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 RESPONSE TO EXPEDITED MOTION FOR RECONSIDERATION OF ORDER PARTIALLY QUASHING GOODNIGHT MIDSTREAM PERMIAN, LLC'S SUBPOENA DUCES TECUM

Empire New Mexico, LLC ("Empire") submits the following response to the Expedited Motion for Reconsideration of Order Partially Quashing Goodnight Midstream Permian LLC's Subpoena Duces Tecum ("Motion"). As discussed below, the New Mexico Oil Conservation Commission ("Commission") should deny the Motion.

1. Goodnight's Request Nos. 7 – 9 seek reserve reports and estimates for the Eunice Monument South Unit ("EMSU"), including those that were used to underwrite Empire's acquisition of the unit, as well as "internal and external communications, emails, memoranda, and summaries, that reflect on, discuss, reference, or concern" the requested documents.

2. Empire objected to the requests for several reasons, including that the information sought is not reasonably calculated to lead to the discovery of admissible evidence in these Commission cases, which only involve whether Goodnight's proposed injection into Empire's unitized interval will impair correlative rights and/or result in waste under the New Mexico Oil and Gas Act. *See* NMSA 1978, § 70-2-6 (Commission and Division have authority "over all matters relating to the conservation of oil and gas . . ."). Empire pointed out that the Commission does not have jurisdiction over financial matters, contract issues, damages, or business transactions. Empire also objected to these requests on the ground that they are overly broad in seeking *all* internal and external communications that "reflect on, discuss, reference, or concern" the requested information.

3. The Commission correctly granted Empire's motion to quash the requests because they relate to financing and are not reasonably calculated to lead to the discovery of admissible evidence regarding the technical issues in these cases.

4. Goodnight now asks the Commission to reconsider its decision, claiming that the reserves reports and estimates will include information regarding whether economically

recoverable oil exists in the San Andres formation. *See* Motion at 3-4. Goodnight attempts to argue that because reserve reports have been deemed relevant in litigation that resolves issues not before the Commission (e.g., damages claims) that they must be relevant here and should be produced. It is notable that despite citing several cases, Goodnight does not attempt to draw any parallel between the issues being resolved in those cases and the cases before the Commission. This is because the fact that such reports are relevant and appropriate discovery in another setting, under different rules, resolving entirely separate legal issues (e.g., damages claims) has no bearing on whether they should be produced in this matter. Furthermore, Goodnight fundamentally misunderstands the limited nature of reserves reports in the United States and its requests are not reasonably calculated to lead to the discovery of admissible evidence. Regardless, Empire has not prepared reserves reports that address whether there is economically recoverable oil in the San Andres.

5. In accordance with United States Securities and Exchange Commission ("SEC") requirements, publicly traded companies in the United States are only required to file reserve reports that include "proved" – rather than probable or possible – reserves. *See* 17 C.F.R. § 210.4-10; *Cf. Sunray DX Oil Co. v. Helmerich & Payne, Inc.*, 398 F.2d 447, 450 (10th Cir. 1968) ("[T]he Securities and Exchange Commission permits disclosure only when such reserves are within the 'proved' category."); *see also* 17 C.F.R. § 210.4-10(c)(3) (itemizing excludable amortization costs). The SEC's definition of "proved" reserves is narrow and includes many restrictions. *See* 17 C.F.R. § 210.4-10.[1] With respect to enhanced recovery projects, reserves are not considered "proved" unless the project has commenced or pilot testing has occurred. *See id.*

[1] The complete definition of "proved oil and gas reserves" states:

> Proved oil and gas reserves are those quantities of oil and gas, which, by analysis of geoscience and engineering data, can be estimated with reasonable certainty to be economically producible—from

6. Based on the above, Empire's reserves reports do not address tertiary recovery, are not specific to the EMSU or the San Andres formation, and are therefore not responsive to Goodnight Request Nos. 7-9. Presumably, Goodnight seeks the reports that are prepared under highly restrictive rules (that are not applicable to the Commission's findings) so that it can make

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a given date forward, from known reservoirs, and under existing economic conditions, operating methods, and government regulations—prior to the time at which contracts providing the right to operate expire, unless evidence indicates that renewal is reasonably certain, regardless of whether deterministic or probabilistic methods are used for the estimation. The project to extract the hydrocarbons must have commenced or the operator must be reasonably certain that it will commence the project within a reasonable time.

(i) The area of the reservoir considered as proved includes:

(A) The area identified by drilling and limited by fluid contacts, if any, and

(B) Adjacent undrilled portions of the reservoir that can, with reasonable certainty, be judged to be continuous with it and to contain economically producible oil or gas on the basis of available geoscience and engineering data.

(ii) In the absence of data on fluid contacts, proved quantities in a reservoir are limited by the lowest known hydrocarbons (LKH) as seen in a well penetration unless geoscience, engineering, or performance data and reliable technology establishes a lower contact with reasonable certainty.

(iii) Where direct observation from well penetrations has defined a highest known oil (HKO) elevation and the potential exists for an associated gas cap, proved oil reserves may be assigned in the structurally higher portions of the reservoir only if geoscience, engineering, or performance data and reliable technology establish the higher contact with reasonable certainty.

(iv) Reserves which can be produced economically through application of improved recovery techniques (including, but not limited to, fluid injection) are included in the proved classification when:

(A) Successful testing by a pilot project in an area of the reservoir with properties no more favorable than in the reservoir as a whole, the operation of an installed program in the reservoir or an analogous reservoir, or other evidence using reliable technology establishes the reasonable certainty of the engineering analysis on which the project or program was based; and

(B) The project has been approved for development by all necessary parties and entities, including governmental entities.

(v) Existing economic conditions include prices and costs at which economic producibility from a reservoir is to be determined. The price shall be the average price during the 12–month period prior to the ending date of the period covered by the report, determined as an unweighted arithmetic average of the first-day-of-the-month price for each month within such period, unless prices are defined by contractual arrangements, excluding escalations based upon future conditions.

17 C.F.R. § 210.4-10.

another misleading argument that because the potential reserves are not certain enough to meet SEC requirements, they are not sufficient for the Commission to find protectable correlative rights. The two standards are created for entirely different reasons and have nothing in common. Reserve reports prepared for one purposes are not only irrelevant to the Commission's inquiry but should not be sought in order to support the misleading conclusion that Goodnight tacitly admits as its purpose for seeking the reports. Regardless, the reports are available via Empire's publicly filed Forms 10-K: https://s3.amazonaws.com/sec.irpass.cc/2431/0001072613-24-000353.htm#exh99-1_18813.htm, which Goodnight has already identified as being available for review in footnote 6 of the Motion. In short, this is just another example of Goodnight's exhausting, overaggressive approach to discovery.

7. Furthermore, Goodnight's request is not reasonably calculated to lead to the discovery of admissible evidence because the New Mexico Oil and Gas Act requires the Commission and Division to prevent waste and protect correlative rights. *See* NMSA 1978, § 70-2-6. This obligation has never been limited to protecting only the limited reserves that are "proved" according to the SEC, and imposing any such limitation would contravene the requirements of the Act.

For the foregoing reasons, Goodnight's Motion should be denied.

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 June 19, 2024:

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