

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

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

CASE NO. 22626

MOTION IN LIMINE TO EXCLUDE EVIDENCE AND TESTIMONY

Goodnight Midstream Permian, LLC (“Goodnight Midstream”) submits this motion in limine to exclude all testimony and evidence that relies on or includes information or data responsive to Goodnight Midstream’s subpoena that was required to be produced under the Division’s Order on Motion to Quash Subpoena dated July 26, 2022 (the “Order”) but was not produced. In support of this motion, Goodnight Midstream states as follows:

1. On May 16, 2022, the Division issued a subpoena (the “Subpoena”) that required Empire New Mexico, LLC (“Empire”) to provide: “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.”
2. Empire filed a motion to quash the subpoena because it claimed it was “unreasonable and unduly burdensome, and requires disclosure of protected information.”
3. After briefing on the motion and argument, the Division entered the Order granting Empire additional time to comply with the Subpoena, allowing a rolling production, and ruling that Empire did not need to produce records that are available on the Division’s website.

See Order ¶¶ 7-8. The Division ruled that “the requests in the Subpoena are relevant to the subject matter of this case.” See *id.* ¶ 9.

4. The Division ordered that “[t]he date of compliance with the Subpoena is 30 days from the date of this Order” and that the “Empire is not required to produce any documents that are also available on the Division’s website[,]” and “may produce documents on a rolling schedule with the initial documents focused on the area of review associated with the Proposed Well.” See Order at 2.

5. On August 24, 2022, Empire served a response to the Subpoena, attached as **Exhibit A**, along with seven “Data, Analyses, Reports” it identified as responsive. Of those, only four relate specifically to the Eunice Monument South Unit (“EMSU”). Of those, two documents were prepared by Empire in response to Goodnight Midstream’s application and appear to be draft exhibits for hearing. The other document is a printout from a third-party well data company that provides detailed information on the EMSU #200H well.

6. Other than the seven documents that were provided, Empire stated that “there are no documents specific to the area of review” other than communications “contained in the pleadings in this case or communications which are protected by the attorney client privilege.”

7. Concerned that Empire had not fully complied with the Subpoena by producing all responsive documents not also available on the Division’s website and that responsive documents had been withheld under a claim of privilege, counsel for Goodnight Midstream sought to confirm all responsive documents had been produced under the Order and to understand the basis for the claim of attorney-client privilege.

8. Goodnight Midstream counsel sent three separate emails to Empire's counsel requesting confirmation that all responsive documents had been produced—not just those within the area of review associated with the proposed well—and additional detail on the communications that were withheld under a claim of attorney-client privilege. *See* e-mail correspondence, attached as **Exhibit B**. No response was given.

9. Empire did not file timely testimony or exhibits on September 8, 2022, as required under the June 17, 2022 Pre-Hearing Order. However, counsel for Empire did provide documents on September 11, 2022 that Empire intends to use and rely on as exhibits at the hearing.

10. Two of those documents were not produced in response to Goodnight Midstream's subpoena but are plainly responsive and were required to be produced under the Division's Order. Those documents are: (1) a power point presentation titled "EMSU, EMSU B, and AGU Upside Potential – Infill Drilling and ROZ" prepared by ExxonMobil, attached as **Exhibit C**; and (2) Executive Summary – Eunice Assets, Lea County, New Mexico November 2020, prepared by XTO Energy, attached as **Exhibit D**. All three documents make express reference to the EMSU and the potential for hydrocarbon development within what the documents refer to as the San Andres formation in and around the EMSU.

11. It is not clear what other responsive documents Empire has in its possession that were not produced to Goodnight Midstream. The Division's records and the Division's EMSU case file provide strong evidence that Goodnight Midstream's target injection interval within the San Andres is not prospective for hydrocarbons. The failure to produce responsive documents

that Empire now intends to rely on at hearing raises serious questions about what documents it may possess that are adverse to Empire's position that also should have been produced.

12. To avoid unduly prejudicing Goodnight Midstream and conveying an unfair advantage on Empire by refusing to comply with the express requirements of the Division's Order, the Division should enter an Order precluding all testimony and evidence that relies on or includes information or data responsive to Goodnight Midstream's subpoena that was required to be produced under the Division's Order but was not produced. Specifically, the Division should preclude the admission of documents marked as Exhibits C and D to this motion and related testimony.

CONCLUSION

For the reasons stated, the motion should be granted and Empire should be precluded from presenting and all testimony and evidence that relies on or includes information or data that was required to be produced under the Division's Order but was not produced, including Exhibits C, and D and related testimony.

Respectfully submitted,

HOLLAND & HART LLP

By:  _____

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**ATTORNEYS FOR GOODNIGHT MIDSTREAM
PERMIAN, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on September 12, 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

EXHIBIT A

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

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

Case No. 22626

RESPONSE TO SUBPOENA

Empire New Mexico, LLC, by and through their counsel of record, hereby responds to the Subpoena as amended by the Order issued by the Division on July 26, 2022 as follows:

1. The Subpoena requests:

All (1)documents, (2)communications, (3)correspondence, (4)emails, (5)data, (5)analyses, (5)reports, and (5)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.

2. Response as to the enumerated requests:

- 1) Documents: there are no documents specific to the area of review.
- 2) Communications: there are no documents specific to the area of review other than communications contained in the pleadings in this case or communications which are protected by the attorney client privilege.
- 3) Correspondence: there are no documents specific to the area of review other than correspondence contained in the pleadings in this case or communications which are protected by the attorney client privilege.
- 4) Emails: there are no documents specific to the area of review other than emails contained in the pleadings in this case or emails which are protected by the attorney client privilege.
- 5) Data, Analyses, Reports: see data attached hereto:

BEFORE THE OIL CONSERVATION DIVISION
Santa Fe, New Mexico
Exhibit No. A

Submitted by: Goodnight Midstream Permian, LLC
Hearing Date: September 15, 2022
Case No. 22626

EXHIBIT A

- a. Goodnight SWD San Andres- Eunice Monument South Unit 200H-Well Card Detail;
- b. Proximity map of Goodnight SWD San Andres- Eunice Monument South Unit 200H-Well;
- c. Goodnight SWD Application_EP Exhibit;
- d. EMSU 200H Slide;
- e. Empire Petroleum Corporation Announces Final Closing of the Operated New Mexico;
- f. 2010GTWI_ROZ_Scient to Exploitation (1) Chevron Presentation;
- g. Residual_Oil_Zones_Mother_Natures_Water;
- h. Significant San Andres play emerging amid ROZ fairways.

Respectfully submitted,

PADILLA LAW FIRM, P.A.
/s/ Ernest L. Padilla
Ernest L. Padilla
Post Office Box 2523
Santa Fe, New Mexico 87504
(505) 988-7577
padillalawnm@outlook.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing was served to counsel of record by electronic mail this 24th day of August, 2022, as follows:

Michael H. Feldewert	mfeldewert@hollandhart.com
Adam G. Rankin	agrarkin@hollandhart.com
Julia Broggi	jbroggi@hollandhart.com

/s/ Ernest L. Padilla
Ernest L. Padilla

EXHIBIT B

Adam Rankin

From: Adam Rankin
Sent: Wednesday, August 31, 2022 9:42 AM
To: 'Padilla Law'
Cc: Michael Feldewert; Paula M. Vance
Subject: RE: OCD Case 22626 Response to Subpoena - follow up on responses and production

Ernie,

Good morning. Will we get a response from Empire addressing the requests below?

From: Adam Rankin
Sent: Thursday, August 25, 2022 5:55 PM
To: 'Padilla Law' <padillalaw@qwestoffice.net>
Cc: Michael Feldewert <MFeldewert@hollandhart.com>; Paula M. Vance <PMVance@hollandhart.com>
Subject: RE: OCD Case 22626 Response to Subpoena

Ernie,

Thanks for taking my call today. As discussed, I am following up on Empire’s responses to the subpoena and production of documents in an effort to quickly resolve our concerns about the adequacy of the production, responses, and claims of privilege.

It appears from the responses that the documents produced do not include all responsive documents within the Eunice Monument South because the responses refer only to documents “specific to the area of review.” The Division’s order required Empire to produce documents “on a rolling schedule with the initial documents focused on the area of review associated with the Proposed Well” but specifically ruled that “the requests in the Subpoena are relevant to the subject matter in the case,” and ordered compliance with the subpoena within 30 days, except that documents available on OCD’s website do not need to be produced. That would require producing all responsive documents, not just those focused on the area of review, within the 30-day compliance deadline. Based on our discussion today, I understand you believe that Empire has no additional responsive documents outside the AOR that are not available on the OCD’s website. Can you please inquire with Empire and confirm by email? If there are additional responsive documents not available on OCD’s website relating to areas outside the AOR, please produce them no later than September 1.

In Empire’s motion to quash the subpoena, Empire suggested that it likely has in its possession “reserve estimates and financial analyses of present and future oil and gas production” that would be responsive to the subpoena. No such documents were produced and no claims of trade secret or proprietary business information were made with the responses justifying withholding any such documents from production. Please confirm in an email by August 29 that Empire has no such responsive documents in its possession or control relating to the San Andres.

Finally, Empire claims attorney-client privilege as to “emails contained in the pleadings in this case or emails which are protected by attorney client privilege” but did not produce a privilege log identifying the communications withheld based on the privilege claim. Without a privilege log, we have no way to assess the claim of privilege as to any given communication. As to the documents withheld from production based on this claim of privilege, please answer the following questions by August 29:

- Did any of the communications withheld from production take place before the date Goodnight filed its administrative C-108 application at issue in this case? If so, please describe the general nature of the communications (subject matter) that were withheld, the date it was created, its author, all recipients (identify

EXHIBIT B

attorneys), and other elements so we can properly assess whether a claim of privilege can be extended to these communications?

- Did any of the responsive emails or other communications withheld from production based on the claim of privilege include document attachments that were also withheld from production? If so, please describe the contents of the document attachments (subject matter) that were withheld, the date it was created, its author, all recipients (identify attorneys), and other elements so we can properly assess whether a claim of privilege can be extended to these documents?

Answering these questions and providing the requested information is the fastest way to resolve our concerns regarding Empire’s responses, the documents produced, and the documents withheld under a claim of privilege. We appreciate Empire’s cooperation in resolving our concerns.

All best,
Adam

Adam G. Rankin

Partner, Holland & Hart LLP

110 N. Guadalupe, Suite 1, Santa Fe, NM 87501

Direct 505.954.7294 Cell 505.570-0377 Main 505.988.4421



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 e-mail.

From: Adam Rankin
Sent: Wednesday, August 24, 2022 6:01 PM
To: 'Padilla Law' <padillalaw@qwestoffice.net>
Cc: Michael Feldewert <MFeldewert@hollandhart.com>; Paula M. Vance <PMVance@hollandhart.com>
Subject: RE: OCD Case 22626 Response to Subpoena

Ernie,

Thanks. Received. We are still reviewing the responses and the documents produced. The order allows Empire to produce responsive documents on a rolling basis starting with the area of review around the proposed Piazza SWD, but provides that all responsive documents must be produced 30 days from the order.

Does Empire have any more responsive documents that it is going to produce outside the area of review, or is what Empire produced today all responsive documents in its possession and control—both within and outside the AOR?

Thanks for the clarification.

Best,
Adam

EXHIBIT B

From: Padilla Law <padillalaw@qwestoffice.net>

Sent: Wednesday, August 24, 2022 3:16 PM

To: Michael Feldewert <MFeldewert@hollandhart.com>; Adam Rankin <AGRankin@hollandhart.com>; 'Jack Burton' <JBurton@rodey.com>

Subject: OCD Case 22626 Response to Subpoena

External Email

All,
Attached is the Response to Subpoena with attach documents as listed. Please let us know if you have any questions. Thank You.

JoAnn B. Gallegos
Office Manager
Padilla Law Firm, P.A.
PO Box 2523
Santa Fe, NM 87504
505-988-7577
505-988-7592 (fax)
padillalawnm@outlook.com

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Executive Summary - Eunice Assets

Lea County, New Mexico

BEFORE THE OIL CONSERVATION DIVISION
Santa Fe, New Mexico
Exhibit No. C
Submitted by: Goodnight Midstream Permian, LLC
Hearing Date: September 15, 2022
Case No. 22626

November 2020

XTO Eunice Opportunity Overview

XTO Energy Inc. ("XTO") is offering for sale a large operated package with assets that include certain oil and gas properties, infrastructure, offices, and personnel located in southeastern Lea County, New Mexico.

ASSET HIGHLIGHTS

Proven Resource & Cash Flow

- Three legacy operated waterflood units (Eunice Monument South Unit A and B, Arrowhead Grayburg Unit)
- An additional ~270 operated lease wells with ~90% working interest
- All leasehold is held by production

Low-Risk Development Potential

- Numerous workover repair opportunities
- Optimization of waterfloods through conformance work
- Opportunities to reduce operating costs

Attractive Upside Opportunities

- Infill drilling locations at 20 acre spacing
- Potential CO2 flooding in the Residual Oil Zone Recent in three units

XTO Eunice Opportunity Snapshot

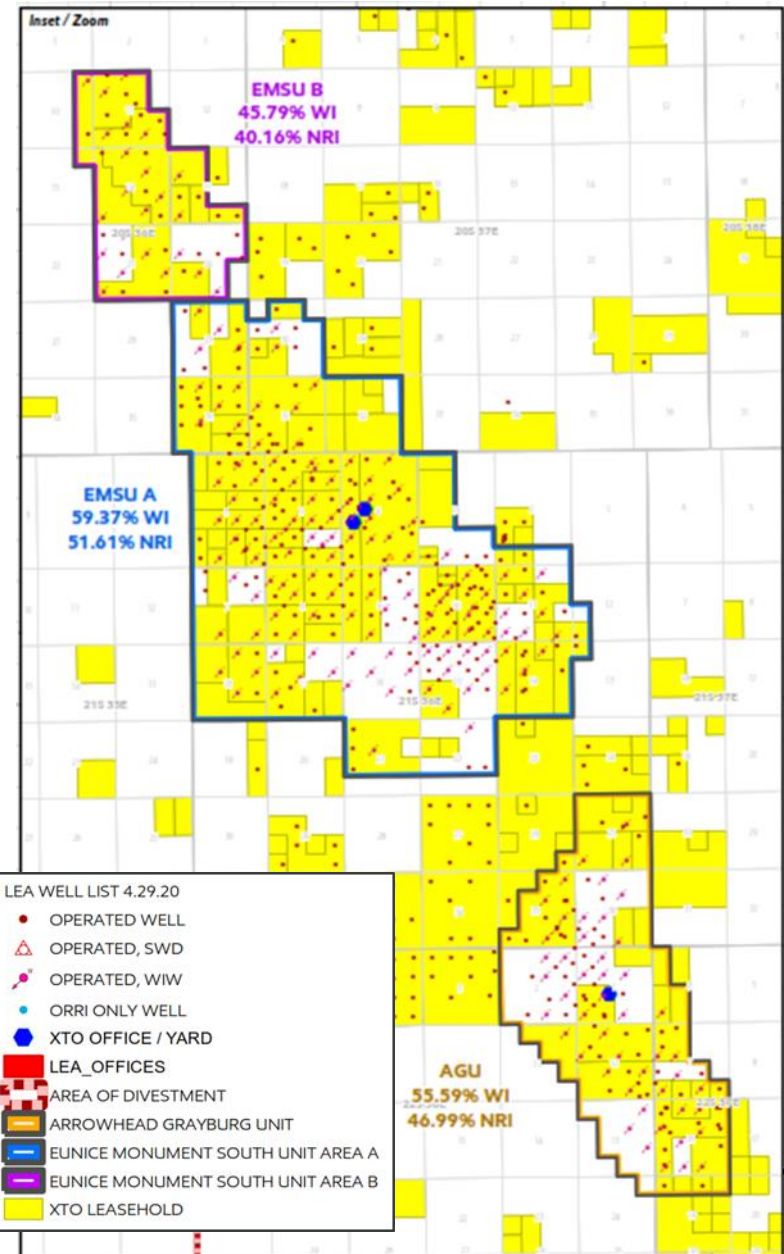
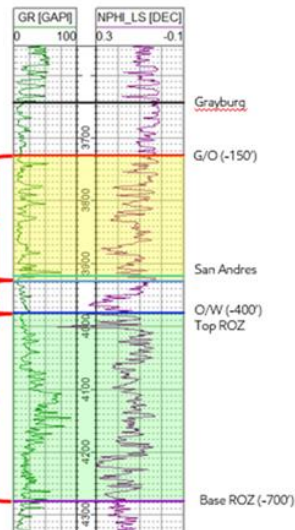
Acres (Approx.)	GROSS	47k
	NET	40k
PDP Well Count (Approx.)	OP	688
	NON-OP	0
	ROY	14
2019 Net Production	OP	1566 OEBD (23% Gas)
	NON-OP	NONE
	ROY	8 OEBD (90% Gas)

TYPE LOG

Minor Queen Production within Unit

Main Oil Column (MOC) ~200' Thick Transition Zone

Residual Oil Zone (ROZ) ~300' Thick ~965 MBO STOPIP



Process Details & Contact Information

- Responses of interest should be directed to XOM-UOG-EUNICE@exxonmobil.com
- Following receipt of executed Confidentiality Agreement, interested parties will be given access to the Virtual Data Room (VDR)
- Questions should be directed to **Jim Laumbach**
- Evaluation materials will include:
 - ARIES database
 - Historical financial data / Lease Operating Statements
 - Well, lease, and key contract schedules
 - Well logs and Wellbore Sketches
 - Lease and well map
- Key Process Dates
 - Virtual Data Room opens November 5th
 - Bids due on December 1st
 - PSA signing on or before December 22nd
 - Estimated closing in 1Q 2021



November 2020						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

December 2020						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

VDR OPENS

BIDS DUE

PSA SIGNED

CONTACT INFORMATION

Jim Laumbach
 Sr. Engineering Advisor
 832-625-2936
James_Laumbach@xtoenergy.com

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EMSU, EMSU B and AGU Upside Potential – Infill Drilling and ROZ

Energy lives here™

BEFORE THE OIL CONSERVATION DIVISION
Santa Fe, New Mexico
Exhibit No. D
Submitted by: Goodnight Midstream Permian, LLC
Hearing Date: September 15, 2022
Case No. 22626

Location Map

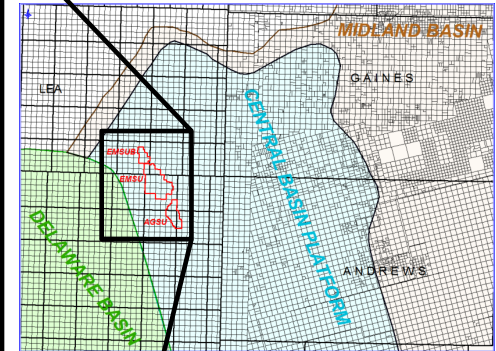
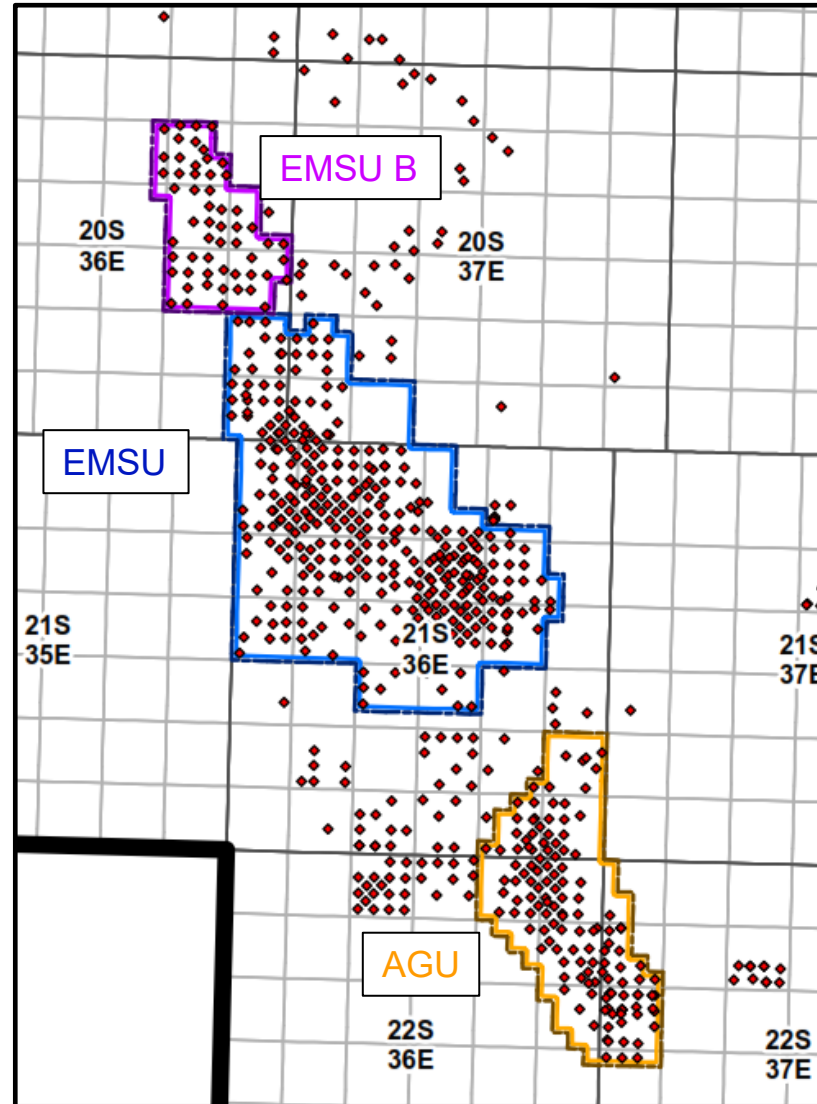
Description

- Three existing units; EMSU, EMSU B, AGU all have infill drill well and ROZ potential
- Significant “outside leases” are also part of Eunice asset but do not contain significant contiguous ROZ acreage

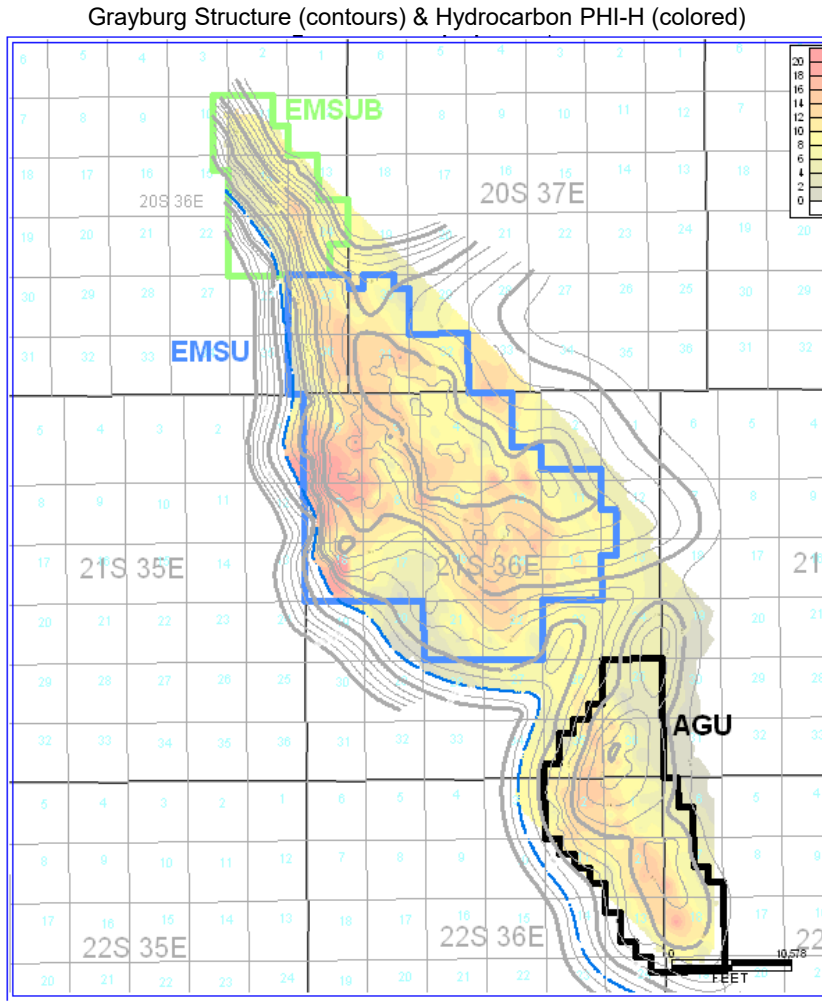
Incentive

- EMSU, EMSU B and AGU have approximately 50 infill drill well locations
- EMSU, EMSU B and AGU hold a combined 23,400 ac of ROZ potential
- ROZ interval approximately 350’ thick with average oil saturation of ~25%

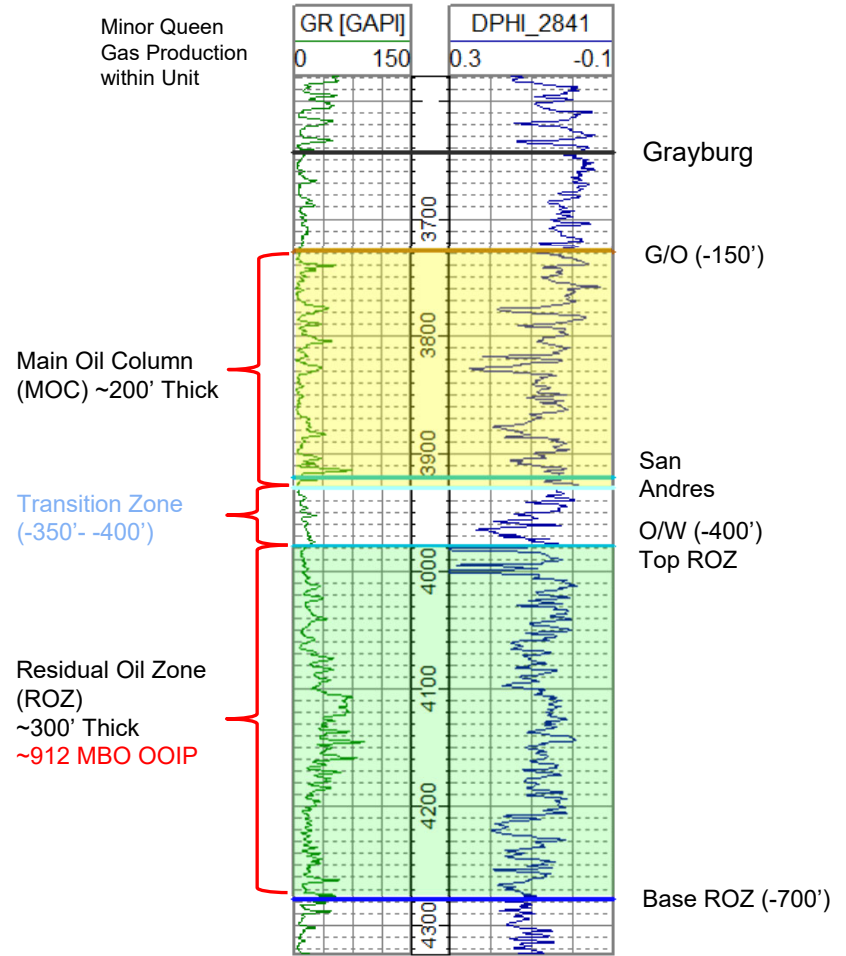
◆ XTO Operated Wells



EMSU, EMSU B and AGU Grayburg Structure, PhiH (MOC) and Type Log

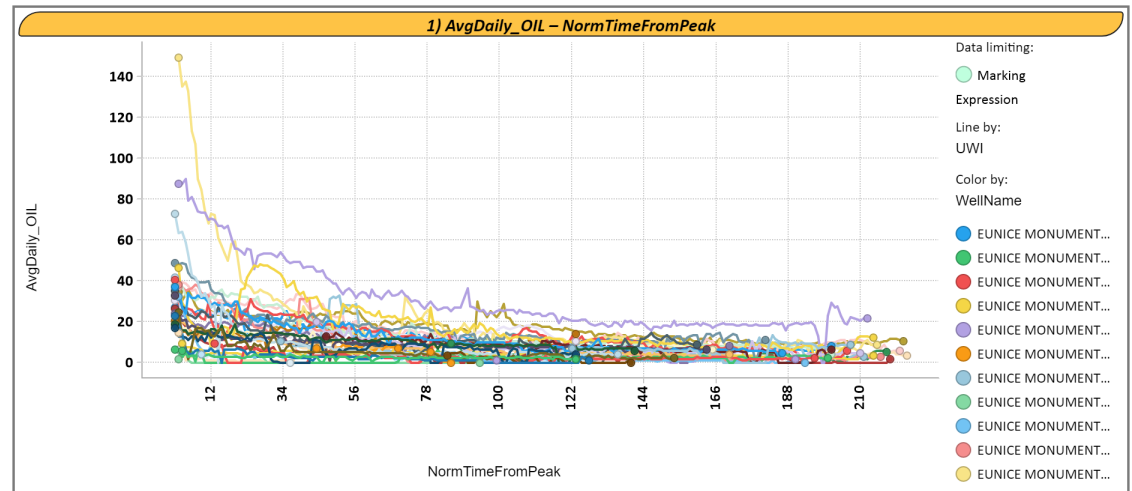
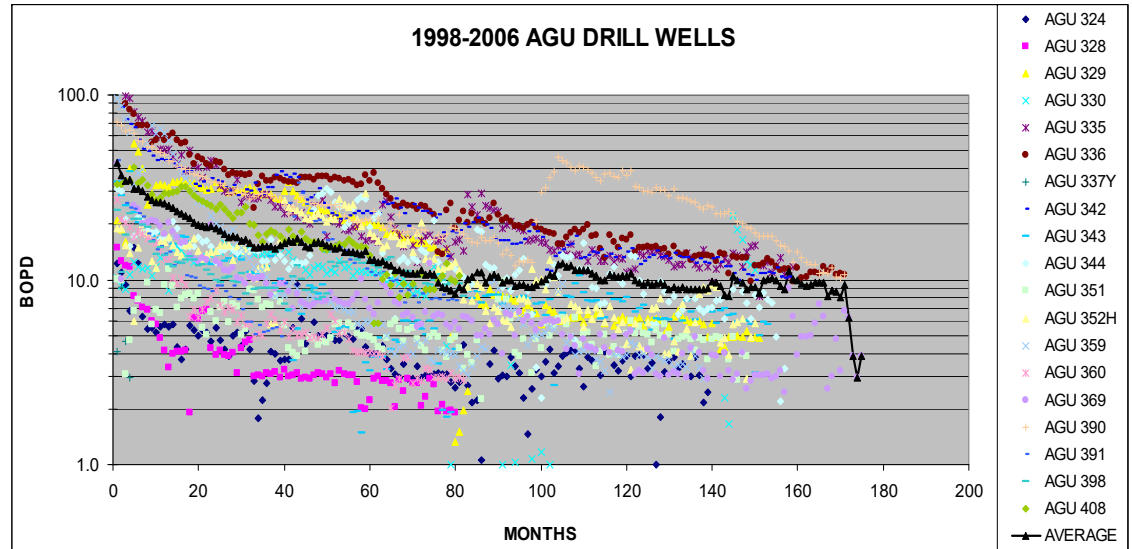


TYPE LOG
UNIT WELLS



EMSU, EMSU B and AGU Infill Type Curve

- A series of infill wells were drilled between 1998-2006 at EMSU and AGU
- 61 in total (42 EMSU and 19 AGU)
 - 13 XTO wells drilled between 2005-2006
 - 48 Chevron wells drilled between 1998-2002
- EMSU AVG IP = 49 BOPD
- AGU AVG IP = 43 BOPD



EMSU, EMSU B, AGU and Surrounding Area Potential

Infill Potential

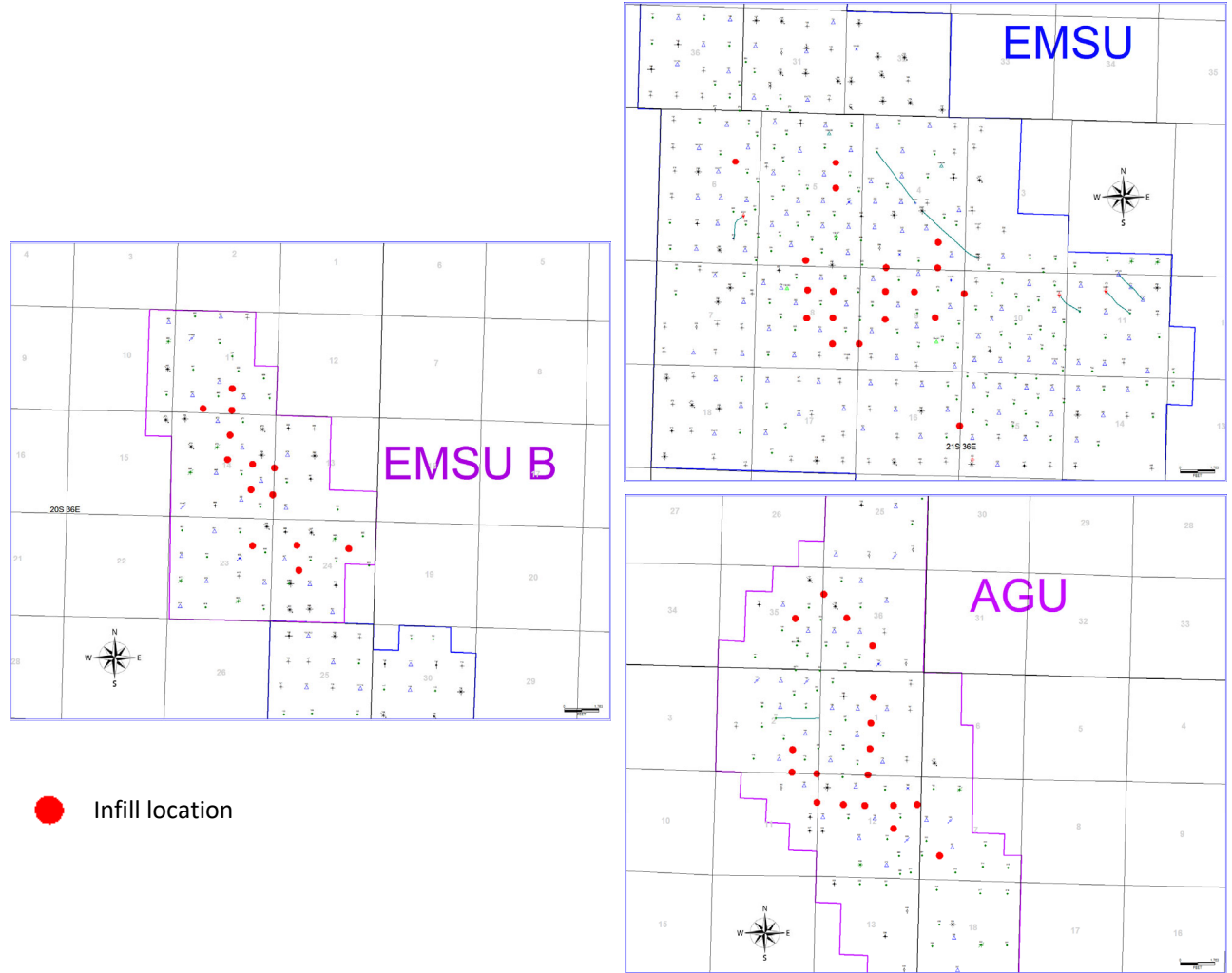
- Approximately 50 infill locations (20 acre spacing) have been identified within the three units

Returning ~40 shut-in wells to production

- An additional ~250 BOPD if wells could be repaired more cost effectively
- Evaluate shut-in wells for OAP

Optimization of water floods

- Injector conformance work: Attempt squeezing zones in the upper Grayburg previously identified with injection profile logs as being "thief" zones



Eunice Area ROZ PhiH Map

Map Description

- Porosity Cutoff >6%
- Porosity curve calculated from RhoB using 2.84 g/cc matrix based on core matrix density
- Green arrows indicate core location
- Please note location of cross-section A – A' (see next slide)

