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

APPLICATION OF EMPIRE NEW MEXICO LLC TO REVOKE THE INJECTION AUTHORITY GRANTED UNDER ORDER NO. R-1647, LEA COUNTY, NEW MEXICO – EME SWD #033M WELL OPERATED BY RICE OPERATING. **Case No. 24433**

APPLICATION OF EMPIRE NEW MEXICO LLC TO REVOKE THE INJECTION AUTHORITY GRANTED UNDER ORDER NO. R-3102, LEA COUNTY, NEW MEXICO – EME SWD #021M WELL OPERATED BY RICE OPERATING. **Case No. 24434**

APPLICATION OF EMPIRE NEW MEXICO LLC TO REVOKE THE INJECTION AUTHORITY GRANTED UNDER ADMINISTRATIVE ORDER NO. SWD-985-A, LEA COUNTY, NEW MEXICO – STATE E TRACT 27 #001 WELL OPERATED BY RICE OPERATING. **Case No. 24435**

APPLICATION OF EMPIRE NEW MEXICO LLC TO REVOKE THE INJECTION AUTHORITY GRANTED UNDER ADMINISTRATIVE ORDER NO. SWD-1754, LEA COUNTY, NEW MEXICO – N 11#00-1 WELL OPERATED BY PERMIAN LINE SERVICE. **Case No. 24436**

APPLICATION OF EMPIRE NEW MEXICO LLC TO REVOKE THE INJECTION AUTHORITY GRANTED UNDER ADMINISTRATIVE ORDER NO. SWD-184, LEA COUNTY, NEW MEXICO – BLINEBRY DRINKARD SWD #018 WELL OPERATED BY RICE OPERATING COMPANY. **Case No. 24437**

APPLICATION OF EMPIRE NEW MEXICO LLC TO REVOKE THE INJECTION AUTHORITY GRANTED UNDER ADMINISTRATIVE ORDER NO. SWD-965, LEA COUNTY, NEW MEXICO – BLINEBRY DRINKARD SWD #020 WELL OPERATED BY RICE OPERATING COMPANY. **Case No. 24438**

APPLICATION OF EMPIRE NEW MEXICO LLC TO REVOKE THE INJECTION AUTHORITY GRANTED UNDER ADMINISTRATIVE ORDER NO. SWD-1751, LEA COUNTY, NEW MEXICO – N 7 #001 WELL OPERATED BY RICE OPERATING COMPANY. **Case No. 24439**

NOTICE OF AGREEMENT WITH EMPIRE NEW MEXICO LLC'S MOTION TO DISMISS

Respondents Rice Operating Company ("Rice") and Permian Line Company, LLC ("Permian"), the ***only*** respondents and adverse parties in these applications, file this notice of agreement with Applicant Empire New Mexico LLC's ("Empire") Motion to Dismiss (filed June 21, 2024). On June 21, 2024, Empire filed the Motion to Dismiss all of the above applications against Rice and Permian. Rice and Permian, the only parties whose interests are affected by the Motion to Dismiss, consent to dismissal of the Applications. The Motion to Dismiss should be granted, because the only parties whose interests are affected by the Applications, or the dismissal of the Applications, consent to dismissal.

Dismissal would, of course, be pro-forma. But intervenor Goodnight Midstream Permian LLC ("Goodnight") opposes the Motion to Dismiss. *See* Motion to Dismiss at 1. In the Motion to Dismiss, Empire lays out the substantial reasons that dismissal of these matters is proper, including that Rice and Permian have significant vested rights in their wells and they prudently operate their wastewater disposal wells. *See* Motion to Dismiss at 4. Rice and Permian agree and incorporate by reference Empire's arguments for dismissal here.

Rice and Permian file this Notice to make plain to the Division and to make explicit that they agree with and support fully the Motion to Dismiss. Rice and Permian also seek to point out that the Division should not consider Goodnight's opposition to the Motion to Dismiss, if it ever

endeavors to articulate that opposition – as of today, Goodnight has not filed (or provided any counsel with) any written reasons for its objection to the Motion to Dismiss.

Courts around the country recognize that even co-defendants, setting aside intervenors, lack standing to oppose a party plaintiff's agreement to dismiss claims against a defendant. *See, e.g., Thurman v. Wood Grp. Prod. Servs., Inc.*, No. 09-4142 Sec.: J(3), 2010 U.S. Dist. LEXIS 132190, at *4–5 (E.D. La. Dec. 14, 2010) ("[C]o-defendants do not have standing to oppose a defendant's motion for summary judgment when the motion is unopposed by the plaintiff." (citing *C.F. Bean Corp. v. Clayton Indus., Ltd.*, No. 95-161, 1996 U.S. Dist. LEXIS 12182, 1996 WL 470633, at *1 (E.D. La. Aug. 19, 1996)); *Blonder v. Casco Inn Residential Care, Inc.*, 2000 U.S. Dist. LEXIS 8054, at *1 (D. Me. May 4, 2000); *Hawes v. Blast-Tek, Inc.*, No. 09-365, 2010 U.S. Dist. LEXIS 67089, at *3–7 (D. Minn. July 2, 2010) (adopting the Blonder rule and denying standing to a codefendant who opposed another codefendant's motion for summary judgment); *Eckert v. City of Sacramento & Union Pac. R.R. Co.*, No. 2:07-cv-00825-GEB-GGH, 2009 U.S. Dist. LEXIS 95655, at *7 (E.D. Cal. Sept. 29, 2009)*8 (following the *Blonder* reasoning in denying standing to the co-party). In *Blonder*, the United States District Court for the District of Maine concluded that "principles underlying Rule 56" require dismissal. The Court reasoned that requiring a plaintiff to continue to pursue a claim the plaintiff wants to dismiss and requiring a defendant to "endure" the suit when the parties agree it should be dismissed runs contrary to the principle that justice should be provided expediently whenever "legally proper." *Blonder*, U.S. Dist. LEXIS 8054, at *2.

Courts have followed that reasoning, and so should the Division. Both the Applicant, Empire, and the Respondents, Rice and Permian, agree that Empire should not continue to pursue its claims. Providing the relief that the parties request – dismissal of the applications – is

"legally proper." It would be improper and punitive to require the parties and the Division to continue to undergo the expenditure of resources and unknown pitfalls of litigation when the parties agreed that Empire will not pursue its Applications.

Courts finding that parties plaintiff and parties defendant are entitled to dismissal of claims have not sought to analyze at all the prejudice to the co-defendants. But it bears pointing out here that there is no prejudice to Goodnight in dismissal of these Applications. Goodnight does not assert, because it cannot, that it has any interest (financial or otherwise) in the SWD wells at issue in these Applications. Rather, at the May 16, 2024, in which the Hearing Officer granted Goodnight's oral motion to intervene (which Empire asserts it will move the Division to reconsider), Goodnight's only basis for intervention was that "any action that the [D]ivision takes" on these applications to "affect [Rice's or Permian's] opportunity or ability to inject into its well[s] will have a substantial impact, potentially, on Goodnight's similarly situated wells." Hearing Tr. at 82:7-24 (May 16, 2024); *id.* at 96:10-11 (allowing intervention of Goodnight into these Applications against Rice and Permian). If the Division dismisses these Applications against Rice and Permian, then the only basis for Goodnight's intervention – a possible ruling by the Division affecting Rice's and Permian's injection rights – is completely alleviated; the Division will make no ruling, and these Application cannot, therefore, affect Goodnight's injection rights. Thus, dismissal of these Applications against Rice and Permian actually avoids completely the harm that Goodnight alleges it would suffer from these cases. Dismissal, therefore, is appropriate and proper.

Finally, the Commission stayed these cases on June 26, 2024. *See* Order to Stay Proceedings. A stay of proceedings does not affect the ability of a party to dismiss its case, and the court's ability to dismiss the case. *See, e.g., O.F. Mossberg & Sons, Inc. v. Timney Triggers*,

LLC, 955 F.3d 990, 993 (Fed. Cir. 2020). And that makes sense. It falls precisely in line with the reasoning in cases like *Blonder* above: it is unjust to require a party (or applicant or respondent here) to continue to bear the burden of litigation if the parties agree that the claims should not be pursued. Thus, given that Empire and Rice and Permian agree that dismissal of these applications is proper right now, and given that dismissal avoids the alleged harms on the basis of which Goodnight intervened, the Division properly should dismiss the Applications.

CONCLUSION

Empire has moved the division to dismiss all of these Applications against Rice and Permian. Rice and Permian agree to the dismissal. The dismissal would avoid the potential harms which were the basis for Goodnight's intervention. The Division properly should, therefore, grant the Motion to Dismiss and dismisses these cases.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on counsel of record by electronic mail this 5th day of July, 2024.

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