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

APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN, LLC TO AMEND ORDER NO. R-7765, AS AMENDED TO EXCLUDE THE SAN ANDRES FORMATION FROM THE UNITIZED INTERVAL OF THE EUNICE MONUMENT SOUTH UNIT LEA COUNTY, NEW MEXICO **CASE NO. 24278**

APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN, LLC TO AMEND ORDER NO. R-7767 TO EXCLUDE THE SAN ANDRES FORMATION FROM THE EUNICE MONUMENTOIL POOL WITHIN THE EUNICE MONUMENT SOUT UNIT AREA, LEA COUNTY, NEW MEXICO **CASE NO. 24277**

APPLICATION OF GOODNIGHT PERMIAN MIDSTREAM, LLC FOR APPROVAL OF A SALTWATER DISPOSAL WELL, LEA COUNTY, NEW MEXICO AND, AS A PARTY ADVERSELY AFFECTED BY ORDER R-22869-A, FOR A HEARING DE NOVO BEFORE THE FULL COMMISSION, PURSUANT TO NMSA 1978, SECTION 70-2-13. **CASE NO. 24123**

APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN, LLC TO AMEND ORDER NO. R-22026/SWD-2403 TO INCREASE THE APPROVED INJECTION RATE IN ITS ANDRE DAWSON SWD #1, LEA COUNTY, NEW MEXICO **CASE NO. 23775**

APPLICATIONS OF GOODNIGHT MIDSTREAM PERMIAN, LLC FOR APPROVAL OF A SALTWATER DISPOSAL WELL, LEA COUNTY, NEW MEXICO **CASE NOS. 23614-23617**

APPLICATION OF EMPIRE NEW MEXICO TO REVOKE THE INJECTION AUTHORITY GRANTED UNDER ORDER NO. R22026 FOR THE ANDRE DAWSON SWD #001, LEA COUNTY, NEW MEXICO **CASE NOS. 24018-24027**

OIL CONSERVATION DIVISION'S MOTION TO COMPEL EXPERT WITNESS TESTIMONY OF ROBERT LINDSAY, Ph.D.

COMES NOW the New Mexico Oil Conservation Division ("OCD") and hereby requests that the New Mexico Oil Conservation Commission ("OCC") or its designated Hearing Officer compel Empire New Mexico's ("Empire) expert witness Robert Lindsay, Ph.D. to answer to specific questions asked of him by OCD Counsel and to override baseless objections by Empire's Counsel, including the instruction to Dr. Lindsay not to answer OCD Counsel's questions. OCD requests further relief in the form of a resumed deposition limited solely to the topic of Dr. Lindsay's rebuttal opinions and with costs to Empire for said reconvened deposition. As grounds in support thereof, OCD states the following:

I. Introduction

On or about June 4, 2024, the OCC issued a procedural order for the above-captioned cases. In that Procedural Order, which permitted parties to engage in discovery in the above-captioned matters, the OCC commanded that the parties to the above-captioned cases supply documents to each other that are "(1) within the respective party's possession, custody, or control, (2) upon which each party (including their witnesses) relied in preparation for the merits hearing and (3) referenced in the direct testimony and exhibits within one week of a request for such documents, without a subpoena." *See* June 4, 2024 Procedural Order, p. 3-4, ¶ 7; *see also* the most recently amended Procedural Order. Additionally, due to discovery disputes amongst the parties earlier in the above-captioned cases, the Hearing Officer reminded counsel as follows:

> "*I also remind everyone of my admonition that I expect the utmost good faith from all partis with respect to discovery especially given the short time frame remaining before the merits hearing in these matters. I also remind everyone that this is not a federal case but an administrative proceeding before an OCC-appointed hearing officer. As such, I expect free and even voluntary exchanges of information at the discovery stage.* Authority permitting, I will not hesitate to sanction parties who I deem to be violating this precept. Lastly, but consonant with all of the foregoing, I do not appreciate the plethora of tedious and lengthy discovery motions. They are in derogation of the discovery principles I expect in these administrative cases and are unworthy of the high professionalism

> and generally exceptional caliber of the counsel involved in this specialized and rarified practice."

See Hearing Officer's Order dated August 22, 2024 (*emphasis added*). Thus, the law of the above captioned cases is that discovery should be conducted openly, freely, and with voluntary exchanges of information, which concords with New Mexico Rule of Civil Procedure 1-026 NMRA.

On January 17, 2025, Goodnight Midstream Permian, LLC ("Goodnight"), Empire New Mexico ("Empire"), and the OCD convened for the deposition of Empire's expert witness Robert Lindsay, Ph.D. *Exhibit 1- January 17, 2025 Deposition Transcript of Robert Lindsay, Ph.D.* During OCD counsel's examination of Dr. Lindsay, OCD counsel inquired about Dr. Lindsay's opinions, including those he expected to deliver as or had prepared thus far for rebuttal testimony, and his discussions with Empire's counsel, with rebuttal testimony due on February 6, 2025 per the Procedural Order in its most recent iteration. *Id.* at 222:7-25. Mr. Padilla objected to this line of questioning, initially asserting the attorney-client privilege on behalf of Dr. Lindsay. *Id.* OCD Counsel repeatedly asked questions along similar lines, with Mr. Padilla's objections starting with the attorney-client privilege and then transitioning over to the attorney work-product doctrine. *Exhibit 1* at 223:1-226:17. OCD counsel then asked Mr. Padilla if he intended to tell his expert not to answer OCD counsel's questions, which resulted in Mr. Padilla doing just that. *Id.* OCD counsel then inquired of Dr. Lindsay whether he was employed by Empire. *Id.* Dr. Lindsay waffled back and forth in his response, from yes to no to I work as a consultant for Empire, ultimately sticking with his role as a consultant and *not* an Empire employee whatsoever. *Id.* OCD counsel commented that the objections and instructions issued by Mr. Padilla were improper, resulting in the need for this motion.

Opposition by Empire is presumed based on the relief requested.

II. Party Counsel communications with expert witnesses are not protected by the attorney-client privilege nor the attorney work-product doctrine.

Empire's counsel appears to believe that the attorney-client privilege extends to expert witnesses, as does the attorney work-product doctrine. Below, OCD will demonstrate that is a flawed interpretation of the law, an interpretation for which OCD seeks rectification.

The first American instance of the attorney-client privilege being observed by courts was found in *U.S. v. Burr*, in which Chief Justice Marshall outlined that a client's confidential communications with his or her lawyer were shielded from disclosure absent waiver or a compelling reason to override the privilege. *United States v. Burr*, 25 F. Cas. 55, 70-73 (C.C.D. Va. 1807). There are cases from England that reach back as far as the 16th century that address the attorney-client privilege, none of which apply in the United States, but the point remains that the attorney-client privilege is an old and sacred privilege found in the greater and lesser bodies of the Common Law. The attorney-client privilege is generally defined as "[t]he *client*'s right to refuse to disclose and to prevent any other person from disclosing *confidential communications between the client and the attorney*." Black's Law Dictionary 1235 (8th ed. 2004) (*emphasis added*).

a. 19.15.4.17 NMAC.

19.15.4.17 NMAC, titled "Rules of Evidence and Exhibits for Adjudicatory Hearings," sets forth the following concerning the application of the New Mexico Rule of Evidence: "The rules of evidence applicable in a trial before a court without a jury shall not control, but division examiners and the commission may use such rules as guidance in conducting adjudicatory hearings. The commission or division examiner may admit relevant evidence, unless it is immaterial, repetitious or otherwise unreliable." 19.15.4.17(A) NMAC. OCD concedes that the OCC is not obligated to strictly enforce New Mexico's Rules of Evidence, but may refer to them for guidance on the admission, or rejection, of proffered evidence. The OCD encourages either the OCC or the designated Hearing Officer to consider the New Mexico Rules of Evidence in evaluating this Motion.

b. The New Mexico Rules of Evidence do not recognize assertion of the attorney-client privilege between party counsel and expert witnesses retained by a party.

OCD asserts that two New Mexico Rules of Evidence are relevant to this motion and matters presented to the OCC, namely Rules 11-501 and 11-503 NMRA, addressed below.

i. 11-501 NMRA.

Rule 11-501 NMRA, titled "Privileges Recognized Only as Provided," states: "Unless required by the constitution, these rules, or other rules adopted by the supreme court, no person has a privilege to A. refuse to be a witness; B. refuse to disclose any matter; C. refuse to produce

any object or writing; or D. prevent another from being a witness, disclosing any matter, or producing any object or writing.

Without belaboring the obvious, Rule 11-501's baseline is that no person has a privilege to hide evidence, whether it be in the form of testimony, documents, or preventing another person from disclosing testimony or documents, with the exception of provision of privilege by the constitution, rules of evidence, or other rules adopted by the New Mexico Supreme Court. Thus, an analysis of Empire's objections starts from the premise that Empire had no right whatsoever to object to OCD counsel's questions pursuant to the attorney-client privilege or work-product doctrine.

ii. **11-503 NMRA.**

Rule 11-503 NMRA, titled "Lawyer-Client Privilege," outlines the New Mexico Supreme Court's position on the attorney-client privilege. Rule 11-503 defines several key terms used within the rule. OCD avers that the definition of a client or lawyer are not in dispute here, but wishes to present the definition of "representative of a lawyer." The Rule goes on to say that a "representative of a lawyer" is one employed to assist the lawyer in providing professional legal services." 11-503(A)(3) NMRA.

The heart of Rule 11-503 NMRA is found in subsection (B), which sets the outer boundaries of the attorney-client privilege:

> "**B. Scope of the privilege.** A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made for the purpose of facilitating or providing professional legal services to that client,
>
> (1) between the client and the client's lawyer or representative;
>
> (2) between the client's lawyer and the lawyer's representative;
>
> (3) between the client or client's lawyer and another lawyer representing another in a matter of common interest;
>
> (4) between representatives of the client or between the client and a representative of the client; or
>
> (5) between lawyers representing the client."

11-503(B) NMRA.

11-503 NMRA also makes clear that the assertion of the attorney-client privilege must be done by the client or the lawyer, who can do so only on behalf of the client. 11-503(C) NMRA.

Further, should a lawyer assert the attorney-client privilege on behalf of the client, the presumption favors the privilege absent evidence to the contrary. *Id.*

Turning to the caselaw, New Mexico courts offer no protection under the attorney-client privilege for expert witness opinions or conclusions. *State ex rel. State Highway Comm'n v. Steinkraus*, 1966-NMSC-134, ¶ 4, 76 N.M. 617, 620, 417 P.2d 431, 432. Further, an expert witness for a party may not hide material facts or evidence by communicating them to the retaining party's attorney. *Id.* If a retaining party does assert the attorney-client privilege as to its experts, the burden of proof as to existence of the privilege lies with the retaining party. *Murphy v. Gorman*, 271 F.R.D. 296, 304 (D.N.M. 2010).

c. The Attorney Work-Product doctrine.

The work-product doctrine is defined as "[t]he rule providing for qualified immunity of an attorney's work product from discovery or other compelled disclosure." Black's Law Dictionary 1639 (8th ed. 2004). The attorney work-product doctrine is a separate concept from the attorney-client privilege, with the work-product doctrine being more expansive than the attorney-client privilege. *S.F. Pac. Gold Corp. v. United Nuclear Corp.*, 2007-NMCA-133, ¶ 38, 143 N.M. 215, 228, 175 P.3d 309, 322. More specifically, the attorney work-product doctrine does not concern communications, the heart of the attorney-client privilege, buts shields from discovery documents and tangible things possessed by an client's attorney in order to protect an attorney's privacy to do what is necessary to prepare a case. *Id.* The doctrine finds its roots in Rule 1-026(B)(4), which holds that a party may obtain discovery of documents and tangible things may be discoverable absent a privilege or other legal right to withhold production. *Id.* However, the work-product doctrine nearly always applies to "the mental impressions, conclusions, opinions, or legal theories of an attorney. . ." *Id.*; *see also* Rule 1-026 NMRA.

III. Empire Counsel's assertions of attorney-client privilege, the attorney work-product doctrine, and instruction to Robert Lindsay, Ph.D. are improper and should be overruled.

a. Empire's counsel has no attorney-client relationship with Dr. Lindsay and, therefore, has no attorney-client privilege with Dr. Lindsay.

By Dr. Lindsay's own words, he is not employed by Empire and receives no paychecks from Empire; rather, Dr. Lindsay is a consultant for Empire (put another way, Dr. Lindsay is a contractor

for Empire and certainly not a representative of either Mr. Padilla or Empire). *Exhibit 1* at 223:6-13; *see also* 11-503 NMRA. Further, Mr. Padilla asserted that he was retained counsel for Dr. Lindsay, yet Dr. Lindsay himself acknowledged that Mr. Padilla did not represent him in this matter, which resolves in the negative the question of whether an attorney-client relationship, and vicariously the affiliated privilege, exists between Dr. Lindsay and Mr. Padilla. *Exhibit 1* at 226:4-17; *Murphy v. Gorman*, 271 F.R.D. 296, 304 (D.N.M. 2010). OCD avers that the deposition excerpts for Dr. Lindsay demonstrate a few things of salience: that Mr. Padilla is not counsel for Dr. Lindsay unless he can demonstrate otherwise per *Murphy*; that Dr. Lindsay is not an employee of Empire but is a contractor; and that there is no attorney-client relationship between Mr. Padilla and Dr. Lindsay who is an expert whose opinions are discoverable at any stage of litigation. *Murphy v. Gorman*, 271 F.R.D. 296, 304 (D.N.M. 2010); *State ex rel. State Highway Comm'n v. Steinkraus*, 1966-NMSC-134, ¶ 4, 76 N.M. 617, 620, 417 P.2d 431, 432. Absent the attorney-client relationship, which does not exist here between Mr. Padilla and Dr. Lindsay, there can be no attorney-client privilege. 11-503 NMRA. Therefore, Mr. Padilla's objection and instructions not to answer OCD counsel's questions were lodged improperly by Mr. Padilla and should therefore be overruled.

b. The attorney-work product doctrine does not apply to Dr. Lindsay's contracted-for opinions and impressions.

When OCD counsel, as well as Goodnight's counsel, attempted to question Dr. Lindsay about his rebuttal opinions as of the day of Dr. Lindsay's deposition, Mr. Padilla repeatedly asserted the attorney-work product doctrine (which, for clarification, is not a privilege). *Exhibit 1* at 18:9-19:15; 225:11-226:17. At no point did either OCD or Goodnight's counsel seek to acquire documents or tangible things, but rather Dr. Lindsay's opinions and conclusions, as well as the underlying data used to formulate said opinions and conclusions. *Id.* Neither did OCD or Goodnight's counsel seek documents or tangible things from Mr. Padilla; in fact, the questions posed to Dr. Lindsay did not pertain whatsoever to Mr. Padilla's "mental impressions, conclusions, opinions, or legal theories. . ." *Id.*; *see also S.F. Pac. Gold Corp. v. United Nuclear Corp.*, 2007-NMCA-133, ¶ 38, 143 N.M. 215, 228, 175 P.3d 309, 322; Rule 1-026 NMRA. Dr. Lindsay was not a client of Mr. Padilla at the time of his deposition, nor was Dr. Lindsay an employee of Empire at that time, thus not attorney-client privilege existed to justify the assertion of the attorney work-

product doctrine. Rule 1-026 NMRA; *Murphy v. Gorman*, 271 F.R.D. 296, 304 (D.N.M. 2010). If Mr. Padilla communicated with Dr. Lindsay in preparation for Dr. Lindsay's deposition, such communications possess no confidentiality – they are perfectly discoverable communications to which no privilege or doctrine attach.

As with the flawed assertion of the attorney-client privilege between Mr. Padilla and Dr. Lindsay, so too is the objection based on the attorney work-product doctrine. The questions at issue posed to Dr. Lindsay concerned discoverable information subject to a deadline, as discussed above in Section III(a) of this Motion. Nothing sought from Dr. Lindsay crossed into attorney work-product. *Exhibit 1* at 18:9-19:15; 225:11-226:17; *see also S.F. Pac. Gold Corp. v. United Nuclear Corp.*, 2007-NMCA-133, ¶ 38, 143 N.M. 215, 228, 175 P.3d 309, 322; Rule 1-026 NMRA. Because the law does not favor the asserted objection, Mr. Padilla's objection and instructions not to answer are rightly overruled.

c. Dr. Lindsay should be compelled to answer OCD counsel's questions.

Because Empire's counsel's objections and instructions not to answer deposition questions are legally and fatally flawed, a suitable remedy is required. OCD proposes that a reconvened deposition, with depositions costs borne by Empire, is proper. Specifically, OCD requests that a reconvened deposition be set as soon as practicable and be limited to Dr. Lindsay's opinions and conclusions as of the date of the deposition. If the deposition is scheduled after the February 6, 2025 deadline for disclosure of rebuttal testimony, then the scope of the deposition should be enlarged to a full deposition on the filed rebuttal testimony.

IV. New Mexico law does not prohibit discovery into the topic of expert witness rebuttal opinions; the order merely sets a drop-dead date for disclosure of rebuttal evidence, including opinions, and nothing more.

Empire's counsel's assertion that an Dr. Linday's rebuttal testimony is not discoverable until the disclosure deadline in the underlying procedural order is hokum. *Exhibit 1* at 224:10-225:10. Nothing in OCD's regulations, the underlying procedural order, or the New Mexico Rules of Civil Procedure provide a party a right or privilege to withhold expert opinions or conclusions, regardless of the status of those opinions or conclusions. *State ex rel. State Highway Comm'n v. Steinkraus*, 1966-NMSC-134, ¶ 4, 76 N.M. 617, 620, 417 P.2d 431, 432. Rather, the current

Procedural Order simply sets a deadline for disclosure. A deadline is defined as "a date or time by which something must be done or completed."[1] That definition neither states expressly nor implies that a deadline is the only date upon which something must be done, but rather establishes a final date by which something must be accomplished.

Empire's attempt to shield from disclosure its retained expert's opinions is therefore unsupported and prejudicial to the other Parties to this action. A less charitable view might construe such a theory as dilatory. Therefore, OCD requests that Empire's objection to disclosure of expert witness rebuttal testimony on the grounds of an existing and pending deadline be overruled as a matter of law.

V. Conclusion.

Mr. Padilla is a highly-experienced and knowledgeable attorney, licensed to practice law in New Mexico since 1975 (fifty years), something OCD does not think can be contested in any meaningful sense. Therefore, it stands to reason that Mr. Padilla knew or should have known that his assertions of the attorney-client privilege, the attorney work-product doctrine, and his instruction to Dr. Lindsay were patently improper and could be viewed as having been designed to intentionally deprive the OCD of information that it is entitled to receive, namely the state and nature of Dr. Lindsay's rebuttal opinions at the time of the deposition. While OCD is not seeking sanctions for this Mr. Padilla's misconduct, OCD suggests that Mr. Padilla should be cautioned about his behavior. The OCD requests that Mr. Padilla's objections and instruction be overruled and that OCD should be permitted to depose Dr. Lindsay as to his rebuttal opinions (which he clearly possesses based on his testimony) as of the date of reconvened deposition. Further, OCD requests that Dr. Lindsay, should he intend to deny that he has any rebuttal opinions currently formulated, be they partial or complete, be instructed to answer honestly and forthrightly without further delay. The same should apply to Empire's counsel.

Respectfully submitted,

[1] "deadline," Oxford English Dictionary, *https://www.oed.com/dictionary/deadline*, retrieved January 23, 2025.

Christopher Moander

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CERTIFICATE OF SERVICE

I certify that on January 24, 2025, this pleading was served by electronic mail on:

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OCD EXHIBIT 1

STATE OF NEW MEXICO

ENGERGY MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL AND GAS COMMISSION

APPLICATIONS OF GOODNIGHT MIDSTREAM PERMIAN, LLC, FOR APPROVAL OF SALTWATER DISPOSAL WELLS, LEA COUNTY, NEW MEXICO, AND ASSOCIATED CASES

CASE NOS: 23641-23617
23775
20418-20420,20425
DIVISION CASE 24123
ORDER NO. R-22869-A

VIDEOTAPED DEPOSITION OF ROBERT FORREST LINDSAY

ROUGH DRAFT TRANSCRIPT

FRIDAY, JANUARY 17, 2025

VIA ZOOM VIDEOCONFERENCING PLATFORM.

PURSUANT TO THE NEW MEXICO RULES OF CIVIL PROCEDURRE, THIS DEPOSITION WAS TAKEN BY:

ADAM G. RANKIN, ESQ.

ATTORNEY FOR GOODNIGHT MIDSTREAM PERMIAN

REPORTED BY: Mary Therese Macfarlane CCR No. 122

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Division will have some questions for you, and maybe some other parties, as well.

MR. MOANDER: Is that an insinuation, Mr. Rankin, that I'm going to cause trouble? Don't answer that.

MR. RANKIN: You always say you're trouble.

MR. MOANDER: That's true. It is a well-known documented quality of mine.

EXAMINATION

BY MR. MOANDER:

Q. Good afternoon, Dr. Lindsay. We met way earlier today. My name is Chris Moander. I'm the torn for the New Mexico Oil Conservation Division in this matter. I've got a couple of bodies of questions. I can assure you

that I will not take up as much time as Mr. Rankin, but I want to get through some of this relatively efficiently.

So we will start off here.

The opinions that you've rendered up to today, are those your final opinions for this matter?

A. Yes.

Q. And have you spoken -- my understanding is you've had conversations with Empire's counsel's, I'll call them trial counsel, the attorneys who are going to appear in this case before the OCC.

Have you -- you've spoken with them?

A. Oh you mean like Ernie and Sharon?

Q. Yes.

A. Yes. Via Zoom but not in person.

Q. When was the last time you spoke with them, Doctor?

A. Yesterday.

Q. And what did you discuss with them?

MR. PADILLA: Objection: Attorney-client privilege.

MR. MOANDER: Ernie, I'm going to take a stand here on that objection.

Is it your representation that Dr. Lindsay is your client?

MR. PADILLA: Yes.

MR. MOANDER: And how is -- he's not an expert witness, he's your client? Is that right? Because I want to explore that a bit.

And some of this probably needs to be taken offline, so let me try something else.

Q. Dr. Lindsay do you work inside Empire?

A. No.

Q. Who do you work for currently?

A. Myself.

Q. Does Empire pay you? Do they pay any wages to you?

A. No, I just consult with them, yes. That's all I do.

MR. MOANDER: Ernie, I'm going to reserve my position on this, because it's my view that expert witnesses are not subject to attorney-client privilege. So we may need to come back to this, because I don't think that's right, at all, legally.

So I'm just putting everyone on notice that that objection, to me, doesn't work, and I may see what I need to do about motion practice on that, so I can find out what's been discussed with these attorneys, because I think I'm entitled to it as a matter of law.

Be that as it may, I'll reserve that. I'll file something.

I'm just going to point out again, though, for matters of the record that if this type of objection results in further delay I am going to make that clear on whose shoulders that lies, and it's not mine.

So moving on.

Q. Dr. Lindsay, have you at any point in time -- well, since Mr. Padilla is objecting to this I don't even know if I can ask this question. I'll probably draw another one.

Have you discussed rebuttal testimony with anybody involving this case, Dr. Lindsay?

A. With Empire, yes.

Q. And are you intending to provide rebuttal testimony in this case?

A. Yes.

MR. PADILLA: Work product.

MR. Moander: All right. So, to be clear, is that an objection to me learning what rebuttal testimony will be forthcoming?

MR. PADILLA: Yes.

MR. MOANDER: Okay. So I'm going to have to talk with the hearing officer about that, too. This is a new objection.

So Mr. Padilla are you instructing this witness not to answer?

MR. PADILLA: Yeah, I am instructing him not to answer, because we have -- we haven't finalized the rebuttal testimony.

MR. MOANDER: And it's your position, Mr. Padilla, that rebuttal testimony is not discoverable at this stage of things?

MR. PADILLA: Yes. You can have the report.

MR. MOANDER: Excuse me? What was that?

MR. PADILLA: Once we finalize the report I think you can discover the report.

MR. MOANDER: Okay. Let's get that instruction on to the record, if we could. I'd like that preserved.

Q. So I'll ask again: So you've discussed rebuttal with Empire's counsel. Is that correct, Dr. Lindsay?

A. Yes.
Q. Will you tell me as of today what that rebuttal testimony looks like, what that might be?
A. Well, all I've done is reviewed what the different expert witnesses have said on behalf of Goodnight, and I've sent that to the people at Empire.
Q. And what are those opinions or those conclusions if you've arrived at anything?
MR. PADILLA: Objection. I continue the objection. This is work product at this point.
MR. MOANDER: Okay. So, Mr, padilla I'm going

to need an instruction not to answer on the record, rather than the objection.
So I'm going to ask the question again.
Q. Dr. Lindsay, what are the opinions you have come to at this point concerning rebuttal after your review of other expert testimony?
MR. PADILLA: Objection. And I'm going to instruct you, Dr. Lindsay, not to respond to that

question.

Q. And, Dr. Lindsay, are you going to follow the instructions of Mr. Padilla, who is not your attorney in this case.

A. He represents my employer, so, uh -- who I consult for. Let's put it that way.

Q. So let's be clear on that. Empire is not your employer, though. Right?

A. No, they are not. I just consult with them.

Q. All right. Well, let's move on.

Dr. Lindsay, have you reviewed OCD's filings in this case?

A. No.

Q. Would it be fair to say, then, at least as of today you have no opinions on OCD's case.

A. No. Yes, that's correct. Yeah. Yeah.

Q. Yes, you do not have a -- sorry. I realize we

get into double negatives here. Lawyers are bad at that. I apologize.

Okay. Thank you for that answer.

A. No opinion.

Q. So having reviewed your report -- so I'm not going to throw it up. It's your self-affirmed statement, including all of the exhibits.

Is it fair to say your analysis focused on the Grayburg and the San Andres Formations?

A. Yes.

Q. And would that also include, say, the Goat Seep Formation, as well?

A. Yes. The little bit of data we've got on that.

Q. Are there any other formations in the EMSU, aside from the Grayburg, the San Andres and the Goat that you analyzed in preparation to render your opinions in this matter?

A. Yes. We looked at the base of the Queen on top of the Grayburg, as well, because that forms a little bit of the reservoir of the EMSU.

Q. During the course of forming your opinions, and as your opinions stand today, Dr. Lindsay, did you at any point -- did you at any point factor in The Safe Drinking Water Act?

A. No. But that's an issue, because the Goat Seep