

**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 REPLY IN SUPPORT OF MOTION TO QUASH  
GOODNIGHT MIDSTREAM PERMIAN, LLC'S SUBPOENA DUCES TECUM**

Empire New Mexico, LLC ("Empire") submits the following Reply in support of its 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

Goodnight has served extensive requests for production of documents on Empire. Empire has diligently responded and 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). Despite Empire’s exhaustive efforts to provide thousands of pages of documents to Goodnight, Goodnight continues to serve overly broad and unduly burdensome discovery requests on Empire and is abusing the Division’s subpoena authority by attempting to use these proceedings to circumvent discovery in ongoing litigation between Goodnight and Empire. 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. Further, Goodnight continues to seek information that Empire has already said it does not have in its possession, custody, and control. This action amounts to harassment.

Goodnight spends the first seven pages of its response to Empire’s Motion to Quash Goodnight’s Subpoena (“Empire’s Motion”) discussing the Commission’s authority to adjudicate the applications presently before it, which is not at issue. Empire is not contesting the Commission’s authority to address the issues before it; Empire’s Motion addresses whether the discovery requested by Goodnight is proper given the *scope* of the Commission proceedings. Simply put, Goodnight’s discovery requests are not reasonably tailored to request information that is relevant and necessary to these proceedings. *See Lara v. City of Albuquerque*, 1999-NMCA-

012, ¶ 10 (finding that administrative hearing officer's order allowed for the discovery of irrelevant information because it was "not narrowly tailored to reach only information that was relevant to" the former employee's appeal of his termination).

It is important to remember that this is an administrative hearing, and as such, "there is no constitutional right to pre-trial [or pre-hearing] discovery in administrative hearings." *Archuleta v. Santa Fe Police Dep't ex rel. City of Santa Fe*, 2005-NMSC-006, ¶ 31, 37 (finding that the administrative hearing officer acted reasonably in denying the petitioner's request for discovery and the district court did not err in concluding the board had not acted arbitrarily or capriciously in upholding the hearing officer's ruling). Goodnight seeks to convert these proceedings into protracted litigation, presumably so it can continue to inject into Empire's unitized interval. Goodnight has all the information it is entitled to obtain and its subpoena should be quashed.

## II. ARGUMENT

### **A. Goodnight's subpoena should be quashed because it seeks information that subjects Empire to an undue burden, is not relevant, and is not reasonably calculated to lead to the discovery of admissible evidence in this Commission proceeding.**

Goodnight completely misses the mark on its attempt to argue that Empire has failed to establish that the subpoena in question creates an "undue burden" on Empire. Goodnight presents four pages of argument dealing with the "undue burden" standard for protective orders sought by parties pursuant to Rule 1-026(C) NMRA, which permits a district court to issue an order that "protect[s] a party or person from annoyance, embarrassment, oppression or undue burden or expense...." See Goodnight's Response at 16 (citing *Krahling v. Exec. Life Ins. Co.*, 1998-NMCA-071 (addressing whether a protective order should be lifted to allow for the dissemination of confidential information to non-parties to the litigation); *Kutilek v. Gannon*, 132 F.R.D. 296 (D. Kan. 1990) (addressing a motion for protective order for all discovery requests)). Empire is not

seeking a protective order. Rather, Empire has filed objections to, and a motion to quash, Goodnight's overly broad and unduly burdensome subpoena, which in the administrative setting is loosely governed by Rule 1-045 NMRA.

The only case cited by Goodnight that is actually on point, *Whiteside v. State Farm Fire & Cas. Co.*, No. 1:20-cv-01210-JAP-LF (D.N.M. Apr. 13, 2021), wholly supports Empire's position. *Whiteside* concerned a non-party's motion to quash a subpoena and reinforces the requirement of Rule 1-045 that "the party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena." *Whiteside*, 1:20-cv-01210-JAP-LF, at \*6. Further, *Whiteside* found that a subpoena seeking "all documents regarding" a particular subject that the subpoenaed party "has worked on in any capacity over the course of nearly six years is facially excessive." *Id.* at \*6-7. "[W]hen the request is overly broad on its face or when relevancy is not readily apparent, the party seeking the discovery has the burden to show the relevancy of the request." *Id.* (citing *Johnson v. Kraft Foods N. Am., Inc.*, 238 F.R.D. 648, 653 (D. Kan. 2006)). Here, Goodnight has tried to place the burden entirely on Empire to demonstrate why requesting over 40 years of records is unduly burdensome.

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 to Empire's Motion at pg. 4, ¶¶ 5, 6. Goodnight's demands for these documents are unreasonable, unduly burdensome, and will in no way assist Goodnight in obtaining documents that could potentially be admissible in this proceeding.

Goodnight also seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. As was set out in detail in Empire's Motion at pages 8 through 16, many of 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. The subpoena power is not unlimited in district court or administrative proceedings, and Goodnight's facially overbroad, irrelevant, and limitless discovery requests should be quashed. *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); *Estate of Romero*, 2006-NMSC-028, ¶ 7 (a party must only provide information relevant to a pending case in discovery).

**B. Goodnight's Subpoena is overly broad in that it fails to limit its requests to exclude information that is protected from disclosure by the attorney-client privilege and work product doctrine.**

As another example of Goodnight's harassing discovery tactics, instead of simply stating they are not requesting attorney-client privileged communications or documents protected by the attorney work product doctrine, they ask the Commission to make Empire prove that there are documents requiring protection. In this case, the Commission must first resolve Empire's objections to the requested discovery based on their overly broad, unduly burdensome nature, as well as Empire's objections that the documents and information requested are not reasonably calculated to lead to the discovery of admissible evidence and are unlimited with respect to time and scope. Should the Commission determine that the discovery requests at issue are in fact objectionable, there is no need for the privilege inquiry.

As stated in Empire's Motion, given the extreme overly broad nature of the requests, which are not limited in time, Empire has not prepared a privilege log. A privilege log is not required for every assertion of privilege, as the party resisting discovery may support the assertion of privilege through "other means as required by the circumstances of a particular case." *Pina v. Espinoza*, 2001-NMCA-055, ¶¶ 24, 25. In this case, the Commission should first consider the other bases for objection to Goodnight's Requests Nos. 1, 2, and 3, prior to requiring the submission of a privilege log, which will only create additional, unnecessary burden on Empire.

**C. Empire should not be required to produce documents it does not have.**

In its response, Goodnight insists that Empire be compelled to produce documents that it simply does not have and for which Empire has repeatedly told Goodnight are not in its possession. A party is only obligated to produce documents within their "possession, custody or control" and that are actually available to the party. *United Nuclear Corp. v. General Atomic Co.*, 1980-NMSC-094, ¶ 58. Empire has produced the water analyses in its possession and control. However, Empire cannot produce the water analysis Goodnight is requesting that was prepared by Chevron, as Chevron is not in any way a related entity to Empire. *See id.* Goodnight is free to subpoena the information from Chevron if it wishes to do so. As such, Goodnight's requests for documents that are not in Empire's possession or control should be quashed.

**D. Goodnight's arguments regarding specific requests lack merit and should be rejected.**

**Request Nos. 1-3:** As explained in the Motion, Goodnight's requests for agreements and all related documents and communications between Empire and third parties are unlimited in time or scope and have no relevance to these cases between Empire and Goodnight. Motion at 8-9. Goodnight argues summarily that evidence relating to any operating agreement with these three non-parties "is likely to generate highly pertinent evidence" and speculates that "[s]uch evidence

may demonstrate the pretextual nature of Empire's allegations" and "undermine the technical basis for Empire's claims." Response at 9. These proceedings are about Goodnight's wells and its related activities and not the wells or activities of third parties. All Goodnight needs to assess the factual basis for Empire's claims against Goodnight, as it may relate to other SWD operators in the area, is to compare the number of Goodnight wells and the amounts of water disposed of therein with the number of wells operated by the non-parties and the amounts of water disposed therein. All of that information is publicly available. See Rule 1-026(B)(2)(a) NMRA. At best, Goodnight's Request Nos. 1-3 are an improper fishing expedition for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. *Blake v. Blake*, 1985-NMCA-009, ¶ 15, 102 N.M. 354 ("[D]iscovery should be denied if a request is speculative and discovery would amount to a mere 'fishing expedition.'").

**Request Nos. 4, 5, and 6:** Goodnight argues that Empire made a request for similar information, i.e., water analyses, and therefore Empire must respond to Goodnight's "similar" request. However, Goodnight's request is *not* similar. Goodnight seeks "[a]ll ***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.***" Motion, Exhibit 1 at 4, ¶ 5. In contrast, Empire simply asked for "[a]ll water analyses of injected water into the San Andres formation by Goodnight." Response, Exhibit 4, ¶ 5. The difference between these two requests illustrates the overly broad and burdensome nature of Goodnight's requests. See Rule 1-026(B)(2)(c) NMRA; *Archuleta v. Santa Fe Police Dep't ex rel. City of Santa Fe*, 2005-NMSC-006, ¶ 23, 137 N.M. 161, 108 P.3d 1019 ("A party will not be required to respond to an overly broad discovery request unless adequate guidance exists as to

what extent the request is not objectionable.”). Goodnight is effectively seeking every piece of paper or datum relating to any water in two formations for at least **40 years**.

Further, if anyone should have the water analyses that Goodnight is now requesting, it is Goodnight. In filing applications for SWD wells, Goodnight is required to provide the Division with an “Injection Formation Water Analysis.” To satisfy that requirement, Goodnight represented to the Division in each of its applications that “Water analyses from the San Andres formation in the area are included” in the attachments to its applications. *See, e.g.*, Goodnight Exhibit A at Case No. 23614, “Page 12 of 400,” *available at* [https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/cf/20231027/23614\\_10\\_27\\_2023\\_03\\_49\\_05.pdf](https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/cf/20231027/23614_10_27_2023_03_49_05.pdf) (last visited May 8, 2024).

**Request Nos. 7-9:** Goodnight asserts that reserve reports and estimates and every related document must be produced, suggesting that these documents will establish whether “recoverable hydrocarbons exist in the San Andres.” Response at 13. Notably, Goodnight has not limited these requests to the San Andres. Moreover, Empire has already produced testimony and exhibits from its experts evidencing the existence of recoverable hydrocarbons in the San Andres. *See, e.g.*, Empire Exhibits at Case No. 23614, Exhibits B & C (Nov. 2, 2023), *available at* [https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/cf/20231027/23614\\_10\\_27\\_2023\\_07\\_56\\_17.pdf](https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/cf/20231027/23614_10_27_2023_07_56_17.pdf) (last visited May 8, 2024). Goodnight has produced no scientific evidence to the contrary. Instead, it ostensibly seeks to use Empire’s confidential and proprietary financial information in an effort to disparage the undisputed scientific evidence. Reserve reports and estimates are not relevant because information contained therein does not relate to a fact of consequence in determining the action. *See* Rule 11-401. Nor are these requests reasonably



calculated to lead to the discovery of admissible evidence, which must also be relevant. *See* Rule 11-402.

Further, reserve estimates change from year to year because of:

- Price and cost changes
- New discoveries
- Thorough appraisals of existing fields
- Existing reserves production
- New and improved techniques and technologies

U.S. Energy Information Admin., *U.S. Crude Oil and Natural Gas Proved Reserves, Year-end 2022*, available at <https://www.eia.gov/naturalgas/crudeoilreserves/> (last visited May 8, 2024).

The limited parameters of a reserve report or estimate reveal that such information is not relevant to any fact at issue in these proceedings. Relevant evidence regarding “recoverable hydrocarbons” is testimony or evidence from a geologist specialist, and not from confidential financial reports governed by the Security Exchange Commission. *See, e.g., Lane v. Page*, 649 F. Supp. 2d 1256, 1293-94 (D.N.M. 2009) (addressing the propriety of disclosure of reserve estimates to shareholders contemplating merger).

**Request No. 10:** Here, Goodnight demands that Empire produce “All plans of development for the EMSU” *for the past 40 years*, and “all internal and external communications, emails, memoranda, and summaries that reflect on, discuss, reference, or concern such plans of development.” Response at 13; *see* Motion, Exhibit 1 at 5, ¶ 10. Notably, Goodnight neglects to inform the Commission that, in response to this request, Empire produced plans of development within its possession. *See* Motion at 11-12. Empire cannot be compelled to produce documents from the past 40 years that are not in its possession. Any other plans of development from previous operators are publicly available through the State Land Office. *See* Rule 1-026(B)(2)(a).

**Request No. 12:** Again, Goodnight neglects to inform the Commission that Empire produced responsive information. *See* Response at 14; *see also* Empire’s Response to Goodnight’s March 5, 2024 Subpoena at ¶ 4 (“Empire is producing a list of its wells that require remedial action.”), attached as Exhibit A. Ignoring the information provided by Empire, Goodnight cherry picks two statements from the 10-page self-affirmed statement of Empire’s petroleum engineer, William West, filed on November 2, 2023, regarding increased operating costs relating to injection of excess water. Response at 14 and n.11. In reliance thereon, and without citation to authority, Goodnight demands that it is entitled to “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 [a] footnote” in the motion to refer these cases to the Commission, which was filed by Empire as directed by the Division examiner and requested by Goodnight. *See* Motion Exhibit A at 5, ¶ 12; *see also* Response at 14; OCD Case No. 23614, 12/21/23 Tr. 14:19-15:18 (Mr. Rankin: “We’re proposing to go directly to the commission . . . .”), *available at* [https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/cf/20240116/23795\\_01\\_16\\_2024\\_10\\_53\\_36.pdf](https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/cf/20240116/23795_01_16_2024_10_53_36.pdf) (last visited May 8, 2024). *See generally id.* at 49:22-56:3 (discussion among counsel and the hearing examiner as to the process of filing the motion for referral to the Commission in light of Mr. Rankin’s unavailability to timely file such a motion). Goodnight’s demand relating to Request No. 12 highlights Goodnight’s apparent intent to harass Empire by demanding discovery outside the bounds of discovery contemplated in an agency proceeding. *See infra* at 3-5. This type of discovery may be allowed by the court in the companion litigation, *Empire New Mexico, LLC*

v. *Goodnight Midstream Permian, LLC*, No. D-506-CV-2023-01180 to the extent it may be relevant to damages. The Commission, however, will not be addressing the issue of damages.<sup>1</sup>

**Request Nos. 13-15:** These requests ask for all information relating to the migration of water from specific wells into the Grayburg formation, including wells operated by third parties. The migration of water from wells operated by third parties is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence relating to the issues before the Commission in these proceedings. *See supra* at 6-7, Request Nos. 1-3. These proceedings relate only to Goodnight's wells. *See* Rules 11-401, 11-402. As to Goodnight's wells, Empire's witnesses continue to prepare their testimony and exhibits in preparation for the exchange of exhibits contemplated by the agreed-upon scheduling order previously submitted to the Commission. Empire will disclose any information referenced therein, in accordance with the anticipated scheduling order.

**Request Nos. 16-17:** These requests relate to the potential for CO<sub>2</sub> flooding for recovery of hydrocarbons from the San Andres formation. Again, Goodnight mischaracterizes the nature of Empire's "similar" request to Goodnight. Request Nos. 16 and 17 ask for all documents "that reflect on, discuss, reference, or concern" Empire's estimate of recoverable oil in the EMSU unitized interval and "the potential for CO<sub>2</sub> flooding in the San Andres formation," respectively. In turn, Empire's "comparable" request simply sought documents concerning "the existence or non-existence of hydrocarbons in the San Andres formation." Response at 15. Empire's reasonable request is directed to a core issue in this case, the existence of hydrocarbons in the San Andres. In contrast, Goodnight seeks information related to damages, which is appropriate for the companion litigation, but not at issue before the Commission. Moreover, again, Goodnight fails

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<sup>1</sup> To date, Goodnight has refused to participate in discovery in the companion litigation.

to acknowledge the responsive documents already provided by Empire that relate to this same exact request in Goodnight's first subpoena to Empire. *See* Response to Goodnight Subpoena at 1, Response to ¶ 1 (providing documents in response to Goodnight's request for all documents concerning "the existence or non-existence of hydrocarbons in the San Andres formation within the Eunice Monument South Unit), attached as Exhibit A; *see also id.*, Index of Produced Documents attached thereto); Empire's Second Supplemental Response to Goodnight's Subpoena, attached as Exhibit B. Thus, Empire has already responded to the identical request from Goodnight, and Goodnight's failure to acknowledge the relevant production is further indicative of its bad faith conduct relating to its discovery in these proceedings.

**Request No. 18:** Similar to Request Nos. 1-3, Goodnight's Request No. 18 seeks agreements and all related documents/communications between Goodnight and yet another third party, DASCO Cattle Company, LLC. Request No. 18 should be quashed for the same reasons that Goodnight's Requests Nos. 1-3 should be quashed. *See supra* at 6-7. Indeed, Goodnight posits, "***If*** Empire has had communications with DASCO . . . over a ***potential*** agreement to inject carbon dioxide," ***then*** such communications would be relevant. Response at 11 (emphasis added). Goodnight's use of "if" and "potential" simply highlight the speculative nature of Request No. 18, which should be quashed accordingly. *Blake*, 1985-NMCA-009, ¶ 15.

Goodnight also argues that such communications with DASCO "would severely undermine [Empire's] representations that" the San Andres residual oil zone ("ROZ") is economic. Response at 11. This makes no sense. The only reason that Empire would seek to sequester CO2 would be for the purpose of recovering hydrocarbons in the ROZ. Empire has the right to use the Grayburg and San Andres formations for that purpose.

In addition, Goodnight suggests that its overly broad request for any agreement with DASCO and all related documents is proper because Goodnight's surface agreement with DASCO was responsive to a request in Empire's subpoena to Goodnight. Response at 10-11. Goodnight fails to acknowledge, however, that Empire's request is much narrower than Goodnight's request. Compare Goodnight Subpoena at 7, attached to Motion as Exhibit 1 ("All communications, emails, letters, and agreements of any kind, including draft or proposed agreements, between Empire . . . and any of its . . . affiliates . . . and DASCO . . . or its owner or any of its members") with Empire Subpoena, ¶ 5, attached to Response as Exhibit 4 ("Copies of the surface use agreements or other agreements . . . between Goodnight . . . or its affiliates, and surface owners or other persons purporting to have ownership of the San Andres formation . . . underlying the surface locations of" four specific SWD wells proposed by Goodnight in OCD Case Nos. 23614-23617). Notably, Goodnight could not seek to drill its SWD wells in those locations without a right to use the surface. Goodnight cannot say the same about its overly broad fishing expedition with Empire.

And, finally, Goodnight acknowledges that it made the same request in its subpoena issued in the DASCO litigation. Response at 10 n.6. It fails to inform the Commission, however, that Empire's response to the subpoena expressly stated that no responsive documents exist. See Exhibit C, attached hereto. Thus, Goodnight is seeking to compel documents that it knows do not exist. This is yet another example that reveals Goodnight does not seek relevant information in discovery; rather, it simply seeks to harass Empire. See *Miera v. Dairyland Ins. Co.*, 143 F.3d 1337 (10th Cir. 1998) (recognizing that sanctions may be imposed "when certain discovery is substantially unjustified and interposed for the improper purposes of harassment, unnecessary delay and to increase the costs of the litigation").

Goodnight's abuse of discovery in this proceeding is further evident from its numerous footnotes to exhibits submitted by Empire in anticipation of the hearing that was scheduled before the Division last November. Empire diligently prepared for the November 2023 hearing and timely filed its detailed exhibits in preparation. Since then, Goodnight has taken the past six months to scrutinize those exhibits and make related discovery requests through subpoenas. Goodnight, on the other hand, filed basic exhibits that would ordinarily be used in an uncontested hearing, providing no detail of its position. Empire has had to guess at what information Goodnight may have to support its position in these cases, while Goodnight has run with Empire's information for the past six months. *See, e.g.*, Response at 12. This is not the process that the legislature, the division, or the Commission envisioned for agency proceedings. Rather, the Commission contemplates that the parties shall exchange exhibits at a reasonable time before the hearing and shall cross-examine the respective witnesses at hearing about the information disclosed in the exhibits. *See generally* 19.15.4.14 – 19.15.4.17 NMAC. Goodnight has turned the process upside down for a tactical advantage and its conduct should not be condoned.

### **III. CONCLUSION**

In short, Goodnight's overly broad discovery requests amount to harassment and abuse of the limited discovery available under the Commission's regulations. For these reasons, Goodnight's efforts to exponentially expand these proceedings, and thereby conduct unprecedented discovery, should not be condoned. Empire's motion should be granted, and Goodnight's 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 May 6, 2024:

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

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

**CASE NOS. 23614-23617**

**RESPONSE TO GOODNIGHT SUBPOENA**

For its response to the Goodnight Midstream Permian LLC subpoena to Empire New Mexico LLC (Empire) states:

1. Documents, communications, correspondence, emails, data, analyses, reports, and summaries, including but not limited to internal and external correspondence, memoranda, and assessments, that address, reflect on, or concern the existence or non-existence of hydrocarbons in the San Andres formation within the Eunice Monument South Unit.

**RESPONSE:**

Empire objects to this request because it seeks information that is protected by the attorney-client privilege, the attorney work-product doctrine, and exemptions afforded consulting experts. Goodnight seeks information currently being formulated by Empire's expert witnesses and consultants in coordination with Empire's attorneys for the hearing of the instant cases. Subject to that objection, in addition to the documents submitted by Eugene Sweeney in his testimony in Case 22626, Empire submits the documents in the attached Index of Produced Documents.

2. A copy of the analysis, including all drafts, identified in Paragraph 4 of Empire's Motion to Stay Issuance of Order, filed with the Division in Case Nos. 23614-23617.

**RESPONSE:**

Empire did not file a Motion to Stay Issuance of Order in Case Nos. 23614-23617. Empire did file such a Motion in Case No. 22626. To the extent that Goodnight seeks information regarding the Motion to Stay Issuance of Order filed by Empire in Case No. 22626, Empire objects to this request because it seeks information that is protected by the attorney-client privilege, the attorney work-product doctrine, and exemptions afforded consulting experts. Goodnight seeks information currently being formulated by Empire's expert witnesses and consultants in coordination with Empire's attorneys for the hearing of the instant cases.

Subject to that objection, Empire states that any intended plan or analysis that may have been formulated by Empire was contained in Eugene Sweeney's testimony in OCD Case 22626.

Exhibit A

3. Documents, communications, correspondence, emails, data, and summaries, including but not limited to internal and external correspondence and memoranda, that address, reflect on, or concern the analysis identified in Paragraph 4 of Empire's Motion to Stay Issuance of Order, filed with the Division in Case Nos. 23614-23617 on August 25th, 2023.

**RESPONSE:**

Empire objects to this request because it seeks information that is protected by the attorney-client privilege, the attorney work-product doctrine, and exemptions afforded consulting experts. Goodnight seeks information currently being formulated by Empire's expert witnesses and consultants in coordination with Empire's attorneys for the hearing of the instant cases. Subject to that objection, please see response to Request No. 2.

4. A copy of Empire's written plan, including all drafts, to evaluate the San Andres formation for production of hydrocarbons identified by Eugene Sweeney in Case No. 22626 at the hearing on September 15, 2023. See Tr. 238:18-22.

**RESPONSE:**

See Responses to Requests Nos. 2 and 3.

5. Documents, communications, correspondence, emails, data, and summaries, including but not limited to internal and external correspondence and memoranda, that address, reflect on, or concern Empire's plan to evaluate the San Andres formation for production of hydrocarbons identified by Eugene Sweeney in Case No. 22626 at the hearing on September 15, 2023. See Tr. 238:18-22.

**RESPONSE:**

See responses to Request Nos. 2, 3, and 4.

6. Documents, communications, correspondence, emails, data, analyses, reports, and summaries, including but not limited to internal and external correspondence, memoranda, and assessments, that address, reflect on, or concern evidence that there is communication between the proposed injection intervals in Case Nos. 23614-23617 and the overlying Grayburg formation, including core analyses.

**RESPONSE:**

Empire objects to this request because it seeks information that is protected by the attorney-client privilege, the attorney work-product doctrine, and exemptions afforded consulting experts. Goodnight seeks information currently being formulated by Empire's expert witnesses and consultants in coordination with Empire's attorneys for the hearing of the instant cases. Subject to that objection, in addition to the documents submitted by Eugene Sweeney in his testimony in Case 22626, Empire submits the documents in the attached Index of Produced Documents.

7. Documents, communications, correspondence, emails, reports, and summaries identifying Empire's geologic pick for the top of the San Andres formation within the Eunice Monument South Unit, including references to the measured depth and/or subsea depth for the top of the San Andres formation.

**RESPONSE:**

See response to Request No. 6. The vertical limits of the Eunice Monument South Pool are defined in Oil Conservation Division Orders Nos. R-7767 and R-7767-A.

Respectfully submitted by:

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**INDEX OF PRODUCED DOCUMENTS**

**Goodnight Midstream Permian, LLC  
Subpoena Responses from  
Empire New Mexico, LLC  
OCD Case Nos. 23614-23617**

**Response to Request Number 1**

- 1a) Maps\_EMSU Oil Bubble Map and MITs v. 2.;
- 1b) Exploiting the ROZ in Lithuania;
- 1c) ROZ determination for EOR in Means Field;
- 1d) ROZ Long Term EOR in Permian Basin & Elsewhere;
- 1e) ROZ testimony 2023;
- 1f) Stranded oil in the ROZ – Melzer2006;
- 1g) Two geological case histories of ROZ Permian Basin;

**Response to Request Number 6 and 7**

OCD Orders R-7767 and R-7767-A.

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

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

**CASE NOS. 23614-23617**

**EMPIRE NEW MEXICO LLC'S SECOND SUPPLEMENTAL RESPONSE TO  
GOODNIGHT MIDSTREAM PERMIAN, LLC'S SUBPOENA**

Empire New Mexico LLC (Empire) states the following for its second supplemental response to Goodnight Midstream Permian LLC's subpoena.

**REQUEST NO. 1:**

Documents, communications, correspondence, emails, data, analyses, reports, and summaries, including but not limited to internal and external correspondence, memoranda, and assessments, that address, reflect on, or concern the existence or non-existence of hydrocarbons in the San Andres formation within the Eunice Monument South Unit.

**RESPONSE:**

Empire objects to this request because it seeks information that is protected by the attorney-client privilege, the attorney work-product doctrine, and exemptions afforded consulting experts. Goodnight seeks information currently being formulated by Empire's expert witnesses and consultants in coordination with Empire's attorneys for the hearing of the instant cases. Subject to that objection, in addition to the documents submitted by Eugene Sweeney in his testimony in Case 22626, Empire submits the documents in the attached Index of Produced Documents.

**SUPPLEMENTAL RESPONSE:**

Subject to and without waiving the objections set forth in Empire's response, Empire is producing the following additional documents in response to this request:

- Robert F. Lindsey publications dated 1998, 2014 (dissertation), 2016, and 2022. Mr. Lindsey's materials from 1993-1994 are not available, as they were presented on 35 mm slides that cannot be located. However, the pertinent illustration addressed in those materials is included in his dissertation and in his 2022 publication.
- Fracture Study of the EMSU Well No. 679 Oriented Core
- Two raster logs for the core wells
- Fracture study
- Empire's communications with its expert witnesses that contain: (1) the experts' requested scope of work; and (2) information Empire provided to the experts for use in their analysis.

Exhibit B

Empire does not have other documents, including mudlogs or internal well files, that are responsive to this request.

## **SECOND SUPPLEMENTAL RESPONSE:**

As an initial matter, Empire objects to Goodnight repeatedly using this extremely broad request as a vehicle to repeatedly raise new requests for additional information. As demonstrated by Empire's multiple rounds of document production and the discussion below, Empire has gone to great lengths to fully respond to the subpoena and will object to further requests for supplementation as a misuse of the Division's subpoena.

Subject to and without waiving its objections, Empire is producing responsive, non-privileged internal communications and communications among its former employees and experts (OCD 23614-23617 02978-3230). Empire identified other communications among its former employees and Empire's counsel, which are subject to the attorney-client privilege, and communications among its employees regarding communications with counsel and preparation for the hearing in New Mexico Oil Conservation Division Case No. 24123, which are protected from disclosure by the work product doctrine and attorney-client privilege.

Empire is also producing a complete copy of the July 1, 1987 Waterflood Performance and Cash Flow Projections for Eunice Monument South Unit, Lea County, New Mexico, prepared by William M. Cobb & Associates, Inc. (OCD 23614-17 03231-03277). This report was previously produced but certain pages contained notes that blocked text.

In addition, Empire previously produced the following documents in response to this request:

- Resistivity Log for the EMSU 679 Well (OCD 23614-23617 02811-30025310090000\_MIC.pdf)
- EMSU Well 679 Core Analysis (Jan. 24, 1991) (OCD 23614-23617 02812-02850)
- EMSU-679 Core Description (OCD 23614-23617 02851)
- Infill Drilling and Waterflood Potential for Eunice Monument South Unit, Lea County, New Mexico, as of January 1, 1988, prepared by William M. Cobb & Associates, Inc. (OCD 23614-23617 02852-2872)
- Routine Core Analysis, Amerada Hess Corporation, NMGSAU #522 Well (OCD 23614-23617 02873-02930)
- July 1, 1987 Waterflood Performance and Cash Flow Projections for Eunice Monument South Unit, Lea County, New Mexico, prepared by William M. Cobb & Associates, Inc. (OCD 23614-17 02931-02977).

Please also note that Empire's initial response to the subpoena included the following documents responsive to this request:

- BO/d Bubble Maps, Log Data Coverage, EMSU "A" – CO2 Pilot High-Grade
- Exploiting the ROZ in Lithuania, Presented at 19<sup>th</sup> Annual CO2 Flooding Conference, December 14, 2013, Midland Texas;
- Residual Oil Saturation Determination for EOR Projects in Means Field, October 2012 SPE Reservoir Evaluation & Engineering

- Residual Oil Zones: The Long Term Future of Enhanced Oil Recovery in the Permian Basin and Elsewhere, 5<sup>th</sup> Annual EORI CO2 Workshop, Casper, Wyoming
- What is a Residual Oil Zone and What Makes it a Huge Oil Resource?, Melzer Consulting, September 2023
- Stranded Oil in the Residual Oil Zone, Prepared for Advances Resources International and U.S. Department of Energy, L. Stephen Melzer, February 2006
- Two Geological Case Histories of Residual Oil Zones in the Permian Basin by Independent Operators: with Core Observations, B. Trentham,

In Case No. 22626, Empire produced documents to Goodnight that were prepared by XTO in relation to the Unit. Those documents are in Goodnight's possession and are not being reproduced here.

Empire also filed its hearing testimony and exhibits in these matters on October 27, 2023. Those exhibits include approximately 370 pages of discussion and analysis that is responsive to this request. Empire is not reproducing those documents here.

Goodnight requested that Empire produce its internal well file for the EMSU #660 well under this request. That file was previously produced.

Empire is not in possession, custody, or control of other documents responsive to this request.

**REQUEST NO. 3:**

Documents, communications, correspondence, emails, data, and summaries, including but not limited to internal and external correspondence and memoranda, that address, reflect on, or concern the analysis identified in Paragraph 4 of Empire's Motion to Stay Issuance of Order, filed with the Division in Case Nos. 23614-23617 on August 25th, 2023.

**RESPONSE:**

Empire objects to this request because it seeks information that is protected by the attorney-client privilege, the attorney work-product doctrine, and exemptions afforded consulting experts. Goodnight seeks information currently being formulated by Empire's expert witnesses and consultants in coordination with Empire's attorneys for the hearing of the instant cases. Subject to that objection, please see response to Request No. 2.

**SUPPLEMENTAL RESPONSE:**

Please refer to Empire's Second Supplemental Response to Request No. 1.

**REQUEST NO. 4:**

A copy of Empire's written plan, including all drafts, to evaluate the San Andres formation for production of hydrocarbons identified by Eugene Sweeney in Case No. 22626 at the hearing on September 15, 2023. See Tr. 238:18-22.

**RESPONSE:**

See Responses to Requests Nos. 2 and 3.

**SUPPLEMENTAL RESPONSE:**

On information and belief, Mr. Sweeney was referring to documents provided to Empire by XTO, which were produced to Goodnight in Case No. 22626. Empire is not reproducing those documents here.

**REQUEST NO. 5:**

Documents, communications, correspondence, emails, data, and summaries, including but not limited to internal and external correspondence and memoranda, that address, reflect on, or concern Empire's plan to evaluate the San Andres formation for production of hydrocarbons identified by Eugene Sweeney in Case No. 22626 at the hearing on September 15, 2023. See Tr. 238:18-22.

**RESPONSE:**

See responses to Request Nos. 2, 3, and 4.

**SUPPLEMENTAL RESPONSE:**

Please refer to Empire's supplemental response to Request Nos. 3 and 4.

**REQUEST NO. 6:**

Documents, communications, correspondence, emails, data, analyses, reports, and summaries, including but not limited to internal and external correspondence, memoranda, and assessments, that address, reflect on, or concern evidence that there is communication between the proposed injection intervals in Case Nos. 23614-23617 and the overlying Grayburg formation, including core analyses.

**RESPONSE:**

Empire objects to this request because it seeks information that is protected by the attorney-client privilege, the attorney work-product doctrine, and exemptions afforded consulting experts. Goodnight seeks information currently being formulated by Empire's expert witnesses and consultants in coordination with Empire's attorneys for the hearing of the instant cases. Subject to



that objection, in addition to the documents submitted by Eugene Sweeney in his testimony in Case 22626, Empire submits the documents in the attached Index of Produced Documents.

**SUPPLEMENTAL RESPONSE:**

Please refer to Empire's supplemental response to Request No. 1.

**SECOND SUPPLEMENTAL RESPONSE:**

Please refer to Empire's Second Supplemental Response to Request No. 1. Regarding documents that show plumes of water and changes in water chemistry in the Grayburg, please refer to the paper "Utilization of Geological Mapping Techniques to Track Scaling Tendencies in the Eunice Monument South Unit Waterflood, Lea County, New Mexico," Corrosion 96, NACE International Annual Conference and Exposition (Strickland et al., March 1996), which is being produced (OCD 03278-03297). In addition, please refer to the USGS Water Chemistry Database (filtering for Lea County and Grayburg/San Andres) at: <https://data.usgs.gov/datacatalog/data/USGS:59d25d63e4b05fe04cc235f9>

Empire is also aware of water chemistry analyses that are in the possession, custody and control of Chevron.

**REQUEST NO. 7:**

Documents, communications, correspondence, emails, reports, and summaries identifying Empire's geologic pick for the top of the San Andres formation within the Eunice Monument South Unit, including references to the measured depth and/or subsea depth for the top of the San Andres formation.

**RESPONSE:**

See response to Request No. 6. The vertical limits of the Eunice Monument South Pool are defined in Oil Conservation Division Orders Nos. R-7767 and R-7767-A.

**SUPPLEMENTAL RESPONSE:**

Empire witness Nicholas Cestari prepared a structure map, which is included in Empire's hearing exhibits as Exhibit F-1. The San Andres formation top is evident in the structure map and is also identified in the cross sections Empire has provided in its hearing exhibits and the NuTech logs that Empire has produced. Empire does not have a document beyond what has been provided that identifies the San Andres formation tops and is not required to prepare documents for Goodnight.

Respectfully submitted by:

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**FIFTH JUDICIAL DISTRICT COURT  
COUNTY OF LEA  
STATE OF NEW MEXICO**

FILED  
5th JUDICIAL DISTRICT COURT  
Lea County  
3/11/2024 4:10 PM  
NELDA CUELLAR  
CLERK OF THE COURT  
Cory Hagedoorn

**DASCO CATTLE COMPANY, LLC**

**Plaintiff,**

**v.**

**Cause No. D-506-CV-2023-00122**

**GOODNIGHT MIDSTREAM PERMIAN, LLC**

**Defendant.**

**EMPIRE NEW MEXICO, LLC'S RESPONSE TO SUBPOENA**

**COMES NOW** Empire New Mexico, LLC and as and for its objections and response to the Subpoena served upon it in this matter would object and respond as follows:<sup>1</sup>

1. All communications including but not limited to letters, emails, text messages, and voicemails on or after January 1, 2017, by and between You and DASCO, that reference, refer to, and/or pertain to any of the following:

- A. Goodnight Midstream Permian, LLC;
- B. the use of DASCO's surface or subsurface lands for purposes of transporting or disposing of produced water, and/or drilling of injection or disposal wells;
- C. the use of DASCO's surface or subsurface lands for purposes of transporting or injecting CO2, and/or drilling of injection or disposal wells for CO2;
- D. the use of DASCO's surface or subsurface lands for purposes of exploring for hydrocarbons and/or operating oil and/or gas wells;
- E. the Eunice Monument South Unit;
- F. the Arrowhead Grayburg Unit.

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<sup>1</sup> Empire New Mexico LLC was not formed until March, 2021. Therefor Empire would not have any responsive documents prior to that date.

**OBJECTION:** Empire objects to this Request as it seeks materials and information that appear to have nothing whatsoever to do with the litigation for which the information is being sought and is therefore neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Nevertheless, and subject to that objection, Empire states that after a reasonable search of its electronic data base, there are none.

2. Any and all documents prepared by You or for You containing forecasts, estimates, projections of revenue or costs, or other financial planning related to any agreement or potential agreement or contract evaluation related to any agreement of any kind between You and DASCO.

**OBJECTION:** Empire objects to this Request as it seeks materials and information that appear to have nothing whatsoever to do with the litigation for which the information is being sought and is therefore neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Any such documents would also be protected as proprietary and trade secret privileged information. Nevertheless, and subject to that objection, Empire states that after a reasonable search of its electronic data base, there are none.

3. All communications, specifically including Your internal communications, that refer to surface use of DASCO lands within or around the surface of the Eunice Monument South Unit or the Arrowhead Grayburg Unit.

**OBJECTION:** Empire objects to this Request as it seeks materials and information that appear to have nothing whatsoever to do with the litigation for which the information is being sought and is therefore neither relevant nor reasonably calculated to

lead to the discovery of admissible evidence. Nevertheless, and subject to that objection, Empire states that after a reasonable search of its electronic data base, there are none.

4. All communications between You and Atlee Snyder (to the extent not covered by Request No. 1), or any of his employees, agents, and anyone acting on his behalf, including but not limited to consultants, accountants, and other experts and professionals send or received within, or relevant to, the period January 1, 2017 to Present.

**OBJECTION:** Empire objects to this Request as it seeks materials and information that appear to have nothing whatsoever to do with the litigation for which the information is being sought and is therefore neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Nevertheless, and subject to that objection, Empire states that after a reasonable search of its electronic data base, there are none.

5. All communications between You and DASCO (to the extent not covered by Request No. 1 or 4), or any of its employees, agents, and anyone acting on its behalf, including but not limited to consultants, accountants, and other experts and professionals send or received within, or relevant to, the period January 1, 2017 to Present.

**OBJECTION:** Empire objects to this Request as it seeks materials and information that appear to have nothing whatsoever to do with the litigation for which the information is being sought and is therefore neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Nevertheless, and subject to that objection, Empire states that after a reasonable search of its electronic data base, there are none.

6. Copies of all formal or informal notices, and related documents and communications, that You sent or were required to send to DASCO related to applications you

have filed with the New Mexico Oil Conservation Division at any time between January 1, 2017 and Present.

**OBJECTION:** Empire objects to this Request as it seeks materials and information that appear to have nothing whatsoever to do with the litigation for which the information is being sought and is therefore neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition any such documents would be public information and as readily available to Goodnight as to Empire. Nevertheless, and subject to that objection, Empire states that after a reasonable search of its electronic data base, there are none.

**HINKLE SHANOR LLP**

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 11, 2024, I caused the foregoing *Response* along with this Certificate of Service, to be served and filed electronically through the Tyler Technologies Odyssey File & Serve electronic filing system, which caused all parties or counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

**HINKLE SHANOR LLP**  
/s/ Dana S. Hardy