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

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

CASE NOS. 23614-23617

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 EMPIRE NEW MEXICO LLC TO REVOKE INJECTION AUTHORITY, LEA COUNTY, NEW MEXICO

CASE NOS. 24018-24020, 24025

APPLICATION OF GOODNIGHT PERMIAN MIDSTREAM, LLC FOR APPROVAL OF A SALTWATER DISPOSAL WELL, LEA COUNTY, NEW MEXICO.

DIVISION CASE NO. 24123
ORDER NO. R-22869-A

GOODNIGHT'S RESPONSE IN OPPOSITION TO EMPIRE'S MOTION FOR A FOUR-DAY EXTENSION TO FILE REQUESTS FOR SUBPOENAS

Goodnight Midstream Permian, LLC ("Goodnight") respectfully files this response opposing Empire New Mexico LLC's ("Empire") motion to extend the deadline to request subpoenas (the "Motion"). For the reasons stated, the Motion should be denied and the requested subpoena for a witness deposition should not issue.

ARGUMENT

A. Goodnight Acted in Good-Faith.

1. Contrary to Empire's assertion, Goodnight counsel did not act in bad faith. And contrary to Empire's contention, the parties have each conducted five depositions in preparation for the February 2025 hearing. Empire has deposed five (not four) of Goodnight's seven witnesses: Dr. Lake, Dr. Davidson, Mr. Knights, Mr. McBeath, and Mr. Tomastik.

2. Goodnight has deposed four of Empire's nine witnesses and a corporate representative under Rule 30(b)(6). Goodnight deposed Dr. Trentham, Mr. West, Dr. Buchwalter, and Mr. Dillewyn, and Mr. West as a corporate representative.

3. While counsel for Goodnight was preparing to depose Mr. Dillewyn, Empire submitted a "revised" report from Mr. Dillewyn that substantially altered Mr. Dillewyn's analysis and conclusions a week before his scheduled deposition on November 8, 2024. *See* **Exhibit A**.

4. As addressed in communications between counsel, Mr. Dillewyn's revised report was dated September 2024, and was provided to Empire for review by Mr. Dillewyn sometime during the second week of October but was not provided to Goodnight counsel until the end of the day on October 31, 2024. *See id.*

5. Goodnight counsel also was not previously advised that Mr. Dillewyn was preparing a revised report and was not advised how or to what extent the revised report would impact Mr. Dillewyn's previously filed testimony or the testimony and conclusions of Empire's other witnesses. Counsel for Goodnight attempted to confer with Empire counsel over this issue, but never received a response. *See* **Exhibit B**.

6. Without notifying Goodnight counsel in advance—or even attempting to confer—Empire unilaterally filed revised testimony for both Mr. Dillewyn (on December 4, 2024) and Mr. McShane (on December 6, 2024) more than three months after the deadline to file direct testimony passed on August 26, 2024, and did so without seeking leave from the other parties or the Hearing Officer.

7. The revised testimony of Mr. Dillewyn and Mr. McShane substantially modified their previous testimony—all based on Mr. Dillewyn's revised report. Among other things, Empire decreased its calculated oil in place by more than 56% on average—a reduction in calculated oil that ranges from a decrease of 41% to 83% across the seven analyzed wells.

8. Counsel for Empire made no effort to communicate Empire's intent to make these changes or the basis for them to any of the other parties at any time, despite Goodnight's efforts to learn from Empire's counsel the significance of Mr. Dillewyn's revised report and its implications for Empire's other witness testimony. *See* **Exhibit B**.

9. Upon receiving Mr. Dillewyn's revised report, Goodnight counsel cancelled Mr. Dillewyn's originally scheduled deposition for November 8, 2024, to provide time to adequately review the revised report, assess the potential implications of its analysis and conclusions, and confer with Empire counsel. *See* **Exhibit C**.

10. According to Empire counsel, the only mutually available dates to reschedule Mr. Dillewyn's deposition were December 6, 2024, or one day during the week of December 16, 2024. *See* **Exhibit C**. At the time (November 4, 2024), Empire counsel made no mention of Empire's intent to file revised testimony for Mr. Dillewyn or when they anticipated filing it. As it turns out, Empire filed Mr. Dillewyn's revised testimony on December 4, making December 6 unworkable for a deposition of Mr. Dillewyn.

11. To provide time to review and assess Mr. Dillewyn's revised report—even before being aware revised testimony would be forthcoming—Goodnight counsel scheduled Mr. Dillewyn's deposition for December 17, 2024, which was one day after the deadline to submit requests for subpoenas under the proposed amended scheduling order that had been agreed to by all counsel on October 31, 2024. *See* **Exhibit D**.

12. On December 16, 2024, while preparing for Mr. Dillewyn's re-scheduled deposition, Goodnight counsel conferred with Empire counsel and counsel for all parties about potentially extending the deadline to submit subpoenas until Friday, December 20, 2024, for the limited purpose of obtaining documents identified in Mr. Dillewyn's deposition, which was to occur one day after the deadline to submit subpoenas. *See* Empire Mot., Ex. B.

13. The request was made in good faith as a protective measure to ensure Goodnight would have the opportunity to obtain relevant documents identified in a deposition that was necessarily rescheduled to a date after the subpoena deadline due to Empire's substantial revision of its witnesses' testimony outside of the scheduling order deadlines.

14. Empire counsel agreed to an extension on the condition that Empire be granted a mutual extension but did not disclose their intent to expand the scope of the limited mutual extension intended by Goodnight counsel to pursue the deposition of additional witnesses. Nor did Empire make any effort to confer with Goodnight counsel on their purported need for additional witness depositions.

15. If Empire counsel had conferred in good faith over what they actually intended to obtain through an extension, there would not have been confusion over what was being agreed to but more importantly Goodnight counsel never would have agreed. Knowing Goodnight would

not agree to additional witness depositions, Empire counsel instead withheld their true intent as part of their negotiation tactic.

16. At the close of business on December 16, 2024, after having reviewed Mr. Dillewyn's revised testimony and revised report, Goodnight counsel made the reasonable determination not to request an extension of the subpoena deadline—as stated would likely be the case—because any documents identified in his deposition should be produced under the provisions of the prehearing order.

17. Good faith is a two-way street. In contrast to Empire counsel, Goodnight counsel conferred with Empire over what potential discovery it might require and the reason for it. Because Empire counsel did not confer with Goodnight counsel over what additional discovery Empire intended to pursue, Goodnight counsel had no knowledge the decision to forgo requesting an extension would have any impact on any other party.

18. The deadline to request a subpoena came and went on December 16, 2024, without an extension to the subpoena deadline having been requested. While Goodnight counsel did not expressly advise Empire it ultimately decided against seeking the extension, the fact that the deadline came and went without having requested the extension conclusively established Goodnight did not seek the extension.

19. Having observed that Goodnight did not request an extension, Empire counsel never reached out to confer about extending the deadline for its own purposes. Indeed, if Empire simply requested production of documents it identified in witness depositions that had not been produced rather than additional witness depositions, Goodnight would not have objected as that would have been within the scope of what was intended. Instead, it filed a request for a subpoena

to depose an additional Goodnight witness at 5:18 p.m. on the Friday before Christmas without conferring with Goodnight counsel.

20. Counsel for Goodnight did not act in bad faith.

B. Empire's Argument in Support of an Additional Deposition is Not Supported.

21. Contrary to Empire's assertion, Goodnight's three witnesses—Mr. McBeath, Dr. Davidson, and Dr. Lake—clearly stated in their direct written testimony that they considered discussions with Goodnight personnel and Goodnight's witness testimony in preparation of their own testimony. The only Goodnight personnel and witness in this case is Preston McGuire, who is the geology and reservoir engineering manager for Goodnight.

22. Empire's contends it had no knowledge until the depositions that Mr. McBeath, Dr. Lake, and Dr. Davidson had considered or relied on the testimony of Goodnight's witness, Preston McGuire, in preparation of their own testimony. In fact, both Dr. Lake and Mr. McBeath made clear in their written statements that they did. *See* Empire Mot. at Ex. C.

23. In his written testimony submitted on 8/26, Dr. Lake stated he considered the testimony of Goodnight's witnesses and discussions with Goodnight personnel. Mr. McGuire's final draft testimony was provided among the documents Dr. Lake reviewed and relied on. Similarly, Mr. McBeath also stated in his written testimony that he considered the testimony of Goodnight's witnesses and discussions with Goodnight personnel. Mr. McGuire's testimony was not re-produced among his documents to avoid duplication.

24. As to Dr. Davidson, as noted in his deposition testimony, his exhibits relied on the geologic tops picked by Mr. McGuire. *See* Empire Mot. at Ex. C. That information—and all of Mr. McGuire's San Andres picks—were all provided to Empire under the prehearing order on

September 17, 2024. Moreover, the basis for Mr. McGuire's geologic picks is spelled out in his written testimony.

25. Moreover, Dr. Lake's deposition was on 11/12, Dr. Davidson's was on 11/22, and Mr. McBeath's was on 12/6, which provided Empire more than enough time to meet the 12/16 subpoena deadline.

C. If Empire is Granted the Deposition of Preston McGuire, Goodnight Should be Permitted to Depose Dr. Lindsay.

26. Empire's witnesses—William West, Dr. Buchwalter, Dr. Trentham, and Galen Dillewyn—all testified in their depositions that they relied on information provided by Empire's witness, Dr. Lindsay, including among other things his determination of the oil-water-contact in the Eunice Monument South Unit, his fracture analysis purportedly establishing communication pathways between the San Andres and Grayburg formations, chemistry data, and other information.

27. Until their depositions, it was impossible to determine from Empire's witness statements or the documents Empire produced under the prehearing order that these witnesses were relying on Dr. Lindsay for this information.

28. For example, despite his extensive testimony, Mr. West produced only two documents that he reviewed or relied on to prepare his testimony, neither of which relate to Dr. Lindsay. Mr. West also never referenced Dr. Lindsay in his written testimony. In contrast to Goodnight's fulsome production of documents associated with the testimony of each of its witnesses, Empire produced relatively few documents their witnesses reviewed or relied on, with the exception of Dr. Buchwalter.

29. If the Hearing Officer determines the deadline to submit subpoena requests should be extended and Empire's request for an additional deposition should be approved, Goodnight

should be afforded the same opportunity depose an additional witness and be allowed to depose Dr. Lindsay, as well.

CONCLUSION

For the reasons stated, Empire's Motion should be denied. However, if the Hearing Officer decides to extend the subpoena deadline and grant Empire the right to take an additional witness deposition, the same benefit should be extended to Goodnight and Goodnight should be authorized to depose Empire's witness, Dr. Lindsay.

DATED: December 27, 2024

Respectfully submitted,

HOLLAND & HART LLP

/s/ Adam G. Rankin
By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2024, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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EXHIBIT A

Adam Rankin

From: Sandoval, Yolanda <ysandoval@spencerfane.com>
Sent: Thursday, October 31, 2024 4:52 PM
To: Adam Rankin; Dana Hardy; Ernest Padilla; Shaheen, Sharon
Cc: Jaclyn McLean; Matthew M. Beck; Miguel Suazo; jessek.tremaine@emnrd.nm.gov; Sophia Graham; Nathan R. Jurgensen; Moander, Chris, EMNRD (Chris.Moander@emnrd.nm.gov)
Subject: RE: Goodnight/Empire - expert documents reviewed and relied on- follow up

External Email

Adam, below is a Sharefile link to Trentham publications and Galen Dillewyn's revised report which we are providing unnumbered in advance of the deposition. We will reproduce with Bates number later.

Please note that we are still trying to locate one of the publications.

Best

https://montand.sharefile.com/d-s11c1d896784942839b27b3aa4a1a2a6c

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EXHIBIT B

Adam Rankin

From: Adam Rankin
Sent: Tuesday, November 26, 2024 4:28 PM
To: Shaheen, Sharon; dhardy@hinklelawfirm.com; Ernest Padilla
Cc: Sandoval, Yolanda; Matthew M. Beck; Chris.Moander@emnrd.nm.gov; jessek.tremaine@emnrd.nm.gov; msuazo@bwenergylaw.com; Nathan R. Jurgensen; Jaclyn McLean
Subject: RE: NMOCD - Empire NM - Empire waterflood accounting, monthly unit updates, and Nutech
Attachments: Goodnight Midstream_ Empire Subpoena_2 FINAL (3-5-2024).pdf; Order on Goodnight's Motion 11-5-24.pdf; Water Saturation Model Sensitivity_Empire.pdf

Dana, Sharon, and Ernie – a couple outstanding items I am following up on:

First, the Commission ordered Empire to provide "an accounting of all such waterflood injections into the EMSU as further identified in the Motion[,]" and set a deadline of February 20, 2024 to submit the accounting. See attached order. The information required to be provided in the accounting is relevant to the merits of the hearing in this case. The proposed deadline for rebuttal testimony and exhibits is February 6, 2024 – approximately 2 weeks before Empire will be required to submit its accounting. That does not work for us. I brought this up with Sharon on Friday and asked whether Empire would agree to provide the accounting at some reasonable time in advance of the rebuttal deadline. I understand that she is going to raise that request with your client.

I propose that Empire submit its accounting on or before January 10, 2024. That will give Goodnight and the other parties a little more than three weeks to review the accounting in advance of the deadline to file rebuttal testimony and exhibits.

Please advise if that deadline is acceptable or whether I will have to file a motion to amend the accounting deadline in the order.

Second, under Goodnight's Second Subpoena, Request No. 10 (see attached), we asked for the monthly reports that Empire is required to submit to the Division under the Piazza Order No. R-22869-A. To date, I am not aware of having been provided any of those monthly reports. Can you please inquire with Empire and produce the reports that have been prepared and submitted to the Division or confirm that none of have been submitted? If any have already been produced, can you please identify them by bates range? I am aware we received one annual plan of development for the EMSU that was submitted to SLO, but haven't seen any monthly reports required under Order R-22869-A.

Third, during the depositions of Dr. Davidson and McBeath it became apparent that there is substantial confusion over Nutech's revised report and whether and to what extent Empire has even adopted Nutech's petrophysical analysis. The revised Nutech report is unsigned, so I am not clear if it is Galen Dillewyn's work or someone else's work at Nutech. And, on its face, it is a "sensitivity analysis" applicable to a single well—the cored well—that was not previously analyzed by Nutech. The analysis does indicate that Nutech is suggesting a reduction of 35% of calculated oil in place in the San Andres compared to Nutech's original analysis. Please advise as soon as possible what Empire intends to do with this updated analysis and what it means for Empire's testimony and exhibits that were filed three months ago at the end of August.

We can catch up on these items after Thanksgiving.

Thanks.

Adam

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From: Adam Rankin
Sent: Monday, November 25, 2024 6:27 PM
To: Shaheen, Sharon <sshaheen@spencerfane.com>; dhardy@hinklelawfirm.com; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Sandoval, Yolanda <ysandoval@spencerfane.com>; mbeck@peifer.com; Chris.Moander@emnrd.nm.gov; Jesse.tremaine@emnrd.nm.gov; msuazo@bwenergylaw.com; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Jaclyn McLean <jmclean@hinklelawfirm.com>; padillalawnm@outlook.com
Subject: RE: NMOCD - Empire NM (Responses to Subpoenas) - GNM effort to confer on discovery Request 17 (45Q Tax documents and communications)

Sharon, Dana, and Ernie,

It appears Empire plans to make use of 45Q tax credits and/or to rely on these credits to support an argument that development of a San Andres ROZ could be economic. That topic has come up now repeatedly in questions directed at Goodnight's witnesses in addition to being in Empire's direct testimony. We have asked for related documents from Empire, but only one document has been produced that I can identify.

The only document I am aware of that was produced in response to Request 17 (that I am aware of) is OCD 23614-17 03649 to OCD 23614-17 03649 (EMSU Huff n Puff Design FINAL.pdf). While that document relates to carbon capture/injection, it does not address 45Q tax credits. I note that the Davis "Memo to file" has one reference to 45Q Tax credits (OCD 23614-17 03482-03521). It was produced in response to Request 10. I am not aware of any other document or communication addressing 45Q tax credits. If I am mistaken, please correct me.

All documents—including communications and emails—that touch on 45Q tax credits are responsive to Request No. 17. Empire initially responded that after a "diligent and thorough" search it has not identified any responsive documents. This is more than unlikely when Empire's testimony, submitted to the Commission approximately three weeks later, directly indicates Empire is at least contemplating 45Q tax credits. There surely must be some emails, communications, analyses, calculations, etc. addressing 45Q and whether and to what extent injected CO2 can be sufficiently "sequestered" to qualify for the credit, whether Empire's wells and facilities would qualify for the credit as-is or would need upgrades or new wells, etc.

Please produce all responsive documents, including internal and external emails and communications, memos, analyses, etc. that are responsive or confirm that Empire has no responsive documents in its possession or control.

17. Documents, data, and/or communications, whether interr

addressing the use of the San Andres formation in the EMSU as a carbo

whether in the alternative to or in association with Empire's proposed ca

recovery project.

RESPONSE: Empire has conducted a diligent and thorough sear

its possession, custody, or control and discovered that no responsive docu

I recognize this is a holiday week. However, we are scheduled to depose Empire's witness William West on December 3 and 4. He testified about the economic benefits of 45Q tax credits. I would like any responsive documents produced in advance of that deposition with a reasonable time to review—or confirmation in advance that Empire has no further responsive documents.

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CONFIDENTIALITY NOTICE: This message is confidential and may be privileged. If you believe that this email has been sent to you in error, please reply to the sender that you received the message in error; then please delete this email.

From: Adam Rankin
Sent: Thursday, August 8, 2024 5:59 PM
To: Shaheen, Sharon <sshaheen@spencerfane.com>
Cc: Sandoval, Yolanda <ysandoval@spencerfane.com>; mbeck@peifer.com; Chris.Moander@emnrd.nm.gov; Jesse.tremaine@emnrd.nm.gov; msuazo@bwenergylaw.com; sgrahaham@bwenergylaw.com; Kaitlyn Luck <kluck@bwenergylaw.com>; Michael Feldewert <MFeldewert@hollandhart.com>; Paula M. Vance <PMVance@hollandhart.com>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; dhardy@hinklelawfirm.com; Jaclyn McLean <jmclean@hinklelawfirm.com>; trode@hinklelawfirm.com; padillalawnm@outlook.com; Ortiz, David <dortiz@spencerfane.com>
Subject: RE: NMOCD - Empire NM (Responses to Subpoenas) - GNM effort to confer on discovery

Sharon,

I am following up to confer with Empire on the production made on August 1 in response to GNM's third subpoena for documents. Please review and let me know Empire's responses and when we can expect supplemental discovery or confirmation that Empire has no additional responsive documents.

Given the timing, I am going to ask that the Commission address Empire's objections at the August 15 meeting next week. Of course, we if reach agreement on any or all these items we may not have to seek the Commission's relief or can at least narrow the scope of the disputed issues.

Separately, please supplement Empire's production and provide all monthly EMSU plans provided to the OCD required under Order No. R-22869-A. Empire previously stated in response to discovery that the monthly reports would be provided once they are submitted to the Division. Unless I have missed it, we have not seen a single report submitted to the Division. It has been 9 months since the order was issued.

Request No. 3:

GNM's seeks "Documents, communications, reports, analyses, and protocols reflecting treatment, including volumes and concentrations of chemicals used, and a description of filtering media and size of filters used on injected fluids, and Safety Data Sheets (SDS) for treating chemicals used, conducted by Empire New Mexico LLC to address scaling, H2S, and corrosion in Grayburg production wells, Grayburg injection wells, and San Andres water supply wells within the EMSU from Empire's acquisition of the EMSU to the present." Empire produced documents bates labeled OCD 23614-17 03558-3562, however, those documents are dated January 2024 – May 2024.

Please produce all responsive documents from the time Empire acquired the EMSU or confirm that Empire has no responsive documents from before January 2024.

Request No. 6:

GNM seeks "All documents, communications, reports, analyses, and data provided by XTO to Empire relating to the residual oil zone ("ROZ") referenced in Empire's Exhibit A-5, including but not limited to documents and data provided by XTO in the data room as part of Empire's due diligence review of the EMSU, as well as complete, conforming and legible copies of the analyzed logs used to create the cross section titled "Eunice Area ROZ Cross-section" presented on page 7 of Empire's Exhibit A-5."

Empire produced a single document in response under Bates OCD 23614-17 03563-3622 that it had previously produced. It seems unlikely that is the only technical document provided to Empire relating to the alleged ROZ in the EMSU as part of Empire's EMSU due diligence.

Please produce all responsive documents or confirm that Empire has no additional responsive documents to this request.

Request No. 8

GNM seeks "Documents and data reflecting Grayburg Formation pressure in EMSU production wells and injection wells for the years 2021, 2022, and 2023." In response, Empire produced documents bates labeled OCD 23614-17 03623-3627, which are 5 different spreadsheets: (1) EMSU injection wells with data from November 2023 until February 2024; (2) 4 s/s purporting to show fluid levels for certain wells for certain months in 2021, all months in 2022, certain wells for all months in 2023, and certain wells in January-July 2024.

Please provide all EMSU injection well data prior to November 2023 or confirm that Empire has no additional responsive documents.

Request No. 9

GNM seeks "Documents and data reflecting shut-in well pressure measurements, including shut-in fluid levels, for Grayburg waterflood injection wells within the EMSU for the period beginning immediately after Empire acquired its operating interest(s) the EMSU to Present."

In response, Empire produced a single summary spreadsheet bates labeled OCD 23614-17 03628 that has one table showing pressure values for 2024 (without specific dates) in 4 EMSU Grayburg wells and 1 purported San Andres EMSU well and one table showing pressure values in a different EMSU well purportedly for the Grayburg and San Andres.

Please produce the underlying documents and data used to create the summary tables in OCD 23614-17 03628 and confirm Empire has no additional responsive documents.

Request Nos. 12, 13, & 14

GNM seeks information on capital costs for a tertiary ROZ project in the San Andres, CO2 volumes, and communications with potential CO2 suppliers.

Empire objects to these requests on the grounds the information sought is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Empire points to the Commission's enumeration of powers statute and argues that the requested information is outside the scope of the hearing. We disagree.

First, the enumeration of powers statute Empire relies on expressly incorporates the "in-paying quantities" standard under NMSA § 70-2-12(A)(4) when evaluating whether a potentially prospective zone is at risk of being "drowned out."

Second, the Piazza order, which is one of the cases at issue before the Commission here, denied GNM's application in part on the basis that it is the Division's obligation under that same provision "to prevent the drowning by water of any stratum or part thereof capable of producing oil or gas or both oil and gas in paying quantities and to prevent the premature and irregular encroachment of water or any other kind of water encroachment that reduces or tends to reduce the total ultimate recovery of crude petroleum oil or gas or both oil and gas from any pool." *See* Order No. R-22869-A (citing NMSA § 70-2-12(A)(4)).

Third, in every one of Empire's applications to revoke GNM's injection authority within the EMSU, Empire alleges that GNM is watering out a purported ROZ in the San Andres. See, e.g., Case No. 24025. These claims directly implicate NMSA § 70-2-12(A)(4).

Whether there are recoverable hydrocarbons in the purported San Andres ROZ that can be produced in paying quantities is the central issue in these cases.

Please withdraw Empire's objections and produce all responsive documents or confirm as to each request that Empire has no responsive documents.

Request No. 17

GNM seeks information and communications about whether Empire is seeking to use the EMSU as a carbon capture project.

Empire states it has searched but found no responsive documents.

Empire's witnesses have provided sworn testimony submitted to the Division previously in these cases alleging that the EMSU can receive value and tax credits for injection of anthropogenic CO2.

> See Testimony of William West, referring to Empire Exhibit G-4: "**Exhibit G-14** shows the location of a CO2 pipeline that runs south from Hobbs and within 7.5 miles east of EMSU. This pipeline can be used to transport natural (subsurface CO2 resources) or anthropogenic (industrial emissions) CO2 supplies to be used for the CO2 flood. With 45-Q tax credits paying $60/tonne ($3.19/MCF) of CO2 sequestered, parties

interested in obtaining this tax credit for 12 years will have a location to inject the anthropogenic CO2 they capture."

See Testimony of Stephen Melzer: "9. One of the evolving modern tragedies in our oilfields today is the condemnation of the ROZ oil recovery potential via produced water disposal. This is especially true today with the
recent passage of the Inflation Reduction Act's 45Q tax credit enhancements. The lost oil is bad enough but the enormous potential for large volume CO2 storage that would otherwise occur while producing the oil makes it even more tragic. CO2 EOR is now well established as a proven large and permanent storage process for emission captured CO2. Large reservoirs are needed for the storage and the thick and laterally continuous ROZs are ideally suited for the storage. Disposal water injected into the ROZ reservoirs is effectively condemning them for oil exploitation and CO2 storage."

Please confirm, notwithstanding the fact Empire has alleged the EMSU can be used for carbon storage and sequestration in testimony in these cases, that it has nevertheless identified no responsive documents.

Request No. 18.

In this request, GNM asks for the "The reservoir simulation model of the EMSU 'to evaluate performance and impact to SWD injection and long-term flooding into the San Andres' that is referenced in the May 16, 2024 Form 8-K and attached as Exhibit 99, Press Release of Empire Petroleum, dated May 15, 2024, along with data relied on to construct the model, parameters and inputs, and analyses, reports, and summaries, including internal and external correspondence, that address, reflect on, or concern the reservoir model."

Empire's response clarifies that this publicly advertised model is actually hearing prep material of its experts and objects to its disclosure and production in advance of the timelines set out in the scheduling order. We agree that the model itself and its parameters and inputs are subject to the scheduling order and its disclosure provisions. But the underlying data is not. Underlying data used to create the model is discoverable and should be produced. And while the expert's work may be subject to the scheduling order, Empire has no basis to contend Empire's internal technical communications, reports, and summaries regarding the model are protected against discovery. Also not protected are Empire's internal and external communications that reflect on technical aspects of the model.

Please withdraw Empire's objections and produce all responsive documents and information.

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From: Ortiz, David <dortiz@spencerfane.com>
Sent: Thursday, August 1, 2024 4:45 PM
To: mbeck@peifer.com; Chris.Moander@emnrd.nm.gov; Jesse.tremaine@emnrd.nm.gov; msuazo@bwenergylaw.com; sgrahaham@bwenergylaw.com; Kaitlyn Luck <kluck@bwenergylaw.com>; Michael Feldewert <MFeldewert@hollandhart.com>; Adam Rankin <AGRankin@hollandhart.com>; Paula M. Vance <PMVance@hollandhart.com>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; dhardy@hinklelawfirm.com; Jaclyn McLean <jmclean@hinklelawfirm.com>; trode@hinklelawfirm.com; padillalawnm@outlook.com
Cc: Shaheen, Sharon <sshaheen@spencerfane.com>; Sandoval, Yolanda <ysandoval@spencerfane.com>
Subject: NMOCD - Empire NM (Responses to Subpoenas)

External Email

All, attached are the following:

Empire New Mexico LLC's Responses to the Oil Conservation Division's First Subpoena, along with its corresponding ShareFile link to its documents (see below)
https://montand.sharefile.com/public/share/web-s9d4020f9303e4feca124b01f3556691e

And

Empire New Mexico LLC's Responses to Goodnight Midstream Permian LLC's Third Subpoena Dated July 2, 2024, along with its corresponding ShareFile link to its documents (see below)
https://montand.sharefile.com/public/share/web-s62fde34ce16145339b87b4058ee58064

David Ortiz Legal Administrative Assistant
Spencer Fane LLP

325 Paseo De Peralta | Santa Fe, NM 87501-1860
D 505.986.2641 **O** 505.982.3873 **F** 505.982.4289
dortiz@spencerfane.com | spencerfane.com

EXHIBIT C

Adam Rankin

From: Shaheen, Sharon <sshaheen@spencerfane.com>
Sent: Monday, November 4, 2024 2:43 PM
To: Adam Rankin; Dana Hardy; Moander, Chris, EMNRD; Ernest Padilla
Cc: Jaclyn McLean; Tremaine, Jesse, EMNRD; Nathan R. Jurgensen; Matthew M. Beck; Miguel Suazo; Sophia Graham
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

External Email

Sounds good. I will let Mr. Dillewyn know.

Sharon Shaheen Partner
Spencer Fane LLP

325 Paseo De Peralta | Santa Fe, NM 87501-1860
D 505.986.2678 **O** 505.982.3873 **F** 505.982.4289 M 505.603.8307
sshaheen@spencerfane.com | spencerfane.com

From: Adam Rankin <AGRankin@hollandhart.com>
Sent: Monday, November 4, 2024 2:09 PM
To: Shaheen, Sharon <sshaheen@spencerfane.com>; Dana Hardy <DHardy@hinklelawfirm.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

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Sharon, thanks for explaining the timing on the turnaround for Nutech's revised report.

I propose 12/17 for Mr. Dillewyn starting at 9 a.m. mtn. Unless OCD, Rice or Pilot have a problem with that date, we will serve updated deposition notices later this week.

Adam Rankin
Partner, Holland & Hart LLP

agrankin@hollandhart.com | **T:** (505) 954-7294 | **M:** (505) 570-0377

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From: Shaheen, Sharon <sshaheen@spencerfane.com>
Sent: Monday, November 4, 2024 1:57 PM
To: Adam Rankin <AGRankin@hollandhart.com>; Dana Hardy <DHardy@hinklelawfirm.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>;

Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

External Email

Adam,

Mr. Dillewyn is available Nov 12, 13, 14, 15, 19, 20, 21 and December 4, 5, 6 and anytime the week of December 16. In light of your limited availability, the only dates that appear to be available for all of us at this time are December 6 and the week of December 16.

FYI--With respect to your point that the supplemental report is dated September 2024, I note that the revision to part of Mr. Dillewyn's previously filed testimony was not provided to Empire until the second week of October and Empire provided it to you in good faith as soon as Empire had completed its review.

We will look forward to rescheduling Mr. Dillewyn's deposition.

Sharon

Sharon Shaheen Partner
Spencer Fane LLP

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sshaheen@spencerfane.com | spencerfane.com

From: Adam Rankin <AGRankin@hollandhart.com>
Sent: Monday, November 4, 2024 8:42 AM
To: Dana Hardy <DHardy@hinklelawfirm.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>; Shaheen, Sharon <sshaheen@spencerfane.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

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Dana,

I will get you a list of the documents later today that I expect to reference for Dr. Trentham's deposition tomorrow. I am still putting those together but reserve the right to reference and use as exhibits additional documents, depending on where the deposition goes. Most of the documents are papers or presentations that have Melzer and/or Trentham as authors.

As for Galen Dillewyn's scheduled deposition for Friday, please provide alternative dates. I plan to cancel the Friday deposition because I do not have time to evaluate Mr. Dillewyn's revised report.

I am in the PFAS rulemaking from 11/12-11/15. Also 11/9-11/20 do not work for me. 11/26-27 could work. 12/6, 12/9, or 12/11 are also possible dates. Less ideal, but I am open to it – the early part of the week of 12/16 can probably work.

Thank you.

Adam Rankin
Partner, Holland & Hart LLP
agrankin@hollandhart.com | **T:** (505) 954-7294 | **M:** (505) 570-0377
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From: Dana Hardy <DHardy@hinklelawfirm.com>
Sent: Thursday, October 31, 2024 5:11 PM
To: Adam Rankin <AGRankin@hollandhart.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>; Shaheen, Sharon <sshaheen@spencerfane.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>; Dana Hardy <DHardy@hinklelawfirm.com>
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

External Email

All,

I've accepted the redlines and resolved the comments. I deleted the new footnote since it seems superfluous.

Regarding the upcoming depositions, we propose that the parties provide the exhibits they intend to use (other than the filed hearing testimony and exhibits) 24 hours before the beginning of the deposition. Please let us know if you agree.

Thanks,
Dana

Dana S. Hardy
Partner
Hinkle Shanor LLP
218 Montezuma
Santa Fe, New Mexico 87501
(505) 982-4554 telephone
(505) 930-5702 direct
(505) 982-8623 facsimile
dhardy@hinklelawfirm.com

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From: Adam Rankin <AGRankin@hollandhart.com>
Sent: Thursday, October 31, 2024 10:46 AM
To: Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>; Shaheen, Sharon <sshaheen@spencerfane.com>; Dana Hardy <DHardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

All,

Attached are some redlines to a draft proposed amended scheduling order for consideration.

Adam Rankin
Partner, Holland & Hart LLP
agrankin@hollandhart.com | **T:** (505) 954-7294 | **M:** (505) 570-0377

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From: Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Sent: Tuesday, October 22, 2024 3:18 PM
To: Adam Rankin <AGRankin@hollandhart.com>; Shaheen, Sharon <sshaheen@spencerfane.com>; Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

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Thank you for compiling, Adam.

Also, we need to address the scheduling order and get it tendered.

Chris

From: Adam Rankin <AGRankin@hollandhart.com>
Sent: Tuesday, October 22, 2024 3:07 PM
To: Shaheen, Sharon <sshaheen@spencerfane.com>; Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>; Moander, Chris, EMNRD

<Chris.Moander@emnrd.nm.gov>
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

Ok – Nov. 6 for Bill Knights.

I am putting together a list with all the proposed dates so it is all in one place, but haven't wanted to delay getting you dates.

Adam Rankin
Partner, Holland & Hart LLP
agrankin@hollandhart.com | **T:** (505) 954-7294 | **M:** (505) 570-0377
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Sent: Tuesday, October 22, 2024 3:04 PM
To: Adam Rankin <AGRankin@hollandhart.com>; Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

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November 6

Sharon Shaheen Partner
Spencer Fane LLP

325 Paseo De Peralta | Santa Fe, NM 87501-1860
D 505.986.2678 **O** 505.982.3873 **F** 505.982.4289 M 505.603.8307
sshaheen@spencerfane.com | spencerfane.com

From: Adam Rankin <AGRankin@hollandhart.com>
Sent: Monday, October 21, 2024 5:48 PM
To: Shaheen, Sharon <sshaheen@spencerfane.com>; Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

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Sharon,

Available dates for Bill Knights are November 6 or December 12.

Adam Rankin
Partner, Holland & Hart LLP
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Sent: Monday, October 21, 2024 4:49 PM
To: Shaheen, Sharon <sshaheen@spencerfane.com>; Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

Sharon,

Available date for Dr. Davidson is November 22.

Adam Rankin
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From: Adam Rankin
Sent: Monday, October 21, 2024 3:52 PM
To: Shaheen, Sharon <sshaheen@spencerfane.com>; Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

Sharon,

Since he is only available on three dates between now and the end of the year, it looks like we will need to reserve December 3 & 4 for William West/30b6 depos. November 20 will not work because that is the date of the hearing on Empire' motion to lift the litigation stay. I will confirm in a follow up email which deposition we will take first.

Adam Rankin
Partner, Holland & Hart LLP
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From: Adam Rankin
Sent: Monday, October 21, 2024 1:59 PM
To: Shaheen, Sharon <sshaheen@spencerfane.com>; Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

Sharon,

December 9 or 10 will work for Tom Tomastik.

That means we need to hold December 13 for Buchwalter.

More to follow. Hopefully that works for all counsel.

Also, I am closely involved in the PFAS rulemaking for NMOGA which is scheduled for hearing November 12-15 with a prehearing conference the morning of November 6. I have to work around those dates as well now.

Adam Rankin
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Sent: Monday, October 21, 2024 9:20 AM
To: Adam Rankin <AGRankin@hollandhart.com>; Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
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Attached is a chart of available dates for witnesses and counsel. On the available dates for Empire witnesses, both the witness and counsel are available.

Sharon Shaheen Partner
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From: Adam Rankin <AGRankin@hollandhart.com>
Sent: Sunday, October 20, 2024 6:06 PM
To: Shaheen, Sharon <sshaheen@spencerfane.com>; Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
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Sharon,

I will check with our witnesses to make sure those dates still work. As a heads up, I am not sure November 26 or December 2 work for us with travel plans around the Thanksgiving holiday. I will confirm this week.

November 19 and 20 also do not work. November 20 is the district court hearing on Empire's motion to lift the litigation stay.

As specified, we also need two consecutive days for Empire's 30b6 witness and West's individual deposition. We may not end up needing both days, but we want them scheduled and reserved in case we do.

As a courtesy, can you please provide additional potential dates or ranges for Empire's witnesses, as we did for Goodnight's witnesses?

Adam Rankin
Partner, Holland & Hart LLP
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From: Shaheen, Sharon <sshaheen@spencerfane.com>
Sent: Friday, October 18, 2024 12:17 PM
To: Adam Rankin <AGRankin@hollandhart.com>; Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

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Adam and Chris,

Below are proposed dates for the deposition witnesses. We do, of course, have some wiggle room, but I thought it would be easier if I proposed specific dates and we can adjust as needed. I did my best to work within everyone's schedule that I know of and omitted dates on which there are OCD or OCC hearings (except for November's rulemaking). Happy to have a call to discuss if it would be helpful—

Thanks,
Sharon

Goodnight witnesses:

Knights: November 13
Davidson: November 26
McBeath: November 20
Lake: November 22
Tomastik: December 2

Empire witnesses:

Bob Trentham: November 19
West (fact and 30b6): December 4
Dillewyn: November 15
Buchwalter: December 10

Sharon Shaheen Partner
Spencer Fane LLP

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D 505.986.2678 **O** 505.982.3873 **F** 505.982.4289 M 505.603.8307
sshaheen@spencerfane.com | spencerfane.com

From: Adam Rankin <AGRankin@hollandhart.com>
Sent: Thursday, October 17, 2024 4:52 PM
To: Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>; Shaheen, Sharon <sshaheen@spencerfane.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

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Counsel,

Our experts are requesting confirmation for when their depositions will take place. They having competing demands during this busy time of the year. Please advise what dates work for their depositions so we can coordinate.

Best,
Adam

Adam Rankin
Partner, Holland & Hart LLP
agrankin@hollandhart.com | **T:** (505) 954-7294 | **M:** (505) 570-0377
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From: Adam Rankin
Sent: Wednesday, October 9, 2024 9:47 AM
To: Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>; Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>; Shaheen, Sharon <sshaheen@spencerfane.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

Following up to provide availability for Bill Knights:

Bill Knights

- November 4 - 22
- December 2 - 5
- December 9 - 12

John McBeath:
Nov. 7: morning
Nov. 8: open
Nov. 14: afternoon
Nov. 15, 20: open
Nov. 21: morning
Nov. 25: open
Nov. 26: morning
Dec. 3-4: open
Dec. 5: morning
Dec. 6, 11-12: open
Dec. 13: morning

Tom Tomastik:
December: open

Dr. Larry Lake:
Nov. 25-30: Not Available
Dec. 6-11: Not Available

Dr. Jim Davidson:
November-early December: Available

Adam Rankin

Partner, Holland & Hart LLP
agrankin@hollandhart.com | T: (505) 954-7294 | M: (505) 570-0377
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From: Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Sent: Wednesday, October 9, 2024 9:11 AM
To: Adam Rankin <AGRankin@hollandhart.com>; Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>; Shaheen, Sharon <sshaheen@spencerfane.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

External Email

Adam,

I'm going to sit down with your list tomorrow AM and provide availability. Bit tied up today with OCC and some other items.

Chris

From: Adam Rankin <AGRankin@hollandhart.com>
Sent: Tuesday, October 8, 2024 6:03 PM
To: Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>; Shaheen, Sharon <sshaheen@spencerfane.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>
Subject: [EXTERNAL] Goodnight Expert Depo Availability

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Counsel,

Below are availabilities for John McBeath, Tom Tomastik, and Dr. Jim Davidson. I've provided dates Dr. Larry Lake is not available. I am working to get dates for Bill Knights. Our priority is getting Dr. Davidson scheduled. He has medical treatments he needs to schedule ASAP so the sooner we have his dates scheduled the better.

Please let us know available dates for Empire's witnesses. It would be helpful to confirm who will be Empire's 30b6 witness. If it is William West, it will make sense to schedule the 30b6 and individual depositions for back-to-back days. If we can get both depositions done in one day, great; if not, we'll want that second consecutive day set aside.

John McBeath:

Nov. 7: morning
Nov. 8: open
Nov. 14: afternoon
Nov. 15, 20: open
Nov. 21: morning
Nov. 25: open
Nov. 26: morning
Dec. 3-4: open
Dec. 5: morning
Dec. 6, 11-12: open
Dec. 13: morning

Tom Tomastik:
December: open

Dr. Larry Lake:
Nov. 25-30: Not Available
Dec. 6-11: Not Available

Dr. Jim Davidson:
November-early December: Available

Holland & Hart

Adam Rankin
Partner
HOLLAND & HART LLP
110 North Guadalupe Street, Suite 1, Santa Fe, NM 87501
agrankin@hollandhart.com | **T:** (505) 954-7294 | **M:** (505) 570-0377

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EXHIBIT D

Adam Rankin

From: Dana Hardy <DHardy@hinklelawfirm.com>
Sent: Thursday, October 31, 2024 5:11 PM
To: Adam Rankin; Moander, Chris, EMNRD; Shaheen, Sharon; Ernest Padilla
Cc: Jaclyn McLean; Tremaine, Jesse, EMNRD; Nathan R. Jurgensen; Matthew M. Beck; Miguel Suazo; Sophia Graham; Dana Hardy
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability
Attachments: Goodnight-Empire Scheduling Order - Revised 10-31-24(3014160.1).docx

External Email

All,

I've accepted the redlines and resolved the comments. I deleted the new footnote since it seems superfluous.

Regarding the upcoming depositions, we propose that the parties provide the exhibits they intend to use (other than the filed hearing testimony and exhibits) 24 hours before the beginning of the deposition. Please let us know if you agree.

Thanks,
Dana

Dana S. Hardy
Partner
Hinkle Shanor LLP
218 Montezuma
Santa Fe, New Mexico 87501
(505) 982-4554 telephone
(505) 930-5702 direct
(505) 982-8623 facsimile
dhardy@hinklelawfirm.com

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From: Adam Rankin <AGRankin@hollandhart.com>
Sent: Thursday, October 31, 2024 10:46 AM
To: Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>; Shaheen, Sharon <sshaheen@spencerfane.com>; Dana Hardy <DHardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo

<msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

All,

Attached are some redlines to a draft proposed amended scheduling order for consideration.

Adam Rankin
Partner, Holland & Hart LLP
agrankin@hollandhart.com | **T:** (505) 954-7294 | **M:** (505) 570-0377

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From: Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Sent: Tuesday, October 22, 2024 3:18 PM
To: Adam Rankin <AGRankin@hollandhart.com>; Shaheen, Sharon <sshaheen@spencerfane.com>; Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

External Email

Thank you for compiling, Adam.

Also, we need to address the scheduling order and get it tendered.

Chris

From: Adam Rankin <AGRankin@hollandhart.com>
Sent: Tuesday, October 22, 2024 3:07 PM
To: Shaheen, Sharon <sshaheen@spencerfane.com>; Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

Ok – Nov. 6 for Bill Knights.

I am putting together a list with all the proposed dates so it is all in one place, but haven't wanted to delay getting you dates.

Adam Rankin
Partner, Holland & Hart LLP
agrankin@hollandhart.com | **T:** (505) 954-7294 | **M:** (505) 570-0377

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From: Shaheen, Sharon <sshaheen@spencerfane.com>
Sent: Tuesday, October 22, 2024 3:04 PM
To: Adam Rankin <AGRankin@hollandhart.com>; Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

External Email

November 6

Sharon Shaheen Partner
Spencer Fane LLP

325 Paseo De Peralta | Santa Fe, NM 87501-1860
D 505.986.2678 **O** 505.982.3873 **F** 505.982.4289 M 505.603.8307
sshaheen@spencerfane.com | spencerfane.com

From: Adam Rankin <AGRankin@hollandhart.com>
Sent: Monday, October 21, 2024 5:48 PM
To: Shaheen, Sharon <sshaheen@spencerfane.com>; Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

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Sharon,

Available dates for Bill Knights are November 6 or December 12.

Adam Rankin
Partner, Holland & Hart LLP
agrankin@hollandhart.com | **T:** (505) 954-7294 | **M:** (505) 570-0377

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From: Adam Rankin
Sent: Monday, October 21, 2024 4:49 PM
To: Shaheen, Sharon <sshaheen@spencerfane.com>; Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla

<PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
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Sharon,

Available date for Dr. Davidson is November 22.

Adam Rankin
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agrankin@hollandhart.com | **T:** (505) 954-7294 | **M:** (505) 570-0377
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From: Adam Rankin
Sent: Monday, October 21, 2024 3:52 PM
To: Shaheen, Sharon <sshaheen@spencerfane.com>; Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

Sharon,

Since he is only available on three dates between now and the end of the year, it looks like we will need to reserve December 3 & 4 for William West/30b6 depos. November 20 will not work because that is the date of the hearing on Empire' motion to lift the litigation stay. I will confirm in a follow up email which deposition we will take first.

Adam Rankin
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From: Adam Rankin
Sent: Monday, October 21, 2024 1:59 PM
To: Shaheen, Sharon <sshaheen@spencerfane.com>; Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

Sharon,

December 9 or 10 will work for Tom Tomastik.

That means we need to hold December 13 for Buchwalter.

More to follow. Hopefully that works for all counsel.

Also, I am closely involved in the PFAS rulemaking for NMOGA which is scheduled for hearing November 12-15 with a prehearing conference the morning of November 6. I have to work around those dates as well now.

Adam Rankin
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From: Shaheen, Sharon <sshaheen@spencerfane.com>
Sent: Monday, October 21, 2024 9:20 AM
To: Adam Rankin <AGRankin@hollandhart.com>; Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

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Attached is a chart of available dates for witnesses and counsel. On the available dates for Empire witnesses, both the witness and counsel are available.

Sharon Shaheen Partner
Spencer Fane LLP

325 Paseo De Peralta | Santa Fe, NM 87501-1860
D 505.986.2678 **O** 505.982.3873 **F** 505.982.4289 M 505.603.8307
sshaheen@spencerfane.com | spencerfane.com

From: Adam Rankin <AGRankin@hollandhart.com>
Sent: Sunday, October 20, 2024 6:06 PM
To: Shaheen, Sharon <sshaheen@spencerfane.com>; Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
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Sharon,

I will check with our witnesses to make sure those dates still work. As a heads up, I am not sure November 26 or December 2 work for us with travel plans around the Thanksgiving holiday. I will confirm this week.

November 19 and 20 also do not work. November 20 is the district court hearing on Empire's motion to lift the litigation stay.

As specified, we also need two consecutive days for Empire's 30b6 witness and West's individual deposition. We may not end up needing both days, but we want them scheduled and reserved in case we do.

As a courtesy, can you please provide additional potential dates or ranges for Empire's witnesses, as we did for Goodnight's witnesses?

Adam Rankin
Partner, Holland & Hart LLP
agrankin@hollandhart.com | **T:** (505) 954-7294 | **M:** (505) 570-0377

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From: Shaheen, Sharon <sshaheen@spencerfane.com>
Sent: Friday, October 18, 2024 12:17 PM
To: Adam Rankin <AGRankin@hollandhart.com>; Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

External Email

Adam and Chris,

Below are proposed dates for the deposition witnesses. We do, of course, have some wiggle room, but I thought it would be easier if I proposed specific dates and we can adjust as needed. I did my best to work within everyone's schedule that I know of and omitted dates on which there are OCD or OCC hearings (except for November's rulemaking). Happy to have a call to discuss if it would be helpful—

Thanks,
Sharon

Goodnight witnesses:

Knights: November 13
Davidson: November 26
McBeath: November 20
Lake: November 22
Tomastik: December 2

Empire witnesses:

Bob Trentham: November 19
West (fact and 30b6): December 4
Dillewyn: November 15
Buchwalter: December 10

Sharon Shaheen Partner
Spencer Fane LLP

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To: Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>; Shaheen, Sharon <sshaheen@spencerfane.com>
Cc: Jaclyn McLean <JMcLean@hinklelawfirm.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Nathan R. Jurgensen <NRJurgensen@hollandhart.com>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Sophia Graham <sgraham@bwenergylaw.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
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Counsel,

Our experts are requesting confirmation for when their depositions will take place. They having competing demands during this busy time of the year. Please advise what dates work for their depositions so we can coordinate.

Best,
Adam

Adam Rankin
Partner, Holland & Hart LLP
agrankin@hollandhart.com | **T:** (505) 954-7294 | **M:** (505) 570-0377

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Sent: Wednesday, October 9, 2024 9:47 AM

To: Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>; Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>; Shaheen, Sharon <sshaheen@spencerfane.com>
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Subject: RE: [EXTERNAL] Goodnight Expert Depo Availability

Following up to provide availability for Bill Knights:

Bill Knights

- November 4 - 22
- December 2 - 5
- December 9 - 12

John McBeath:
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Tom Tomastik:
December: open

Dr. Larry Lake:
Nov. 25-30: Not Available
Dec. 6-11: Not Available

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November-early December: Available

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To: Adam Rankin <AGRankin@hollandhart.com>; Dana Hardy <dhardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>; Shaheen, Sharon <sshaheen@spencerfane.com>
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External Email

Adam,

I'm going to sit down with your list tomorrow AM and provide availability. Bit tied up today with OCC and some other items.

Chris

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Counsel,

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Dr. Larry Lake:
Nov. 25-30: Not Available
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November-early December: Available

Adam Rankin
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