

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

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**UPON THE PETITION OF**

AmeriCulture, Inc.,  
Petitioner,

**AND CONCERNING**

Los Lobos Renewable Power, LLC,  
Respondent.

**CASE NO. 14948**

**MOTION FOR CONTINUANCE**

COMES NOW AmeriCulture, Inc., and moves the Oil Conservation Division for a continuance of the hearing corresponding to the above case number, currently scheduled for February 7, 2013, be continued to March 7, 2013, or 30 days from the exchange of confidential information between Petitioner and Respondent, which ever is later, for the following reasons:

1. **Petitioner requires counsel.** On January 16, 2013 Respondent requested a continuance from January 24<sup>th</sup>, 2013 to February 7<sup>th</sup>. Petitioner agreed to the suggested continuance pending the confirmation of availability of counsel. Prior to said confirmation, the Division reset the hearing to February 7<sup>th</sup>. Petitioner learned on January 29<sup>th</sup> that its intended counsel was at least temporarily unavailable for the purposes of the hearing. Petitioner immediately approached alternative counsel on January 30<sup>th</sup> and thus Petitioner has diligently sought counsel during the time available. Despite willingness of alternative counsel to represent Petitioner, counsel has not verified ability to represent Petitioner. Said verification is anticipated shortly. Furthermore, in the absence of counsel, Petitioner would have to be represented by its expert witness, AmeriCulture President Damon Seawright, thereby arguably calling into question important expert testimony by said expert witness. The requested continuation should provide Petitioner a reasonable opportunity to obtain counsel and to present important expert testimony by Damon Seawright without said testimony being the subject of arguments unrelated to the substance of the testimony.
2. **Petitioner requires competent counsel.** The case is complex and once Petitioner secures substitute counsel, counsel will require additional time to prepare for the hearing and otherwise develop other necessary components to effectively represent Petitioner.
3. **Petitioner requires additional expert witnesses.** Petitioner, Respondent and the Division attended a settlement conference on January 18<sup>th</sup>. During the conference Respondent indicated that

(1) they intended to inject a greater quantity water than applied for in their application and (2) that they reserved the right to utilize wet cooling tower technology, which involves the injection of chemicals into groundwater, should financial necessity arise, despite repeated prior representations that they would not use wet cooling towers. These previously withheld disclosures may require Respondent to have additional expert witnesses. Respondent will diligently and promptly endeavor to obtain necessary expert witnesses, who will require sufficient time to make a complete study of the matter involved, and gather such data as he or she will need to testify in the case. Petitioner anticipates that a March 7<sup>th</sup> hearing date should allow expert witnesses to be identified and to prepare an expert opinion.

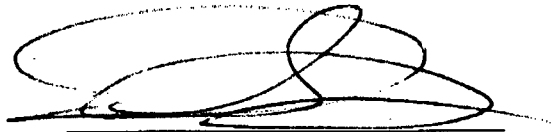
4. **Complex factors in the case make the time previously allotted insufficient.** The case is extremely complex as it involves, among additional issues, (1) the potential to cause waters of the State of New Mexico to exceed applicable water quality standards, (2) the potential waste of geothermal resources, (3) the possible impairment of correlative rights of the Respondent, (4) the application to use well 55-7 as an injection well despite the fact that well 55-7 is not permitted as an injection well under the July 2009 discharge permit issued Respondent because well 55-7 was not advertized according to 20.6.2.3108 NMAC, is of an intermediate depth forbidden by the OCD in ¶23 of the Order of the Division dated May 29, 2009, pre-existed the discharge permit by more than two decades and was not constructed according to discharge permit specifications, and is in direct hydraulic connection with Respondents State Well #1, (4) the fact that the July 2009 Discharge Permit, although allowing under certain conditions the injection of cooling tower chemicals into three future injection wells, was fashioned to prevent the migration of said chemicals into Respondent's shallow water wells. Respondent disclosed at the January 18<sup>th</sup>, 2013 settlement conference that they wish to retain the right to inject cooling tower chemicals into an injection well in hydraulic connection with Respondent's State Well #1 which strictly violates the July 2009 injection permit, (5) the failure of Respondent to provide technical data to Protestant that would demonstrate that the proposed production well 45-7 and the proposed injection well(s) tap the same aquifer, (6) the fact that Respondent deliberately and intentionally introduced contaminants to regional groundwater without permit and has, after more than a year since the contamination event, failed to remediate contaminated water used by Petitioner despite having identified, according to Respondent's affiliate, a suitable remediation technology. As a consequence of Respondent's reckless contamination of shallow groundwater and failure to respond appropriately to protect Petitioner's business, Petitioner reasonably believes Respondent will in the future continue to circumvent permitting and recklessly contaminate groundwater, and (7) the attempted silencing of Respondent's testimony by depriving Respondent of a hearing through speculative and erroneous correspondence to Division counsel David Brooks in a letter dated January 28<sup>th</sup>. Respondent has a history of attempting to

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prevent Petitioner's testimony at an OCD hearing, having attempted to legally intimidate Protestant in 2008 shortly before the December 1, 2008 WQCC hearing that led to the Respondent's discharge permit.

5. **Need to procure evidence** . Certain evidence material to the issues in the hearing has been until the present time unavailable to Petitioner because Respondent is the custodian of evidence and has prevented disclosure to the Division of said evidence under the guise of confidentiality. Such evidence consists of geological, geophysical, chemical and hydrological data of subject wells. Such evidence and facts are relevant and material to the issues of the hearing because Respondent must demonstrate that the production and injection zones are the same and that the injection wells will prevent excursion of injected fluids into a resource other than the source resource. Petitioner is willing to return or destroy confidential information provided by the Respondent but because Respondent has legally threatened Petitioner in the past, Petitioner is reluctant to enter into a confidentiality agreement that it believes would be used by Respondent to enter into an abuse of process suit against petitioner.

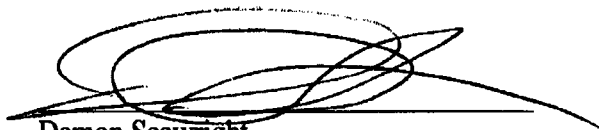
Respectfully submitted,



Damon Seawright  
President  
AmeriCulture, Inc., Petitioner  
25 Tilapia Trail  
Animas, NM 88020  
(505)670-5220

#### CERTIFICATE OF SERVICE

A copy of the foregoing has been sent via email and via regular, U.S. Mail, postage prepaid to: Michelle Henry, Esq., 225 E. DeVargas, Santa Fe NM 87501 and via email, via fax (to 505-476-3462) and via regular, U.S. Mail, postage prepaid to: Ms. Cheryl Bada, Esq., Attorney/Hearing Examiner, 1220 S. St. Francis Dr., Santa Fe, NM 87505 as this 4th day of February, 2013.



Damon Seawright  
President  
AmeriCulture, Inc., Petitioner