

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

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

CASE NOS. 23614-23617

RESPONSE IN OPPOSITION TO MOTION FOR CONTINUANCE

Goodnight Midstream Permian, LLC (“Goodnight Midstream”) respectfully files this response in opposition to Empire New Mexico LLC’s (“Empire”) Motion for Continuance. For the reasons outlined below, the Motion should be denied and these contested cases should proceed to hearing as the parties agreed and the Division ordered at the July 6, 2023, status conference.

INTRODUCTION

Empire asserts it only became aware of the potential impact of Goodnight Midstream’s applications to inject produced water on Empire’s EMSU operations in early August. *See* Motion ¶ 3. If true, that is an astonishing admission for an operator who claims the EMSU is “the crown jewel” of the company. *See* Case No. 22626, Sept. 15, 2022, Tr. 205:9-19 (Testimony of Eugene Sweeney). Blaming one departed executive-level employee for company-wide ignorance and lack of preparation makes no sense given the extensive documented record and background in these cases and a prior similar case (Case No. 22626). It also is not a reasonable or fair basis on which to grant a continuance when it is undisputed that notice was proper. Moreover, Empire has known about these applications since May 2023. It is uncontested that Empire received proper notification of the administrative applications, which Empire protested, and the applications for hearing. The applications are subject to a Pre-Hearing Order and contested hearing date that the parties agreed to back on July 6, 2023. Two months is

ample time for outside expert consultants and three law firms to prepare Empire for hearing. For these reasons, and the reasons more fully set out below, Empire's motion should be denied.

BACKGROUND

1. Before Empire assumed operations of the Eunice Monument South Unit ("EMSU") from XTO in early 2021, Goodnight Midstream had already been injecting produced water into the San Andres disposal zone within the unit boundaries through a previously approved disposal well. *See id.* at #1 & #2 on Timeline of Events, attached as **Exhibit A**.

2. But Goodnight Midstream was not the only operator disposing produced water into the San Andres within the EMSU at the time Empire took over. OWL, Rice Engineering, and Empire itself (previously XTO) operate four produced water disposal wells within the boundaries of the EMSU that were active and injecting into the San Andres, some of which have been injecting since the 1960s. *See, e.g.*, Goodnight Midstream Exhibit C ¶¶ 6-8, 13-15, 19-24, 29-34; *see also* Exhibit C-8 & C-9:

https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/cf/20220909/22626_09_09_2022_08_42_30.pdf.

3. OCD had already designated the San Andres in this area to be a produced water disposal zone, assigning it pool code "96121" and the pool name "SWD:¹ San Andres." *See* <https://www.emnrd.nm.gov/ocd/ocd-data/statistics/> (go to "Pool Codes and Names").

4. Notwithstanding this existing disposal, Empire has known about Goodnight Midstream's plans to inject into the San Andres formation inside the boundaries of the EMSU since at least September 2021 when it first protested Goodnight Midstream's administrative

¹ SWD is an acronym for "salt water disposal."

application for the proposed Piazza SWD #1 that is the subject of Case No. 22626 (the “Piazza Case”). *See id.* #5. As early as its September 2021 protest, Empire has been alleging Goodnight Midstream’s disposal operations will impair its unit operations and correlative rights. *Id.*

5. By June 2022, Empire knew Goodnight Midstream had a produced water disposal agreement with a surface owner inside the EMSU. *See id.* #8.

6. By the time Case No. 22626 went to hearing in September 2022, six produced water wells were actively injecting into the San Andres disposal zone within the EMSU and another eight wells were injecting in the San Andres within two miles of the unit boundary. *See* Goodnight Midstream Exhibit C-8 & C-9:

https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/cf/20220909/22626_09_09_2022_08_42_30.pdf.

7. The Piazza Case went to hearing on September 15, 2022. *Id.* #9. During the hearing, Goodnight Midstream explained in great detail its technical case for injecting produced water into the San Andres disposal zone, specifically identifying the six existing approved produced water disposal wells within the EMSU operated by Goodnight Midstream (2), OWL (1), Rice Engineering (2), and Empire itself (1). *See, e.g.,* Goodnight Midstream Exhibit C ¶¶ 6-8, 13-15, 19-24, 29-34; *see also* Exhibit C-8 & C-9:

https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/cf/20220909/22626_09_09_2022_08_42_30.pdf.

8. In anticipation of that hearing, Empire retained third-party geology consultants to prepare exhibits in response to Goodnight Midstream’s application.² *See* Case No. 22626, Sept.

² For unknown reasons, Empire did not introduce the exhibits prepared by Geology Consultants at the hearing. Goodnight Midstream introduced them at the hearing on cross-examination and as a rebuttal exhibit.

15, 2022, Tr. 223:1-11 (Testimony of Eugene Sweeney testifying on Goodnight Rebuttal Exhibit G).

9. Leading up to the hearing on the Piazza Case, Goodnight Midstream obtained a Division order compelling Empire to produce “all documents . . . addressing the existence or non-existence of hydrocarbons in the San Andres formation within the Eunice Monument South Unit.” See Exhibit A #10. Empire produced seven documents, none of which show the San Andres formation contains hydrocarbons within the EMSU. *Id.* at #11. Despite a Division order compelling production, Empire apparently withheld responsive documents on the grounds that they contained proprietary and confidential information without disclosing that the documents were being withheld. See Case No. 22626, Sept. 15, 2022, Tr. 232:2-238:22 (Testimony of Eugene Sweeney).

10. While awaiting a final order in Case No. 22626, Goodnight Midstream filed C-108 applications in May 2023 for four new San Andres produced water disposal wells within the EMSU. *Id.* #14. Empire was provided formal notice of these administrative applications by certified mail, return receipt requested, as required by Division rules. *Id.* #14. Empire timely protested on May 24, 2023, on the grounds that Goodnight Midstream’s injection “could cause potential damage to Empire’s correlative rights.” *Id.* #15.

11. Unable to resolve Empire’s protest, Goodnight Midstream formally filed applications for hearing on July 6, 2026. *Id.* #16. Counsel for Goodnight Midstream provided formal notice of the hearing applications for each of the four wells to Empire and Empire’s counsel on June 16, 2023. *Id.* #17.

ARGUMENT

Empire raises two reasons its request continuance, neither of which justifies a delay.

First, Empire claims its departed chief operating officer, Eugene Sweeney, was the only company employee aware of Goodnight Midstream's applications and the potential impact on the EMSU's operations. But whether Empire's claim is true is of no consequence when Empire acknowledges in its motion that company management and its expert consultants have known about the applications since at least early August, giving them a little more than two months to prepare for these contested cases. Empire's first justification does not provide good cause for a continuance.

Second, it is undisputed that Empire received formal notification of the administrative filings in May and of the hearing applications in June. *See* Exhibit A #15-18. That is ample time to prepare for these cases, especially when the issues are similar to the issues in the Piazza Case.

After having acquired the EMSU in early 2021 with six existing wells within its boundaries that actively inject produced water into the San Andres disposal zone, Empire was already alleging by September 2021 in response to the Piazza Case that Goodnight Midstream's planned injection operations would impair unit operations and correlative rights. By August 2022, Empire knew the evidentiary standard against which the Division would evaluate Empire's allegations when the Division issued its order denying Empire's motion to dismiss Case No. 22626. *See* Exhibit A #12. Empire knew enough that it retained expert geology consultants at some point prior to the hearing in the Piazza Case to help it prepare a case against Goodnight Midstream. *See, supra*, ¶ 8. At the time of the Piazza Case, Empire was already actively appraising the potential for

a residual oil zone development and opposed to any injection in the San Andres. *See* Case No. 22626, Sept. 15, 2022, Tr. 259:24-260:14 (E. Sweeney stating that Empire would be opposed to any injection into the San Andres that is not operated by Empire). By September 2022, Empire knew or should have known that Goodnight Midstream had a produced water injection agreement in place with a surface owner inside the EMSU, had already drilled and was operating two existing San Andres disposal wells there, and had plans to drill and operate additional wells in the area. *See* Exhibit A #8. By June 2023, Empire was fully informed that Goodnight Midstream was pursuing those additional wells when it received notification of the administrative applications and notification of the hearing applications.

Throughout this entire time, Empire has been making the same allegations—that the San Andres disposal zone is prospective for hydrocarbons and Goodnight Midstream’s injections will impair unit operations and Empire’s correlative rights. When given the opportunity to put forward affirmative evidence in support of their claims that the San Andres is prospective for hydrocarbons within the EMSU, Empire was either unwilling or unable to do so in advance of the hearing on the Piazza Case or at the hearing itself. *See, supra*, ¶ 9.

Empire has had since at least June 2023 to begin preparing for this hearing. Having been through the Piazza Case, Empire is well acquainted with the Division’s evidentiary standard applicable to these issues and Goodnight Midstream’s arguments and evidence. The four topics Empire plans to study go directly to the claims and allegations at issue in the Piazza Case and are at issue again in these contested matters a year later. Remarkably, Empire does not appear to have started work on this “study” it

plans even though it knew about the “impact” in early August and there was a prehearing order already in place as of July 6, 2023. *See* Motion at ¶¶ 3, 5 (stating that Empire’s management and consultants . . . learned of the impact” of Goodnight Midstreams’ applications “in early August 2023” and that “Empire plans to conduct a study . . .” (emphasis added)). In addition, the four wells at issue in these applications are grouped within a contiguous three-section area—they are not spread across the entire EMSU expanse. With two months to prepare since it acknowledges being aware of the “impact,” there is simply no justification for Empire to claim it cannot be ready for hearing by September 21, 2023.

Finally, as explained at the July 6, 2023, status conference, Goodnight Midstream’s principle expert witness in these cases is retiring at the end of September. Goodnight Midstream will be severely and unfairly prejudiced if, because of Empire’s own inattention and poor planning, these cases are continued to a later hearing date. Moreover, Empire has now retained three law firms to represent it in these cases. With a team of outside technical experts and three law firms, Empire should be able to prepare itself for a late September hearing.

CONCLUSION

For the reasons stated, Empire’s motion should be denied and the contested hearing should proceed as scheduled on September 21, 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2023, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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EXHIBIT A
TIMELINE OF EVENTS
GOODNIGHT MIDSTREAM PERMIAN, LLC
CASE NOS. 23614-23617

1. **July 2020:** Goodnight Midstream commenced injection into the San Andres disposal zone through its Ryno SWD #1 located within the EMSU in Unit Letter H, Section 17, Township 17 South, Range 36 East, Lea County.
2. **March 2021:** Goodnight Midstream commenced injection into the San Andres disposal zone through its Sosa SA 17 SWD #2, located within the EMSU in Unit Letter N, Section 17, Township 17 South, Range 36 East, Lea County.
3. **April/May 2021:** Empire New Mexico LLC (“Empire”) assumed operation of the Eunice Monument South Unit (“EMSU”) from XTO in the April/May 2021 timeframe. *See* Case No. 22626, September 15, 2022, Tr. 205:9-19 (Testimony of Eugene Sweeney, stating the time when Empire assumed complete operations of the EMSU was in the “April-May” timeframe).
4. **July 23, 2021:** Transfer of operatorship to Empire approved by OCD. *See* https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/wf/20210723/3002506277000_0_07_23_2021_01_11_00.pdf.
5. **September 16, 2021:** Goodnight Midstream Permian LLC (“Goodnight Midstream”) filed a C-108 administrative application for its Piazza SWD #1. *See* https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/cf/20220304/22626_03_04_2022_02_40_08.pdf.
6. **September 22, 2021:** Joshua Cornell, Empire’s Vice President of Land and Business Development, submitted an objection to Goodnight Midstream’s C-108 administrative

application for the Piazza SWD #1. *See* Case No. 22626, Goodnight Exhibit B-2¹ (stating that “[t]he proposed injection is within Empire’s Eunice Monument South Unit where Empire operates a waterflood project which will be adversely affected by the proposed injection operation.”).

7. **March 4, 2022:** Unable to resolve Empire’s administrative protest, Goodnight Midstream filed an application for hearing on its Piazza SWD #1 administrative application. *See* https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/cf/20220304/22626_03_04_2022_02_40_08.pdf.
8. **June 14, 2022:** Goodnight Midstream filed a response to Empire’s motion to dismiss Case No. 22626 confirming it has an agreement with a surface owner inside the EMSU to construct surface facilities and inject produced water into the subsurface. *See* https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/cf/20220614/22626_06_14_2022_04_18_16.pdf.
9. **June 17, 2022:** OCD set Goodnight Midstream’s application for a contested hearing on September 15, 2022. *See* https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafeadmin/cf/20220617/22626_06_17_2022_10_49_49.pdf.
10. **July 26, 2022:** In response to Goodnight Midstream’s subpoena, OCD ordered Empire to produce “All documents, communications, correspondence, emails, data, analyses, reports, and summaries . . . that address, reflect on, or concern the existence or non-existence of hydrocarbons in the San Andres formation within the Eunice Monument South Unit.” *See* Order on Motion to Quash, Case No. 22626 (emphasis added):

¹ https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/cf/20220909/22626_09_09_2022_08_42_30.pdf.

https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafeadmin/cf/20220726/22626_07_26_2022_03_13_03.pdf.

11. **August 24, 2022:** Empire produced seven documents purportedly responsive to Goodnight Midstream's subpoena, none of which reflect on the existence of hydrocarbons in the San Andres formation within the EMSU. *See* Testimony of Steve Drake, Case No. 22626, Exhibit C ¶ 39

https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/cf/20220909/22626_09_09_2022_08_42_30.pdf.

12. **August 24, 2022:** OCD issued an order denying Empire's motion to dismiss and providing that the issue for determination at hearing is whether injection "will interfere with unit operations, will not cause waste, will protect correlative rights and will otherwise comply with the Oil and Gas Act."

https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafeadmin/cf/20220824/22626_08_24_2022_12_04_04.pdf.

13. **September 8, 2022:** Empire timely filed a prehearing statement pursuant to the prehearing order, stating Goodnight Midstream's proposed injection through the Piazza SWD #1 into the San Andres will impair Empire's unit production. *See*

https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/cf/20220909/22626_09_09_2022_08_44_45.pdf.

14. **September 15, 2022:** Goodnight Midstream's Case No. 22626 went to hearing before the Division and was taken under advisement.²

² The Division kept the evidentiary record open for the limited purpose of collecting additional information from the parties on the status of the EMSU Unit #462 well (API No. 30-025-29622). Empire satisfied the Division's order compelling it to produce responsive documents or submit a verified statement that it has no such documents on

15. **May 12, 2023:** Goodnight Midstream filed four C-108 administrative applications for produced water disposal wells for its proposed Doc Gooden SWD #1, Seaver SWD #1, Hodges SWD #1, and Hernandez SWD #1. On or about the same date, Goodnight Midstream also provided notice of these administrative applications to Empire by certified mail, return receipt requested. *See, e.g.,* https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/cf/20230606/23615_06_06_2023_01_27_13.pdf.
16. **May 24, 2023:** Empire filed a protest against each of the four administrative applications by email with the Division on the grounds that Goodnight Midstream's applications "could cause potential damage to Empire's correlative rights." *See* https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/ao/20230531/pmsg231475505_9_05_31_2023_02_47_46.pdf.
17. **June 6, 2023:** After requesting that the Division set the four protested administrative applications for hearing, Goodnight Midstream filed applications for a hearing on all four cases for the July 6, 2023, Division hearing. *See, e.g.,* Case No. 23615 at https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/cf/20230606/23615_06_06_2023_01_27_13.pdf.
18. **June 16, 2023:** Counsel for Goodnight Midstream provided notice of the applications to Empire by certified mail and to Empire's counsel by email.
19. **July 6, 2023:** Empire counsel represented to the Division that Empire's expert witnesses would be available for a contested hearing after August and agreed to a September 21 hearing date. *See* Case Nos. 23614-23617, July 6, 2023, Tr. 43:20-21, 44:20-24 (stating

February 6, 2023, at which point the evidentiary record was closed. *See* https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/cf/20230206/22626_02_06_2023_03_18_41.pdf.

that Empire's expert witnesses were not available until after August so a late September hearing should be acceptable).

https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafeadmin/cf/20230720/22971_07_20_2023_04_04_01.pdf.

20. **July 6, 2023:** The Division Hearing Examiner issued a Pre-Hearing Order setting the four-related cases for a contested hearing on September 21, 2023, and establishing deadlines to file testimony and exhibits. *See*

https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafeadmin/cf/20230706/23614_07_06_2023_01_27_08.pdf.

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