

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

**APPLICATIONS OF PERMIAN OILFIELD
PARTNERS, LLC TO APPROVE
SALTWATER DISPOSAL WELLS IN
LEA COUNTY, NEW MEXICO.**

CASE NOS. 23807-23808

**REPLY TO PERMIAN OILFIELD PARTNERS, LLC AND SUPPORT OF MATADOR'S
OBJECTION TO PROCEEDING BY AFFIDAVIT**

MRC Permian Company and Matador Production Company (collectively “Matador”), through undersigned counsel, submit this reply to Permian Oilfield Partners, LLC’s (“POP”) response, filed on October 10, 2023, and in support of setting these cases for a status conference on October 19, 2023 in accordance with the Division’s long-standing policy on contested hearings.

Contrary to POP’s assertion, Matador’s objection to proceeding by affidavit is not immaterial. Rather, Matador has legitimate, significant concerns regarding POP’s applications it is prepared to raise at hearing, if necessary, over faulting it believes impacts these two proposed Saltwater Disposal (“SWD”) locations that Matador has identified through its confidential 3-D seismic data—data that POP apparently does not possess. To do so, however, the parties must follow the Division’s long-standing procedural requirements necessary for orderly management and presentation of these contested cases.

Under the Division’s hearing policy that it has strictly adhered to since April 2020, “all contested cases, which includes any case for which a party intends to call a witness”¹ will be set

¹ See Oil Conservation Division’s Instructions for April 30, 2020 Hearing Docket, attached as **Exhibit A**; See also, OCD Hearings Scheduled for April 16, 2020 and After, attached as **Exhibit A** (“The Hearing Examiners will hear only cases that can be taken by affidavit. If a case requires a witness or cross-examination, or a party does not consent to the case be[ing] taken by affidavit, the case will be continued.” (emphasis added)).

for a status conference. Following the status conference, at which a contested hearing date is set, the Hearing Examiner will issue a Pre-Hearing Order establishing deadlines for witness testimony and exhibits. Not only is a status conference necessary because it is required under the Division's long-standing policy on contested cases, but it is also required to narrow contested issues and establish deadlines for testimony, exhibits, and a process for managing confidential and proprietary information—which is something the Division does not currently have in place.

Another reason for the status conference and Pre-Hearing Order is to allow the parties to confirm witness availability. Matador has previously scheduled Board of Director meetings on October 17-19, which will make Matador's primary witness in opposition to POP's applications—Matador's Executive Vice President of Geosciences, Dr. Edmund L Frost III—unavailable for the proposed hearing date on October 19.

I. Procedural Background.

POP filed administrative applications for their Belated Federal SWD Well #1 and Overdue Federal SWD Well #1, in early July 2023.² Matador protested these applications, along with seven other administrative SWD applications filed by POP, on July 18, 2023. *See* POP Response Exhibits A & B. The Division subsequently notified POP of Matador's objections on August 18, 2023, and provided POP two options: (1) resolve Matador's objections through the hearing process, or (2) negotiate a resolution. *Id.*

On August 30, 2023, POP reached out to Matador's in-house counsel directly to discuss their protest, and on September 5, 2023, POP filed its applications for these cases and requested a hearing date of October 5, 2023. *See* POP Response, pages 2-3; *See also* POP Response Exhibits C & D. Counsel for the parties engaged in telephone and email communications, and POP

² *See* Administrative Action ID: 238279 (Belated) and 240077 (Overdue).

unilaterally decided to continue the cases to October 19—POP did not confer with Matador to see if that date worked for Matador to go forward with a contested hearing. As indicated by the email exhibits attached to POP's Response, Matador initially thought a technical meeting might be beneficial to explain Matador's concerns. However, in discussions with counsel for POP, Matador was left with the impression that POP was fully entrenched in going forward with its cases, notwithstanding Matador's concerns, even going so far as to say, "there is zero percent probability of either of these wells inducing a seismic event" (*See* POP Response, Exhibit D) (emphasis added)—an objectively far-overreaching statement. Given POP's apparent insistence on moving forward, Matador felt it would be more beneficial to have the Division participate in a meeting between the parties to discuss Matador's concerns.

II. Division Policy Requires a Status Conference and a Pre-Hearing Order for All Contested Cases.

Beginning in April 2020, the Division started issuing policies governing contested cases based on "the Attorney General's recommendations." *See* Exhibit A, OCD Hearings Scheduled for April 16, 2020 and After and Oil Conservation Division's Instructions for April 30, 2020 Hearing Docket.³ These notices prescribed the process going forward for contested hearings, providing that "[i]f a party does not consent to the case being taken by affidavit, the case will be considered to be a contested case." *See* Oil Conservation Division's Instructions for April 30, 2020 Hearing Docket (emphasis added). Further, stating that the "[t]he Hearing Examiner will hold a status conference for all contested cases, which includes any case for which a party intends to call a witness." *Id.* (emphasis added). The cases at issue here are contested by Matador and, in

³ The two notices from April 2020 (OCD Hearings Scheduled for April 16, 2020 and After and the Oil Conservation Division's Instructions for April 30, 2020 Hearing Docket) were superseded by OCD Hearings Scheduled for August 6, 2020 and After; however, the requirement for contested cases to be set for a status conference did not, and has not, changed. *See* OCD Hearings Scheduled for August 6, 2020 and After, attached as Exhibit A.

accordance with Division policy must be set for a status conference before going to a contested hearing.

This is the policy the Division has followed for almost four years without variation. It applies to all cases—including SWD cases⁴—that appear on the hearing docket before the Division and has been followed by the Division in every instance. The parties do not have to “presume” anything because the Division has provided clear expectations through its consistent application of this policy since April 2020.

But a status conference isn’t just about fulfilling a perfunctory procedural step; it is an essential substantive component for contested cases. The status conference allows the parties, along with the Hearing Examiner, to confer on available contested hearing dates and witness availability, as well as discuss any issues that may need to be addressed in the Pre-Hearing Order, which is issued by the Division *prior* to a contested hearing moving forward. *Id.* No status conference has taken place and no Pre-Hearing Order has yet been issued by the Division in these cases. And, as mentioned above, Matador’s key witness is unavailable on October 19 due to Matador’s previously scheduled Board of Directors meetings.

In addition, there are substantial procedural issues that need to be discussed at a status conference and addressed in the Pre-Hearing Order. As mentioned in POP’s response brief, Matador’s objections stem from concerns arising from its confidential 3-D seismic data. The Division currently has no procedure or mechanism to handle or manage confidential and

⁴ See e.g., Goodnight Midstream Permian LLC (“Goodnight”) NMOCD Case Nos. 23614-23617. Similarly, these SWD cases were filed administratively and were protested by Empire New Mexico, LLC (“Empire”). Goodnight then filed applications for hearing, which were objected to by Empire and a status conference was held and Pre-Hearing Order entered by the Division. These cases are currently set for a contested hearing on the November 2, 2023 docket.

proprietary testimony and exhibits. If these cases move forward, a Pre-Hearing Order will need to address how such evidence will be managed to prevent disclosure to third parties and the public.

Thus, POP's assertion that Matador is merely delaying these cases is false. Matador simply expects the Division to follow its policy for contested cases, which is necessary to set out an orderly process for the submission of testimony and exhibits, identify and narrow the contested issues, and protect Matador's valuable confidential information.

III. POP Has Been Adamant About Resolving Matador's Objections at Hearing.

At the time it objected to the administrative applications, Matador indicated it was open to discussing its concerns at a technical meeting (and remains open to this proposal with the participation of the Division); however, no less than five days later, after Matador indicated it would confer internally on setting up a technical meeting, POP turned around and filed applications for hearing. *See* POP Response, Exhibit C. And, according to their response brief, "the only reason POP filed the Cases is to resolve Matador's objections through an adjudicatory hearing." *See* POP Response, page 3. Matador took these actions as an indication POP had no intention to seriously consider Matador's concerns. POP's rush to circumvent Division procedural requirements and attempt to go directly to a contested hearing undermined efforts to engage in discussions.

IV. Matador's Confidential 3-D Seismic Demonstrates Issues of Significant Concern.

Matador has substantial concerns over POP's plans based on its confidential 3-D seismic data. Rather than target its injection based on the most suitable and appropriate geology, POP's injection plans appear to be based on easy access and proximity to the highway. *See* Exhibit B. Matador is in favor of setting a technical meeting behind closed doors with the Division and POP. Besides being necessary under the Division's policy, setting a status conference and scheduling

these matters for a contested hearing will give the parties time to potentially have a technical meeting with the Division and avoid the necessity of having a contested hearing.

CONCLUSION

For the reasons stated above, these cases should be set for a status conference at the October 19, 2023 hearing and a Pre-Hearing Order entered by the Division following the status conference. Otherwise, Matador remains open to continuing the cases and scheduling a technical meeting with the Division and POP to further discuss its concerns and potentially resolve its objections.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2023, I served a copy of the foregoing document to the following counsel of record via Electronic Mail:

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Oil Conservation Division



NOTICE

OCD Hearings Scheduled for April 16, 2020 and After

On March 11, 2020, a Public Health Emergency (Executive Order 2020-004) was declared to prevent the spread of the novel coronavirus (COVID-19). In response to the declaration, Secretary Cottrell Propst directed the Oil Conservation Division (OCD) to take prudent precautionary steps to encourage the public and OCD staff to maintain social distance, a factor in preventing the spread of COVID-19, by cancelling, postponing, or taking other actions to limit public interaction.

Governor Michelle Lujan Grisham has directed that government buildings will be closed to the public.

The New Mexico Attorney General has issued the Open Government Division Advisory During COVID-19 State of Public Emergency, which makes recommendations to state agencies how to conduct virtual meetings.

OCD Hearings Scheduled for April 16, 2020

OCD intends to conduct electronic hearings on April 16, 2020 in accordance with the Attorney General's recommendations.

Persons may view and participate in the hearings through the following link. **This link is good for the April 16, 2020 hearings only:**

<https://zoom.us/j/517058707?pwd=OHB0WnRBb1hHUExFQ3E5dk5GeTZXdz09>

Meeting ID: 517 058 707
Password: 131433

One tap mobile
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+1 253 215 8782 US

Meeting ID: 517 058 707

Find your local number: <https://zoom.us/j/aeH2q3M9VZ>

The Hearing Examiners will hear only cases that can be taken by affidavit. If a case requires a witness or cross-examination, or a party does not consent to the case be taken by affidavit, the case will be continued.

To be heard, the applicant must submit the exhibits, including the public notice affidavit and compulsory pooling checklist, if applicable, to the Hearings Bureau at ocd.hearings@state.nm.us no later than 5:00 p.m. on April 14, 2020.

The Hearing Examiners in their sole discretion will call cases that meet the above requirements in any order for a hearing. The Hearing Examiners will call for appearances. The applicant shall advise if the application will be presented by affidavit. Upon concurrence of the other parties, the Hearing Examiners will inquire whether any party requests a special provision or stipulation. OCD's technical reviewer may ask questions of the applicant and other parties, if any.

The hearing will be transcribed by a court reporter. Participants are reminded to identify themselves whenever they speak, and to speak clearly so that the audio is understandable.

The Hearing Examiners in their sole discretion may continue any application to a future date for any reason.

OCD Hearings Scheduled After April 16, 2020

OCD intends to conduct electronic hearings for dockets after April 16, 2020 until further notice. An applicant for a hearing is advised to provide the following statement in the public notice:

During the COVID-19 Public Health Emergency, state buildings are closed to the public and hearings will be conducted remotely. The hearing will be conducted on [date] beginning at 8:15 a.m. To participate in the electronic hearing, see the instructions posted on the OCD Hearings website:
<http://www.emnrd.state.nm.us/OCD/announcements.html>.

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NOTICE

OIL CONSERVATION DIVISION'S INSTRUCTIONS FOR APRIL 30, 2020 HEARING DOCKET

APRIL 22, 2020

The following information applies to the April 30, 2020 docket.

OCD previously announced that it will conduct virtual hearings in accordance with the Attorney General's recommendations.

Cases by Affidavit. The Hearing Examiner will only hear cases that can be taken by affidavit. If a party does not consent to the case being taken by affidavit, the case will be considered to be a contested case. For the Hearing Examiner to hear a case by affidavit, the applicant must submit the exhibits, including the public notice affidavit and compulsory pooling checklist, if applicable, to the Hearings Bureau at OCD.Hearings@state.nm.us. Do not submit hard copies by mail or to OCD offices.

Contested Cases. The Hearing Examiner will hold a status conference for all contested cases, which includes any case for which a party intends to call a witness. The Hearing Examiner may set a contested case for a virtual hearing on or after May 2020. The parties must be capable of presenting their witnesses in the audio and visual formats. The parties or their counsel shall prepare and submit a joint stipulation identifying the dates on which they will submit the following information:

- a. a list of material facts not in dispute;
- b. a list of disputed facts and issues;
- c. identification of witnesses and their qualifications;
- d. a full narrative of the direct testimony and exhibits for witnesses;
- e. the filing of prehearing motions, including evidentiary objections, and a briefing schedule;

- f. a telephonic conference to hear motions and to address questions regarding the conduct of the hearing; and
- g. the hearing.

An applicant may decline the opportunity for a status conference by filing a motion for continuance via the fee portal.

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Oil Conservation Division



NOTICE

July 22, 2020

OCD Hearings Scheduled for August 6, 2020 and After

On March 11, 2020, Governor Michelle Lujan Grisham issued Executive Order 2020-004 declaring a Public Health Emergency to prevent the spread of the novel coronavirus. The Executive Order closed government buildings to the public.

Additionally, Secretary Cottrell Propst directed the Oil Conservation Division (OCD) to take prudent precautionary steps to encourage the public and OCD staff to maintain social distance by cancelling, postponing, or taking other actions to limit public interaction.

To comply with these directives, OCD has been conducting electronic hearings in accordance with the New Mexico Attorney General's Open Government Division Advisory During COVID-19 State of Public Emergency.

HEARINGS ON AUGUST 6, 2020 AND AFTER

This notice governs OCD hearings on August 6, 2020 and after, and supersedes the earlier notices entitled "OCD Hearings Scheduled for April 16, 2020 and After" and "Oil Conservation Division's Instructions for April 30, 2020 Hearing Docket."

The Hearing Examiner will call each case and inquire whether the parties agree that the case can be taken by affidavit. If the parties concur, the Hearing Examiner will hear the case by affidavit, provided that the applicant submitted the exhibits, including the public notice affidavit and the compulsory pooling checklist, if applicable, to the Hearings Bureau at ocd.hearings@state.nm.us no later than 5:00 p.m. on the Tuesday preceding the hearing date. The Hearing Examiner will inquire whether any party requests a special provision or stipulation, and the OCD's technical reviewer may ask questions of the applicant and parties, if any.

If the parties do not concur that the case may be taken by affidavit, and do not agree to continue the case, the Hearing Examiner will conduct a status conference, set

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the case for an electronic hearing, and direct the parties to submit a pre-hearing order setting forth the dates on which they will submit to OCD and exchange between the parties the following information:

- a. a list of material facts not in dispute;
- b. a list of disputed facts and issues;
- c. identification of witnesses and their qualifications;
- d. a full narrative of the direct testimony and exhibits for witnesses;
- e. the filing of prehearing motions, including evidentiary objections, and a briefing schedule; and
- f. the date and time for a telephonic conference to hear prehearing motions and address questions regarding the conduct of the hearing.

Any party may request a status conference to resolve disputes regarding the preparation of the pre-hearing order.

The Hearing Examiner in her sole discretion will call cases on the docket in any order.

The hearings will be transcribed by a court reporter. Participants are reminded to identify themselves when they speak and to speak clearly so that the audio is understandable.

The Hearing Examiner in her sole discretion may continue any application to a future date for any reason.

Applicants for a hearing are advised to provide the following statement in their public notice:

During the COVID-19 Public Health Emergency, state buildings are closed to the public and hearings will be conducted remotely. The hearing will be conducted on [date] beginning at 8:15 a.m. To participate in the electronic hearing, see the instructions posted on the docket for the hearing date: <http://www.emnrd.state.nm.us/OCD/hearings.html>.

