



April 21, 2023

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The Honorable J. Travis Laster
Court of Chancery
Leonard L. Williams Justice Center
500 N. King Street
Wilmington, Delaware 19801

Re: *Texas Pacific Land Corp. v. Horizon Kinetics LLC, et al.,*
C.A. No. 2022-1066-JTL (Del. Ch.)

Dear Vice Chancellor Laster:

I write to provide Defendants' view on post-trial briefing and to respond to TPL's letter to the Court of April 20, 2023. Although Defendants do not object to the "tight, four-brief sequence" that the Court suggested, they do object to additional extension of the more than six-month-old 2022 annual meeting and its stale record date. At the close of trial on April 17, the Court noted that "if indeed there was an obligation on the part of the investor group to vote their shares consistent with the board recommendation, then...one would enforce the voting agreement, effectively,

as if it had been voted that way at the original meeting.”¹ Accordingly, on April 18, Defendants proposed to TPL that the parties agree that TPL’s annual meeting would close on May 18, as currently scheduled, and that the result of the stockholder vote on Proposal Four at that meeting would be determined by the Court through this litigation. Such an agreement would relieve the timing pressure on the parties and the Court without prejudicing any party. In response, TPL instead proposed that the May 18 meeting be further adjourned to an as-of-yet unspecified later date. *See* Plf’s Letter (Apr. 20, 2023). Because the timing of the 2022 annual meeting’s conclusion meaningfully affects the rights of Defendants, it likewise affects Defendants’ views on the post-trial schedule in this action.

TPL’s ostensible purpose for adjourning the 2022 Annual Meeting has been “to provide the Delaware Court of Chancery sufficient time to issue a ruling...prior to the Company reconvening the 2022 Annual Meeting.”² But as the Court noted at trial, even if TPL were to prevail, the Court’s remedy would apply as of the conclusion of the “original meeting,” which is currently set to close on May 18,

¹ Trial Tr. at 375:9-16; *see also* Plf’s Letter (Apr. 20, 2023)

² *See* Texas Pacific Land Corporation Press Release, January 23, 2023, available at <https://tinyurl.com/2z2s74ch>.

2023.³ As a result, there is no need to keep voting on Proposal Four open until the Court has reached a final decision. Voting on Proposal Four should instead be closed as currently scheduled—though the final result of the election would remain contingent upon the ultimate resolution of this action.

The contrary approach TPL proposes would severely prejudice Defendants. Section 11(a) of the Stockholders' Agreement provides that the agreement terminates "following the completion of the 2022 annual meeting of stockholders of TPL Corp."⁴ TPL apparently believes that, because it has "adjourned" rather than "completed" its 2022 annual meeting, the Stockholders' Agreement's prohibitions on, for example, Defendants' purchasing TPL stock beyond certain percentile caps or nominating a candidate for election as a director at the 2023 annual meeting remain in place.⁵ In addition, TPL contends the agreement prohibits Defendants from making virtually any public communication about TPL.

³ Trial Tr. at 375:9-16 (emphasis added). In light of TPL's past adjournments, some TPL stockholders have cast or changed votes since November 16, 2022. While Defendants agree that such votes should be given effect, for the reasons provided in this letter, TPL should not be permitted to further prolong the voting period.

⁴ JX116:10. There is a proviso stating that certain of Defendants' obligations survive "until such time as no Investor Group Designee is serving on the Board." *Id.* But the completion of the 2022 annual meeting provides Defendants the ability to terminate these obligations by resigning from the Board.

⁵ *Id.* at 4 (§3(a)-(b)).

By holding the 2022 annual meeting open indefinitely, TPL seeks to artificially keep these prohibitions intact. This is particularly problematic here because TPL has adopted an advance notice bylaw.⁶ If, as TPL contends, the Stockholders' Agreement's standstill provisions remain in force, TPL may argue that Defendants are prohibited from submitting nominations or proposals for consideration at the 2023 annual meeting in compliance with the advance notice bylaw. The parties plainly did not intend this result when they agreed to a termination of the Stockholders' Agreement upon the completion of TPL's 2022 annual meeting.⁷ Nor is TPL's attempt to manufacture such a result permissible under equitable principles of Delaware law.⁸

⁶ See Amended and Restated Bylaws of Texas Pacific Land Corporation § 2.8(A)(2), available at <https://tinyurl.com/2p8zk8au>. TPL's advance notice bylaw provides that, if TPL advances the 2023 meeting by more than 30 days from the anniversary of the 2022 meeting, TPL may create a deadline for stockholder nominations and proposals in as few 10 days "following the day on which public announcement of the date of [the 2023 annual] meeting is first made by the Corporation." *Id.*

⁷ JX116:10 (§11(a)) (emphasis added).

⁸ *Coster v. UIP Companies, Inc.*, 255 A.3d 952, 961 (Del. 2021) ("[T]he subversion of corporate democracy by manipulation of corporate machinery will not be countenanced under Delaware law."); *Schnell v. Chris-Craft Indus., Inc.*, 285 A.2d 437, 439 (Del. 1971) ("[I]nequitable action does not become permissible simply because it is legally possible.").

Moreover, a contention that the vote on Proposal Four remains incomplete would be incompatible with TPL's sole claim in this summary Section 225(b) proceeding. Section 225(b) empowers the Court to "hear and determine the *result* of any vote of stockholders."⁹ By bringing a Section 225(b) claim, TPL conceded that a stockholder vote on Proposal Four already occurred, and sought a judicial "determin[ation]" of its "result."¹⁰ TPL cannot simultaneously seek such a ruling and also contend that its 2022 annual meeting is incomplete.

Defendants thus seek clarity on whether, for purposes of the Termination Provision of the Stockholders' Agreement, the "completion of the 2022 annual meeting" occurred on November 16, 2022. Otherwise, Defendants face the risk of prejudice from further indefinite adjournment that would necessitate a faster-paced schedule than the parties or the Court currently desire. Accordingly, Defendants propose that the parties discuss with the Court on a brief teleconference as suggested at the end of the trial and will reach out to TPL to contact the Court for availability.

As always, we are available if Your Honor has any questions.

⁹ 8 *Del. C.* § 225(b) (emphasis added).

¹⁰ *Id.*

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Respectfully submitted,

/s/ James M. Yoch, Jr.

James M. Yoch, Jr. (No. 5251)

Words: 994

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cc: Register in Chancery (via File&ServeXpress)
A. Thompson Bayliss, Esq. (via File&ServeXpress)
Adam K. Schulman, Esq. (via File&ServeXpress)
Matthew L. Miller, Esq. (via File&ServeXpress)
George Mason Thomson, Esq. (via File&ServeXpress)
Peter C. Cirka, Esq. (via File&ServeXpress)