

**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**

**SUPPLEMENTAL LEGAL MEMORANDUM**

Goodnight Midstream Permian, LLC (“Goodnight Midstream”) submits this Supplemental Legal Memorandum in response to the Hearing Examiner’s statement at the hearing on June 16, 2022, that the threshold issue for decision on Empire’s motion to dismiss is whether statutory unitization precludes the Division from authorizing injection for disposal purposes, unrelated to unit operations, within a formation included within the vertical limits of a statutory unit.

For the reasons stated below, the Division is not precluded as a matter of law from authorizing the proposed injection into the San Andres formation under Order No. R-7765. The Division must decide on the merits whether injection will result in waste, impair correlative rights, or interfere with unit operations, or whether the proposed injection meets the requirements for approval under 19.15.26 NMAC (Injection).

**ARGUMENT**

**A. The Statutory Unitization Act Limits the Division’s Authority to Unitize Only Underground Hydrocarbon Reservoirs, or Pools.**

Under the Statutory Unitization Act (the “Act”), the Division is authorized only to issue orders providing for unitization and unit operation “of a pool or part of a pool.” NMSA 1978, 70-7-7 (emphasis added). As defined in the Act, a pool is “an underground reservoir containing a common accumulation of crude petroleum oil or natural gas or both.” § 70-7-4(A). A pool is

synonymous with a “common source of supply” and a “common reservoir.” The Division is not authorized to unitize pore space, aquifers, or formations—any subsurface structure—that is not a “pool” or part of a pool. In short, the Act “is applicable” only to “oil and gas properties.” See § 70-7-1.

Prior to entering a unitization order, the Division is required to determine whether the “unitized management, operation and further development of the oil or gas pool or a portion thereof is reasonably necessary in order to effectively carry on pressure maintenance or secondary or tertiary recovery operations, to substantially increase the ultimate recovery of oil and gas from the pool or the unitized portion thereof[.]” § 70-7-6(A)(1) (emphasis added). After making this finding, among others, the Division is required to issue an order, “upon such terms and conditions as may be shown by the evidence[,]” that “provid[e] for the unitization and unitized operation of the pool or portion thereof described in the order” to the extent “necessary or proper to protect and safeguard the respective rights and obligations of the working interest owners and royalty owners.” § 70-7-6(A) (emphasis added).

The Act does not authorize the Division to unitize formations or geologic intervals that are not a pool or part of a pool and are not an oil and gas property, as shown by the evidence. The Division, like the Oil Conservation Commission, “is a creature of statute, expressly defined, limited and empowered by the laws creating it.” *Cont’l Oil Co. v. Oil Conservation Comm’n*, 1962-NMSC-062, ¶ 11. The Division has no authority to unitize non-hydrocarbon-bearing formations, such as aquifers. Unitization of an aquifer, geologically distinct from a pool, is not “necessary or proper” to protect the rights and obligations of working interest owners and royalty owners with an interest in the oil and gas minerals. An aquifer is not an oil and gas property and is not subject to statutory unitization.

**B. Order No. R-7765 Must Be Read in Harmony with the Division's Authority to Unitize Only a Pool or Part of a Pool.**

In Order No. R-7765, the Division found that the “‘unitized formation’ will include the entire oil column under the unit area permitting the efficient and effective recovery of secondary oil therefrom.” *See* Order No. R-7765, Finding ¶ 10. As shown by the evidence presented by the applicant in the Case No. 8397, the oil column is limited to the Grayburg and Penrose formations. *See* Goodnight Resp. to Mot. to Dismiss, Exhibit D, Hearing Tr. Vol. 1, 52:6-7 (“[T]he oil column in this area thins from the Grayburg up into the lower part of the Penrose.”); 53:1-4 (“Q: When you look at the oil column in the unit area, that is included generally in the Grayburg and the lower portion of the Penrose, is that correct? A: That’s correct.”). The only portion of the vertical limits within the unit area that is a pool or part of pool, as defined by the Act, are the Grayburg and Penrose formations.

Because the oil pool is confined to the Grayburg and Penrose formations, waterflood operations and injection were limited to those zones. *See* Goodnight Resp. to Mot. to Dismiss, Exhibit C at 224:22-25 (“Q: Now I understand that you will be injecting only into the Grayburg and Penrose and not the San Andres, is that correct? A: That is correct.”). Being an aquifer and geologically distinct from the overlying Grayburg and Penrose formations, the San Andres is neither a pool nor part of a pool. Only the Grayburg and Penrose formations are necessary for the “efficient and effective recovery of secondary oil” from the Unitized interval. The San Andres was included within the vertical limits of the Unit to serve as a water supply source for initial fillup and, if needed, to provide makeup water thereafter. *See* **Exhibits A, B, C**. It is not necessary or proper to include the San Andres in the unitized formation for efficient and effective recovery of hydrocarbons from the pool. It also is not an oil and gas property and not subject to statutory unitization under the Act. *See* § 70-7-1.

The Division's finding in paragraph 10 of Order No. R-7765 must be read as limiting the "unitized formation" to the oil pool within the Grayburg and Penrose formations. To interpret the "unitized formation" as including the San Andres aquifer would conflict with the Division's limited authority under the Act to unitize only a pool or a portion of a pool, *i.e.*, oil and gas properties.

**C. Unitization of the San Andres Aquifer Conflicts with the New Mexico Constitution.**

The San Andres aquifer is not a source of hydrocarbons in a pool. It is a source of unappropriated groundwater. As an aquifer, it is not subject to unitization by the Oil Conservation Division for any purpose.

Under the New Mexico Constitution, unappropriated groundwater within the state belongs to the public. *See* N.M. Const. Art. XVI, § 2; *see also McBee v. Reynolds*, 1965-NMSC-007, ¶ 10 (confirming that "waters of underground streams, channels, artesian basins, reservoirs and lakes, the boundaries of which may be reasonably ascertained, are public" and "included within the term 'water as used in Art. XVI, §§ 1-3, of our Constitution.>"). To unitize the San Andres would foreclose appropriation and use of the San Andres aquifer by the public and conflict with the New Mexico Constitution. To avoid conflict over management and control of subsurface resources, the Legislature limited the Division's authority under the Act to unitizing oil and gas pools. The Division has no authority to unitize a public source of groundwater.

Order No. R-7765 must be interpreted as unitizing only the Grayburg and Penrose formations where the oil pool is located, or it would conflict with the New Mexico Constitution.

**D. Because the Act Does Not Preclude Injection into the San Andres Formation, the Division Must Decide Goodnight Midstream's Application on its Merits.**

Because the Act gives the Division authority to unitize only formations containing a pool or a portion of a pool, the Division is not precluded as a matter of law from hearing an application to inject produced water into a formation that is not a pool or a part of a pool.

The San Andres is not a formation containing an oil or gas pool, so the Division must decide on the merits whether injection of produced water will cause waste, impair correlative rights, or interfere with unit operations. The Division has separate authority to determine whether the application meets the requirements imposed under 19.15.25 NMAC. The Division has no legal basis to dismiss Goodnight Midstream's application as a matter of law under the Act or Order No. R-7765.

**CONCLUSION**

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

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 20, 2022, I served a copy of the foregoing document via

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