

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

**APPLICATION OF GOODNIGHT
MIDSTREAM PERMIAN, LLC TO AMEND
ORDER NO. R-7765, AS AMENDED TO
EXCLUDE THE SAN ANDRES FORMATION
FROM THE UNITIZED INTERVAL OF THE
EUNICE MONUMENT SOUTH UNIT,
LEA COUNTY, NEW MEXICO.**

CASE NO. 24278

**APPLICATION OF GOODNIGHT
MIDSTREAM PERMIAN, LLC TO AMEND
ORDER NO. R-7767 TO EXCLUDE THE SAN
ANDRES FORMATION FROM THE EUNICE
MONUMENT OIL POOL WITHIN THE
EUNICE MONUMENT SOUTH UNIT AREA,
LEA COUNTY, NEW MEXICO.**

CASE NO. 24277

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

CASE NOS. 23614-23617

**APPLICATIONS OF EMPIRE NEW MEXICO LLC
TO REVOKE INJECTION AUTHORITY,
LEA COUNTY, NEW MEXICO**

CASE NOS. 24018-24027

**APPLICATION OF GOODNIGHT MIDSTREAM
PERMIAN LLC TO AMEND ORDER NO. R-22026/SWD-2403
TO INCREASE THE APPROVED INJECTION RATE
IN ITS ANDRE DAWSON SWD #1,
LEA COUNTY, NEW MEXICO.**

CASE NO. 23775

**EMPIRE NEW MEXICO LLC'S OBJECTIONS TO AND MOTION TO QUASH
GOODNIGHT MIDSTREAM PERMIAN, LLC'S SUBPOENA DUCES TECUM**

Empire New Mexico, LLC ("Empire") submits the following Objections to and Motion to Quash Goodnight Midstream Permian, LLC's ("Goodnight") Subpoena. For the reasons discussed

below, the Oil Conservation Commission (“Commission”) should issue an order quashing the subpoena.

I. INTRODUCTION

These applications arise from Goodnight’s past, current, and proposed injection of produced water into the San Andres formation within and surrounding the 14,189.84-acre Eunice Monument South Unit (“EMSU”) operated by Empire, and Goodnight’s effort to unilaterally amend the unitized interval that was approved by the Division, Commission, New Mexico State Land Office, and Bureau of Land Management. The EMSU has existed since 1984, when it was approved by the Commission via Order Nos. R-7765, R-7766, and R-7767. Empire also operates the Arrowhead Grayburg Unit (“AGU”), which is located approximately one mile to the southeast of the EMSU, under Order No. R-9482. Chevron and XTO operated the units prior to Empire’s acquisition in 2021.

Goodnight is abusing the Division’s subpoena authority by attempting to use these proceedings to circumvent discovery in ongoing litigation between Goodnight and Empire (D-506-CV-2023-01180). In fact, Goodnight has objected to Empire’s discovery requests and filed a motion to stay discovery in the litigation—where discovery should occur—while at the same time claiming these administrative proceedings should be delayed so it can conduct discovery. Goodnight should not be permitted to engage in procedural gamesmanship in an attempt to gain some perceived advantage. Empire has already produced 3,230 pages of documents in response to Goodnight’s initial subpoena in these cases and has also responded to a subpoena issued by Goodnight in the unrelated case of *DASCO Cattle Company, LLC v. Goodnight Midstream Permian, LLC* (Case No. D-506-CV-2023-00122), which involves a surface owner’s claims

against Goodnight for unpaid injection royalties. Goodnight's heavy-handed discovery tactics are contrary to the Commission's rules and procedures.

In pursuit of its continued harassment of Empire, Goodnight seeks information that for the most part is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding, which relates solely to whether Goodnight's injection of produced water into Empire's unitized interval violates correlative rights and results in waste of oil and gas.¹ See Subpoena, attached as Exh. A. Goodnight seeks Empire's agreements with third parties, documents that have been requested previously, confidential and privileged information, and information readily available to the public through the Division's well files. The Division should not allow Goodnight to utilize a Division subpoena to conduct a fishing expedition or skirt the district court's discovery process in ongoing litigation. The subpoena should be quashed.

II. ARGUMENT

Moving to quash a subpoena is among the "appropriate avenues for redress" when a subpoena constitutes an abuse of process. See *Poorbaugh v. Mullen*, 1982-NMCA-141, ¶ 18, 99 N.M. 11. A subpoena that is unreasonable or oppressive should be quashed. See *Blake v. Blake*, 1985-NMCA-009, ¶ 21, 102 N.M. 354. Under the New Mexico Rules of Civil Procedure, a party is only entitled to seek information that is not privileged and is reasonably calculated to lead to the discovery of admissible evidence in the pending action. Rule 1-026(B)(1). Goodnight's subpoena should be quashed because it fails to comply with these requirements and is unreasonable, oppressive, and amounts to an abuse of process.

¹ Empire is responding in part to Goodnight's Request Nos. 10-12 but otherwise objects to Goodnight's subpoena.

A. General Objections to Subpoena

1. Goodnight's subpoena should be quashed because it subjects Empire to an undue burden.

The Oil and Gas Act delegates to the Commission and Division authority to prevent waste and protect correlative rights. NMSA 1978, §§ 70-2-6; 70-2-11. While this grant of authority is broad, it is limited in scope. Discovery is an exception in Commission and Division proceedings rather than the rule. For example, unlike in district court, “[t]he commission and director or the director’s authorized representative shall issue subpoenas for witness depositions in advance of [a] hearing *only in extraordinary circumstances for good cause shown.*” 19.15.4.16(A) NMAC (emphasis added). Further, written discovery is not generally contemplated in adjudicatory proceedings before the Division or Commission, and parties are required to obtain subpoenas should they want to request the production of documents ahead of a hearing. *Id.* Neither the Oil and Gas Act nor the Division’s regulations contemplate the broad scope of discovery sought by Goodnight.

Rule 1-045(C) requires a party issuing a subpoena to “take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena” and permits a subpoena to be quashed or modified if it fails to allow reasonable time for compliance, subjects a person to undue burden, or requires disclosure of privileged or other protected information. Rule 1-045(C)(1)-(3) NMRA. A subpoena subjects a party to “undue burden” when it is “unreasonable” or “oppressive” within the context of the circumstances of the case. *Blake v. Blake*, 1985-NMCA-009, ¶ 21, 102 N.M. 354. New Mexico courts have recognized that it is appropriate to limit discovery when the requests at issue are insufficiently specific or amount to a “fishing expedition.” *Id.* at ¶ 15.

Goodnight's document requests are overly broad and unduly burdensome in that they demand production of internal and external communications and memoranda that "reflect on, discuss, reference, or concern" a wide variety of matters. They are also unlimited with respect to time and even expressly seek "documents, data, reports, and analyses...from before creation of the Unit to present." See Exh. A at pg. 4, ¶¶ 5, 6. Goodnight's demands for documents that are more than 40 years old are unreasonable, unduly burdensome, and will in no way assist Goodnight in obtaining documents that could potentially be admissible in this proceeding. If Goodnight wants to obtain documents that are reasonably calculated to lead to the discovery of admissible evidence in this proceeding, it should tailor its requests to achieve that goal instead of using a scattershot approach to discovery.

2. Goodnight's subpoena seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this Commission proceeding.

Empire objects to the production of the documents requested, including agreements between Empire and other companies and documents that pertain to Empire's acquisition of the EMSU, on the ground that they are irrelevant, contain proprietary, trade secret and/or other confidential information regarding Empire's business dealings and methods of operations, and are not calculated to lead to the discovery of admissible evidence in a hearing before the Commission. The documents sought by Goodnight are irrelevant because they have no bearing on Goodnight's applications for authorization to inject produced water into the San Andres formation underlying the EMSU, on Goodnight's application to contract the vertical limits of the pool, or on Empire's application to revoke Goodnight's injection permits.

Particularly demonstrative of Goodnight's harassing discovery tactics is its request for "[a]ll communications, emails, letters, and agreements of any kind, including draft or proposed

agreements, between Empire New Mexico, LLC or any of its parent companies, affiliates, or subsidiaries, and DASCO Cattle Company, LLC or its owner or any of its members.” *See* Exh. A at pg. 7, ¶ 18. This request has no bearing on anything at issue in the cases currently before the Commission. DASCO Cattle Company, LLC has filed a lawsuit against Goodnight for unpaid royalties under a surface agreement. This request, along with the majority of Goodnight’s other requests, seek irrelevant information to circumvent the discovery process in ongoing litigation and harass Empire.

The subpoena power is not an unlimited one, particularly in an administrative proceeding. *See* Rule 1-026(B)(1) NMRA (limiting discovery to information that is relevant or reasonably calculated to lead to the discovery of admissible evidence). The subpoena at issue is extremely overbroad with no practical limitation in time or scope, providing no limiting principle to filter out irrelevant information, and amounts to nothing more than an impermissible fishing expedition. For example, the subpoena seeks:

- “Agreements of *any* kind, between Empire New Mexico, LLC,...and Rice Operating Company...,including internal and external communications, emails, memoranda, and summaries that reflect on, discuss, reference or concern such agreements.”
- “Agreements of *any* kind, between Empire New Mexico, LLC,...and Parker Energy Support Services...,including internal and external communications, emails, memoranda, and summaries that reflect on, discuss, reference or concern such agreements.”
- “Agreements of *any* kind, between Empire New Mexico, LLC,...and OWL SWD Operating, LLC...,including internal and external communications, emails, memoranda, and summaries that reflect on, discuss, reference or concern such agreements.”
- “*All* water compatibility documents, data, reports, and analyses, including internal and external communications, emails, memoranda, and summaries...from before creation of the Unit to present.”
- “*All* communications, emails, letters, and agreements of any kind, including draft or proposed agreements, between Empire New Mexico, LLC or any of its parent companies, affiliates, or subsidiaries, and DASCO Cattle Company, LLC or its owner or any of its members.”

See Exh. A at pg. 3, ¶¶ 1, 2, 3, pg. 4 ¶ 6, pg. 7, ¶ 18.

Compliance with these unbounded requests in either scope or time will necessarily result in undue burden on Empire and lead to the production of irrelevant material. While it is unlikely that *any* emails or documents exchanged between Empire and Rice, Parker, or OWL will have anything to do with Goodnight – it is inconceivable that *every* email or communication between them over the course of some unknown period of time will be relevant to Goodnight’s claims. The subpoena’s unlimited scope makes the requests overbroad and unduly burdensome and is likely to require Empire to produce information that contains proprietary, trade secret and/or other confidential information regarding Empire’s business dealings and methods of operations. *See, e.g., In re Subpoena Duces Tecum to AOL, LLC*, 550 F.Supp.2d 606, 612 (E.D. Va. 2008) (observing that subpoena seeking plaintiff’s emails was “overbroad because it does not limit the e-mails requested to those containing subject matter relevant to the underlying action”). By asking for *all* agreements, communications, letters, e-mails, etc. between Empire and any other entity, Goodnight has not even made the faintest attempt to draw a connection to the subject matter of this case. *See In re Subpoenas for Documents Issued to Thompson McMullen, P.C.*, No. 3:16-MC-1, 2016 WL 1071016 at *6 (E.D.Va. Mar. 17, 2016) (“[S]ubpoenas must impose parameters explicitly limiting the scope of the subpoena to material relevant to the underlying case.”). Goodnight’s failure to properly limit its subpoena requests demonstrates it is conducting an impermissible fishing expedition that should be quashed. *Blake*, 1985-NMCA-009, ¶ 15 (“[D]iscovery should be denied if a request is speculative and discovery would amount to a mere ‘fishing expedition.’”).

3. Goodnight's subpoena seeks information that is protected from disclosure by the attorney-client privilege and work product doctrine.

Goodnight's requests seek "internal and external communications" that "reflect on, discuss, reference, or concern" a wide variety of topics. In addition to the fact that these requests are overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and unlimited with respect to time, they also seek communications that are protected from disclosure by the attorney-client privilege and the work product doctrine. Accordingly, Empire objects to each of Goodnight's request on this basis. Given the extreme overbreadth of the requests, Empire has not prepared a privilege log.

B. Objections to Specific Subpoena Requests

Request No. 1: This request seeks "Agreements of *any* kind, including operating agreements, between Empire New Mexico, LLC, or any of its parent companies, affiliates, or subsidiaries, and Rice Operating Company or any of its parent companies, affiliates, or subsidiaries, including internal and external communications, emails, memoranda, and summaries that reflect on, discuss, reference or concern such agreements."

Empire objects to this request on the ground that it is overly broad, unduly burdensome, seeks information that is protected from disclosure by the attorney-client privilege and work product doctrine, and seeks production of information that contains proprietary, trade secret and/or other confidential information regarding Empire's business dealings and methods of operations because it asks for all agreements of any kind with Rice and for all internal and external communications that "reflect on, discuss, reference, or concern" such agreements.

Empire further objects to this request on the ground that it is not reasonably calculated to lead to the discovery of admissible evidence. The request is not limited to injection matters, Empire's units, New Mexico, or even the unitized formation generally. In addition, Rice is not a

party to these Commission cases, which involve Goodnight's proposal to inject into Empire's unitized formation. And even if Rice were a party, the requested documents could not possibly have a bearing on Goodnight's operations and applications. Although Goodnight may wish to shift liability to Rice for injecting into Empire's unitized formation, any such claim is not relevant to the Commission's determination regarding whether *Goodnight's* injection is resulting in waste and violating correlative rights. NMSA 1978, §§ 70-2-6; 70-2-11. The request amounts to nothing more than an unbridled fishing expedition and should be quashed.

Request No. 2: This request seeks "Agreements of *any* kind, including operating agreements, between Empire New Mexico, LLC, or any of its parent companies, affiliates, or subsidiaries, and Parker Energy Support Services, or any of its parent companies, affiliates, or subsidiaries, including internal and external communications, emails, memoranda, and summaries that reflect on, discuss, reference or concern such agreements." Empire objects to this request for the same reasons discussed above with respect to Request No. 1.

Request No. 3: This request seeks "Agreements of *any* kind, including operating agreements, between Empire New Mexico, LLC, or any of its parent companies, affiliates, or subsidiaries, and OWL SWD Operating, LLC, or any of its parent companies, affiliates, or subsidiaries, including internal and external communications, emails, memoranda, and summaries that reflect on, discuss, reference or concern such agreements." Empire objects to this request for the same reasons discussed above with respect to Request No. 1.

Request No. 4: This request claims that production volumes discussed in Empire's testimony and exhibits in Case Nos. 23614-23617 do not match reported volumes and demands that Empire produce "internal documents reflecting total water production volumes on a monthly basis for each EMSU water supply well operated by Empire, including "internal and external

communications, emails, memoranda, and summaries that reflect on, discuss, reference, or concern water production from Empire's water supply wells."

Empire objects to this request on the ground that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it: does not reference any specific water supply wells; fails to identify any allegedly inconsistent injection volumes; is unlimited with respect to time; and seeks any documents that "reflect on, discuss, reference, or concern" water production for an unlimited period of time.

Request No. 5: This request seeks "all water chemistry documents, data, reports, and analyses, including internal and external communications, emails, memoranda, and summaries, that reflect on, discuss, reference, or concern water chemistry in the San Andres and Grayburg formations within the EMSU, from before creation of the Unit to the present."

Empire objects to this request on the ground that it is overly broad, unduly burdensome, and not calculated to lead to the discovery of admissible evidence in that it seeks water chemistry analysis from "before creation of the Unit to the present" and all documents that "reflect on, discuss, reference, or concern water chemistry...." The request is unlimited with respect to time. Further, the request is duplicative of Goodnight's prior requests, to which Empire has repeatedly responded and has also explained that Chevron is in possession of a water chemistry analysis that Chevron deems confidential. Goodnight's repeated request that Empire produce this information constitutes harassment.

Request No. 6: This request seeks "[a]ll water compatibility documents, data, reports, and analyses, including internal and external communications, emails, memoranda, and summaries that reflect on, discuss, reference, or concern analyses assessing the compatibility of water between the

San Andres and Grayburg formations within the EMSU, from before creation of the Unit to the present.” Empire objects to this request for the same reasons it objects to Request No. 5.

Request Nos. 7 - 9: These requests seek reserve reports and estimates for the EMSU, including those that were used to underwrite Empire’s acquisition of the unit, and include “internal and external communications, emails, memoranda, and summaries, that reflect on, discuss, reference, or concern” the requested documents.

Empire objects to these requests on the ground that the information sought is not reasonably calculated to lead to the discovery of admissible evidence in these Commission cases, which only involve whether Goodnight’s proposed injection into Empire’s unitized interval will impair correlative rights and/or result in waste. *See* NMSA 1978, § 70-2-6 (Commission and Division have authority “over all matters relating to the conservation of oil and gas . . .”). The Commission does not have jurisdiction over financial matters, contract issues, damages, or business transactions. The information sought is also confidential and proprietary/trade secret in that it pertains to Empire’s financing and financial decision making. Empire further objects to these requests on the grounds that they are overly broad in seeking *all* internal and external communications that “reflect on, discuss, reference, or concern” the requested information.

Request No. 10: This request seeks “[a]ll plans of development for the EMSU submitted to the New Mexico State Land Office from approval of the EMSU to the present, including all internal and external communications, emails, memoranda, and summaries, that reflect on, discuss, reference, or concern such plans of development.

Empire objects to this request on the ground that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks “*all* internal and external communications, emails, memoranda, and summaries, that reflect on, discuss,

reference, or concern” plans of development. Subject to that objection, Empire agrees to produce the plans of development for the EMSU that are in its possession and have been submitted to the New Mexico State Land Office.

Request No. 11: This request seeks “[a]ll monthly reports submitted to the Division required under Order R-22869-A, including all internal and external communications, emails, memoranda, and summaries, that reflect on, discuss, reference, or concern such monthly reports.”

Empire objects to Request No. 11 on the grounds that it is overly broad and unduly burdensome in its request for “*all* internal and external communications, emails, memoranda, and summaries, that reflect on, discuss, reference, or concern” monthly reports submitted to the Division under Order No. R-22869-A.” Empire further states that Order No. R-22869-A was issued in late November and is the subject of the *de novo* hearing requested by Goodnight. At this time, reports are being prepared but have not yet been submitted. Once the reports are submitted, they will be produced.

Request No. 12: This request seeks “[a]ll documents, data, reports, and analyses, including internal and external communications, emails, memoranda, and summaries that reflect on, discuss, reference, or concern the alleged EMSU well failures and alleged increased well costs referred to in footnote No. 2 of Empire New Mexico LLC’s Motion to Refer Cases to New Mexico Oil Conservation Commission, filed on January 3, 2024.”

Empire objects to Request No. 12 on the ground that it is overly broad and unduly burdensome in its request for “[a]ll documents, data, reports, and analyses, including internal and external communications, emails, memoranda, and summaries that reflect on, discuss, reference, or concern” documents requested. Empire further objects to Request No. 12 on the grounds that it is not calculated to lead to the discovery of admissible evidence because well costs are not at issue

in these Commission proceedings. Subject to those objections, Empire will produce a list of the wells that have failed.

Request No. 13. This request seeks “[a]ll documents, data, reports, and analyses, including internal and external communications, emails, memoranda, and summaries that reflect on, discuss, reference, or concern whether injection volumes from each of the following wells is interfering or may interfere with EMSU operations or potential tertiary recovery of residual oil from the Grayburg or San Andres formations within the EMSU: [Empire] EMSU SWD #001 (API No. 30-025-04484); [Permian Line Service LLC] N 11 SWD #001 (API No. 30-025-46577); [Rice Operating Company] E M E SWD #021 (API No. 30-025-21852); and [OWL SWD Operating] P 15 SWD #001 (API No. 30-025-46579).”

Empire objects to this request on the ground that it is overly broad, unduly burdensome, speculative, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks “all documents, data, reports, and analyses, including internal and external communications, emails, memoranda, and summaries that reflect on, discuss, reference, or concern whether injection volumes from” five different wells operated by parties other than Goodnight “is interfering *or may interfere with*” the EMSU. The wells referenced in the request are not at issue in these proceedings, which only involve Goodnight’s applications to inject massive volumes of water via 11 saltwater disposal wells into Empire’s unitized interval. Although Goodnight may argue that others are also injecting into the unitized interval, that fact does nothing to reduce the impact of Goodnight’s injection on correlative rights and the associated waste of hydrocarbons.

Request No. 14: This request seeks “[a]ll documents, data, reports, and analyses, including internal and external communications, emails, memoranda, and summaries that reflect on, discuss, reference, or concern whether injection volumes from each of the following wells [operated by

Goodnight] is migrating into the unitized interval of the EMSU: Pedro SWD #1 (API No. 30-025-50079); Nolan Ryan SWD #1 (API No. 30-025-45349); Ted SWD #1(API No. 30-025-44386); and Yaz SWD #1 (API No. 30-025-46382).”

Empire objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks “all documents, data, reports, and analyses, including internal and external communications, emails, memoranda, and summaries that reflect on, discuss, reference, or concern whether injection volumes from” five different wells “is migrating into the unitized interval of the Eunice Monument South Unit.” Subject to, and without waiving its objections, Empire directs Goodnight to Empire’s initial response and multiple supplemental responses to Goodnight’s initial subpoena and all testimony and exhibits filed with the Division in these cases.

Request No. 15: This request seeks “[a]ll documents, data, reports, and analyses, including internal and external communications, emails, memoranda, and summaries that reflect on, discuss, reference, or concern whether injection volumes from each of the following wells is migrating into the unitized interval of the EMSU: Parker Energy SWD #005 (API No. 30-025-38789); [Rice Operating] E M E SWD #033M (API No. 30-025-12786); and [Rice Operating] N 7 SWD #001 (API No. 30-025-46576).” Empire objects to this request for the same reasons it objects to Request No. 13.

Requests Nos. 16 and 17: These requests essentially seek all information that supports Empire’s position in these cases, including regarding Empire’s estimate of the underlying reserves and the potential for CO₂ flooding in the San Andres formation within the EMSU.

Empire objects to these requests on the grounds that they are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Furthermore, the requests are duplicative of Goodnight's prior subpoena requests and further evidence Goodnight's harassment of Empire. Subject to and without waiving its objections, Empire directs Goodnight to Empire's initial response and multiple supplemental responses to Goodnight's initial subpoena and all testimony and exhibits filed with the Division in these cases.

Request No. 18: This request seeks “[a]ll communications, emails, letters, and agreements of any kind, including draft or proposed agreements, between Empire New Mexico, LLC, or any of its parent companies, affiliates, or subsidiaries, and DASCO Cattle Company, LLC or its owner or any of its members.”

This request is particularly illustrative of Goodnight's harassment of Empire, and Empire objects to the request on the ground that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in these cases. Goodnight issued a third-party subpoena to Empire in the DASCO Cattle Company litigation, which is currently the subject of a motion to quash. Rather than await the court's ruling, Goodnight has served *even broader* requests on Empire in this Commission proceeding. As a general rule, “a party may not use Rule 1-045 to pursue discovery of material that is subject to an ongoing discovery dispute that has not been resolved by the parties or decided by the court.” *Wallis v. Smith*, 2001-NMCA-017, ¶ 20; *see also Keplinger v. Virginia Elec. and Power Co.*, 208 W.Va. 11, 24, 537 S.E2d 632 (W.Va. 2000) (“[W]hen a party timely objects to the discovery of particular information, all efforts at obtaining discovery of that information should cease until the discovery dispute is resolved.”). In the present case, Goodnight's service of a subpoena on Empire circumvents the discovery process in the DASCO litigation, which involves unpaid royalties and has no bearing on Goodnight's injection of produced water into Empire's unitized interval or whether Goodnight's injection violates

correlative rights and results in waste. Goodnight is improperly using this proceeding as a mechanism to obtain information regarding pending litigation.

III. CONCLUSION

The vast majority of the information sought by Goodnight is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding, which only concerns whether Goodnight's effort to inject massive volumes of water into Empire's unitized interval violates correlative rights and results in waste. The subpoena is duplicative of prior subpoena requests, seeks confidential and privileged information, and constitutes an abuse of the Division's subpoena authority. Accordingly, the subpoena should be quashed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following by electronic mail on April 4, 2024:

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

**APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ORDER NO. R-22026 FOR THE ANDRE DAWSON
SWD #001 OPERATED BY GOODNIGHT MIDSTREAM
PERMIAN LLC, LEA COUNTY, NEW MEXICO.**

CASE NO. 24018

**APPLICATION OF EMPIRE NEW MEXICO LLC
TO REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ORDER NO. R-22027 FOR THE ERNIE BANKS
SWD NO. 1 WELL OPERATED BY GOODNIGHT
MIDSTREAM PERMIAN LLC,
LEA COUNTY, NEW MEXICO.**

CASE NO. 24019

**APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED BY
ADMINISTRATIVE ORDER SWD-2307 FOR THE RYNO
SWD #001 F/K/A SNYDER SWD WELL NO. 1 OPERATED
BY GOODNIGHT MIDSTREAM PERMIAN LLC,
LEA COUNTY, NEW MEXICO.**

CASE NO. 24020

**APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ORDER NO. R-22027 FOR THE ROCKET SWD
NO. 1 WELL OPERATED BY GOODNIGHT MIDSTREAM
PERMIAN LLC, LEA COUNTY, NEW MEXICO.**

CASE NO. 24021

**APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ADMINISTRATIVE ORDER NO. SWD-2391 FOR
THE PEDRO SWD #001 WELL OPERATED BY
GOODNIGHT MIDSTREAM PERMIAN LLC,
LEA COUNTY, NEW MEXICO.**

CASE NO. 24022

**APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ORDER NO. R-22030 FOR THE VERLANDER
SWD WELL NO. 1 OPERATED BY
GOODNIGHT MIDSTREAM PERMIAN LLC,
LEA COUNTY, NEW MEXICO.**

CASE NO. 24023

**APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ORDER NO. R-20855 FOR THE NOLAN RYAN**

SWD #001 OPERATED BY GOODNIGHT MIDSTREAM PERMIAN LLC, LEA COUNTY, NEW MEXICO.

CASE NO. 24024

APPLICATION OF EMPIRE NEW MEXICO LLC TO REVOKE THE INJECTION AUTHORITY GRANTED UNDER ORDER NO. R-21190 FOR THE SOSA SA 17 NO. 2 WELL OPERATED BY GOODNIGHT MIDSTREAM PERMIAN LLC, LEA COUNTY, NEW MEXICO.

CASE NO. 24025

APPLICATION OF EMPIRE NEW MEXICO LLC TO REVOKE THE INJECTION AUTHORITY GRANTED UNDER ADMINISTRATIVE ORDER NO. SWD-2075 FOR THE TED 28 SWD WELL NO. 1 OPERATED BY GOODNIGHT MIDSTREAM PERMIAN LLC, LEA COUNTY, NEW MEXICO.

CASE NO. 24026

APPLICATION OF EMPIRE NEW MEXICO LLC TO REVOKE THE INJECTION AUTHORITY GRANTED UNDER ORDER NO. R-20865 FOR THE YAZ 28 SWD WELL NO. 1 OPERATED BY GOODNIGHT MIDSTREAM PERMIAN LLC, LEA COUNTY, NEW MEXICO.

CASE NO. 24027

SUBPOENA

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YOU ARE HEREBY COMMANDED pursuant to NMSA 1978, §70-2-8 and Rule 19.15.4.16.A NMAC to produce the following documents at the offices of Holland & Hart LLP, 110 North Guadalupe, Santa Fe, New Mexico, 87501, within thirty (30) days of service of this subpoena:

1. Agreements of any kind, including operating agreements, between Empire New Mexico, LLC, or any of its parent companies, affiliates, or subsidiaries, and Rice Operating Company (OGRID 19174), or any of its parent companies, affiliates, or subsidiaries, including internal and external communications, emails, memoranda, and summaries, that reflect on, discuss, reference, or concern such agreements.
2. Agreements of any kind, including operating agreements, between Empire New Mexico, LLC, or any of its parent companies, affiliates, or subsidiaries, and Parker Energy Support Services (OGRID 245739), or any of its parent companies, affiliates, or subsidiaries, including internal and external communications, emails, memoranda, and summaries, that reflect on, discuss, reference, or concern such agreements.
3. Agreements of any kind, including operating agreements, between Empire New Mexico, LLC, or any of its parent companies, affiliates, or subsidiaries, and OWL SWD Operating, LLC (OGRID 308339 or 308256), or any of its parent companies, affiliates, or subsidiaries, including internal and external communications, emails, memoranda, and summaries, that reflect on, discuss, reference, or concern such agreements.
4. Because water production volumes from its water supply wells cited in Empire's witness testimony and exhibits submitted in Case Nos. 23614-23617 do not match publicly reported volumes, please produce internal documents reflecting total water production volumes

on a monthly basis for each Eunice Monument South Unit (“EMSU” or “Unit”) water supply well operated by Empire, including internal and external communications, emails, memoranda, and summaries, that reflect on, discuss, reference, or concern water production from Empire’s water supply wells.

5. All water chemistry documents, data, reports, and analyses, including internal and external communications, emails, memoranda, and summaries, that reflect on, discuss, reference, or concern water chemistry in the San Andres and Grayburg formations within the EMSU, from before creation of the Unit to the present.

6. All water compatibility documents, data, reports, and analyses, including internal and external communications, emails, memoranda, and summaries that reflect on, discuss, reference, or concern analyses assessing the compatibility of water between the San Andres and Grayburg formations within the EMSU, from before creation of the Unit to the present.

7. Reserve reports for the EMSU, including internal and external communications, emails, memoranda, and summaries, that reflect on, discuss, reference, or concern such reserve reports.

8. All internal and external estimates of proved, probable, and possible reserves of oil, gas, and hydrocarbons within the EMSU, including external reports prepared for the Empire New Mexico, LLC, or any of its parent companies, affiliates, or subsidiaries, as well as internal and external communications, emails, memoranda, and summaries, that reflect on, discuss, reference, or concern such reserve reports.

9. All reserve reports or reserve estimates prepared to underwrite the acquisition of the EMSU, including reserve reports prepared to underwrite any loans or partnerships that financed the acquisition of the EMSU, as well as internal and external communications, emails, memoranda, and summaries, that reflect on, discuss, reference, or concern such reserve reports.

10. All plans of development for the EMSU submitted to the New Mexico State Land Office from approval of the EMSU to the present, including all internal and external communications, emails, memoranda, and summaries, that reflect on, discuss, reference, or concern such plans of development.

11. All monthly reports submitted to the Division required under Order R-22869-A, including all internal and external communications, emails, memoranda, and summaries, that reflect on, discuss, reference, or concern such monthly reports.

12. All documents, data, reports, and analyses, including internal and external communications, emails, memoranda, and summaries that reflect on, discuss, reference, or concern the alleged EMSU well failures and alleged increased well costs referred to in footnote No. 2 of Empire New Mexico LLC's Motion to Refer Cases to New Mexico Oil Conservation Commission, filed on January 3, 2024.

13. All documents, data, reports, and analyses, including internal and external communications, emails, memoranda, and summaries that reflect on, discuss, reference, or concern whether injection volumes from each of the following wells is interfering or may interfere with EMSU operations or potential tertiary recovery of residual oil from the Grayburg or San Andres formations within the EMSU:

- a. EMSU SWD #001 (API No. 30-025-04484);
- b. N 11 SWD #001 (API No. 30-025-46577);
- c. E M E SWD #021 (API No. 30-025-21852); and
- d. P 15 SWD #001 (API No. 30-025-46579);

14. All documents, data, reports, and analyses, including internal and external communications, emails, memoranda, and summaries that reflect on, discuss, reference, or

concern whether injection volumes from each of the following wells is migrating into the unitized interval of the EMSU:

- a. Pedro SWD #1 (API No. 30-025-50079);
- a. Nolan Ryan SWD #1 (API No. 30-025-45349);
- b. Ted SWD #1(API No. 30-025-44386); and
- c. Yaz SWD #1 (API No. 30-025-46382).

15. All documents, data, reports, and analyses, including internal and external communications, emails, memoranda, and summaries that reflect on, discuss, reference, or concern whether injection volumes from each of the following wells is migrating into the unitized interval of the EMSU:

- a. Parker Energy SWD #005 (API No. 30-025-38789);
- b. E M E SWD #033M (API No. 30-025-12786); and
- c. N 7 SWD #001 (API No. 30-025-46576).

16. All documents, data, reports, and analyses, including internal and external communications, emails, memoranda, and summaries that reflect on, discuss, reference, or concern the basis for Empire’s estimate that “270 million barrels or more of residual oil can be recovered, in addition to an estimated million barrels of tertiary oil recovered from the Grayburg” by conducting a CO₂ flood in the San Andres formation within the EMSU.

17. All documents, data, reports, and analyses, including internal and external communications, emails, memoranda, and summaries that reflect on, discuss, reference, or concern the potential for CO₂ flooding in the San Andres formation within the EMSU, including such reports and communications prepared by the EMSU’s previous operators.

18. All communications, emails, letters, and agreements of any kind, including draft or proposed agreements, between Empire New Mexico, LLC, or any of its parent companies, affiliates, or subsidiaries, and DASCO Cattle Company, LLC or its owner or any of its members.

This subpoena is issued on application of Goodnight Midstream Permian, LLC through its attorney, Adam G. Rankin of Holland & Hart LLP.

Dated this 5th day of March 2024

NEW MEXICO OIL CONSERVATION DIVISION

BY:  _____

Date: 3/5/2024 _____

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