

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

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

**CASE NO. 20114**

**NGL WATER SOLUTIONS PERMIAN LLC'S RESPONSE TO  
SOLARIS WATER MIDSTREAM, LLC'S ("SOLARIS") MOTION TO DISMISS**

NGL Water Solutions Permian, LLC ("NGL"), OGRID No. 372338, through its undersigned attorneys, hereby submits this Response in opposition to Solaris' Motion to Dismiss Protest. Solaris' Motion to Dismiss does not provide a valid basis for dismissing NGL's protest of the Telluride Well.

Solaris' Motion to Dismiss incorporates Solaris' response to NGL's Motion to Dismiss. As discussed in NGL's Reply in Support of its Motion to Dismiss, attached as Exhibit A, Solaris has failed to demonstrate why its protest of NGL's Sidewinder well should not be dismissed as moot, nor, for purposes of its own motion, has Solaris demonstrated why NGL's protest should be dismissed. This reply addresses only those arguments raised in Solaris' response that are arguably relevant to Solaris' motion to dismiss.<sup>1</sup>

Solaris states that it is Solaris' position that NGL's protest to Solaris' Telluride well should be dismissed and Solaris incorrectly states that "NGL has refused to give a reason why it is still objecting to Solaris' well." Response ¶ 4. First, NGL's counsel informed Solaris' counsel that NGL's protest of the Telluride well is based on NGL's ownership of fee lands within close proximity of the Telluride well. Consequently, and contrary to Solaris' assertions, NGL has

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<sup>1</sup> To the extent the Division considers Solaris' other arguments as part of Solaris' motion to dismiss, NGL incorporates its Reply and Motion herein to refute those arguments.

informed Solaris' counsel of the basis for NGL's protest. In addition, NGL is reviewing its records to determine whether NGL was properly notified of Solaris' application. If Solaris did not provide NGL with proper notice, NGL protests the Telluride well on that basis as well.

NGL understands it is the Division's position that it lacks jurisdiction over some of the concerns that NGL intends to raise regarding the proximity of the Telluride well to NGL's fee lands, specifically the issue of pore space. NGL has legitimate concerns regarding whether Solaris' Telluride well will lead to trespass into NGL's pore space, depriving NGL of its ability to utilize some or all of the pore space underlying NGL's fee land in proximity to Solaris' proposed well. NGL believes that its concerns are valid and merit review. There is some degree of uncertainty in New Mexico about the pore space argument generally and, in terms of this case specifically, where those arguments can and should be made. NGL, like many others in New Mexico, is trying to navigate that uncertainty. Given this uncertainty, NGL raises its pore space arguments before the Division both because NGL believes that argument has merit but also to preserve that argument.

**WHEREFORE**, NGL requests that the Division deny Solaris' Motion to Dismiss NGL's Protest in Case No. 20114.

Respectfully submitted,

MODRALL, SPERLING, ROEHL, HARRIS  
& SISK, P.A.

By: Deana M. Bennett

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*Attorneys for Applicant*

I hereby certify that a true and correct copy of the foregoing was served on counsel of record by electronic mail on February 18, 2019.

James Bruce  
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jamesbruc@aol.com  
*Attorney for Solaris Water Midstream, LLC*

**MODRALL, SPERLING, ROEHL, HARRIS  
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**STATE OF NEW MEXICO  
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES  
OIL CONSERVATION DIVISION**

**APPLICATION OF NGL WATER  
SOLUTIONS PERMIAN, LLC  
TO APPROVE SALT WATER  
DISPOSAL WELL IN LEA  
COUNTY, NEW MEXICO.**

**CASE NO. 16443**

**NGL WATER SOLUTIONS PERMIAN LLC'S  
REPLY IN SUPPORT OF MOTION TO DISMISS PROTEST**

NGL Water Solutions Permian, LLC (“NGL”), OGRID No. 372338, through its undersigned attorneys, hereby submits this Reply in support of its Motion to Dismiss Protest. NGL filed its Motion to Dismiss (“Motion”) on January 25, 2019. Solaris Water Midstream, LLC (“Solaris”) filed its response on February 8, 2019, after originally stating that it intended to file the response on February 1, then on February 4, and then by the morning of February 5 “at the latest.” *See* e-mail from Solaris counsel attached as Exhibit A.<sup>1</sup> NGL’s Motion to Dismiss should be granted because Solaris’ objection to the Sidewinder SWD # 1 well (“Sidewinder Well”) is moot and Solaris’ response to NGL’s Motion to Dismiss fails to address, much less overcome, NGL’s showing that Solaris’ protest is moot.

Solaris advances three arguments in its Response, all of which are irrelevant and none of which overcome NGL’s showing that Solaris’ protest is moot and should be dismissed.

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<sup>1</sup> In addition to the delays NGL has encountered from Solaris outlined in NGL’s Motion and in this Reply, Solaris has not timely responded to requests from the Division. For example, at the January 24, 2019 hearing, the Division asked Solaris to file its pre-hearing statement on Friday, January 25, 2019. Solaris did not file its pre-hearing statement until Wednesday January 25, 2019.



First, Solaris' response ignores that NGL filed an amended application on December 14, 2018, relocating the Sidewinder Well more than 1.5 miles from the Telluride well. *See* Response at 2 (discussing only the 9/21/18 amended application). NGL's counsel emailed Solaris' counsel a copy of the amended application. *See* December 14, 2018 email attached as Exhibit B.

After amending the application, NGL's counsel requested that Solaris dismiss its protest on a number of occasions, which Solaris refused to do, despite the fact that Solaris' protest has been rendered moot by NGL's decision to move the Sidewinder Well. *See* emails from NGL's counsel to Solaris's counsel, attached as Exhibit B to NGL's Motion.

Second, Solaris states that it is Solaris' position that NGL's protest to Solaris' Telluride well should be dismissed and Solaris incorrectly states that "NGL has refused to give a reason why it is still objecting to Solaris' well." Response ¶ 4. First, NGL's counsel informed Solaris' counsel that NGL's protest of the Telluride well is based on NGL's ownership of fee lands within close proximity of the Telluride well. Consequently, and contrary to Solaris' assertions, NGL has informed Solaris' counsel of the basis for NGL's protest. More importantly, NGL's protest of the Telluride well has no bearing on NGL's Motion to Dismiss Solaris' moot protest of NGL's Sidewinder Well—these are separate cases and NGL's protest of Solaris' well is irrelevant to the issue of whether Solaris' protest is moot.

Third, Solaris contends that "NGL is gaming the system." Response ¶ 5. Not so. NGL has been diligently pursuing the Sidewinder Well, as demonstrated by the fact that NGL applied for and obtained an APD. Apparently, Solaris has not—if it had, Solaris' Response likely would have contained that information. In addition, NGL has been attempting to get this case heard by the Division, but has faced delay and opposition (now clearly unwarranted) from Solaris. If anyone

is “gaming the system” it is Solaris—by refusing to dismiss a moot protest and by creating roadblocks in an attempt to keep NGL from having its application heard by the Division.

Finally, Solaris states that it must be allowed to proceed with its objection to determine whether drilling two wells in the area is proper. Response ¶ 6. The Division, by requiring a 1.5 buffer, has already addressed this issue and no further determination is necessary.

**WHEREFORE**, NGL requests that the Division find that Solaris’ protest is moot and dismiss it, and allow NGL to present this case by affidavit on February 21, 2019.

Respectfully submitted,

MODRALL, SPERLING, ROEHL, HARRIS  
& SISK, P.A.


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*Attorneys for Applicant*

I hereby certify that a true and correct copy of the foregoing was served on counsel of record by electronic mail on February 11, 2019.

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*Attorney for Solaris Water Midstream, LLC*

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## Deana M. Bennett

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**From:** Deana M. Bennett  
**Sent:** Thursday, February 7, 2019 6:58 PM  
**To:** 'jamesbruc@aol.com'; 'gabriel.wade@state.nm.us'  
**Cc:** Warnell, Terry G, EMNRD; Adam Rankin (AGRankin@hollandhart.com)  
**Subject:** RE: NGL/Solaris Motion to Dismiss/Pre-Hearing Conference

Hi All (Looping Mr. Warnell and Adam back in.):

Jim, thanks much letting me know today that you will file the response to NGL's motion to dismiss tomorrow. I appreciate the update. You also suggested that I request a pre-hearing conference, which I am doing via this email. You mentioned to me that you are available next week.

Mr. Wade and Mr. Warnell, would it be possible for us to set up a pre-hearing conference for early next week? Perhaps Tuesday afternoon? Or Wednesday?

Thanks much,

Deana

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**From:** Deana M. Bennett  
**Sent:** Wednesday, February 6, 2019 3:04 PM  
**To:** jamesbruc@aol.com; gabriel.wade@state.nm.us  
**Subject:** RE: NGL/Solaris

Hi Jim,

Any update?

Thanks,

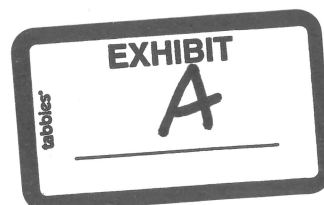
Deana



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**From:** jamesbruc@aol.com <jamesbruc@aol.com>  
**Sent:** Tuesday, February 5, 2019 2:32 PM  
**To:** Deana M. Bennett <dmb@modrall.com>  
**Subject:** Re: NGL/Solaris



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I am waiting on a call back from my client. Also, am getting a bunch of applications filed.

Jim

-----Original Message-----

From: Deana M. Bennett <dmb@modrall.com>  
To: jamesbruc@aol.com <jamesbruc@aol.com>  
Cc: gabriel.wade@state.nm.us <gabriel.wade@state.nm.us>  
Sent: Tue, Feb 5, 2019 2:22 pm  
Subject: RE: NGL/Solaris

Hi Jim,

I wanted to follow up on the status of your response. You indicated that you would file it yesterday/this am by the latest. Will you be filing it today? If not, do you know when you file it?

Thanks,

Deana



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**From:** jamesbruc@aol.com <jamesbruc@aol.com>  
**Sent:** Monday, February 4, 2019 8:31 AM  
**To:** Deana M. Bennett <dmb@modrall.com>  
**Cc:** gabriel.wade@state.nm.us  
**Subject:** Re: NGL/Solaris

\*\*\*

I hope tyhis afternoon. If not, tomorrow a.m. at the latest.

-----Original Message-----

From: Deana M. Bennett <dmb@modrall.com>  
To: jamesbruc@aol.com <jamesbruc@aol.com>  
Cc: gabriel.wade@state.nm.us <gabriel.wade@state.nm.us>  
Sent: Mon, Feb 4, 2019 7:47 am  
Subject: Re: NGL/Solaris

Thanks Jim. I hope today finds you feeling much better!

Do you have a sense of when you will have it done?

Thanks,

Deana

Sent from my iPhone

On Feb 4, 2019, at 7:43 AM, "[jamesbruc@aol.com](mailto:jamesbruc@aol.com)" <[jamesbruc@aol.com](mailto:jamesbruc@aol.com)> wrote:

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I am working on Solaris response to Deanna's motion to Dismiss Objection.

Besides being out of tiwn I came down with an infection that has slowed me down quite a bit. I will gwt it done.

Jim

This e-mail may be a confidential attorney-client communication. If you received it in error, please delete it without forwarding it to others and notify the sender of the error.

**Deana M. Bennett**

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**From:** Deana M. Bennett  
**Sent:** Friday, December 14, 2018 1:38 PM  
**To:** 'James Bruce'  
**Subject:** Sidewinder Amended Application  
**Attachments:** Sidewinder Amended Application (12-14-18) (W3327737x7A92D).pdf

Hi Jim,

Nice speaking with you today. As I mentioned, I am going to be filing an amended application for Sidewinder. I have attached it for you. The only changes from our last application, submitted 9/21, are changes to the surface location, which move the proposed well more than 1.5 miles from Solaris' well (Telluride I believe). I included in this application a statement that the case is currently set for hearing on the 10<sup>th</sup> or may be set for a special docket date. I believe that the change in surface location will resolve the need for a special docket date and Solaris' protest because the well will be further than 1.5 miles away from Solaris' well which was the basis for the protest. In any event, I felt that I needed to put something in the application about the hearing date, which is why I included both the 10<sup>th</sup> and the potential for a special docket date.

Thanks much and I look forward to hearing back from you after you have had a chance to speak with Solaris.

Deana



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