefits?[26]

For the reasons included below, this Office submits that the constitutional duty contained in La. R.S. IX, § 1 is the actual duty owed by the Office and that the "IT Factors" contained in *Save Ourselves*,[27] *Blackett*, and jurisprudence following the same are not applicable to permits to explore for and produce minerals beneath a given tract of land since the technology is established, the minerals are undisputedly beneath the location at issue, and the Office also routinely requires that additional mitigating factors be implemented on a case by case basis. However, since comments were made, and a public hearing was held, in taking each of these assertions, in turn, "First, have the potential and real adverse environmental effects of the proposed facility been avoided to the maximum extent possible? Here, the Office considered expert testimony provided at a hearing wherein the author of the text above was able to cross-examine all witnesses. In conducting the analysis noted above, the Office relied upon sworn expert testimony which supports that the project at issue is necessary to explore for and produce the minerals contained beneath the subject property. The potential adverse impacts of the well and the construction of the well pad necessary to drill the

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26 Citing to *Blackett v. La. Dept. of Envtl. Quality*, 506 So.2d 749, 754 (La. App. 1 Cir. 1987).

27 *Save Ourselves v. La. Envtl. Control Comm'n*, 452 So. 2d 1152 (La. 1984).

well (including but not limited to those expressed during the hearing and in written statements) were considered, and the Office concluded that the permit application as filed and as supplemented by the testimony and presentations made at the hearing, which meets or exceeds the minimum regulatory requirements, will have a potential impact on the environment, but that this potential impact is minimal given the steps that the permit applicant will be required to take in engineering, constructing, and drilling the subject well. Therefore, the Office finds that the permit application (as amended via testimony at the hearing) has addressed the potential and real adverse environmental effects and that these effects have been avoided to the maximum extent possible.

Next, "Second, does a cost benefit analysis of the environmental impact costs balanced against the social and economic benefits of the proposed facility demonstrate that the latter outweighs the former?" As mentioned above, the actions associated with drilling of an oil and gas well and potentially hydraulically fracturing the same may result in environmental impact costs. In reviewing the statements submitted and the testimony provided, this Office has found that the environmental impact costs associated with the current project are minimal, considering the mitigating factors discussed below and have been avoided to the maximum extent possible (as stated above). Further, while the actual environmental costs are minimal and have been avoided to the maximum extent possible, this Office (after reviewing thousands of pages of statements) has also considered the impact of the environmental costs associated with potential environmental impact costs that may or may not occur in the future, and finds that the potential social and economic benefits of the proposed facility outweigh not only the actual environmental costs but also the potential concerns raised by Abita Springs, CCST, and the general public.

Third, are there alternative projects which would offer more protection to the environment than the proposed facility without unduly curtailing non-environmental benefits? The Office relies upon the sworn and cross-examined expert testimony that the chosen well site is at an optimum location to efficiently and economically drain the unit and to minimize the environmental impact and disruption or inconvenience to the public.[28] Since the opposition has stated that alternate sites, technologies, or methods exist to explore for and produce the minerals beneath this landowners' property, but offered no testimony or evidence regarding the same, the Office could have considered the same if such testimony was presented at the hearing (which was initiated by the opposition). However, given the testimony of both sides and the institutional and technical knowledge held by the staff of the Office, there are no alternate technologies that offer more protection to the environment without unduly curtailing the non-environmental benefits.

Next, "Fourth, are there alternative sites which would offer more protection to the environment than the proposed facility site without unduly curtailing non-environmental benefits?" Expert testimony has established that there is a likelihood of minerals beneath the property at issue.[29] The Office has considered the same and decided that the permit applicants' plans are not only necessary to explore for and produce the minerals at issue, but that they meet or exceed the regulatory requirements

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[28] It should be noted that Abita Springs/CCST rely upon an affidavit of Mark Quarles submitted during the written statement period following the hearing. While an affidavit is surely a sworn statement, Mr. Quarles affidavit is not the equivalent of sworn testimony wherein the opposition party is afforded the opportunity to cross-examine said testimony. While these conclusions were considered, they were not given the same weight as the testimony of Mr. Quarles and the other witnesses that was subject to cross-examination and specific to the permit application at issue.

[29] *See* Conservation Docket No. 14-232, and the transcript testimony of Geologist Bill Dale in the current matter.

associated with protecting the environment. Further, as a matter of law, it is surely unreasonable to preclude this mineral lessee, and the landowner from exploring for and producing minerals on his property. In written statements submitted, the landowner (and adjacent landowners) has/have expressed support of the issuance of this permit. And finally, "Fifth, are there mitigating measures which would offer more protection to the environment than the facility as proposed without unduly curtailing non-environmental benefits?" The Office takes the position that state law and the applicable regulations protect the environment. While such is the case, the current permit will also include mitigating measures (above the regulatory requirements) as set forth in the Order portion of this document below, which undoubtedly offer more protection to the environment without unduly curtailing non-environmental benefits. Considering the same, this Office has chosen to grant the permit at issue since it does include these additional mitigating measures.

The next assertion is that granting the permit will be a "taking" of everyone else in St. Tammany's property under La. Const. Art. I, § 4. This proposition is without merit. In fact, if the permit applicant were to comply with Louisiana law and the applicable regulations and were denied the permit, the opposite would be true. While it is understood that some citizens of St. Tammany Parish view this as something that negatively impacts the beauty of St. Tammany Parish and property values, La. Const. Art. I, § 4 (A) states that [e]very person has the right to acquire, own, control, use, enjoy, protect, and dispose of private property." This includes Helis' right to acquire, own, control, use, enjoy, protect its mineral rights, and the surface owner's right to do the same.[30]

The final assertion is that St. Tammany Parish's zoning authority stems from La. Const. Art. VI, § 17 and that the Parish's zoning plan shall be considered pursuant to La. R.S. 33:109.1. As a preliminary matter, this Office does not dispute St. Tammany Parish's zoning authority, but it does question the issues involving St. Tammany Parish's zoning authority and that here it conflicts with general law (including but not limited to Titles 30 and 31 of the Louisiana Revised Statutes and the Civil Code). With regard to La. R.S. 33:109.1, it states "§109.1. Relationship between local master plans and the plans of the state and other political subdivisions. Whenever a parish or municipal planning commission has adopted a master plan, state agencies and departments shall consider such adopted master plan before undertaking any activity or action which would affect the adopted elements of the master plan." It is the Office's understanding that the area contained in the permit application are zoned "A-3," which is a zone "intended to provide a single-family residential environment on moderate sized lots which are served by central utility systems and other urban services."

In addressing this final assertion, as a preliminary matter, La. R.S. 33:109.1 states "Relationship between local master plans and the plans of the state and other political subdivision." While this is a legal issue currently being considered in *St. Tammany v. Welsh*, No. 631,370, 19th JDC, the Office submits that it has no "plans" aside from implementing the laws that Conservation is statutorily charged with implementing (including but not limited to Title 30 of the Louisiana Revised Statutes). While Conservation continues to take the position that La. R.S. 33:109.1 is not applicable to its regulatory authority and also that it is preempted by general law, given that this issue is currently in litigation, the Office finds it reasonable to consider St. Tammany Parish's zoning in reviewing this permit application before issuing the permit at issue (due to the existence of the above-referenced case). While the property is zoned "A-3" with the intent of providing a single family residential

[30] See Title 31 of the Louisiana Revised Statutes (Mineral Code), including but not limited to La. R.S. 31:8.

environment, the Office of Conservation found no portion of the zoning ordinance that expressly forbid a property owner from exploring for and drilling for the minerals located beneath his land. For this reason, this Office finds it unreasonable to preclude this mineral lessee, and the landowner from exploring for and producing on his property. At the hearing, there was uncontroverted testimony at the hearing supporting that the property at issue is subject to a long-term timber lease and is currently used as a commercial pine tree farm which appears to qualify as an "legal non-conforming use" under St. Tammany Parish's zoning regulations, since the property can only be used for "One Single Family Dwelling[s], ...Private Garages and Accessory Structures...Garage Apartments or Guest Houses under 1000 square feet of habitable floor space when the subject lot, parcel or tract is no less than one acre in area...Community Central Water Treatment, Well, and Storage Facilities...Household Agriculture...and Other uses which are similar and compatible with the allowed uses of the A4 Single Family Residential District as determined by the Director of Planning acting in the capacity of Zoning Administrator..." under the above-cited zoning ordinance.[31] Additionally, there was also uncontroverted testimony establishing that there are currently no structures within one mile of the site at issue.[32] Therefore, while the Office has considered such adopted master plan before undertaking "any activity or action which would affect the adopted elements of the master plan," the Office has decided that the issuance of the current permit remains necessary in accordance with the reasons and factual findings stated above.

Therefore, while the Office has considered the impact that the granting of this permit application may have on St. Tammany's zoning ordinance, the Office submits that: (1) it has no plans aside from implementing the laws and regulations which it is charged with implementing, (2) the zoning ordinance as applied results in a taking of the mineral rights attributable to the property at issue, (3) uncontroverted expert testimony supports that the chosen well site is at an optimum location to efficiently and economically drain the unit and to minimize the environmental impact and disruption or inconvenience to the public and that hydraulic fracturing is necessary to drill and complete this well so that it will have enough flow to produce commercially and further that there are no structures contained within one mile of the site at issue, (4) that the ordinance appears to be unconstitutional as applied to the current situation, and finally that (5) the ordinance and/or zoning authority of St. Tammany Parish appears to be both expressly and impliedly preempted by State law, and the jurisprudence interpreting the same.

ORDER:

NOW, THEREFORE IT IS ORDERED THAT:

1. That Helis' well permit application is approved, but only as supplemented by the testimony, exhibits, and presentation made at the public hearing.
2. In addition to the regulatory requirements, Helis is required to execute its plan as presented at the hearing, including but not limited to:
    a. Helis will drill the well using a "closed-loop solids control systems, and there will be no pits, no earthen pits, either lined or unlined. Steel tanks will be used in the closed-

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[31] Section 5.08 A-3 of the St. Tammany Parish Zoning Ordinance.

[32] It should be noted that while the property is zoned for single family residential purposes, given the testimony received at the hearing and the statements made by the landowner, it appears that the subject property will remain a timber farm and will not be used for "single family residential purposes" for the foreseeable future.

loop solids control system with all the waste mud and rock cuttings being generated being removed as they are drilled."

b. Helis will cement the intermediate casing from approximately 12000 to surface.[33]
c. Helis will restrict its acquisition of water (for fracking purposes) to surface water from private owner ponds that are not replenished by groundwater wells.[34]
    i. Prior to acquiring water, Helis shall provide information to the Office of Conservation to identify the proposed sources of water. The acquisition of water shall not commence until these sources are approved by the Office of Conservation.
d. Helis will provide full disclosure of the chemicals it uses to hydraulically fracture the well (if and when it is deemed necessary to hydraulically fracture the well).[35]
e. Helis will monitor groundwater, air, storm water, and noise and make any reports associated with such monitoring available to Conservation and the public.[36]
    i. Monitoring of air – Prior to commencing any drilling operations, provide a work plan satisfactory to the Office of Conservation for the monitoring of air quality on and near the site that identifies the sampling methods to be applied, the type of analysis to be conducted and the frequency of sampling and analysis. Additionally, drilling may not commence until the initial air samples have been analyzed and the results provided to the Office of Conservation.
    ii. Monitoring of storm water – Prior to commencing any drilling operations, provide a work plan satisfactory to the Office of Conservation for the construction of an onsite rainwater holding pond with dimensions no less than 50' x 50', including plastic lining and associated drainage ditches and dikes; and includes a monitoring plan for storm water that identifies the sampling methods to be applied, the type of analysis to be conducted and the frequency of sampling and analysis. Additionally, drilling may not commence until the rainwater holding pond and associated ditches and dikes have been installed.
    iii. Monitoring of groundwater – Prior to commencing any drilling operations, provide a work plan satisfactory to the Office of Conservation that provides for the installation onsite of at least three clusters of ground water monitoring wells, the identification of existing wells to be used for groundwater sampling and monitoring, a monitoring plan that identifies the sampling methods to be applied, the type of analysis to be conducted and the frequency of sampling and analysis. Additionally, drilling may not commence initial

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33 Transcript, page 117.
34 Transcript, page 133.
35 Transcript, page 136.
36 Transcript, page 145.

samples from all well have been analyzed and the results provided to the Office of Conservation.

iv. Monitoring of noise - Prior to commencing any drilling operations, provide a work plan satisfactory to the Office of Conservation for the methods of monitoring for noise, the standards to be applied for limits on noise and frequency of monitoring. Additionally, drilling may not commence a background noise level has been established through such monitoring method.

3. That the issuance of this Order does not relieve the permit recipient of the obligation to comply with any applicable Federal, State, or local permitting or regulatory requirements.

This Order shall be effective on and after December 19, 2014.

OFFICE OF CONSERVATION
OF THE STATE OF LOUISIANA

JAMES H. WELSH
COMMISSIONER OF CONSERVATION

Permit Enclosed
cc:

Helis Oil and Gas
Town of Abita Springs
Concerned Citizens of St. Tammany