

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

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

CASE NO. 22626

**RESPONSE IN OPPOSITION
TO MOTION TO QUASH SUBPOENA**

Goodnight Midstream Permian, LLC (“Goodnight Midstream”) files this response in opposition to Empire New Mexico, LLC’s motion to quash a subpoena issued by the Division on May 16, 2022. For the reasons stated, the motion should be denied and Empire should be compelled to produce all responsive documents.

First, Empire’s argument that the subpoena is void and must be reissued is moot and without basis. While the May 16, 2022, subpoena was not served on Empire due to a miscommunication between counsel, the subpoena was discussed on May 17, 2022. In recognition of the fact that the subpoena was not served, undersigned counsel had the subpoena reissued. The reissued subpoena was promptly served on Empire’s counsel the morning of June 6, 2022. See **Exhibit A**, attached.

Second, Empire’s contention that the documents and information Goodnight Midstream seeks are irrelevant is wrong. The subpoena targets a single issue that is likely dispositive in this case. It asks Empire to provide documents indicating whether hydrocarbons exist in the San Andres formation within the Unit area. The request is highly relevant because the existence or non-existence of hydrocarbons directly bears on Empire’s contention that disposal of produced water in the San Andres will interfere with Unit operations. If no hydrocarbons exist in the San Andres, water disposal in that zone will not cause interference. Empire makes no effort to

articulate how the information requested is irrelevant, because there is no basis for the contention.

Third, Empire's objection that the subpoena is overly broad and burdensome and that the time for production is inadequate is not supported. The fact that the Unit is relatively large and has many production and waterflood injection wells has no bearing on the effort to review and produce a narrow set of requested documents and information relating to the existence of hydrocarbons in the San Andres, the formation at issue in this case. As to the amount of time provided, counsel for Goodnight Midstream asked how much more time Empire needs to produce responsive documents on June 1, 2022. *See* Exhibit A. Counsel for Empire never responded. Empire should be required to produce responsive documents no later than July 6, 2022, which is thirty days from the date the reissued subpoena was served.

If Empire believes the San Andres is reasonably capable of producing hydrocarbons and that Goodnight Midstream's proposed disposal will impair future production, Empire must be compelled to produce documents and information supporting that contention. Instead of fighting the subpoena, Empire should be jumping at the opportunity to produce responsive documents in support of its case. Empire claims it has responsive information that is confidential, proprietary, and privileged, but has made no showing that the purported documents actually meet the statutory definition of a protected trade secret. *Pincheira v. Allstate Ins. Co.*, 2008-NMSC-049, ¶ 38 ("If the party opposing production gives nothing more than 'an initial conclusory assertion' of a trade secret's existence, the trial court may decline further review and order production without a protective order."). To the extent the information requested exists and meets the statutory definition of a confidential and proprietary trade secret, the Division has the means to shield the information from dissemination in the public record while allowing Goodnight Midstream a fair and reasonable opportunity to review and assess the evidence in advance of a hearing. If the

materials exist and they constitute confidential and proprietary trade secrets, the remedy is to require production under a protective order, not to shield them from production. *See Pincheira*, 2008-NMSC-049, ¶ 39 (“...if the conclusion is that the information does comprise a trade secret, the court should craft an appropriate protective order covering use and dissemination of the information (including, possibly, post-trial dissemination).”). In any event, if Empire intends to rely on confidential and proprietary information regarding the potential for oil and gas production from the San Andres in this case, it must be compelled to produce it.

In contrast, if Empire has documents reflecting the non-existence of hydrocarbons in the San Andres, or that any existing oil and gas reserves are not economic, it must be compelled to produce those documents, as well. Empire cannot be heard to object to Goodnight Midstream’s proposed disposal and be protected from producing documents that undermine its case. Empire has articulated no reasonable basis to substantiate its claim that the subpoena imposes an unfair burden. It elected to contest this hearing. Having to respond to reasonable and narrowly targeted discovery comes with the territory.

Finally, Empire argues the information sought is publicly available in the Division’s records. Goodnight Midstream is well aware of the public records and is prepared to rely on them at the hearing in this case. But this dispute is not limited to the public record. The subpoena requests Empire’s documents and information. Empire cannot contest Goodnight Midstream’s application and avoid producing responsive information, especially if its documents undermine its objections. Empire must be compelled to produce responsive documents.

Contrary to Empire’s unsupported assertion, Goodnight Midstream’s document request narrowly targets a limited scope of potentially responsive documents that bear directly on Empire’s objections. Empire must be required to produce all responsive documents and should be compelled to do so no later than July 6, 2022.

CONCLUSION

For the reasons stated, Empire's motion should be denied.

Respectfully submitted,

HOLLAND & HART LLP

By:  _____

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**ATTORNEYS FOR GOODNIGHT MIDSTREAM
PERMIAN, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2022, I served a copy of the foregoing document via

Electronic Mail to:

Ernest L. Padilla
Padilla Law Firm, P.A.
P.O. Box 2523
Santa Fe, NM 87504
(505) 988-7577
PadillaLawNM@outlook.com

Attorney for Empire New Mexico, LLC



Adam G. Rankin

19082286_v1

EXHIBIT A

Adam Rankin

From: Adam Rankin
Sent: Monday, June 6, 2022 10:25 AM
To: Ernest Padilla
Subject: RE: [EXTERNAL] Case No. 22626 - subpoena for production of documents
Attachments: SIGNED Goodnight Midstream Piazza SWD - Empire Subpoena REVISED.PDF

Ernie,

Attached is the subpoena issued by the Division Director for document production on or before June 9.

From: Adam Rankin
Sent: Wednesday, June 1, 2022 3:57 PM
To: 'Ernest Padilla' <PadillaLawNM@outlook.com>
Subject: RE: [EXTERNAL] Case No. 22626 - subpoena for production of documents

Ernie,

As we discussed on May 17, the OCD issued the attached subpoena on May 16. I understand Empire would like more time to produce the documents. When can Empire produce the requested documents? How much time do they need?

From: Adam Rankin
Sent: Wednesday, June 1, 2022 2:32 PM
To: 'Ernest Padilla' <PadillaLawNM@outlook.com>
Subject: FW: [EXTERNAL] Case No. 22626 - subpoena for production of documents

From: Salvidrez, Marlene, EMNRD <Marlene.Salvidrez@state.nm.us>
Sent: Monday, May 16, 2022 1:25 PM
To: Adam Rankin <AGRankin@hollandhart.com>
Cc: Carla S. Garcia <CSGarcia@hollandhart.com>; Paula M. Vance <PMVance@hollandhart.com>; Michael Feldewert <MFeldewert@hollandhart.com>; Tremaine, Jesse K, EMNRD <JesseK.Tremaine@state.nm.us>
Subject: RE: [EXTERNAL] Case No. 22626 - subpoena for production of documents

External Email

Good afternoon,
Please see attached.

Thank you,
Marlene Salvidrez
Oil Conservation Division
Energy, Minerals and Natural Resources Department
(505) 469-5527



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

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

CASE NO. 22626

SUBPOENA

To: Empire New Mexico, LLC
c/o Padilla Law Firm, P.A.
Attn: Ernest L. Padilla
Post Office Box 2523
Santa Fe, New Mexico 87504
(505) 988-7577 telephone
padillalawnm@outlook.com

YOU ARE HEREBY COMMANDED pursuant to NMSA 1978, §70-2-8 and Rule
19.15.4.16.A NMAC to produce the following documents at the offices of Holland & Hart LLC,
110 North Guadalupe, Santa Fe, New Mexico, 87501, on or before June 9, 2022:

1. All documents, communications, correspondence, emails, data, analyses, reports,
and summaries, including but not limited to internal and external correspondence, memoranda,
and assessments, that address, reflect on, or concern the existence or non-existence of
hydrocarbons in the San Andres formation within the Eunice Monument South Unit.

This subpoena is issued on application of Goodnight Midstream Permian, LLC through
its attorney, Adam G. Rankin of Holland & Hart LLP.

Dated this 6th day of June 2022.

NEW MEXICO OIL CONSERVATION DIVISION

BY: 

Date: June 6, 2022