

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

**APPLICATIONS OF PERMIAN OILFIELD
PARTNERS, LLC TO APPROVE SALT WATER
DISPOSAL WELLS IN LEA COUNTY, NEW
MEXICO**

Case Nos. 24124 and 24125

**PERMIAN OILFIELD PARTNERS, LLC'S MOTION
TO AMEND THE PRE-HEARING ORDER**

Permian Oilfield Partners, LLC ("POP"), through its undersigned attorneys, respectfully requests that Oil Conservation Division ("Division" or "OCD") amend the Pre-Hearing Order issued on February 1, 2024, in order to set the hearing date in these contested applications for February 29, 2024, instead of May 2, 2024. In support whereof, the following is shown:

I. INTRODUCTION

1. At the February 1, 2024, Status Conference, the Hearing Examiner directed the parties to confer in an attempt to agree on a mutually acceptable date for the contested hearing by close of business of February 2. Subsequent to the Status Conference, POP, after reaching out, received minimal responses and no agreement on a hearing date from the parties, MRC Permian Company and Matador Production Company (collectively "MRC/Matador") and Avant Operating, LLC ("Avant"), who were objecting to the applications. *See, e.g.*, Exhibit 1, email from MRC/Matador stating without substantive explanation or discussion that their witness would not be available until May 2, in other words, their witness would not become available for three months, a prolonged absence for which any justification would be incredulous in today's world of multiple electronic platforms for remote access and attendance.

2. On the afternoon of February 2, the day of the deadline, POP retained new counsel, the undersigned, due to a conflict in interest. New counsel's review of the cases found that under Division rules, statutes and policies, an earlier hearing date was warranted and necessary based on the importance and nature of the facts and issues in these cases, and thus, new counsel promptly, but without sufficient time to fully explain the situation, drafted and submitted a request, within minutes of the deadline, for the Hearing Examiner to consider a February 29, 2024, hearing date. However, a Pre-Hearing Order was issued on February 4th, setting May 2nd as the hearing date.

3. This Motion is respectfully submitted to provide explanation and reasoning for POP's request that the hearing date be set for February 29, which is based on the facts, as set forth below, that the public interest considerations for setting the hearing date on February 29 far outweigh any inconvenience to MRC/Matador and Avant.

II. THE PUBLIC INTEREST CONSIDERATIONS FOR HOLDING THE CONTESTED HEARING ON FEBRUARY 29, 2024, OUTWEIGHS ANY MINOR INCONVENIENCE TO THE OBJECTING PARTIES

4. Three fundamental statutory responsibilities of, and thus legislative mandates for, the Division and Oil and Gas Commission ("OCC") are (1) to prevent waste and (2) to protect public health and (3) the environment, especially when it comes to regulating produced water.¹

¹ See, e.g., NSMA 1978 § 70-2-12(B)(15) (OCD makes rules and has jurisdiction "to regulate the disposition, handling, transport, storage, recycling, treatment and disposal of produced water during, or for reuse in, the exploration, drilling, production, treatment or refinement of oil or gas, including disposal by injection pursuant to authority delegated under the federal Safe Drinking Water Act, in a manner that protects public health, the environment and fresh water resources); § 70-2-12(B)(21) (OCD makes rule and has jurisdiction "to regulate the disposition of nondomestic wastes resulting from the exploration, development, production or storage of crude oil or natural gas to protect public health and the environment); and § 70-2-12(B)(22) (OCD makes rules and has jurisdiction "to regulate the disposition of nondomestic wastes resulting from the oil field service industry, the transportation of crude oil or natural gas, the treatment of natural gas or the refinement of crude oil to protect public health and the environment, including administering the Water Quality Act") OCD; see also § 70-13-3 (showing it is the jurisdiction of the OCD to regulate produced water as provided in the Oil and Gas Act in conjunction with the water quality control

The mandates and concern for public health and the environment are reflected throughout the Statewide Rules, and the Commission and Division have adopted various regulations to carry out these charges.²

5. As set forth in more detail below, Permian Resources Corporation (“PR”) is planning to drill and complete more than 50 oil and gas wells in the Wolfcamp and Bone Springs formations in Sections 3-5, 8-10, 17-20, and 30, Township 20 South, Range 34 East, NMPM (the “PR Wells”). POP has been working in conjunction with PR to provide a means for disposing of the produced water from these wells resulting in the subject applications for the Vital Federal SWD # 1 Well and the Imperative Federal SWD # 1 Well (collectively referred to as “POP’s SWD Wells”).

6. The significant delay in addressing the objections of MRC/Matador and Avant to POP’s SWD Wells will prevent the timely development of, and may even result in not developing, the PR Wells, thus resulting in waste from considerable amounts of hydrocarbons being undeveloped and stranded because, absent POP’s SWD Wells, there is no environmentally sound means to dispose of the produced water from the PR Wells in a way that will protect the public health and environment. *See Continental Oil Co. v. OCC*, 1962-NMSC-062 (the rulings in *Continental* come into play under the present circumstances because the undue delay of POP’s

commission to regulate produced water in the Water Quality Act).

² *See, e.g.*, Rules 19.15.17.15 (standing of for the proposition that public health and the environment can be essential criteria and factors to be considered in applications); 19.15.30.10 (OCD duties and authority include enforcement of changes in procedure “upon a showing by an operator that changes are necessary to avoid waste or to protect public health or the environment); 19.15.34.8(A)(4)(requirements for the disposition by use of produced water shall be handled in a manner that protects public health and the environment); and 19.15.34.3 (stating 19.15.34 NMAC is adopted pursuant to the Oil and Gas Act, § 70-2-12(15)(B), which authorizes the OCD to regulate the disposition, handling, transport, storage, recycling, treatment and disposal of produced water during, or for re-use in, the exploration, drilling, production, treatment or refinement of oil or gas in a manner that protects public health, the environment and fresh water resources.)

permit hearing directly impacts considerations of waste, correlative rights, and public interest, which is the nexus addressed by the *Continental* court. *See id.* at ¶ 28. Correlative rights represent an owner's opportunity to produce without waste the owner's share of oil and gas which will be violated without an earlier hearing date. *See id.* at ¶ 7. *Continental* stands for the proposition that when private parties are pursuing their self-serving interests, as they will do, it is only the presence and intervention of the Division and OCC that can protect public interest. *See id.* at ¶ 28) Under the circumstances of the present cases, a May 2 hearing date undermines correlative rights, promotes waste, and threatens public interest in public health and the environment.

7. With today's environment of ubiquitous virtual access and the hybrid options provided by the OCD, the naked, unsubstantiated, and incredulous claims of MRC/Matador and Avant, that their technical witnesses are not available to testify for three months -- not until May 2 -- are outweighed by the public interest considerations discussed herein. This is especially true in light of the fact that MRC/Matador protested POP's administrative applications without having even made a determination that either of the wells presented problematic seismicity issues for MRC/Matador and the abject failure of both MRC/Matador and Avant to engage in good faith discussions regarding their objections to POP's SWD Wells.

III. FACTUAL BACKGROUND:

8. POP is a midstream company formed in 2018 by a management team with extensive experience in developing and managing produced water infrastructure in the Permian Basin. POP has drilled and completed 9 Class II disposal wells in the Permian Basin. *See* Self-Affirmed Statement of Gary Fisher, President of Permian Oil Partners, LLC, at ¶ 5. Mr. Fisher's Self-Affirmed Statement is attached hereto as Exhibit 2.

9. POP has the opportunity to enter into a contract with PR to dispose of the produced water from PR's Wolfcamp and Bone Spring wells located in T20S-R34E, Sections 3-5, 8-10, 17-20, and 30, Lea County, New Mexico (the "PR Wells"). PR has informed POP that PR will need POP to be able to start taking water away from the PR Wells by November 1, 2024. *Id.* at ¶ 6.

10. PR estimates that PR will drill up to eighty-eight wells in these eleven sections and that the PR Wells will produce approximately 60,000 of barrels of water per day. The Vital Federal SWD # 1 Well and the Imperative Federal SWD # 1 Well (collectively referred to as "POP's SWD Wells") will have the capacity to dispose of all of the produced water from the PR Wells. *Id.* at ¶ 7.

11. However, under the terms of the proposed contract, if POP does not have a permit for POP's SWD Wells by May 1, 2024, PR has the option of cancelling the water disposal contract with POP. *Id.* at ¶ 8. Thus, POP, because of the delays already suffered, now is faced with a very short-fuse for obtaining a permit; missing its deadline would jeopardize the contract and could jeopardize PR's, and other operators', ability to develop and produce hydrocarbons in this area, potentially leaving the hydrocarbons stranded in their undeveloped state for an unforeseeably extended duration. This situation is analogous to having an existing lease that is set to expire soon, a situation that in the past has provided the Division with a favorable justification for setting an earlier rather than later hearing date to prevent the expiration and loss of producing capacity. Without the timely availability of disposal wells, it is clear that the hydrocarbons would not be produced in any reasonable amount of time and may not be produced in the foreseeable future.

12. Exhibit A of Mr. Fisher's Self-Affirmed Statement shows a map of the area that depicts the location of POP's SWD Wells, and the PR Well sections. There are no known commercial salt water disposal wells that have available capacity to dispose of the produced water

from the PR Wells in a 20-mile radius. Estimated driving distance to a commercial SWD that may have capacity is in excess of 30 miles. *Id.* at Exhibit 2 and ¶ 9.

13. The POP SWD Wells project will use pipelines to transport water the three-to-five-mile distances from the PR Wells to the POP SWD Wells. If it were required to truck water to a currently available commercial SWD at a distance of 30 miles, based on the standard water truck capacity to transport 120 barrels of water, it will take 15,000 water truck miles (500 loads) per day to dispose of the produced water from the PR Wells. *Id.* at ¶ 10.

14. Based on the current costs for trucking water, the additional costs for trucking water to an existing SWD versus pipeline to POP's SWD Wells would be approximately \$200,000 per day. This additional expense could make the PR Wells uneconomic to develop at this time. *Id.* at ¶ 11.

15. Furthermore, the use of trucks to transport and dispose of wastewater increases the danger and hazards to the public on roads and highways, increases the amount of air pollution and exposure of the public to particles and debris, increases the threat and incidence of spills on public roads and highway with increased exposure of hazards to local businesses and industry in this area of the state.

16. POP has been diligent in attempting to provide an environmentally sound means to provide water disposal for the PR Wells that protects the public health and allows for the development of the PR Wells over the subject eleven sections of land. By contrast, neither MRC/Matador nor Avant have acted in good faith.

17. For example, after POP filed administrative applications for two SWD wells in the area to which MRC/Matador objected, POP determined the locations of the subject wells in conjunction with PR's geology department utilizing PR's 3D seismic information in order to avoid

any seismicity issues. On November 7, 2023, POP submitted its Administrative Applications for POP's SWD Wells. On November 21, 2023, MRC Permian Company ("MRC") emailed the Division, protesting both of administrative applications. *Id.* at ¶ 12(a)-(c).

18. On December 21, 2023, POP filed its contested hearing applications, requesting a February 1 hearing date. Matador requested that February 1 be a status conference instead. Matador initially responded with March or April hearing dates but then backtracked on those and is now requesting a May 2 hearing date. *Id.* at ¶ 12(h). POP suspects that MRC/Matador has been consistently stalling at every effort to find a timely hearing date in order to torpedo POP's plans, and by dragging things out to finally obtain a May 2 hearing, it looks as if they have achieved their goal, given that POP's contract may now expire due to a lack of a timely hearing date. POP respectfully submits to the Division its request to amend the Pre-hearing Order and set a hearing date that would facilitate, and not sabotage, POP's efforts to provide the waste disposal services that are necessary for development.

19. Since the December 5, 2023, technical call, POP has requested on numerous occasions that Matador provide it with the basis for its seismic objections to POP's SWD Wells. Matador has ignored these requests. *Id.* at ¶ 12(i).

20. On, January 30, 2024, Avant filed an appearance in Case No. 24125 (the Imperative Federal SWD # 1 Well). Avant has never provided POP with the basis for its objections to the Imperative Federal SWD # 1 Well. *Id.* at ¶ 12(j) and (k).

IV. CONCLUSION:

21. While POP and its counsel understand that witness availability can sometimes be an issue, the mere naked unsubstantiated assertion that a party's technical witnesses are unavailable for a hearing, and in MRC's case, not available for three months, is not sufficient to

justify such a delay when balanced against the public interest considerations in conducting the hearing on February 29.

22. MRC/Matador should not be given the benefit of any doubt in light of the facts that:

- it protested the administrative applications in bad faith since it failed to conduct any analysis prior to protesting those applications;
- it has refused to provide POP with any technical basis for objecting to POP's SWD Wells;
- it provided no basis for asserting witness availability; and
- its technical witnesses can easily testify by virtual means, negating any travel concerns.

23. Similarly, Avant's claim that its technical witnesses are not available until May 1, a claim that suspiciously tracts MRC/Matador's claim, is unsubstantiated. Further, Avant has refused to provide any basis for its objection to the Imperative Federal SWD # 1 Well.

24. The opposing parties' objections have long ago been made, and the point for any further negotiations or attempts to resolve differences has long passed; thus, the cases are ripe, and there is no justification to delay the hearing for another three months. Furthermore, the data and information on which MRC/Matador claims to base its allegations of seismicity are readily available to the Division if MRC/Matador were compelled to release and submit it to the technical examiners for timely review. POP respectfully submits that such a presentation to the Division is feasible within the month of February and does not require a three-month delay. MRC/Matador is a sizable company with numerous experts in the geosciences, and both opposing parties are sophisticated operators that should house a number of expedient options for providing expert testimony.

WHREEFORE, premises submitted, POP respectfully requests that its two applications be set for a hearing on February 29, 2024, or at a date close to February 29th.

ABADIE | SCHILL PC

/s/ William E. Zimsky

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Attorneys for Permian Oilfield Partners, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed with the New Mexico Oil Conservation Division and was served on counsel of record via electronic mail on February 9, 2024:

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Attorneys for Avant Operating, LLC

/s/ Darin C. Savage

Darin C. Savage

From: Adam Rankin AGRankin@hollandhart.com 
Subject: POP - Imperative and Vital SWDs - 24124/24125 - hearing dates
Date: February 1, 2024 at 6:00 PM
To: Deana M. Bennett deana.bennett@modrall.com
Cc: Dana Hardy dhardy@hinklelawfirm.com, Jaclyn McLean JMclean@hinklelawfirm.com



EXTERNAL EMAIL: Please do not click any links or open any attachments unless you trust the sender and are expecting this message and know the content is safe.

Deana,

Matador's technical witnesses are unavailable for a contested hearing until May 2.



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Exhibit 1

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

**APPLICATIONS OF PERMIAN OILFIELD
PARTNERS, LLC TO APPROVE SALT WATER
DISPOSAL WELLS IN LEA COUNTY, NEW
MEXICO**

Case Nos. 24124 and 24125

SELF-AFFIRMED STATEMENT OF GARY FISHER

I state the following under penalty of perjury:

1. I am over the age of 18, and I have personal knowledge of the matters stated herein.
2. I am the President of Permian Oilfield Partners, LLC (“POP”). I am familiar with the subject applications and the geology involved.
3. This Self-Affirmed Statement is submitted in connection with Permian Oilfield Partners, LLC’s Motion to Amend the Pre-Hearing Order.
4. I have testified previously by affidavit before the Oil Conservation Division (“Division”) as an expert petroleum geologist; my credentials have been made a matter of record, and I have been qualified as an expert by the Division.
 - a. I have a Bachelor of Science Degree in Mechanical Engineering from University of Southern California.
 - b. I have worked on New Mexico Oil and Gas matters since November 2018.
5. POP is a midstream company formed in 2018 by a management team with extensive experience in developing and managing produced water infrastructure in the Permian Basin. POP has drilled and completed 9 Class II disposal wells in the Permian Basin.

6. POP has the opportunity to enter into a contract with Permian Resources Corporation (“PR”) to dispose of the produced water from PR’s Wolfcamp and Bone Spring wells located in T20S-R34E, Sections 3-5, 8-10, 17-20, 30, Lea County, New Mexico (the “PR Wells”). PR has informed POP that PR will need POP to be able to start taking water away from the PR Wells by November 1, 2024.

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8. However, under the terms of the proposed contract, if POP does not have a permit for POP’s SWD Wells by May 1, 2024, PR has the option of cancelling the water disposal contract with POP.

9. **Exhibit A** shows a map of the area that depicts the location of POP’s SWD Wells, and the PR Well sections. There are no known commercial salt water disposal wells that have available capacity to dispose of the produced water from the PR Wells in a 20-mile radius. Estimated driving distance to a commercial SWD that may have capacity is in excess of 30 miles.

10. The POP SWD Wells project will use pipelines to transport water the three-to-five mile distances from the PR Wells to the POP SWD Wells. If it were required to truck water to a currently available commercial SWD at a distance of 30 miles, based on the standard water truck capacity to transport 120 barrels of water, it will take 15,000 water truck miles (500 loads) per day to dispose of the produced water from the PR Wells.

11. Based on the current costs for trucking water, the additional costs for trucking water to an existing SWD versus pipeline to POP's SWD Wells would be approximately \$200,000 per day. This additional expense could make the PR Wells uneconomic to develop at this time.

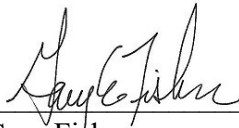
12. Timeline of pertinent events:

- a. POP originally filed administrative applications for two other SWD Wells, the Overdue Fed SWD # 1 well (filed on July 11, 2023) and the Belated Fed SWD # 1 well (filed on July 11, 2023). However, Matador protested both applications due to seismicity concerns.
- b. PR and Matador conferred regarding Matador's objections and PR examined Matador's 3D seismic information and concurred. Thus, POP withdrew its administrative applications for the Overdue and Belated SWD wells.
- c. On November 1, 2023, POP met with PR's geology department to determine locations for the Vital #1 SWD Well and the Imperative # 1 SWD Well in order to avoid causing any issues to Matador's wells. Utilizing PR's 3D seismic information, PR and POP selected the proposed locations for these two wells.
- d. On November 7, 2023, POP submitted its Administrative Applications for POP's SWD Wells.
- e. On November 21, 2023, MRC Permian Company ("MRC") emailed the Division, protesting both of the administrative applications.
- f. On December 5, 2023, during a technical call with POP, PR & Matador Resources Company ("Matador"), Matador stated that it had not yet reviewed the proposed locations. They indicated that they were surprised to hear that we had picked the locations in conjunction with PR using 3D seismic and said that they would review the locations. They later indicated to PR that they did not approve of the locations.
- g. On December 21, 2023, POP filed its contested hearing applications, requesting a February 1 hearing date.
- h. Matador requested that Feb 1 be a status conference instead. Matador initially responded with March or April hearing dates but then backtracked on those and is now requesting a May hearing date.
- i. Since the December 5, 2023, technical call, POP has requested on numerous occasions that Matador provide it with the basis for its seismic objections to POP's SWD Wells. Matador has ignored these requests.

j. On, January 30, 2024, Avant filed an appearance in Case No. 24125 (the Imperative Federal SWD # 1 Well).

k. Avant has never provided POP with the basis for its objections to the Imperative Federal SWD # 1 Well.

13. I understand that this Self-Affirmed Statement will be used as an Exhibit to Permian Oilfield Partners, LLC's Motion to Amend the Pre-Hearing Order and affirm that my testimony herein is true and correct, to the best of my knowledge and belief and made under penalty of perjury under the laws of the State of New Mexico.



Gary Fisher
President of Permian Oilfield Partners, LLC

Dated February 9, 2024

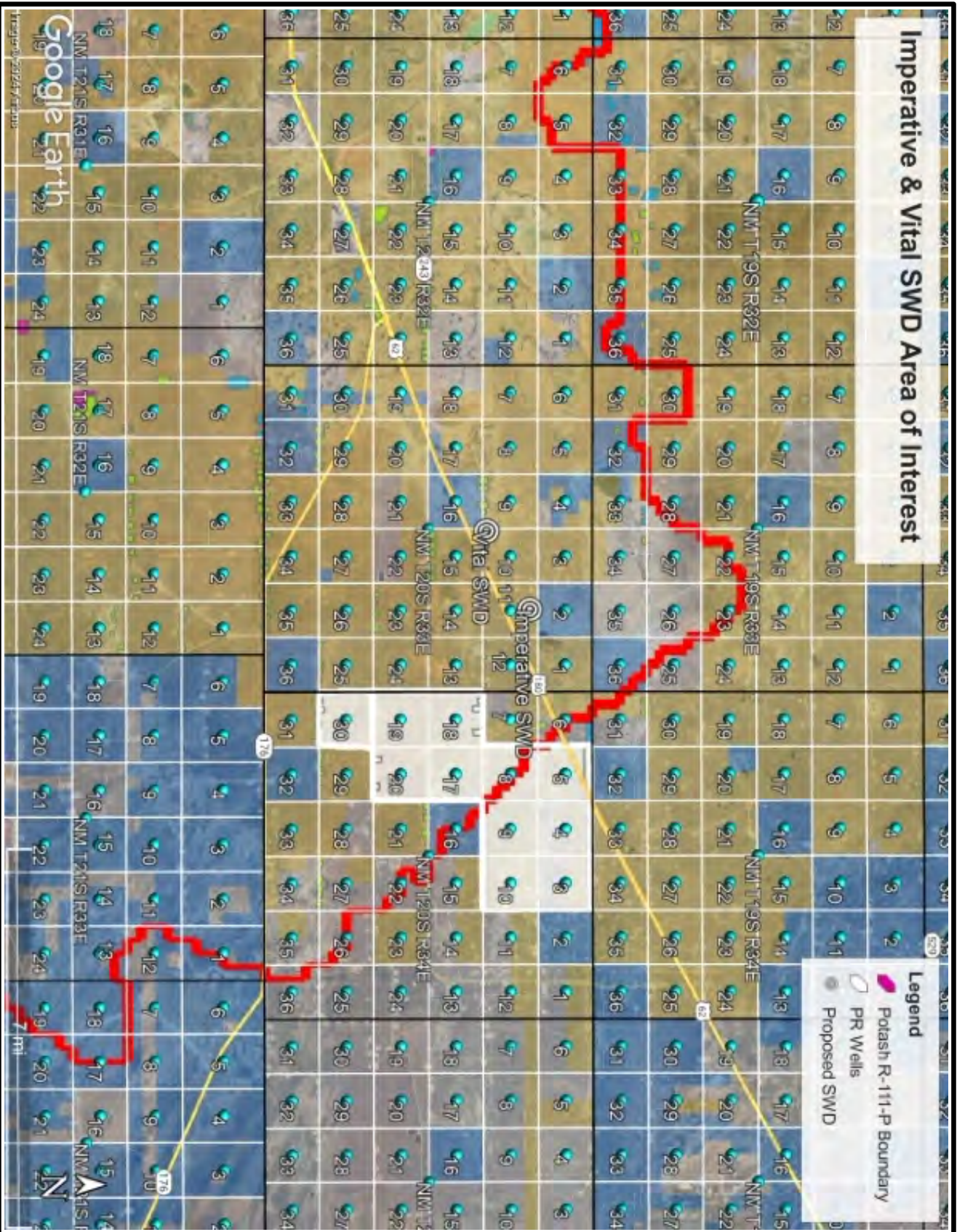


Exhibit A