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

APPLICATIONS OF SELECT WATER SOLUTIONS, LLC FOR APPROVAL OF SALTWATER DISPOSAL WELLS, LEA COUNTY, NEW MEXICO.	**CASE NOS. 25547–25548, 25899 & 25900**

SELECT WATER SOLUTIONS, LLC'S RESPONSE IN OPPOSITION TO PILOT WATER SOLUTIONS SWD, LLC'S MOTION FOR RECONSIDERATION

Select Water Solutions, LLC ("Select") files this Response in Opposition to Pilot Water Solutions SWD, LLC's ("Pilot") Motion for Reconsideration of Order Granting Select's Motion to Strike Pilot's Entry of Appearance and Objection, and Request for Leave to Intervene Under 19.15.4.11(C) NMAC ("Motion for Reconsideration). As demonstrated below, Pilot's motion is not well taken and should be denied.

I. STANDARD FOR RECONSIDERATION

Reconsideration is an extraordinary remedy, warranting relief only if the movant shows: (1) an intervening change in controlling law; (2) new evidence previously unavailable despite due diligence; or (3) the need to correct clear error or prevent manifest injustice. *See Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000); *Ankeney v. Zavaras*, 524 F. App'x 454, 458 (10th Cir. 2013). None of those circumstances exist here.

Courts have emphasized that "late revelation of the evidence does not mean that it was previously unavailable, it was simply tardy." *Derrick v. Standard Nutrition Co*., No. CIV 17-1245 RB/SMV, 2019 WL 2717150, at *3 (D.N.M. June 28, 2019). Nor is evidence "new" when it has long been in the moving party's possession. *Spring Creek Exploration & Prod. Co. v. Hess Bakken*

Inv., II, LLC, 887 F.3d 1003, 1024-25 (10th Cir. 2018) (affirming district court's denial of a motion to reconsider).

"Clear error," likewise, means a decision that is arbitrary, capricious, whimsical, or manifestly unreasonable. *Thymes v. Verizon Wireless, Inc.*, No. CV 16-66 KG/WPL, 2016 WL 9777487, at *2 (D.N.M. Sept. 28, 2016) (quoting *Wright ex rel. Tr. Co. of Kan. v. Abbott Labs., Inc.*, 259 F.3d 1226, 1236 (10th Cir. 2001)). "Manifest injustice" requires more than prejudice to the movant; it demands a showing that the prior ruling was fundamentally unfair in light of governing law. *Id.* (quoting *Smith v. Lynch*, 115 F. Supp. 3d 5, 12 (D.D.C. 2015)). A party may not use a motion for rehearing or reconsideration to reargue issues already decided or to submit evidence that could have been presented earlier. *Derrick*, 2019 WL 2717150, at *9-10 (holding that magistrate judge did not abuse its discretion by denying rehearing where movant reasserted prior arguments and presented no new evidence).

Pilot has shown no change in law, new, previously unavailable evidence, or clear error. Its Motion for Reconsideration must be denied.

II. ARGUMENT

a. The Oil and Gas Act's protections against waste and in favor of correlative rights apply to oil and gas operations, not wastewater disposal.

Throughout its briefing on the standing question, Pilot repeatedly insists that its participation in this matter will prevent waste and protect correlative rights. However, Pilot is a market competitor to Select who operates saltwater disposal wells in Texas. Pilot is not an affected person or entity as contemplated by the Division's rules governing objections to SWD applications or by the Oil and Gas Act's[1] protections against waste and in favor of correlative rights.

[1] NMSA 1978, §§ 70-2-1 to -39 (1935, as amended through 2019).

Pilot concedes that it is does not operate any wells "within any tract wholly or partially contained within one-half mile of the well," 19.15.26.8.B(2) NMAC, and is thus not an affected party under the New Mexico Oil Conservation Division's ("Division") regulations. Nonetheless, Pilot maintains that its "participation will contribute substantially to the prevention of waste and protection of correlative rights."[2] Pilot's invocation of these protections is a red herring.

The first, and often only step, in statutory construction is to "look first to the plain language of the statute, *giving the words their ordinary meaning*, unless the Legislature indicates a different one was intended." *Marbob Energy Corp. v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, ¶ 9, 146 N.M. 24, 206 P.3d 135 (emphasis added). Where, as here, "statutory language is clear and unambiguous, [the Commission] must give effect to that language and refrain from further statutory interpretation." *Id.*

The Oil and Gas Act defines "waste" in part as:

> ...the inefficient, excessive or improper, use or dissipation of the reservoir energy, including gas energy and water drive, of any pool, and the locating, spacing, drilling, equipping, operating or producing, of any well or wells in a manner to reduce or tend to *reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from any pool*[.]

§ 70-2-3(A) (emphasis added). Waste is integral to correlative rights, which afford the "opportunity . . . to produce without waste the owner's *just and equitable share of the oil or gas* or both." § 70-2-17(A) (emphasis added).

The cases involving Empire New Mexico LLC ("Empire"),[3] upon which Pilot relies, illustrate this point. In those cases, Empire, *an oil and gas operator*, sought to prevent waste and protective correlative rights by ending wastewater disposal operations that were threatening the

[2] Motion for Reconsideration at 1.
[3] Case Nos. 24021–24024, 24026, and 24027.

recoverability of oil within its unitized interval. Unlike Pilot, Empire's correlative rights were at stake.

Pilot makes no argument regarding threats to its "just and equitable share of the oil or gas" or actions by Select that "reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from any pool," which would invoke the Act's waste and correlative rights protections. And indeed it cannot, as it is a market competitor in Texas who simply seeks to forestall Select's saltwater disposal operations in New Mexico. Pilot's injection permits in Texas are administered by the Texas Railroad Commission and do not give Pilot any rights – correlative or otherwise – in New Mexico. The Division should reject Pilot's attempt to establish standing based on oil and gas interest owner protections.

b. Pilot's Motion improperly rehashes prior arguments and/or arguments that could have been raised in its prior Response to Select's Motion to Strike.

Beyond Pilot's misplaced reliance on waste and correlative rights protections for oil and gas interests, its Motion for Reconsideration should be denied as it is procedurally improper. New Mexico law is clear that reconsideration motions that merely restate arguments that have already been advanced or that raise arguments that could have been addressed in prior pleadings should be denied. *See, e.g.*, *Beggs v. City of Portales*, 2013-NMCA-068, ¶ 28, 305 P.3d 75 (recognizing that, "[t]o the extent [the p]laintiffs' motion for reconsideration raised new matters that could have been raised during the [briefing stage] but were not, such failure would provide a basis [for] ... denial of the motion"); *Deaton v. Gutierrez*, 2004-NMCA-043, ¶ 10, 135 N.M. 423, 89 P.3d 672 (concluding, in light of the fact that the "motion for reconsideration was merely a restatement of the arguments [the moving party] had already advanced," the trial court "had good reason for denying the motion in its entirety"). Here, Pilot's motion simply rehashes arguments made in its prior response, and the evidence that it proffers in support of its position is not new evidence that

warrants the Division's revisiting of its prior, correct decision. *See, e.g.*, *Derrick*, 2019 WL 2717150, at *9-10. Under these circumstances, Pilot's motion should be summarily denied.

III. CONCLUSION

Because Pilot is neither an affected party nor able to articulate any specific risk or harm within the AOR for Select's proposed wells, its belated attempt to intervene and object was properly dismissed for lack of standing. Pilot's Motion for Reconsideration fails to demonstrate that the Division erred in so ruling. Accordingly, Select respectfully requests that the Division deny Pilot's Motion for Reconsideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon the following counsel of record by electronic mail on February 24, 2026.

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