

**STATE OF NEW MEXICO
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES
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 TO GOODNIGHT'S MOTION FOR A CONTINUANCE

Empire New Mexico LLC ("Empire") hereby responds to Goodnight Midstream Permian LLC's ("Goodnight") Motion for a Continuance, filed November 13, 2023, seeking to continue these cases until December 21, 2023, for a status conference. The Motion should be denied.

Empire appreciates that Mr. Rankin has an immediate personal matter to attend to. However, the pending Motion to Compel can be decided on the papers, or one of Goodnight's other three attorneys (such as Ms. Vance who drafted the Motion to Compel) can argue at the hearing on November 16. In addition, these cases should be heard as a status conference on November 16, 2023, to set a contested hearing on November 28-30 or December 7-8, dates that were previously proposed by the hearing examiner.

In support, Empire states as follows:

1. The applications were filed on June 6, 2023.
2. Empire objected to the presentation of these cases by affidavit, and the cases were set for a contested hearing on September 21, 2023.
3. On August 24, 2023, Empire filed its Motion for Continuance and Amended Pre-Hearing Order, requesting that these cases be continued to a contested hearing on December 7, 2023, to allow its experts enough time to analyze the effects of Goodnight's proposed disposal of saltwater into the unitized interval of the Eunice Monument South Unit, which Empire operates.

4. Goodnight objected to Empire's request for a continuance to December 7, 2023, arguing that "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." Response in Opposition to Motion for Continuance at 3 (Sept. 5, 2023). Goodnight contended that Empire should have been prepared because it had known since September 2021 the evidence that would be required to support Empire's position. *Id.* at 5.

5. Empire's Motion to Continue was granted in part, and the contested hearing was reset for November 2, 2023.

6. Due to Goodnight's opposition to Empire's requested continuance, Empire was required to hire six additional employees, and thereby incur approximately \$325,000.00 additional expense, to prepare for the contested hearing on November 2, 2023, and continues to incur additional expense with each passing week. *See* Self-Affirmed Statement of Jack E. Wheeler, attached hereto.

7. On October 26, 2023, the parties filed their exhibits and pre-hearing statements.

8. On October 30, 2023, Goodnight filed two motions: (1) Motion to Continue to a Status Conference or, in the Alternative, to Exclude Empire's Evidence and Testimony, and (2) Motion to Compel Production of Documents.

9. The Motion to Continue asked the Division to vacate the contested hearing set for November 2, 2023 and reset it for a status conference on December 21, 2023.

10. On October 31, 2023, the hearing examiner granted the Motion to Continue in part and set a status conference for November 2, 2023.

11. At the status conference on November 2, 2023, the hearing examiner determined, and counsel for both parties agreed, that the proposed alternative to the Motion to Continue, to

exclude Empire's evidence, was moot, because the hearing examiner had granted the Motion to Continue.

12. Also on November 2, 2023, the hearing examiner set Goodnight's Motion to Compel for hearing on November 16, 2023. The hearing examiner further stated that on November 16, he would set the case for a contested hearing in the last week of November or the first week of December 2023.

13. In good faith, counsel for Empire conferred with Goodnight counsel, Mr. Rankin and Ms. Vance,¹ about the Motion to Compel. In light of this conference, Empire simultaneously produced additional documents and filed a timely response to the motion to compel on November 10, 2023.

14. Now, however, after receiving Empire's evidence in support of its position, Goodnight suggests that it was unduly surprised by Empire's exhibits and argues that it must have additional time to review documents underlying Empire's evidence. *See* Motion to Continue to a Status Conference or, in the Alternative, to Exclude Empire's Evidence and Testimony at 3 (arguing that "Empire is preventing Goodnight Midstream from having a 'full opportunity' to present evidence and cross-examine witnesses")

15. Yet Goodnight admitted that since September 2021, "Empire has been making the same allegations—that the San Andres disposal zone is prospective for hydrocarbons and that Goodnight Midstream's injections will impair unit operations and Empire's correlative rights." Response in Opposition to Motion for Continuance at 6 (Sept. 5, 2023); *see id.* at 2-4 (relying on Case No. 22626 ("Piazza Case")).

¹ It was apparent during the conference that Ms. Vance drafted the Motion to Compel.

16. Thus, Goodnight knew the general nature of Empire's case based on the Piazza Case and could have obtained the substantial equivalent of the underlying materials that it seeks from Empire without undue hardship. Goodnight is not a neophyte in regulatory matters before the Oil Conservation Division. For over two years, Goodnight knew that it needed to retain experts that would be able to rebut Empire's arguments. Nonetheless, Goodnight simply neglected to offer witnesses and exhibits to counter Empire's position. For this reason, it now seeks to delay the hearing that it previously demanded be held in September 2023. *See id.* Goodnight's last-minute tactics should not be permitted.

In conclusion, Empire recognizes that Mr. Rankin has an immediate personal matter to attend to. However, Ms. Vance drafted the Motion to Compel. She is an experienced attorney, who regularly practices before the Division. She is fully capable of reviewing the documents that were received, to determine whether they satisfy the demands for documents that she identified in the Motion to Compel, and arguing such Motion on November 16. In the alternative, the Motion to Compel can be decided on the papers.

Goodnight's Motion to Continue should be denied. These cases should be heard as a status conference on November 16, 2023, and a contested hearing date should be set November 28-30 or December 7-8, which are possible dates previously proposed by the hearing examiner.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

By /s/ Sharon T. Shaheen

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CERTIFICATE OF SERVICE

I hereby certify that the following counsel were served with the foregoing by email on November 14, 2023 as follows:

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/s/Sharon T. Shaheen

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SELF-AFFIRMED STATEMENT OF JACK E. WHEELER


I, Jack E. Wheeler state as follows:

1. I am over the age of 18. I am employed by Empire Petroleum Corporation (“Empire”) as Vice President-Land & Legal and have personal knowledge of the above-referenced cases and the facts contained herein.

2. On August 24, 2023, Empire previously requested that these matters be heard on December 7, 2023, to allow its experts sufficient time to analyze the effects of Applicant’s proposed disposal of saltwater into the unitized interval of the Eunice Monument South Unit, which Empire operates. Applicant opposed Empire’s request, and the hearing was ultimately reset for November 2, 2023.

3. As a result of Goodnight’s opposition to setting the hearing on December 7, 2023, as requested, Empire was required to hire 6 additional employees, resulting in an additional expense to Empire of approximately \$ 325,000.00, in order to be prepared for hearing on November 2, 2023.

I understand that this Self-Affirmed Statement will be used as written testimony in these cases. I affirm that my testimony above is true and correct and is made under penalty of perjury under the laws of the State of New Mexico. My testimony is made as of the date identified next to my signature below.



Jack E Wheeler
Vice President Land and Legal
Empire Petroleum Corporation

November 14, 2023
Date