

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

**APPLICATION OF SOLARIS WATER
MIDSTREAM, LLC FOR APPROVAL OF
SALT WATER DISPOSAL WELL,
EDDY COUNTY, NEW MEXICO.**

CASE NO. 20587

**REPLY IN SUPPORT OF SOLARIS MOTION
TO DISMISS UNTIMELY PROTEST
AND REMAND FOR ADMINISTRATIVE APPROVAL**

COMES NOW Solaris Water Midstream, by and through undersigned counsel of record, and hereby files its Reply in support of its Motion to Dismiss Untimely Protest and Remand for Administrative Approval.

In its response to Solaris' motion to dismiss NGL's protest as untimely, NGL does not deny that its protest was more on than 15 days after notice was properly published in the Carlsbad Current Argus on March 1, 2019. In fact, the protest was filed 60 days after notice was published. After NGL emailed its protest to the OCD, the OCD notified Solaris, by email to Ramona Hovey at Lonquist, &Co., LLC on May 16, 2019, that the protest had been received, with a copy of the email from NGL's counsel attached. (Exhibit 4, attached hereto). The email states that "if Solaris Water Midstream, LLC wishes for this application to be considered, they must either go to hearing or may be reviewed administratively if the protest is withdrawn as a result of a negotiated resolution with this party." (*Id.*). In order to be on the docket for the July 11, 2019 hearing, Solaris filed its Application for hearing on June 6, 2019, 3 weeks after receiving notice of the protest.

NGL makes a number of arguments that are not supported by the regulations and that do not excuse the fact that it filed a protest 60 days late. NGL implies that Solaris had some sort of

duty or requirement “to work out this issue with OCD prior to filing an application for hearing.” (NGL Response at 1). Nothing in the regulations supports this argument. NGL also complains that it did not receive notice from OCD that its protest was submitted outside the deadlines for protesting an administrative application. It is not the obligation of either Solaris or OCD to ensure that a protestant such as NGL files a timely protest. If a protestant wants its objection to be considered, it is required to meet the 15-day deadline set forth in 19.15.26.8.C(2) and (3) NMAC. Nothing in the regulations prevents Solaris from raising the issue of a late-filed objection as part of the requested administrative hearing. In notifying Solaris that a protest had been received, the OCD stated that Solaris could either request a hearing or negotiate a resolution with NGL. Solaris chose to have NGL’s protest resolved by means of a hearing, including the issue of the late-filed protest. It should be noted that NGL did not file a pre-hearing statement and therefore will not be presenting any technical testimony. Nor has NGL provided any information regarding the basis for its protest.

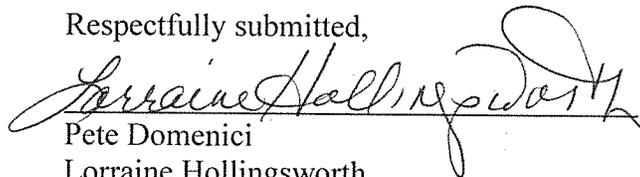
NGL also attempts to read ambiguity into the regulations where such ambiguity does not exist. NGL does not claim that it was entitled to notice by mailing. Therefore, the regulations regarding legal notice in the newspaper are applicable to this issue. Section 19.15.26.8.C(1)(d) requires the legal notice to state that “interested parties shall file objections or requests for hearing with the division within 15 days.” (emphasis added). The only logical and reasonable interpretation of “within 15 days” is within 15 days of the date on which the legal notice is published. NGL tries to tie the deadline for filing protests to OCD determining the application is “administratively complete” but this is not what the regulation states. Nor would such an interpretation make sense because there is no requirement for OCD to provide notice, either to the applicant or to a protesting party, that OCD has deemed an application “administratively

complete.” The words “administratively complete” do not even appear in Section 19.15.26.8.C. NGL, without any basis, argues for what is essentially an open-ended period of time to file protests, which is contrary to the plain language of the regulations.

Nor is there anything in the regulations that prevents Solaris from requesting a remand if the Hearing Examiner agrees to dismiss NGL’s protest. NGL argues that, once an applicant requests a hearing, there is no means whereby the matter can be remanded for administrative approval, claiming that once an applicant requests a hearing it “should be required to continue that path.” (NGL Response at 2). That position is simply not correct. Solaris had a previous application remanded for administrative approval, on the day of the hearing, based on the withdrawal of the only objection to the application that had been made. (*See* Case No. 20405, Roadrunner SWD #1). The current situation would be similar. If the Hearing Examiner agrees to dismiss NGL’s protest, the application would then be uncontested. There would be no reason for continuing with the hearing and it would be appropriate to remand the application for administrative approval.

WHEREFORE, Solaris Water Midstream, LLC, respectfully requests that NGL’s protest be dismissed and the Clara Allen SWD #1 application be remanded for administrative approval pursuant to 19.15.26.8.C.

Respectfully submitted,



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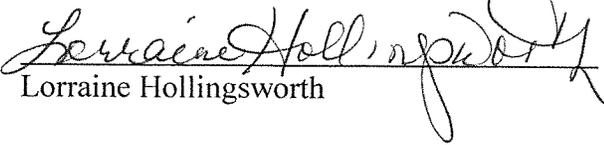
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Attorneys for Solaris Water Midstream, LLC

I hereby certify that the foregoing was served on counsel for NGL on July 9, 2019 via email to Deana M. Bennett at dmb@modrall.com.


Lorraine Hollingsworth

From: McMillan, Michael, EMNRD <Michael.McMillan@state.nm.us>

Sent: Thursday, May 16, 2019 9:12 AM

To: Ramona Hovey <ramona@lonquist.com>

Cc: Deana M. Bennett <dmb@modrall.com>; Jones, William V, EMNRD <WilliamV.Jones@state.nm.us>; Goetze, Phillip, EMNRD <Phillip.Goetze@state.nm.us>; Lowe, Leonard, EMNRD <Leonard.Lowe@state.nm.us>; Murphy, Kathleen A, EMNRD <KathleenA.Murphy@state.nm.us>

Subject: Notification of Protest for Application to Inject -:Brantley 22 SWD Well No. 1 NGL

RE: Brantley 22 SWD #1 (API 30-015-Pending; Admin. Appl. No [pLEL1912738358](#)) Unit H; Sec 22, T26S, R27E, NMPM, Eddy County

Ms. Ramona Hovey

OCD was notified by NGL Water Solutions Permian, LLC. that they are protesting this application. This party has been identified as affected persons for the location being considered for the application. You are being notified that if Solaris Water Midstream, LLC wishes for this application to be considered, they must either go to hearing or may be reviewed administratively if the protest is withdrawn as a result of a negotiated resolution with this party. The application will be retained pending resolution of the protest. Please continue to provide OCD with information regarding the standing of this application. Please me call with any questions on this matter.

Contact for NGL Water Solutions Permian, LLC

Deana M. Bennett, Esq.

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[External email]



McMillan, Michael, EMNRD

From: Deana M. Bennett <dmb@modrall.com>
Sent: Wednesday, May 15, 2019 3:26 PM
To: McMillan, Michael, EMNRD; Goetze, Phillip, EMNRD; Jones, William V, EMNRD
Subject: [EXT] NGL Protests of Solaris Applications

Hello,

I am submitting protests on behalf of NGL for the following Solaris applications:

- Lisa Turtle SWD #1
- Simms 35 SWD #1
- Clara Allen SWD #1
- Capt Call SWD #1
- Brantley 22 SWD #1

Thanks much,

Deana M. Bennett

 MODRALL SPERLING

Deana M. Bennett

Lawyer

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