

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

**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

**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

RESPONSE IN OPPOSITION TO EMPIRE'S MOTION TO DISMISS

Goodnight Midstream Permian, LLC (“Goodnight Midstream”) (OGRID No. 372311), through its undersigned attorneys, submits this response in opposition to Empire New Mexico, LLC’s (“Empire”) Motion to Dismiss Applications to Amend Order Nos. R-7765 and R-7767 (the “Motion”). For the reasons stated, the Motion should be denied.

INTRODUCTION

Goodnight Midstream has a leasehold estate—a legally protectable and valid property interest—in the pore space within the San Andres. The Commission’s mistaken inclusion of the San Andres in the Eunice Monument South Unit (“EMSU”) special pool and unitized interval jeopardizes Goodnight Midstream’s constitutionally protected property interest, its existing regulatory authorizations for produced water disposal, and

its pending applications. While inexplicably ignoring other commercial produced water disposal in and around the EMSU, Empire seeks to revoke injection authority for 10 of Goodnight Midstream's produced water disposal wells based on the allegation that injection into the San Andres portion of the unitized interval impairs Empire's correlative rights and will result in waste. The only way for Goodnight Midstream to fully redress its injury is to eliminate the cause by correcting the EMSU Orders to remove the San Andres from the EMSU special pool and unitized interval. That is textbook standing.

To better understand the issues and the reliance Goodnight Midstream placed on the Division's long history of approving produced water disposal injection in the San Andres within and around the EMSU, it is important to understand more about the background and history of Goodnight Midstream, the San Andres, the EMSU, and the history of the dispute in these matters. As more fully articulated below, Goodnight Midstream easily establishes all three elements of standing—direct injury, causation, and redressability. Empire's Motion should be denied.

BACKGROUND

A. Goodnight Midstream

Goodnight Midstream was formed in 2011 with initial produced water disposal operations in North Dakota. It is now the largest third-party produced water disposal company in North Dakota. In 2016, Goodnight Midstream started operations in Texas and in early 2018 also began operating in New Mexico. In New Mexico, the company operates a large high-pressure produced water pipeline system in Lea County called the Llano System. See **Exhibit A**. It is comprised of 116 miles of pipeline with an ultimate projected capacity of approximately 400,000

barrels of water per day with 11 approved saltwater disposal wells (“SWDs”). The system currently serves 20 dedicated operators (including three midstream operators) with more than 500 producing wells connected at 27 different receipt points. *See Exhibit A*. Active oil and gas production and drilling occurs around the receipt points.

The company’s approach is to move produced water away from areas with intense production and high demand for disposal for takeaway of large volumes of produced water, where reservoir capacity in the Devonian formation is limited, to areas with substantially depleted formations on the Central Basin Platform that can sustainably accept large volumes of produced water for disposal. By targeting these depleted formations, Goodnight Midstream avoids adding to the risk of induced seismicity through deep injection into the Devonian and instead targets zones, such as the San Andres in and around the Eunice Monument Unit (“EMSU”), where there has been substantial depletion through decades of water production related to secondary recovery operations in nearby waterfloods. *See Exhibit B* (showing the Division’s designated Seismic Response Areas and recent seismic events relative to the Llano System).

As outlined below, Empire is challenging Goodnight Midstream’s applications for five proposed San Andres disposal wells within the EMSU and an application to increase the injection rate for an existing San Andres well also within the EMSU. It also seeks to revoke the injection authority for 10 of Goodnight Midstream’s existing San Andres disposal orders—four within the EMSU and six within a mile of the EMSU boundary.

B. The San Andres Formation in and Around the EMSU is a Water Disposal and Water Supply Zone.

By at least 1952, if not earlier, the Division began authorizing produced water disposal in the San Andres. *See Exhibit C* (partial chronological list of SWDs assigned to the SWD; San

Andres Pool [Pool Code 96121], from date of first documented injection up to 2000). By the time the Commission issued the EMSU Orders in December 1984, at least 28 produced water disposal wells had already been approved and were injecting into the San Andres. *See id.* By the late 1960s, two wells were disposing into the San Andres in and around the area that would later become the EMSU. *See id.* (E M E SWD #033 API No. 30-025-21496 and E M E SWD #21 API No. 30-025-21852). When the EMSU SWD #001 (API No. 30-025-04484) was converted to a San Andres disposal well in 1987, more than 30 SWDs had been approved for San Andres disposal. *See id.* In fact, disposal from operators other than Goodnight Midstream into the San Andres in the EMSU and within one mile of the Unit boundary—including Empire’s own disposal injection—totals more than 111 million barrels over 60 years. *See **Exhibit D*** (identifying SWDs within and around the EMSU, showing date of first injection and cumulative injection volumes). This history confirms the San Andres—in and around the EMSU—has long been recognized by the Division and industry as a viable disposal zone for produced water well before the EMSU was approved.

With concerns around induced seismicity related to injection in the Devonian, preserving access to the San Andres as a sustainable and long-term option for disposal is more critical than ever for oil and gas operators in the Delaware Basin. In August 2023 alone, the oil and gas wells connected to Goodnight Midstream’s Llano System produced a combined 3.7 MM barrels of oil, 9.0 BCF of gas, and 7.7 MM barrels of water. Goodnight Midstream reclaimed about 2.0 MM barrels of produced water for re-use and delivered about 5.7 MM barrels of produced water into the Llano System for disposal in August 2023. But for the option of Goodnight Midstream’s Llano System and its associated San Andres SWDs, those operators would have had little choice

but to turn to nearby Devonian SWDs for disposal services, which is less desirable due to concerns over induced seismicity. See **Exhibit B**.

In addition to being a disposal zone, the San Andres also has been recognized as a productive water source since at least the 1960s when the State Engineer declared the San Andres to be part of the Capitan Underground Water Basin. See 19.27.26.8A NMAC (identifying lands that are considered to be within the declared Capitan Basin). The Division recognizes the San Andres as a pool for “water supply wells,” or WSWs, and assigned it a pool code to track water supply wells producing from the San Andres: WSW; San Andres Pool (Pool Code 96221). See **Exhibit E**. This list of water supply wells in Pool Code 96221 is obviously not comprehensive. Many known San Andres water supply wells are not listed, including the six original EMSU San Andres water supply wells developed by Gulf in the late 1980s to supply water for the initial fill-up period necessary for waterflood operations in the Grayburg. The Division separately tracks water supply wells in the San Andres that are not assigned to Pool Code 96221. In addition, the State Engineer’s database tracks all permitted water supply wells producing from the San Andres. See **Exhibit F**.

While the Division’s records and State Engineer’s files make clear the San Andres is an aquifer (and not an oil pool), the fact that each of the EMSU water supply wells is associated with a water right file assigned to the Capitan Underground Water Basin at the State Engineer’s office confirms it.¹

While the San Andres has long been utilized as a produced water disposal zone and a water supply zone, no operator has reported producing hydrocarbons from the San Andres within

¹ See CP-00693; CP-00694; CP-00695; CP-00696; CP-00697; CP-00670. Empire attacks Goodnight Midstream’s description of the San Andres as an aquifer and suggests the State Engineer would have issued permits to appropriate water if it were an aquifer. In fact, the State Engineer has issued several permits for appropriation of San Andres water, including the six permits for the original EMSU water supply wells.

or around the EMSU either before or after creation of the Unit in 1984. The only thing ever produced from the San Andres in this area is water.

C. Eunice Monument South Unit (“EMSU”)

Not approved by the Commission until 1984 as a statutory waterflood unit, the EMSU is comprised of a “unitized interval” from the Lower Penrose formation through the Grayburg to the base of the San Andres. Authorization of the EMSU and its operations are governed by the Oil and Gas Act (NMSA 1978, Sections 70-2-1 through 70-2-39), the Statutory Unitization Act (NMSA 1978, Sections 70-7-1 through 70-7-21), and the terms and conditions of three Commission Orders:

- R-7765, as amended, which authorized creation of the EMSU and unitized all zones from the Lower Penrose to the base of the San Andres (mirroring the EMSU special pool);
- R-7766, which authorized injection for waterflood operations within the EMSU; and
- R-7767, which created a special pool within the EMSU from the Lower Penrose and Grabyburg down to the base of the San Andres (mirroring the unitized interval).

Because the EMSU also includes federal and state trust lands, the BLM and New Mexico Commissioner of Public Lands were required to approve the Unit Agreement and Unit Operating Agreement proposed to govern the EMSU and unit operations. However, both Agreements are expressly subject to the Commission’s orders governing statutory unitization. *See* Unit Agreement, § 39 (incorporating provisions to “automatically” revise the Agreement “in any and all respects necessary to conform” to the Commission’s orders affecting statutory unitization), attached as **Exhibit G**; Unit Operating Agreement, Art. 21.1 (making the agreement “subject to all valid laws and valid rules, regulations and orders of all regulatory bodies having jurisdiction and to all other applicable federal, state, and local laws, ordinances, rules, regulations and orders;

and any provision of this Agreement found to be contrary to or inconsistent with any such law, ordinance, rule, regulation or order shall be deemed modified accordingly”), attached as **Exhibit H** (emphasis added).

As outlined in the applications for Case Nos. 24277-24278, the San Andres was improperly included within the unitized interval under Order No. R-7765 and within the EMSU special pool under Order No. R-7767 for at least the following three reasons. First, at the time the EMSU was approved the San Andres did not (and still does not) meet the statutory definition of a pool or portion of a pool that is required for formations to be subject to statutory unitization orders. NMSA 1978, § 70-7-4(A); *see also* § 70-7-6(C). It does not contain a common accumulation of oil or gas and is geologically completely separate from the overlying reservoir that does contain a continuous oil and gas column. The EMSU was formed to target the oil column in the Lower Penrose and Grayburg formations only. The San Andres was included in the unitized interval as a water supply source for the planned waterflood and because it was historically lumped together with the Grayburg pool.

Second, inclusion of the San Andres within the unitized interval as a water source, thereby unitizing unappropriated waters of the state under authority of the Statutory Unitization Act, conflicts with Article XVI of the New Mexico Constitution and the statutory provisions governing New Mexico water law generally. Order No. R-7765 directly contravenes the New Mexico constitution and water code and is, therefore, void.

Third, statutory units are limited to pools or portions of pools that have “been reasonably defined by development[.]” § 70-7-5(B). Applications for statutory units must establish that the targeted pool or portion of a pool has been defined by development because the Statutory Unitization Act authorizes unitization only for “operation[s] that will substantially increase the

recovery of oil above the amount that would be recovered by primary recovery alone and not to what the industry understands as exploratory units.” § 70-7-1 (emphasis added). At the time of the hearing in Case Nos. 8397-8399, only the Grayburg and Lower Penrose formations were reasonably defined by development within the EMSU. In contrast, the San Andres had (and continues to have) no oil and gas development within or around the Unit. Because the San Andres was not (and still is not) reasonably defined by development, the Commission had no legal basis to include it within the unitized interval.

Empire nevertheless alleges San Andres disposal within the Unitized Interval “impairs the ability of Empire to recover hydrocarbons within the Unitized Interval and thereby adversely affects the correlative rights of Empire and other interest owners in the Unit and results in waste.” See Empire Applications in Case Nos. 24018-24020, 24025.

D. The Contested Matters

The dispute between Goodnight Midstream and Empire is an amalgamation of 18 different cases currently before the Commission outlined in roughly chronological order, by filing date, as follows:

- Goodnight Midstream’s Application (1) for De Novo Review:
 - **Case No. 24123:** De novo review of Division Order No. R-22869-A denying Goodnight Midstream’s Piazza SWD #1 (Division Case No. 22626) (the “Piazza Case”);
- Goodnight Midstream’s Applications (5) for approval of SWDs:
 - **Case Nos. 23614-23617:** Applications for four new SWD wells (Doc Gooden, Hernandez, Hodges, Seaver);
 - **Case No. 23775:** Application to increase the injection rate for the existing Andre Dawson SWD #1;
- Empire’s Applications (10) to Revoke Injection Authority:

- **Case Nos. 24018-24020, 24025:** (targeting four existing SWDs inside the EMSU, i.e., the “EMSU Cases”);
- **Case Nos. 24021-24024, 24026-24027:** (targeting six existing SWDs outside the EMSU, i.e., the “Non-EMSU Cases”);
- Goodnight Midstream’s Applications (2) to Amend the EMSU Orders:
 - **Case No. 24277:** To amend Order No. R-7767 to exclude the San Andres formation from the EMSU special pool; and
 - **Case No. 24278:** To amend Order No. R-7765, as amended, to exclude the San Andres formation from the EMSU unitized interval.

Each of Goodnight Midstream’s SWDs in the foregoing cases inject into or propose to inject into the San Andres for disposal. The dispute boils down to whether disposal of produced water into the San Andres within and around the EMSU can be authorized and will interfere with unit operations, causing waste and impairing correlative rights. Resolution of the dispute implicates the Commission’s power to “regulate the disposition, handling, transport, storage, recycling, treatment and disposal of produced water” under the Oil and Gas Act and its delegated authority under the federal Safe Drinking Water Act, and its authority under the Statutory Unitization Act and the Oil and Gas Act to form statutory units, prevent waste, and protect correlative rights.

Even though non-EMSU, commercial disposal into the San Andres has been occurring within and around the EMSU for decades before the EMSU was formed, Empire initially argued the San Andres formation in the EMSU is off-limits to disposal because it is part of the unitized interval and Goodnight Midstream is not a working

interest owner in the EMSU.² The Division correctly rejected those arguments at the outset in the Piazza Case.³ Goodnight Midstream has a leasehold interest—a valid and legally protected property right—in the San Andres pore space through a “Surface Use and Salt Water Disposal Agreement” with the surface estate owner, authorizing it to inject produced water for disposal into the subsurface. *See* **Exhibit I**.

In the Piazza Case, the Division examiners and Empire’s counsel suggested the EMSU orders could be amended if they are “overbroad or improper.” *See* Case No. 22626, 6/16/22 Tr. 27:24-29:22 (B. Brancard discussion); *see also* Tr. 43:16-20 (Empire counsel contending the proper course is for Goodnight Midstream to amend the EMSU orders), attached as **Exhibit J**. At the time, Goodnight Midstream did not believe amending the EMSU orders was necessary because the Division had already authorized disposal in the San Andres within the EMSU for other non-EMSU, commercial SWDs—e.g., Rice Operating and OWL SWD Operating. *See* **Exhibit D**. This view was supported by the Division’s order denying Empire’s motion to dismiss the Piazza application, where it held that:

[t]he existence of a Unit, established under the Statutory Unitization Act, does not, by itself, prohibit the operation of a disposal well within the Unit. The Division must evaluate whether the proposed injection is allowable under the Oil and Gas Act.

See Case No. 22626, Order Denying Motion to Dismiss, ¶ 9.⁴

² *See* Empire’s Motion to Dismiss Case No. 22626: https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/cf/20220607/22626_06_07_2022_10_49_10.pdf.

³ Order Denying Motion to Dismiss: https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafeadmin/cf/20220824/22626_08_24_2022_12_04_04.pdf.

⁴ *See, supra*, fn. 2.; *see also* **Exhibit J**, Tr. 50:16-51:21 (B. Brancard outlining legal issues).

But the Division apparently flip-flopped on this issue in the final order denying the Piazza application when it ruled that “inclusion of the San Andres formation in the Unitized interval” was a “critical element for a successful waterflood operation[.]” *See* Order No. R-22869-A, COL ¶ 9. It ruled the Commission was authorized to unitize the San Andres as an aquifer because it can include “such additional provisions as are found to be appropriate for carrying on the unit operations and for the protection of correlative rights and the prevention of waste.” *Id.* (quoting § 70-7-7(J)).

Needing to protect its substantial property interest and capital investments associated with its Llano System and associated SWDs—not to mention its producing customers—Goodnight Midstream had no option but to file applications to amend the EMSU orders following the Division’s apparent change in legal position.

LEGAL STANDARD

Under the rules governing adjudications, “an operator . . . or other person with standing may file an application with the division for an adjudicatory hearing.” 19.15.4.8.A NMAC. Applications may be dismissed “upon a showing that the applicant does not have standing.” *Id.*

When assessing standing, the Commission has followed the legal analysis applicable in civil cases. *See, e.g.*, Case No. 16403.⁵ Under that approach, applicants must establish three elements: “(1) they are directly injured as a result of the action they seek to challenge; (2) there is a causal relationship between the injury and the challenged conduct; and (3) the injury is likely to be redressed by a favorable decision.” *ACLU of N.M. v. City of Albuquerque*, 2008-NMSC-045, ¶ 1, 188 P.3d 1222. The extent of the injury required is slight. “An identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the

⁵ Hilcorp Motion to Strike Notice of Intervention, https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafeadmin/cf/316088/16403_30_cf.pdf, and Commission Order No. R-10987-A(2), ¶¶ 13.

principle supplies the motivation.” *Ramirez v. City of Santa Fe*, 1993-NMCA-049, ¶ 9, 852 P.2d 690 (quoting *United States v. SCRAP*, 412 U.S. 669, 689-90, n. 14 (1973) (internal quotation marks omitted)).

Goodnight Midstream easily meets the three elements required to establish standing.

ARGUMENT

A. Goodnight Midstream Has Standing to Challenge the Validity of the EMSU Orders.

The applications in these cases draw a laser-focused line from Goodnight Midstream’s injury—potential foreclosure from continued injection into the San Andres in and around the EMSU—through causation—the San Andres’s invalid inclusion in the EMSU special pool and unitized interval—to redressability—the Commission’s authority and retention of jurisdiction over the EMSU orders to issue amended orders correcting their legal infirmities. Empire’s cramped arguments to the contrary do not withstand scrutiny.

Empire first contends Goodnight Midstream is not a party to the EMSU Agreements and is not an aggrieved party to the original Commission orders so has no legal right to challenge the EMSU Orders today. But party status has never been an element to establish standing. Empire provides no authority in support of the proposition. It is an unsound, manufactured argument contrived to insulate the EMSU from valid legal challenges.

While it is true Goodnight Midstream is an aggrieved party in the Piazza Case and is separately challenging Division Order No. R-22869-A, the scope of its de novo appeal fails to match the scale of the threat Empire has mounted against Goodnight Midstream. While inexplicably declining to contest other non-EMSU, commercial produced water disposal in and around the EMSU, Empire seeks to revoke injection authority for 10 of Goodnight Midstream’s produced water disposal wells—most of its produced water

disposal capacity in New Mexico—based on the allegation that injection into the San Andres portion of the unitized interval impairs Empire’s correlative rights and will result in waste. Even if Goodnight Midstream prevails in its de novo challenge, the problem of the legal infirmities inherent in the EMSU Orders remains unaddressed, giving rise to continued injury. The only way for Goodnight Midstream to fully redress its injury is to eliminate the cause by correcting the EMSU Orders to remove the San Andres from the EMSU special pool and unitized interval. That is textbook standing.

Empire next argues Goodnight Midstream “has no legitimate legal or property interest in the Unit.” Mot. at 6 (emphasis added). But Goodnight Midstream has established through prima facie evidence it has a leasehold estate—a legally protectable and valid property interest—in the pore space within the San Andres. See **Exhibit I**. The Commission’s mistaken inclusion of the San Andres in the EMSU special pool and unitized interval jeopardizes Goodnight Midstream’s constitutionally protected property interest, its existing regulatory authorizations, and pending applications. The only way to redress the injury is to correct the Commission errors. Again, that is textbook standing.

In reliance on the long history of the San Andres as produced water disposal zone; the Division’s affirmative decision to designate the San Andres as a disposal pool with an assigned pool code; and the Division’s approval of other non-EMSU, commercial produced water disposal wells within the EMSU (N 11 SWD#1 API No. 30-025-46577; P 15 SWD #1 API No. 30-025-46579; and E M E SWD #21 API 30-025-21852), Goodnight Midstream invested hundreds of millions of dollars to construct, permit, and operate its Llano System and associated San Andres disposal wells, including its four existing SWDs in the EMSU. In further reliance on the

Division's approval of those initial four wells, and others outside the EMSU, together with the State Land Office's confirmation that, "[a]fter further review . . . [it] does not did not have concerns about encroachment" on State Trust Lands within the EMSU from Goodnight Midstream's disposal "in the affected formations[,]"⁶ Goodnight Midstream proceeded to file four additional applications for San Andres disposal within the EMSU (Case Nos. 23614-23617) and an application to increase the injection rate for its existing Andre Dawson SWD #1 (Case No. 23755). Now, suddenly, Goodnight Midstream's substantial investment and the basis for its reliance is in legal peril. In this circumstance, under these facts, the law clearly supports finding Goodnight Midstream has standing.

B. Empire's Representation of the Governing Legal Framework is Incorrect.

Empire's construction of the legal framework that governs Goodnight Midstream's applications in these cases is self-serving, illogical, and incorrect. Empire's motion asserts that, because the EMSU Unit Agreement is a contract between private parties and was approved by BLM and the New Mexico Commissioner of Public Lands, the Commission is somehow without authority to modify its statutory unitization order that governs operations of the EMSU. Empire also contends that because Goodnight Midstream is not a working interest owner it is powerless to challenge legally invalid aspects of the Commission's governing orders. Empire's cramped arguments have no merit.

Contrary to Empire's assertion, Goodnight Midstream is not seeking to amend the Unit Agreement or Unit Operating Agreement. It is challenging the legal basis for the Commission's inclusion of the San Andres within the EMSU's special pool and unitized interval in Order Nos.

⁶ See **Exhibit K** (SLO withdrawal of request for de novo hearing in Case No. 20558, Order No. R-20865, involving the Yaz SWD, which offsets state trust lands within the EMSU).

R-7765 and R-7767. In short, Goodnight Midstream is attacking the legality of the Commission's orders.

Empire points out that Order No. R-7765 incorporates the Unit Agreement and Unit Operating Agreement by reference, implying that an effort to amend the Order is equivalent to amending the Unit Agreements, and because Goodnight Midstream is not a working interest owner party to the Unit Agreements it is precluded from challenging the Order. In fact, Empire has it precisely backwards.

Both the Unit Agreement and Unit Operating Agreement include express provisions making them subject to the Commission's orders under the Statutory Unitization Act. See **Exhibits G and H**. And, as with all Commission and Division orders, jurisdiction over both orders was retained by the Commission "for entry of such further orders as the Commission may deem necessary." See, e.g., Order R-7765, Decretal ¶ 11. Accordingly, because the EMSU is a creature of statute and necessarily subject to the Commission's Orders, both Unit Agreements expressly include, as they must, express provisions making them subject to and automatically consistent with duly authorized Commission orders.

Finally, Empire contends the Statutory Unitization Act itself limits the Commission to making amendments only when the parties to the Unit Agreement agree that reformation is needed. Mot. at 7 (citing § 70-7-9). But the statutory provision relied on actually states that a unit order can be amended and only in certain circumstances is approval from certain working interest owners or royalty owners required. § 70-7-9. In other words, it does not preclude the Commission from making amendments to unit orders and does not require party approval in every instance. Moreover, there is no basis to contend Section 70-7-9 prevents the Commission from amending Order No. R-7765 or Order R-7767 to correct legal infirmities that would

otherwise render the Orders void. And there is no basis to contend the provision requires EMSU parties to approve amendments correcting statutory infirmities. It would make no sense to construe the provision as requiring the Commission to obtain approval to rectify a legal infirmity when Empire, as operator, disputes a problem exists.

Empire seeks without justification to improperly limit the scope of the Commission's statutory authority. Its effort to prevent the Commission from amending its own orders to comply with the Oil and Gas Act and Statutory Unitization Act are unavailing.

C. Empire Misapprehends the Legal Implications of Including a Geologically Separate, Non-Hydrocarbon-Bearing Aquifer Within a Pool Subject to Statutory Unitization.

Almost as an aside, Empire seeks to discredit Goodnight Midstream's allegation that inclusion of the San Andres formation in a Grayburg oil pool was erroneous but misses the mark. Moreover, the issue implicates a factual inquiry and, therefore, is not susceptible to a motion to dismiss.

As to the legal aspect of the issue, including multiple formations within a statutory unit is not necessarily a problem, as long as those formations fit within the statutory definition of a pool or portion of a pool. The Statutory Unitization Act only authorizes orders "providing for the unitization and unitized operation of the pool or portion thereof described in the order[.]" See § 70-7-6(C). A "pool" is "an underground reservoir containing a common accumulation of crude petroleum oil or natural gas or both." § 70-2-33(B) (emphasis added). It also is a "zone of a general structure, which zone is completely separate from any other zone in the structure[.]"⁷ *Id.*

⁷ This is confirmed by the sustained, geographically expansive pressured differential. See Case Nos. 23614-23617, **Exhibit B** ¶¶ 33-38 (e.g. ¶ 37 "The pressure differential between the Grayburg and San Andres is substantial, extends over a large area, and has not equilibrated over time. This strongly establishes that there are effective geologic barriers to flow between the two reservoirs across a substantial area, including the area at issue within the EMSU.").

(emphasis added); *see also* 19.15.2.7.P(5) NMAC. At the hearing in Case Nos. 8397-8399, Gulf presented testimony and exhibits demonstrating that the targeted, continuous oil column reasonably defined by development is limited to the Grayburg and Lower Penrose formations in the EMSU and does not extend into the San Andres. Accordingly, the Commission had no authority to include the San Andres within the unitized interval of the statutory unit because it is not a pool or part of a pool.

The problem is not simply that the Commission unitized multiple formations. The problem is that the Commission unitized a formation that is not properly part of a pool as defined by the Statutory Unitization Act. But as noted, resolution of this allegation requires a factual inquiry, making it inappropriate for disposition on a motion to dismiss.

CONCLUSION

For the foregoing reasons, Goodnight Midstream respectfully requests the Motion be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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EXHIBIT D

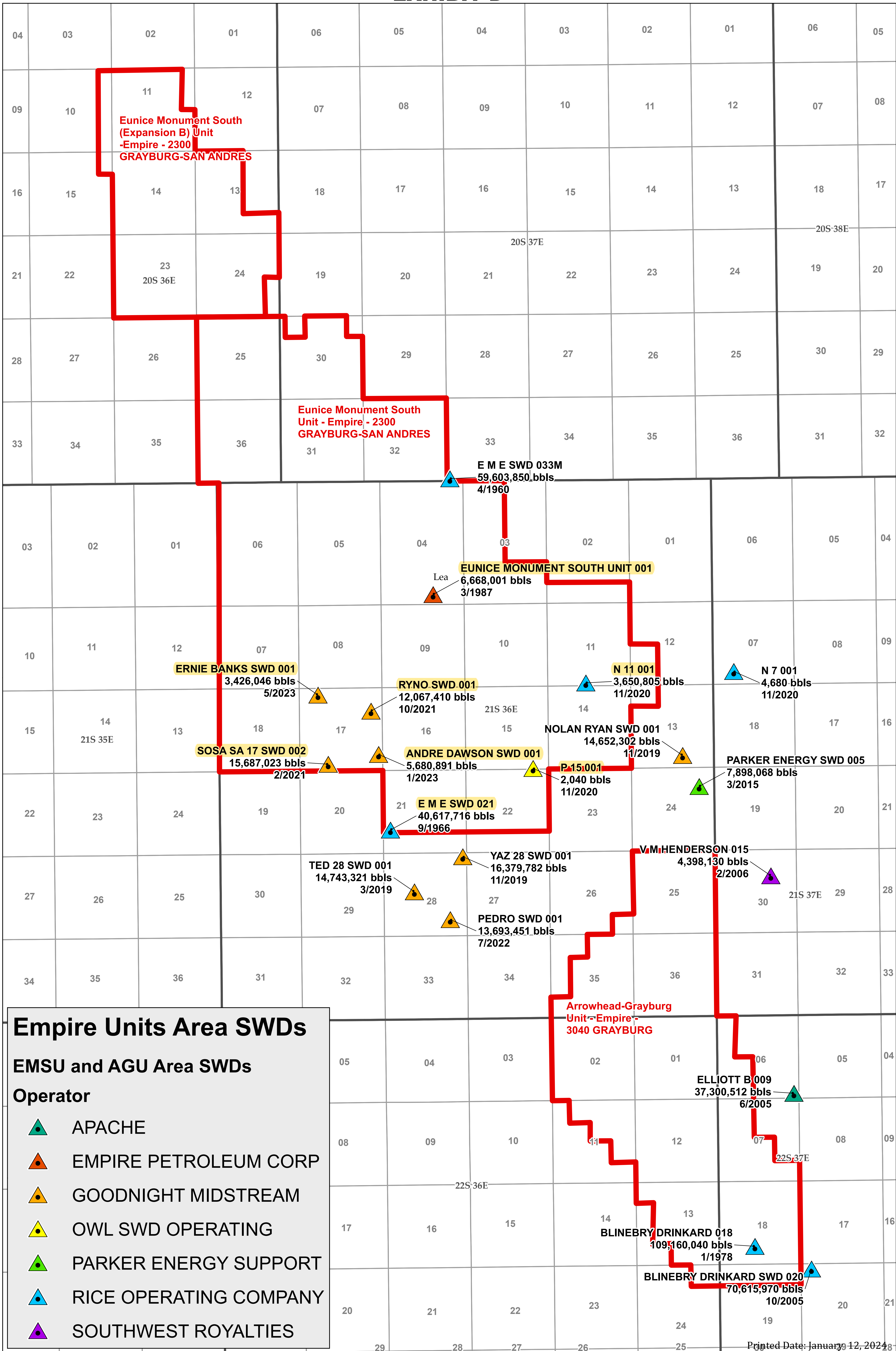


EXHIBIT E

WSWs Assigned to SWD; San Andres Pool Code 96221

API	Well Name	Well Number	Type	Status	Unit Letter	Section	Township	Range	Last Production	Spud Date	Current Operator
30-025-06741	ARGO A	#009	Water	Active	D	22	21S	37E	Sep-10	9/9/1951	[873] APACHE CORPORATION
30-025-06742	ARGO A	#010	Water	Active	C	22	21S	37E	Nov-02	9/29/1951	[873] APACHE CORPORATION
30-025-31505	NORTH MONUMENT G/SA UNIT	#018	Water	Active	B	29	19S	37E	Mar-96	6/23/1992	[873] APACHE CORPORATION
30-025-33618	NORTH MONUMENT G/SA UNIT	#624	Water	Expired Temporary Abandonment	H	20	19S	37E		10/24/1996	[873] APACHE CORPORATION
30-025-27566	WARREN UNIT BLINEBRY TUBB WF	#091	Water	Active	F	33	20S	38E	Apr-93	1/12/1982	[873] APACHE CORPORATION
30-025-31234	ARROWHEAD GRAYBURG UNIT	#600	Water	Active	P	35	21S	36E	Nov-05		[330679] Empire New Mexico LLC
30-025-26090	GLEN RYAN WSW	#001	Miscellaneous	Active	J	14	26S	37E		6/7/1993	[26316] PERMOK OIL INC
30-025-06846	EUNICE KING	#010	Water	Active	B	28	21S	37E	Jan-24	3/31/1948	[21355] SOUTHWEST ROYALTIES INC
30-025-11753	SOUTH JUSTIS UNIT WSW	#001	Water	Active	D	24	25S	37E	Apr-90	12/2/1958	[332148] TEAM OPERATING, L.L.C.
30-025-32020	SOUTH JUSTIS UNIT WSW	#002	Water	Active	C	23	25S	37E	Jun-94	9/23/1993	[332148] TEAM OPERATING, L.L.C.
30-025-32264	SOUTH JUSTIS UNIT WSW	#003	Water	Expired Temporary Abandonment	F	23	25S	37E	Nov-94		[332148] TEAM OPERATING, L.L.C.

EXHIBIT F

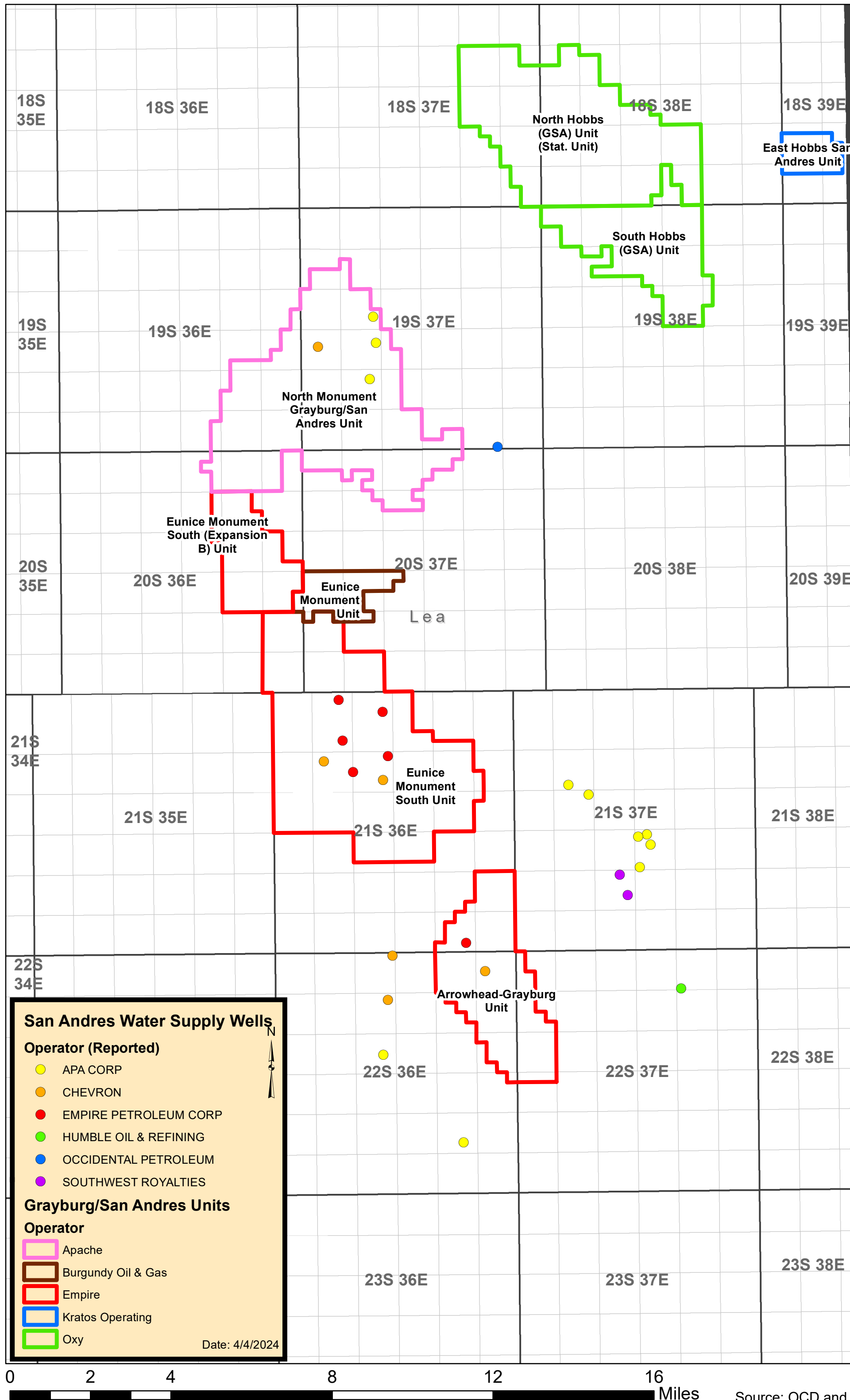


EXHIBIT G

from the unitized land. Any such oil not so removed shall be sold by Unit Operator for the account of such Working Interest Owners, subject to the payment of all Royalty to Royalty Owners under the terms hereof. The oil that is in excess of the prior allowable of the wells from which it was produced shall be regarded as Unitized Substances produced after Effective Date hereof.

If, as of the Effective Date hereof, any Tract is over-produced with respect to the allowable of the wells on that Tract and the amount of over-production has been sold or otherwise disposed of, such over-production shall be regarded as a part of the Unitized Substances produced after the Effective Date hereof and shall be charged to such Tract as having been delivered to the parties entitled to Unitized Substances allocated to such Tract.

SECTION 38. NO SHARING OF MARKET. This Agreement is not intended to provide and shall not be construed to provide, directly or indirectly, for any cooperative refining, joint sale or marketing of Unitized Substances.

SECTION 39. STATUTORY UNITIZATION. If and when Working Interest Owners owning at least seventy-five percent (75%) Unit Participation and Royalty Owners owning at least seventy-five percent (75%) Royalty Interest have become parties to this Agreement or have approved this Agreement in writing and such Working Interest Owners have also become parties to the Unit Operating Agreement, Unit Operator may make application to the Division for statutory unitization of the uncommitted interests pursuant to the Statutory Unitization Act (Chapter 65, Article 14, N.M.S. 1953 Annotated). If such application is made and statutory unitization is approved by the Division, then effective as of the date of the Division's order approving statutory unitization, this Agreement and/or the Unit Operating Agreement shall automatically be revised and/or amended in accordance with the following:

(1) Section 14 of this Agreement shall be revised by substituting for the entire said section the following:

"SECTION 14. TRACTS QUALIFIED FOR PARTICIPATION. On and after the Effective Date hereof, all Tracts within the Unit Area shall be entitled to participation in the production of Unitized Substances."

(2) Section 24 of this Agreement shall be revised by substituting for the first three paragraphs of said section the following:

"SECTION 24. EFFECTIVE DATE AND TERM. This Agreement shall become effective on the first day of the calendar month next following the effective date of the Division's order approving statutory unitization upon the terms and conditions of this Agreement, as amended (if any amendment is necessary) to conform to the Division's order; approval of this Agreement, as so amended, by the Land Commissioner; and the A.O. and the filing by Unit Operator of this Agreement or notice thereof for record in the office of the County Clerk of Lea County, New Mexico. Unit Operator shall not file this Agreement or notice thereof for record, and hence this Agreement shall not become effective, unless within ninety (90) days after the date all other prerequisites for effectiveness of this Agreement have been satisfied, such filing is approved by Working Interest Owners owning a combined Unit Participation of at least sixty-five percent (65%) as to all Tracts within the Unit Area.

"Unit Operator shall, within thirty (30) days after the Effective Date of this Agreement, file for record in the office of the County Clerk of Lea County, New Mexico, a certificate to the effect that this Agreement has become effective in accordance with the terms and conditions of the Division's order approving statutory unitization and stating the Effective Date."

EXHIBIT G

(3) This Agreement and/or the Unit Operating Agreement shall be amended in any and all respects necessary to conform to the Division's order approving statutory unitization.

Any and all amendments of this Agreement and/or the Unit Operating Agreement that are necessary to conform said agreements to the Division's order approving statutory unitization shall be deemed to be hereby approved in writing by the parties hereto without any necessity for further approval by said parties, except as follows:

(a) If any amendment of this Agreement has the effect of reducing any Royalty Owner's participation in the production of Unitized Substances, such Royalty Owner shall not be deemed to have hereby approved the amended agreement without the necessity of further approval in writing by said Royalty Owner; and

(b) If any amendment of this Agreement and/or the Unit Operating Agreement has the effect of reducing any Working Interest Owner's participation in the production of Unitized Substances or increasing such Working Interest Owner's share of Unit Expense, such Working Interest Owner shall not be deemed to have hereby approved the amended agreements without the necessity of further approval in writing by said Working Interest Owner.

Executed as of the day and year first above written.

GULF OIL CORPORATION *KB*

By *L. A. Turner*
Attorney-in-Fact

Date of Execution:

June 22, 1984

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

The foregoing instrument was acknowledged before me this 22nd day of June, 1984, by L. A. Turner Attorney-in-Fact, for/of Gulf Oil Corporation, a Pennsylvania corporation, on behalf of said corporation.

My Commission Expires:

7-30-88

Carolyn D. Larson

EXHIBIT H

and continue to operate a well or wells located thereon may do so by paying Unit Operator, for the credit of the joint account, the net salvage value, as determined by the Working Interest Owners, of the equipment in and on the well, except casing and other equipment originally contributed at no cost, and by agreeing to properly plug the well at such time as it is abandoned.

20.1.3 Salvaging Wells. Unit Operator shall salvage as much of the casing and equipment in or on wells not taken over by Working Interest Owners of separate Tracts as can economically and reasonably be salvaged, and shall cause the wells to be plugged and abandoned in compliance with applicable laws and regulations.

20.1.4 Cost of Abandonment. The cost of abandonment of Unit Operations shall be Unit Expense.

20.1.5 Distribution of Assets. Working Interest Owners shall share in the distribution of Unit Equipment, or the proceeds thereof, in proportion to their Unit Participations.

ARTICLE 21LAWS, REGULATIONS AND CERTIFICATE OF COMPLIANCE

21.1 Laws and Regulations. This Agreement and operations hereunder are subject to all valid laws and valid rules, regulations and orders of all regulatory bodies having jurisdiction and to all other applicable federal, state, and local laws, ordinances, rules, regulations and orders; and any provision of this Agreement found to be contrary to or inconsistent with any such law, ordinance, rule, regulation or order shall be deemed modified accordingly.

21.2 Certificate of Compliance. In the performance of work under this Agreement, the parties agree to comply and Unit Operator shall require each independent contractor to comply with the provisions of Exhibit "F".

EXHIBIT I**SURFACE USE AND SALT WATER DISPOSAL AGREEMENT**

THIS SURFACE USE AND SALT WATER DISPOSAL AGREEMENT (this "Agreement") is made and entered into this 17th day of December, 2020 (the "Effective Date"), by and between **Millard Deck Estate, Terry Richey Trustee**, ("Lessor"), whose address is Southwest Bank Trust Department, 4800 East 42nd Street, Odessa, Texas 79762, and **Goodnight Midstream Permian, LLC**, a Texas limited liability company ("Lessee"), whose address is 5910 North Central Expressway, Suite 800, Dallas, Texas 75206. Lessor and Lessee may each be referred to herein individually as a "Party" and collectively as the "Parties".

WHEREAS, Lessor represents that he is the record owner in fee simple, subject to oil and gas leases and mineral interests of record, if any, in and to the following described land situated in Lea County, New Mexico ("Lessor's Lands"):

All of those certain tracts or parcels of land, being more particularly described on Exhibit A attached hereto and incorporated herein for all purposes.

WHEREAS, Lessor desires to lease unto Lessee, and Lessee desires to lease from Lessor, a forty (40) acre portion of Lessor's Lands, being more particularly described and depicted on Exhibit B attached hereto (the "Leased Premises"), for the purpose of constructing, drilling, and operating up to eight (8) salt water disposal wells, together with associated pipelines, facilities, and equipment, pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the sum of [REDACTED] and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **RIGHTS GRANTED.** Lessor does hereby grant, demise, lease, and let exclusively unto Lessee the Leased Premises for entering, re-entering, drilling, deepening, or converting up to eight (8) wells thereon, and the continuing right to convert, maintain, equip, repair, and operate such wells for the collection, injection and disposal of water, salt water, and other associated liquids produced from oil and gas wells into the substrata of the Leased Premises, referred to herein as "Disposed Water".

Lessee shall further have the right to construct, use, repair, maintain, replace and remove facilities and equipment, including but not limited to, roads, pipelines, power lines, connection lines, pits, ponds, tanks and receptacles for collecting, transporting, receiving, treating and disposing of Disposed Water, transporting of fuel and power, and the right to construct, use and remove such lines, tanks, buildings, structures, appurtenances, pumps, engines, machinery, fences, and other structures as reasonably necessary in connection with the purposes and uses herein granted over, across and upon the Leased Premises or in connection with the gathering, transportation, storing and injection of the Disposed Water.

2. **LEASED PREMISES; LOCATION OF FACILITIES.** The Leased Premises shall include the following: (i) a disposal facility pad site, (ii) up to eight (8) wellbore injection locations,

EXHIBIT I

- (iii) pipeline easements for the purpose of connecting flowlines to the wellbore locations, and (iv) pipeline easements for the purpose of transporting Disposed Water to and/or from Lessee's disposal facility (collectively, "Lessee's Facilities").
3. CONSIDERATION. In consideration of the covenants, obligations, and rights granted herein, Lessee shall pay Lessor [REDACTED] per barrel of Disposed Water that is accepted by Lessee at the inlet flange of Lessee's disposal facility located on the Leased Premises and subsequently injected into the Leased Premises or not injected, but instead recycled and sold for reuse on the Leased Premises (the "Disposal Fee"). All Disposal Fee payments under this Agreement shall be paid to Lessor on a monthly basis, within sixty (60) days of the last day of the month in which the revenue is earned. In addition to the Disposal Fee, Lessee shall pay Lessor a one-time bonus payment in the amount of [REDACTED] within ten (10) business days of the execution of this Agreement by both Lessor and Lessee. Lessee further agrees to pay Lessor a construction bonus for each salt water disposal well that is drilled on the Leased Premises in the amount of [REDACTED] within thirty (30) days of the date Lessee first commences construction of the applicable salt water disposal well.
 4. DISPOSAL FEE ADJUSTMENTS. Beginning on the fifth anniversary of the Effective Date, and on each five (5) year anniversary thereafter, the Disposal Fee will be adjusted up or down by multiplying the current fee by a fraction, the numerator of which will be the annual average Consumer Price Index – All Urban Consumers ("CPI-U Index") developed for the prior year (the "Base Year") by the U.S. Department of Labor and published by the U.S. Department of Commerce, and the denominator of which will be said CPI-U Index developed for the year preceding the Base Year. In no event will the adjustment (up or down) be more than two (2) percent.
 5. TERM AND TERMINATION. This Agreement shall remain in force for an initial term of five (5) years from the Effective Date, and so long thereafter as the Lessee utilizes the Leased Premises or any portion thereof, with no cessation of operations for a period of seven hundred thirty (730) consecutive days, for the purposes set forth in paragraph 1 hereof, unless terminated for an uncured breach, subject to paragraph 17 below. Additionally, Lessee may terminate this Agreement at any time upon sixty (60) days' advance written notice to Lessor, subject to its obligations under paragraphs 12 and 13 of this Agreement.
 6. ENTIRE AGREEMENT. This document constitutes the entire agreement between the parties hereto and supersedes all prior agreements, representations, and understandings of the parties, written or oral.
 7. INGRESS & EGRESS; GRANTS OF FUTURE PIPELINE EASEMENTS. Lessor grants Lessee the right of ingress and egress over Lessor's Lands together with the right-of-way over and across and the right from time to time to lay, maintain, replace, repair, and remove roads, fences, or appurtenances for Lessee's permitted operations on the Leased Premises. Lessee shall have the further right to fence the perimeter of any facility on the Leased

EXHIBIT I

Premises and sufficiently illuminate the site for the safety of operations, and employ such other use as is reasonably necessary for the operation of the disposal facility(ies).

Additionally, Lessor hereby grants Lessee the right-of-way over and across Lessor's Lands adjacent to the Leased Premises to lay, maintain, replace, repair, and remove pipelines under, and appurtenances on, such lands for the purposes herein granted to Lessee; provided, however, that the placement of such additional right of way will not have a material adverse effect on Lessor's then existing operations, as determined reasonably by Lessor. For any pipelines installed by Lessee on Lessor's Lands adjacent to the Leased Premises, Lessee shall pay to Lessor additional consideration of [REDACTED] per diameter inch of any such pipeline, which shall be the rate paid to Lessor per rod (sixteen and one-half feet per rod) of easement.

Any pipeline easement or right-of-way taken pursuant to this paragraph 7 shall be governed by the terms and conditions of the form of Pipeline Easement Agreement attached hereto as Exhibit C and made a part hereof (the "Pipeline Easement Agreement").

The foregoing provisions of this paragraph 7 shall only apply for the compensation due and owing for lines acquired during the first ten years of this Agreement and the "per diameter inch" and/or "per linear foot" compensation shall be renegotiated following ten years from the Effective Date.

8. OPERATING HOURS. Lessor acknowledges that Lessee intends to operate the Leased Premises on a continuous basis, 24 hours per day, 7 days per week, 365 days per year. For such purposes operations may include, but are not limited to staffing the Leased Premises with personnel on 24 hours per day, 7 days per week, 365 days per year.
9. MONTHLY STATEMENTS. With each monthly payment, Lessee shall issue to Lessor an operating statement declaring the number of barrels of water injected, and the Disposal Fee owed as determined in accordance with paragraph 3 of this Agreement.
10. RIGHT TO INSPECT OPERATIONS. Lessor shall have access, at all reasonable times, and at Lessor's sole risk, to inspect all operational areas around equipment and structures located on the Leased Premises. Lessor's access is subject to compliance with Lessee's safety policies and procedures, as determined by Lessee in its sole discretion. Lessor shall indemnify and hold harmless Lessee for any and all harm resulting in such inspection.
11. BURIAL OF PIPELINES. Water lines that Lessee may locate on the Leased Premises, shall be buried to a depth required by and otherwise governed by the terms and conditions of the Pipeline Easement Agreement.
12. REMOVAL OF EQUIPMENT. Lessee shall have the right at any time within the term of this Agreement or within one hundred and eighty (180) days thereafter to remove any and all pipelines, machinery, structures, buildings, appurtenances and fixtures that it has placed on the Leased Premises, including casing in wells. The removal of all personal property,

EXHIBIT I

equipment, and fixtures of Lessee shall be completed within one hundred and eighty (180) days following the expiration of termination of the Agreement.

13. SURFACE RESTORATION AND REPARATION. Lessee agrees that the Leased Premises shall at all times be kept clear of debris, trash, weeds, and foreign or noxious vegetation. Upon termination of this Agreement, within one hundred and eighty (180) days the Leased Premises shall be restored as near to their pre-lease condition as possible. This restoration shall include the removal of all foreign substances and materials, and removal of debris incident to Lessee's operations.
14. RELEASE. Lessor acknowledges the sufficiency of all compensation paid by Lessee pursuant to this Agreement as full and complete settlement for and as release of all claims for loss, damage, or injury to the Leased Premises arising out of Lessee's initial exercise of its rights hereunder for its normal operations related to the Leased Premises.
15. COMPLIANCE WITH REGULATIONS. The exercise of the rights and duties herein conveyed shall be in accordance with the rules and regulations prescribed by state, local or federal authority having jurisdiction on the Leased Premises. Lessee shall have the right but not the obligation to contest, by appropriate legal proceedings diligently conducted in good faith, in the name of the Lessee or Lessor (if legally required) or both (if legally required), without cost or expense to Lessor, the validity or application of any law, ordinance, requirement, order, directive, rule or regulation affecting Lessee's activities upon the Leased Premises. Lessor agrees to execute and deliver any appropriate documents which may be necessary or proper to permit Lessee to contest the validity or application of any such law, ordinance, requirement, order, directive, rule or regulation, and to fully cooperate with Lessee in such contest. Lessor shall cooperate with Lessee in seeking required governmental approvals by promptly signing any required landowner's consents for permit applications and other similar actions.
16. ASSIGNMENT. Lessee shall have the right to assign and transfer this Agreement upon the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned, or delayed; provided, however, that any assignment to an affiliate of Lessee shall not require Lessor's prior written consent. All covenants and conditions herein shall be binding upon the parties hereto and shall extend to their heirs, executors, administrators, personal representatives, successor-in-interest, and assigns. No change in ownership of the Leased Premises shall be binding upon the Lessee until the Lessee has received adequate evidence of ownership transfer. If the Leased Premises should at any time be subdivided into separate tracts by Lessor or Lessor's heirs, successors, administrator, or assigns, all monies due hereunder shall be payable solely to the owner/owners on whose property the well(s) and facilities are actually and physically located, and if Lessor owns less than the entire fee, Lessor shall be paid only his or her proportional share of any payment due.
17. BREACH OF LEASE TERMS. If either Lessee or Lessor breaches any term or covenant, express or implied, in the Agreement, the non-breaching party shall notify the breaching party in writing of the breach. The breaching party shall have sixty (60) days from the date of its receipt of the written notice to remedy the breach. If the breaching party fails to

EXHIBIT I

remedy the breach within the prescribed time period, the non-breaching party may terminate this Agreement. No waiver by Lessee or Lessor of performance by the other party shall be considered a continuing waiver or shall preclude Lessee or Lessor from exercising its rights in the event of a subsequent breach.


18. QUIET ENJOYMENT. Lessor warrants that it is the sole owner of Lessor's Lands and has the legal right to grant the leasehold described herein and that Lessee, as well as Lessee's personal representatives, heirs, successors, and permitted assigns, shall have the quiet use and enjoyment of the Leased Premises in accordance with the terms and conditions of this Agreement.
19. NOTICE OF AGREEMENT. Within thirty (30) days after final determination of the exact location of Lessee's Facilities, Lessee shall execute and place of record in the office of the county clerk of Lea County, New Mexico notice of this Agreement. A certified copy of the notice shall be furnished to Lessor.
20. RELATIONSHIP OF PARTIES. The relationship of the Parties in this Agreement is Lessor and Lessee. Lessor has no interest in Lessee's enterprise or business and this Agreement shall not be construed as a joint venture or partnership between the Parties, and Lessee shall not be deemed an agent or representative of Lessor.
21. CONSTRUCTION. Both Lessor and Lessee acknowledge and represent that this Agreement is a result of an arm's length negotiation and any ambiguity that may arise now or in the future shall not be construed against either Party hereto.
22. COUNTERPARTS. This Agreement may be executed in two or more original counterparts, all of which together shall constitute one and the same Agreement.
23. APPLICABLE LAWS. The parties agree that this agreement shall for all purposes be construed and interpreted according to the laws and regulations of the State of New Mexico and the parties hereby submit to the jurisdiction of the courts of the State of New Mexico.
24. INDEMNIFICATION. LESSEE HEREBY AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS LESSOR, ITS AGENTS, EMPLOYEES, MANAGERS, MEMBERS, SUCCESSORS, AND ASSIGNS, FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, AND LIABILITIES, INCLUDING COURT COSTS AND REASONABLE ATTORNEYS' FEES, ARISING OUT OF OR RELATED TO OPERATIONS BY LESSEE, ITS EMPLOYEES, AGENTS, CONTRACTORS, SUCCESSORS, ASSIGNS, OR ANY OTHER PERSONS ACTING UNDER LESSEE'S CONTROL OR AT LESSEE'S DIRECTION ON THE LEASED PREMISES, INCLUDING, BUT NOT LIMITED TO, CLAIMS, DAMAGES, LOSSES, AND LIABILITIES ARISING OUT OF LESSEE'S BREACH OF ENVIRONMENTAL OR OTHER APPLICABLE LAWS AND REGULATIONS, BUT EXCLUDING TO THE EXTENT ARISING OUT OF (I) LESSOR'S WILLFUL MISCONDUCT OR NEGLIGENCE OR (II) EXERCISE OF LESSOR'S RIGHTS SET FORTH IN PARAGRAPH 10 HEREOF.

EXHIBIT I

- 25. **TAXES.** Lessee shall pay all taxes, including, but not limited to ad valorem taxes, assessed against any structure, material and equipment placed on the Leased Premises by Lessee pursuant to this Agreement, as well as any and all ad valorem taxes attributable to the fee simple surface estate attributable to the Leased Premises. This obligation imposed upon Lessee shall not apply to Lessor's ad valorem taxes applicable to Lessor's royalty due and payable under this Agreement. To the extent that Lessee seeks to protest the valuation of any structure, material or equipment placed on the Leased Premises, Lessor shall, at Lessee's cost, reasonably cooperate with Lessee's reasonable requests for assistance related to such protest. Likewise, to the extent Lessor seeks to protest the valuation of Lessor's royalty, Lessee shall, at Lessor's cost, reasonably cooperate with Lessor's reasonable requests for assistance related to such protest.

This Agreement is agreed to and accepted by the Lessor and Lessee as of the Effective Date.

LESSOR: Milland Deck Estate


by: Terry Richey SRUP Trustee

LESSEE:

Goodnight Midstream Permian, LLC,
a Texas limited liability company

By: 
Name: GRANT ADAMS
Title: GC

EXHIBIT I

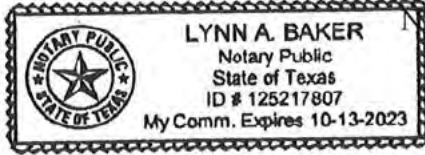
ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF ECTOR §

This instrument was acknowledged before me on this the 17th of December 2020, by
Lynn Baker

[Handwritten Signature]

(Seal)



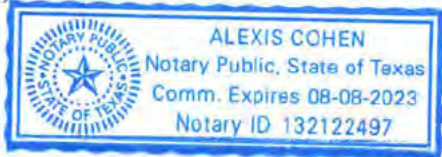
Notary Public in and for the State of Texas

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on this the 21st of December 2020, by
Grant Adams, the CO, of Goodnight Midstream Permian, LLC, a Texas limited liability company, on behalf of said company.

[Handwritten Signature]

(Seal)



Notary Public in and for the State of Texas

EXHIBIT I

Exhibit A

Lessor's Lands

Lessor's Tract One: 320 acres – S/3 of Section 3, Township 21 South, Range 36 East, Lea County, New Mexico

Lessor's Tract Two: 715 acres – All of Section 4 except W/4, Township 21 South, Range 36 East, Lea County, New Mexico

Lessor's Tract Three: 390 acres – All of Section 9 except W/4 & E/2 NE/4 NE/4, Township 21, South, Range 36 East, Lea County, New Mexico

Lessor's Tract Four: 560 acres – All of Section 10 except W/2 NW/4 NW/4, Township 21 South, Range 36 East, Lea County, New Mexico

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Exhibit B

Description of Leased Premises

NOTE: This Exhibit will be populated with Certified Plats and Legal Description of each Five Acre Salt Water Disposal Well location.

EXHIBIT I

Exhibit C

Form of Pipeline Easement Agreement

See attached.

EXHIBIT I

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

PIPELINE EASEMENT AGREEMENT

Grantor:

Grantee:

STATE OF NEW MEXICO §

KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF _____ §

That, this Pipeline Easement Agreement (this "Easement Agreement") is made and entered into as of _____, 2017 ("Effective Date"), by and between [REDACTED], whose address is [REDACTED] ("Grantor", whether one or more), and **Goodnight Midstream Permian, LLC**, of 5910 North Central Expressway, Suite 800, Dallas, Texas 75206 ("Grantee"). Each of Grantor and Grantee may be individually referred to as "Party" and collectively the "Parties".

NOW, THEREFORE, for and in consideration of [REDACTED] in hand paid by Grantee, the receipt and sufficiency of which are hereby acknowledged by Grantor, Grantor does hereby grant, sell and convey unto Grantee, a pipeline easement over and across Grantor's Lands, on the following terms and conditions:

AGREEMENT:

1. Easement Rights. Grantor hereby grants to Grantee the following easement rights:

(a) a permanent easement of Twenty-five feet (30') in width described by metes and bounds and as shown on Exhibit A attached hereto and incorporated herein (the "Permanent Easement").

(b) a temporary easement during any of Grantee's construction activities being generally Fifty feet (50') in width on either side of the centerline of the Permanent Easement and furthermore, such temporary easement can be expanded to include a width of One Hundred feet (100') at all road, ditch, and waterway crossings and any areas of severely uneven ground (the "Temporary Easement"). Collectively, the Permanent Easement and the Temporary Easement are referred to as the Easement Property.

2. As-Built Survey. Grantee shall have the right to select the exact location of its pipeline within the Permanent Easement. Upon the completion of construction of the pipeline, Grantee shall file a memorandum in the official public records of LEA COUNTY, NEW MEXICO, depicting the final route of the Permanent Easement and provide Grantor with a copy

EXHIBIT I

of same. Grantee's filing of an as-built survey shall not restrict Grantee from constructing the pipeline in multiple segments for a period of up to three (3) years from the Effective Date, and each filing of the as-built survey, if so segmented, shall amend the Permanent Easement through the date of the last as-built survey filing.

3. Easement Purpose. For the placement of one (1) line in one (1) trench, for the purpose of laying, constructing, maintaining, operating, inspecting, repairing, replacing, protecting, changing the size of and removing and/or abandoning pipeline, together with all below-ground appurtenances as may be necessary or desirable for the operation of the pipeline, including fiber optic or similar communication line, and with all fittings, tie-overs, shut off valves, pipeline markers and all other equipment and appurtenances thereto, for the transportation of water, salt water and any other liquids, gases or substances which can be transported through a pipeline, upon and along a route within the Permanent Easement to be selected by Grantee.

4. Access to Easement. Grantee shall have such reasonable and necessary additional easement rights of ingress and egress to, from and along said pipeline and facilities of Grantor on, over and across said lands and adjacent lands of Grantor, and Grantee shall have all privileges necessary or convenient for the full use and enjoyment of the rights herein granted. Grantee shall construct gating of Grantor's fence crossings to be secured with lock, keypad, or other reasonably equivalent manner, so that only Grantor and Grantee will have access thereto.

5. Burial of Pipelines. Grantee shall bury the top of its pipelines at or below three feet in depth, except for those connections, fittings, valve boxes or other equipment that may be required to operate and/or monitor the flow of fluids that may be transported through the pipeline.

6. Restoration of Surface. Grantee shall restore the lands affected by the construction within the easement as soon as practicable after the pipelines are completed and such restoration shall be made as near as practicable to the condition when Grantee first entered onto Grantor's Lands.

7. Right to Confirm Staked Easement. Grantor hereby reserves the right to review the staked easement and make reasonable adjustments prior to initiation of construction.

8. Reservation of Right of Use. Grantor shall retain the right to farm, graze and otherwise fully use and enjoy the Easement Property, provided, however, that Grantor agrees not to construct or create any obstruction, structure, or engineering work on the Easement Property that will interfere with the rights and interests of Grantee herein granted.

9. Grantee's Right to Maintain. Grantee shall have the right to clear any and all obstructions from the Easement Property that interfere with Grantee's intended use of the easement rights granted herein.

10. Damages to Surface. The aforesaid consideration includes any and all damages to trees, land, buildings, fences, and growing or planted crops and hayland on said premises which may arise from the original construction of said pipeline and initial exercise of the rights herein-granted, provided Grantee will pay Grantor, and, if leased, to Grantor's tenant, as they may be

EXHIBIT I

respectively entitled, actual reasonable damages done to fences and growing or planted crops and hayland by reason of entry to repair, maintain and remove said pipeline.

11. Duration. If Grantee should abandon the rights granted herein and if such abandonment should continue for a continuous period of three (3) years, all rights of Grantee herein shall ipso facto terminate and revert to Grantor, his heirs, legal representatives, and assigns, in which event Grantee will have the right to abandon the pipeline in place or remove said pipeline. In the event that Grantee elects to abandon the pipeline in place, Grantee agrees to perform such procedures that are standard to the industry in order to prevent corrosion of the pipeline and/or the escape of any hazardous material from the pipeline.

12. Compliance with Laws. Grantee agrees to comply with all applicable state, federal and local regulations regarding the operation of pipelines of the nature contemplated by this Easement Agreement.

13. Indemnity. Grantee shall indemnify, defend and hold harmless Grantor from any and all claims, demands, causes of action, or liability for damages, loss or injuries that arise out of Grantee's operations on Grantor's Lands.

14. Waiver of Special Damages. The Parties agree that in no event shall either be liable to the other for any special, exemplary, consequential or other indirect damages to the other, and all such damages are hereby waived to the extent permitted by law.

15. Entire Agreement. This instrument constitutes the entire agreement and understanding of the Parties and supersedes all prior understandings, negotiations and agreements of the Parties related to the subject matter hereof. Grantor and Grantee acknowledge that this Easement Agreement has been negotiated by the Parties, and this Easement Agreement shall be construed as one prepared by the joint efforts of Grantor and Grantee and shall not be construed against either Party as the drafter.

16. Notice and Cure. Upon the occurrence of any alleged breach or default in the performance of any term or provision of this Easement Agreement, the non-defaulting Party shall send the other Party written notice describing the alleged breach or default and thereafter the allegedly defaulting Party shall have sixty (60) days following the date of that Party's receipt of written notice of any alleged breach of this Easement Agreement to cure the alleged breach or default before the non-defaulting files suit seeking termination or any other remedy permitted under the laws of the State of Texas.

17. Counterparts. This Easement Agreement may be executed in identical counterparts and each of which so executed shall be given the effect of execution of the original. Each executed counterpart shall be binding upon the Party thereto, as fully as if all Parties had executed one instrument, and said counterparts may be combined to form one single instrument for recording purposes.

18. Binding Agreement. This Easement Agreement shall be binding on and inure to the benefit of each Party's heirs, successors, personal legal representatives and assigns.

EXHIBIT I

19. Covenant Running with the Land. This Easement Agreement shall be appurtenant to, run with and burden the Grantor's Lands.

20. Choice of Law; Venue. All causes of action and suits commenced pursuant to this Easement Agreement shall be construed under the laws of the State of Texas and venue for any cause of action shall be proper only in the state or federal court having appropriate jurisdiction for the county in which the Easement Property is located.

TO HAVE AND TO HOLD said Easement Agreement unto said Grantee, its successors, heirs, and assigns forever.

IN WITNESS WHEREOF, the Parties have executed this Easement Agreement to be effective as of the Effective Date.

GRANTOR:

GRANTEE:

Goodnight Midstream Permian, LLC

X _____
[]

X _____

[ACKNOWLEDGEMENTS ON FOLL WING PAGE]

EXHIBIT I

STATE OF _____ §

COUNTY OF _____ §

BE IT REMEMBERED, that on this _____ day of _____, 2019, before me a Notary Public, in and for said County and State, personally appeared _____, to me know to be the identical person described in and who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my official signature and affixed my notarial seal, the day and year first above written.

My commission expires: _____ Notary Public _____

STATE OF _____ §

COUNTY OF _____ §

BE IT REMEMBERED, that on this _____ day of _____, 2019, before me the undersigned Notary Public, in and for said County and State, personally appeared _____, who did state that he is the duly authorized _____ of **Goodnight Midstream Permian, LLC**, and did execute foregoing instrument of behalf of Goodnight Midstream Permian, LLC for the purposes set forth herein.

IN WITNESS WHEREOF, I have hereunto set my official signature and affixed my notarial seal, the day and year first above written.

My commission expires: _____ Notary Public _____

EXHIBIT I

Exhibit A

EXHIBIT J

Page 1

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

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION DIVISION FOR
THE PURPOSE OF CONSIDERING:

APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN, LLC
FOR APPROVAL OF SALT WATER DISPOSAL WELL
LEA COUNTY, NEW MEXICO

Case No. 22626

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS
EXAMINER HEARING
June 16, 2022
SANTA FE, NEW MEXICO

This matter came on for virtual hearing before
the New Mexico Oil Conservation Division, HEARING
OFFICER WILLIAM BRANCARD and TECHNICAL HEARING
OFFICER DYLAN ROSE-COSS on Thursday, June 16, 2022,
through the Webex Platform.

Reported by: PAUL BACA COURT REPORTERS
500 4th Street, NW, Suite 105
Albuquerque, New Mexico 87102
505-843-9241

PAUL BACA PROFESSIONAL COURT REPORTERS
500 FOURTH STREET NW - SUITE 105, ALBUQUERQUE, NM 87102

1 San Andres within the vertical limits of the
2 unitized area, was simply because it was going to be
3 the water source. And I think that an order that
4 locks out and prevents any other operator from using
5 an area that's purely been confirmed to be an
6 aquifer is an error and not justified or supported
7 by the statute or any other authority.

8 And so, you know, I have concerns about
9 the way this order was written, number one, but
10 nevertheless, I think the proper way to interpret it
11 is to read the definition and the finding of
12 Paragraph 10 of the unitized formation as properly
13 limiting the unitized formation to the Grayburg or
14 Penrose where oil is present. The rest was included
15 simply for purposes of oil -- of water production
16 and not for any other reason, which is not a proper
17 basis for it to be unitized under the Division's and
18 Commission's own authority.

19 So that's why I believe Paragraph 10 is
20 important because it does limit the unitized
21 formation to only the portion that has been
22 confirmed and has presented to the Division as
23 having oil.

24 HEARING OFFICER BRANCARD: Well, if you're
25 concerned that the order is overbroad or improper as

1 you put it, why not file an application to amend the
2 order?

3 MR. RANKIN: Well, Mr. Examiner, I guess
4 if that's where the Division is heading, if that's
5 where we need to go with this, we'll certainly do
6 that. I don't believe it's necessary because I
7 believe that it can be addressed on the merits at a
8 hearing in light of the express language of the
9 order itself, which limits the unitized formation
10 only to that oil bearing zone.

11 HEARING OFFICER BRANCARD: The order
12 establishes a unit. It establishes what the
13 horizontal limits of the unit is and then it
14 names -- this a statutory unit. We're not talking
15 about property rights. It's a statutory unit, it
16 names an operator of that unit. And that operator,
17 once upon a time Gulf, seems today to be Empire,
18 operates that entire unit.

19 I'm not sure how we work our way around
20 that other than as appears what has happened in the
21 past, that the applications as your client has made
22 have been made in the past and either with the
23 consent of or lack of a (audio cut out) of (audio
24 cut out) unit operator.

25 THE COURT REPORTER: Mr. Hearing Officer,

1 you're breaking up.

2 MR. RANKIN: Mr. Brancard, you need to
3 (audio cut out) for me, anyway.

4 HEARING OFFICER BRANCARD: (Audio cut out)
5 one fashion or another. I mean the statutory unit
6 means something. Sorry. I'm not seeing you very
7 well either, Mr. Rankin, but it could be my voice.

8 The statutory unit must mean something, we
9 have to figure that out. I mean, I hate all of us
10 being trapped by old documents and old orders, but
11 it's there.

12 So that's my concern that we have a unit,
13 we have a unit operator. But, you know, limits to
14 what that unit. Whether that was done improperly
15 or, you know, should really be, you know, and it
16 seems like if they needed the water from that -- if
17 that's the only reason the San Andres is there to
18 get the water out of it, well, I think that purpose
19 is over, right, because now they just use the water
20 from the operations for reinjection. So you might
21 have a good argument for limiting the scope of that
22 unit.

23 All right. It's very difficult as I try
24 to push Mr. Padilla to come up with a motion to
25 dismiss that works because the reality is that the

1 believe there's oil recoverable in that zone but if
2 that's not the case, I mean, yeah, I want
3 demonstration in the records, their own, that they
4 don't have any evidence of oil being present, that's
5 all.

6 MR. ROSE-COSS: So if they came forward
7 hypothetically and said there is oil and we're
8 planning to move in there next week, Goodnight
9 Midstream would rescind its application?

10 MR. RANKIN: Depending on that strength of
11 that evidence, I mean, we may not have any choice,
12 but I would like to see it. In other words, you
13 know, our request isn't one I would think that
14 Empire should be resisting, if it exists.

15 MR. ROSE-COSS: I understand, yeah. And,
16 Mr. Padilla, is any of this easing the concerns of
17 Empire? Does any of this sound less onerous or in
18 his clarification or does it still sound overly
19 broad and egregious?

20 MR. PADILLA: Still overly broad because,
21 good God, you know, you have to go into everybody's
22 computer, any memorandum that they did. That's why
23 I'm making this statement, that you almost have
24 to -- they're asking for the entire hard drive
25 portion of -- for the unit. I mean, I guess if we

1 limit this to simply a very simple thing that says
2 hydrocarbons do not exist, or in the San Andres
3 formation maybe none, but it begs the question that
4 with technological advancement like horizontal
5 drilling that even in the San Andres horizontal
6 drilling has occurred that would produce oil. We
7 don't know that.

8 And they're simply making the assumption
9 coming out of the stranger to title or anything,
10 note no ownership interest in the unit and certainly
11 not in the oil and gas lease committed to the unit
12 that would -- I mean, just because you simply say
13 it's all water, it's an aquifer, therefore there's
14 no oil, therefore we can dump water in there without
15 a property interest and you go back to the pour
16 space issue. And it can avoid, I think that the
17 best thing to say is the issue that Mr. Gets brought
18 up is that if you're going to say that that's simply
19 an aquifer that is useless, therefore you have to go
20 back and amend the unitized vertical of the unit.

21 MR. ROSE-COSS: I guess my understanding
22 of what's being asked for, then, is that any
23 additional potential information and I like the
24 caveat you had of something that could be found on
25 the OCD records and I imagine most of it can be that

1 I'm just sort of thinking out loud to myself, which
2 can be dangerous. But, you know, I wonder if it
3 might be helpful to the Division for us to, if
4 there's -- you know, I'm not -- I may follow-up on
5 this actually with Mr. Padilla, and Mr. Examiner,
6 but I'm wondering if it may be helpful to have a
7 short briefing to address the unitization issue or
8 if the Division would prefer just to decide that on
9 its own. The only concern is that, you know, some
10 of the questions that are going to be considered by
11 the Division haven't been briefed or addressed. And
12 I'm wondering if it might be helpful for the parties
13 to provide guidance on some of those issues?

14 **HEARING OFFICER BRANCARD:** Well, I don't
15 want you to be the only one thinking on your own
16 here, I do it all day long. As I said, **I think the**
17 **key with the motion to dismiss issue is whether the**
18 **mere fact of a statutory unit that includes this**
19 **interval and that creates a unit with an operator**
20 **negates the possibility of any injection into that**
21 **interval absent some sort of waiver or agreement.**
22 **That's the way I see the motion to dismiss. Okay?**

23 So a threshold legal issue, don't need
24 factual findings to come to that conclusion one way
25 or the other. If we deny the motion to dismiss,

EXHIBIT K

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

APPLICATION OF GOODNIGHT MIDSTREAM
PERMIAN, LLC FOR APPROVAL OF A SALT
WATER DISPOSAL WELL IN LEA COUNTY,
NEW MEXICO

CASE No. 20556, Order No. R-20863
CASE No. 20557 Order No. R-20864
CASE No. 20558 Order No. R-20865

WITHDRAWAL OF REQUEST FOR DE NOVO HEARING

The New Mexico State Land Office (“NMSLO”) by and through its undersigned attorney, withdraws its previous request for a de novo hearing in the above cases, 20556, 20557, and 20558. After further review, the NMSLO has determined that it does not have concerns about encroachment from these particular wells in the affected formations. Therefore, the NMSLO requests that the OCC dismiss the above cases.

Respectfully submitted,



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Attorney for the New Mexico State Land Office

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of January, 2020, a copy of the foregoing Request to Dismiss De Novo Hearing was served via email upon the following:

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