

**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 NO. 23614-23617

**MOTION TO CONTINUE TO A STATUS CONFERENCE OR, IN THE ALTERNATIVE,
TO EXCLUDE EMPIRE'S EVIDENCE AND TESTIMONY**

Goodnight Midstream Permian, LLC (“Goodnight Midstream”) respectfully files this motion to continue Case Nos. 23614-23617 to a status conference on December 21, 2023, to allow Goodnight Midstream time to obtain additional documents responsive to its Subpoena through a motion to compel filed contemporaneously herewith. In the alternative, and out of fairness, the testimony and exhibits submitted by Empire New Mexico, LLC (“Empire”) that rely on information or data responsive to the Subpoena but withheld from production should be excluded from the record and consideration by the Division. Counsel for Goodnight Midstream has conferred with counsel for Empire but, at the time this motion was filed, Empire was unable to provide its position. For the reasons stated below and in Goodnight Midstream’s Motion to Compel, this motion should be granted.

ARGUMENT

After reviewing Empire’s witness testimony and exhibits it is apparent Empire did not produce all material documents and information responsive to Goodnight Midstream’s Subpoena. *See* Goodnight Midstream’s Motion to Compel. In fact, none of the seven documents produced in response to the Subpoena appear to be cited or relied on by any of Empire’s seven expert witnesses. Instead, Empire’s witnesses rely on other facts, data, information, analyses, and documents that were not produced but are plainly responsive.

The Division's regulations governing adjudicatory proceedings are predicated upon and subject to requirements to comply with Division-issued subpoenas. *See* 19.15.4.17.A NMAC ("Subject to other provisions of 19.15.4.16 NMAC (governing subpoenas)," the Division examiner "shall afford full opportunity to the parties at an adjudicatory hearing . . . to present evidence and to cross-examine witnesses."). The rules governing adjudicatory hearings are subject to compliance with subpoenas because unless a party fulfills its discovery obligations an adversary will not have a "full opportunity" to present evidence or cross-examine witnesses at hearing.

Rather than provide documents, data, and information requested under the Subpoena, Empire instead produced a hodge-podge of tangentially related presentations, papers, and reports that generally discuss residual oil zone developments and in only a handful of instances specifically refer to the EMSU and the San Andres aquifer within the EMSU. But the documents produced do not provide the underlying data and information responsive to the Subpoena that are referred to or, in some cases, included in Empire's testimony and exhibits. In short, Empire failed to produce documents or data its witnesses rely on or cite in its exhibits and testimony. Tellingly, Empire's witnesses and exhibits do not reference the documents produced in response to the Subpoena. Instead, they refer to data, reports, and analyses that were not produced. Empire's witnesses also rely on undisclosed analyses that "confirm," "identify," or "document" information that supports Empire's claims, but the data behind these analyses was not produced even though it is clearly responsive.

By withholding responsive information that Empire relies on in its testimony and exhibits, and failing to produce potentially adverse data or information that has not been

disclosed, Empire is preventing Goodnight Midstream from having a “full opportunity” to present evidence and cross-examine witnesses. This outcome contravenes the express requirement under the Division’s rules requiring the Division examiner to afford Goodnight Midstream a full opportunity at hearing. 19.15.4.17.A NMAC. To avoid unfair prejudice and violation of this requirement, the contested hearing in these matters should be continued to a status conference on December 21, 2023, to afford Goodnight Midstream time to obtain documents responsive to its Subpoena and at which a contested hearing date can be re-set.

In the alternative, should the hearing examiner decide the hearing should go forward as scheduled, Empire’s testimony and exhibits that rely on responsive information withheld from production should be excluded from the record and consideration by the Division. A summary breakdown of responsive information in Empire’s testimony and exhibits that was not produced is attached as Exhibit B to Goodnight Midstream’s Motion to Compel. All related testimony and exhibits that rely on this responsive information and data should be excluded because it was not provided to Goodnight Midstream but was responsive to the Subpoena.

Exclusion is appropriate in this circumstance. Because Empire did not produce the documents and data it relies on to support its testimony and exhibits, it is not possible to confirm what adverse information or data it may have also been withheld from production. Empire is the operator of the EMSU. It controls the information relevant to this inquiry, which includes the entire history of the EMSU, but has refused to produce responsive documents and data—especially information that may be adverse to their claims.

CONCLUSION

For the foregoing reasons, Goodnight Midstream respectfully requests this Motion be granted and the contested hearing in these cases be set for a status conference on

December 21, 2023. In the alternative, the testimony and exhibits submitted by Empire that rely on information or data responsive to the Subpoena but withheld from production should be excluded from the record and consideration by the Division.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2023, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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