

**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

**NGL WATER SOLUTIONS PERMIAN LLC'S RESPONSE TO
SOLARIS WATER MIDSTREAM, LLC'S ("SOLARIS") MOTION TO DISMISS
UNTIMELY PROTEST AND REMAND FOR ADMINISTRATIVE APPROVAL**

NGL Water Solutions Permian, LLC ("NGL"), OGRID No. 372338, through its undersigned attorneys, hereby submits this Response in opposition to Solaris' Motion to Dismiss Untimely Protest and Remand for Administrative Approval. Solaris' Motion to Dismiss fails to establish a basis for dismissing NGL's protest of the Capt Call well application and Solaris' Motion should be denied.

First, Solaris' Motion to Dismiss is not well taken because it does not appear from the materials Solaris provided that Solaris attempted to resolve this issue with OCD prior to filing its application in this matter and having this case set for hearing. If Solaris believed that NGL's protest was untimely, Solaris should have, but apparently did not, sought clarification from OCD prior to filing an application for hearing and should have attempted to work out this issue with OCD when Solaris received notice of NGL's protest. NGL received no notice from OCD that NGL's protest was submitted outside the deadlines for protesting an administrative application. Solaris' failure to raise the timeliness of NGL's protest with OCD at the time of NGL's protest, and instead raise it now, more than a month after NGL's protest was filed, weighs against granting Solaris' Motion.

Beyond that, Solaris' decision to file an application for hearing suggests that 1) if Solaris did raise this issue with OCD, then OCD did not agree with Solaris' contention that NGL's protest

was untimely, and that decision should not be revisited now, or 2) Solaris decided to go forward with an Examiner Hearing and forego its opportunity to raise this issue prior to involving the OCD hearing process, a decision which was for Solaris to make and, having done so, Solaris should be required to continue that path.

Additionally, Solaris assumes, incorrectly, that a party opposing a salt water disposal well application has only 15-days from the newspaper application to submit a protest. It is NGL's understanding that once an application is administratively complete, only then does the 15-day protest clock begin to run. The regulations state that OCD "shall not approve an application for administrative approval until 15 days following the division's receipt of form C-108 complete with all attachments including evidence of mailing as required under Paragraph (2) of Subsection B of 19.15.26.8 NMAC and proof of publication as required by Paragraph (1) of Subsection C of 19.15.26.8 NMAC." *See* Rule 19.15.5.9 NMAC. In other words, OCD cannot approve an application for administrative approval until 15 days after an application is determined by OCD to be administratively complete. Consequently, then, it appears that a protest is timely when it is filed within the time period during which OCD is undertaking its administrative completeness review and then for an additional 15 days after that point. Solaris did not provide any information with its Motion suggesting that OCD had determined that Solaris' application was administratively complete or that OCD had concluded that the 15-day protest period had elapsed. NGL received no notice from OCD that OCD considered NGL's protest untimely. Solaris' attempt to circumvent OCD's timeliness determination through this Motion should be denied.

Solaris' attempt to have this case remanded to administrative approval should be rejected. If Solaris wanted this case to be decided administratively, Solaris should have, but apparently did not, make this argument to OCD prior to having filed an application for hearing. Having now filed

such an application, and having expended additional OCD time and resources to docket this case, Solaris should be required to stay that course.

WHEREFORE, NGL requests that the Division deny Solaris' Motion to Dismiss NGL's protest in Case No. 20587.

Respectfully submitted,

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

By: Deana M. Bennett

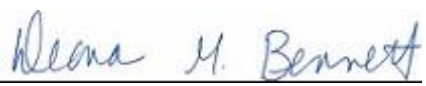
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I hereby certify that a true and correct copy of the foregoing was served on counsel of record by electronic mail on July 3, 2019.

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