

**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

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

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

**CASE NO. 24123
ORDER NO. R-22869-A**

**GOODNIGHT'S MOTION TO QUASH, IN PART,
EMPIRE'S SUBPOENA DUCES TECUM DATED JUNE 3, 2024**

Pursuant to Rules 1-026(C) and 1-045(C)(2)(b)(i) NMRA, Goodnight Midstream Permian, LLC ("Goodnight"), by and through undersigned counsel, hereby files this motion to quash, in part, Empire's New Mexico, LLC's Subpoena, issued by the New Mexico Oil

Conservation Commission on June 3, 2024 (the “Subpoena”). In support, Goodnight states as follows:

BACKGROUND

On March 5, 2024, the Commission issued Goodnight’s subpoena for production of documents to Empire. Empire filed a Motion seeking to quash the Goodnight’s subpoena, in part, which was granted by Commission on or about June 4, 2024. At Empire’s request, the Commission issued Empire’s June 3, 2024 Subpoena to Goodnight shortly before that ruling. Empire’s Subpoena requests many of the same categories of documents as Goodnight’s earlier subpoena. As a matter of fairness, the scope of discovery Empire requested, and that the Commission ordered as to Goodnight’s subpoena equally applies to the scope of discovery sought in the Subpoena.

On June 19, 2024, Goodnight’s counsel conferred with Empire regarding the overbroad scope of the Subpoena by videoconference. Empire would not agree to limit the scope of the Subpoena consistent with the Commission’s general rulings on relevant discovery regarding Goodnight’s March 5, 2024 subpoena. Goodnight files this motion to partially quash the Subpoena consistent with the discovery and admissibility rulings the Commission already established in: (1) the June 4, 2024 *Order Partially Granting Empire New Mexico LLC’s Objections to and Motion to Quash Goodnight Midstream Permian, LLC’s Subpoena Duces Tecum*, now amended in the July 2, 2024 *Amended Order* (the “**Discovery Order**”); and (2) the Commission’s July 2, 2024 *Joint Order on Goodnight Midstream Permian L.L.C.’s Motion to Limit Scope of Hearing on Cases within the Eunice Monument South Unit and the Oil Conservation Motion Concerning the Scope of the Evidentiary Hearing set for September 23-27, 2024* (the “**Scope Order**”).

The Discovery Order and Scope Order establish the scope of appropriate discovery. Under Rule 1-026 NMRA, one of the fundamental goals of discovery is to ensure that the litigating parties

have a fair and balanced opportunity to conduct discovery so that evidentiary hearings are not trial by ambush. It is also important that parties are not subjected to irrelevant or unduly burdensome discovery, i.e., discovery aimed at issues not likely to lead to the discovery of admissible evidence.

ARGUMENT

The Subpoena contains thirty-one multi-part requests. Goodnight has objected to each, in part, along the lines of the Commission's rulings in the Discovery Order and the Scope Order. Goodnight incorporates and reasserts each objection set forth in its response to the Subpoena. *See* Goodnight's Responses, attached as Exhibit 1; *see also* Rule 1-010(C) NMRA.

A. Standard

Pursuant to pursuant to NMSA 1978, §70-2-8 and NMAC §19.15.4.16.A, “[t]he director . . . may consider pre-hearing motions, such as motions for protection or quashing of subpoenas, prior to the hearing . . . or [] reserve such matters for consideration at a hearing on the merits.” NMAC § 19.15.4.16.A. Rule 1-045(C)(2)(b)(i) NMRA provides that “a person commanded to produce and permit inspection, copying, testing, or sampling or a person who has a legal interest in or the legal right to possession of the designated material or premises may serve a written objection on all parties to the lawsuit or file a motion to quash the subpoena with the court[,]” and Rule 1-045(C)(3)(a) NMRA provides that “[o]n timely motion, the court by which a subpoena was issued *shall* quash or modify the subpoena if it . . . (iv) subjects a person to undue burden.”

B. The June 3, 2024 Empire Subpoena Should Be Quashed In Part, and the Commission Should Issue a Protective Order As to Empire's Discovery Requests Aimed At Matters Contradicting the Commission's Discovery Order and Scope Order.

In that Discovery Order, the Commission, in part, sets forth the following general ruling as to all of the requests in Goodnight's March 5, 2024 subpoena:

As a general ruling on all requests:

1. In light of Empire's reliance on orders dating back to 1984 in its pending motion to dismiss, the lack of temporal limitation in Goodnight's requests is not unreasonable.
2. To minimize the burden on responding to the subpoena, Empire may properly withhold any documents otherwise responsive to these requests that it determines in good faith are subject to attorney client or attorney work-product privilege without the necessity of creating a privilege log.
3. Goodnight shall sign a confidentiality and nondisclosure agreement that further mandates destruction after the resolution of these cases of all documents produced by Empire that it asserts constitute trade or proprietary secrets.
4. Any documents or other items responsive to requests in the subpoena that are not quashed by this order shall be produced within fourteen (14) days of the date of this order.

...

Discovery Order, pp. 2-3. The Commission further added additional request-specific rulings as to the scope of relevant discovery related to the September 23-27 hearing in these matters:

Request No. 8: This request is unduly burdensome with respect to any non-technical analysis that Empire relied upon in its estimates as described in this request. In light of Empire's representation that it will produce all such reports, this request should be limited to any other documents that reflect technical analysis as relied upon by Empire in such estimates.

Request Nos. 7 and 9: These requests do not appear reasonably calculated to provide relevant discovery on the technical issues in these cases, but on Empire's financial considerations for acquiring its working interest in the EMSU. These requests are hereby quashed.

Request No. 10: This request is unduly burdensome with respect to any non-technical analysis that Empire relied upon in its plans for development as submitted to the New Mexico State Land Office. In light of Empire's representation that it will produce all such plans, this request should be limited to any other documents that reflect technical analysis as relied upon by Empire in its development and submission of such plans.

Request No. 11: This request is unduly burdensome with respect to any non-technical analysis that Empire relied upon in its reports as submitted to the Division. In light of Empire's representation that it will produce all such reports, this request should be limited to any other documents that reflect technical

analysis as relied upon by Empire in its development and submission of such reports.

...

Request Nos. 14 -17: The motion is denied with respect to these requests. The Chairman notes that these requests seek purely technical information relevant to the issues, and notes that the scope of the issues before the Commission are currently broader than as characterized by Empire, specifically, as noted at page 7 of Goodnight's response to Empire's motion to dismiss in case nos. 24277 and 24278.

Discovery Order, pp. 2-3. Goodnight sought a reconsideration as to requests Nos. 7-9. At the Commission's June 20, 2024 meeting, the Commission recognized that Request No. 8 did, in fact, seek "relevant discovery on the technical issues in these cases" but did not otherwise alter its ruling.

Goodnight recognizes that the Subpoena was issued on June 3, 2024, prior to the Discovery Order on June 4, 2024, as amended on July 2, 2024. Even so, these requests are bound by the Discovery Order. The nature of the relevance ruling cannot meaningfully apply only to matters that *Goodnight* seeks to discover – facts and documents (not requests) are relevant or irrelevant. While it is true the Commission has the discretion to "limit[] the terms . . . of . . . discovery[,]” *see* Rule 1-026(C)(2), it would strike at the very purpose of Rule 1-026 for that ruling to grant a broader scope of relevance to Empire than to Goodnight.

For this reason, Goodnight has objected, in part, to each request set forth by Empire to the extent Subpoena request seeks discovery of any matter that is not "technical information relevant to the issues,” *see* Discovery Order, p. 3 (ruling on Requests Nos. 14-17). Goodnight asks that the Commission issue an order partially quashing the Subpoena consistent with its prior ruling as to relevance in the Discovery Order.

Goodnight also seeks an order partly quashing the Subpoena to the extent it is aimed at matters outside the scope of the September 23-27, 2024 hearing. At the Commission's June 20,

2024 meeting, the Commission orally ruled that the September 23-27 hearing would be limited to applications involving Goodnight's salt-water injection ("SWD") wells located within the Eunice Monument South Unit ("EMSU"). That ruling was memorialized in the Commission's July 2, 2024 *Joint Order on Goodnight Midstream Permian L.L.C.'s Motion to Limit Scope of Hearing on Cases within the Eunice Monument South Unit and the Oil Conservation Motion Concerning the Scope of the Evidentiary Hearing set for September 23-27, 2024* (the "Scope Order"). The Scope Order provided in part that:

...

2. At said hearing, the parties shall submit all evidence, testimony, and legal argument on the issue of the existence, extent of and possible interference with a residual oil zone the Eunice Monument South Unit ("EMSU") by produced water injection activities undertaken by Goodnight.
3. **Such evidence, testimony, and legal argument shall be limited to applications and wells by Goodnight or by Empire New Mexico LLC within the EMSU** and shall include the following cases:
 - a. Commission Case No. 24123;
 - b. Division Case No. – 23775;
 - c. Division Case Nos – 23614-23617;
 - d. Division Case Nos – 24018-24020, and 24025; and

Scope Order, p. 2 (emphasis added). Given the Subpoena was issued under the auspices of that hearing (*see* Commission's June 3, 2024 Pre-Hearing Order ruling on subpoenas within the scope of the above-captioned matters), Empire is bound by the Commission's ruling regarding what evidence is admissible.

It is fundamental that "[p]arties may obtain discovery of any information, not privileged, which is relevant to the subject matter involved in the pending action. **The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.**" Rule 1-026(B)(1) NMRA (emphasis added). Thus, Empire's requests, to the extent they seek information about wells and matters outside the

EMSU, are not “reasonably calculated to lead to the discovery of admissible evidence,” *id.* - such “evidence . . . [is not] limited to applications and wells . . . within the EMSU.” Scope Order, p. 2. Discovery aimed at matters outside the EMSU, thus, is unduly burdensome. *See* NMRA 1-045(C).

Goodnight has objected, in part, and seeks to quash the Subpoena to the extent it is aimed at matters outside the scope of the September hearing.

C. As a Matter of Fundamental Fairness Empire Should Not Be Permitted a Broader Scope of Discovery than Goodnight.

Empire’s position is that Empire should be permitted to discover the same sort of non-technical information from Goodnight, that Empire argued Goodnight should not be permitted to discover from Empire. Empire first obtained a favorable ruling on the scope of discovery it owed to Goodnight, and now seeks to avoid the ruling it sought.

Empire should not *now* be permitted to complain about the ruling it sought and obtained – it is a widely accepted principle that: “a party may not appeal from a judgment entered on its own motion or provisions in a judgment inserted at its own request.” *Green v. Kelischek*, 759 S.E.2d 106, 111 (N.C. Ct. App. 2014). For Empire to assert that the Discovery Order’s ruling about relevance, undue burden, and scope of discovery does not *also* apply to the Subpoena substantially lacks good faith and belies Empire’s attempt to use this Commission’s Discovery Order to gain an unfair tactical advantage.

“[T]he spirit of the [rules of discovery] is violated when advocates attempt to use discovery tools as tactical weapons rather than to expose the facts and illuminate the issues” *Quarrie v. Wells*, No. 17-350 MV/GBW, 2020 U.S. Dist. LEXIS 236358, at *44 (D.N.M. Dec. 16, 2020); *Baez-Eliza v. Instituto Psicoterapeutico De P.R.*, No. 09-1990 (SEC), 2011 U.S. Dist. LEXIS 937, at *20 (D.P.R. Jan. 5, 2011) (“The discovery process delineated in the Federal Rules of Civil Procedure is intended to allow litigants to ‘prepare for trial in a manner that will promote

the just, speedy, and inexpensive determination of the action....’. . . . ‘Thus, the spirit of the rules is violated when advocates attempt to use discovery tools as tactical weapons rather than to expose the facts and illuminate the issues....’”) (quoting, respectively, 8 C. Wright, A. Miller, & R. Marcus, Federal Practice and Procedure § 2001, p. 22 (3rd ed. 2010) and *Burlington Northern & Santa Fe Ry. Co. v. United States District Court for the District of Montana*, 408 F.3d 1142, 1149 (9th Cir. 2005)).

CONCLUSION

For this reason, Goodnight respectfully requests that the Commission sustain Goodnight’s objections as set forth in Exhibit 1, and partly quash Empire’s Subpoena, and for such other and further relief as the Commission may deem appropriate and necessary.

DATED: July 8, 2024

Respectfully submitted,

HOLLAND & HART LLP

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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2024, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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CASE NO. 24278

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CASE NO. 23775

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

**CASE NO. 24123
ORDER NO. R-22869-A**

**GOODNIGHT’S OBJECTIONS AND RESPONSES TO
EMPIRE’S SUBPOENA DUCES TECUM DATED JUNE 3, 2024**

Pursuant to Rules 1-026, 1-034, and 1-045 NMRA, Goodnight Midstream Permian, LLC (“Goodnight”), by and through undersigned counsel, hereby serves these responses and objections

EXHIBIT - 1

to Empire New Mexico, LLC's, Subpoena, issued by the New Mexico Oil Conservation Commission on June 3, 2024 (the "Subpoena").

PRELIMINARY STATEMENT

By agreement between counsel for Goodnight and counsel for Empire: (1) Goodnight need not produce documents already publicly available, although in good faith, where it can easily point to such records, Goodnight has done so; (2) as to Request No. 31, Goodnight will not respond to subparts b, c, or d; (3) these objections and responses are served timely on or before July 8, 2024, during which time Goodnight is also entitled to file a motion for protective order or to quash this Subpoena.

Where Goodnight's responses indicate documents will be produced, Goodnight has and will conduct a reasonable search of the paper and electronic files reasonably likely to contain responsive and non-privileged information and will produce copies of non-privileged responsive documents in a reasonably usable form.

Goodnight submits these responses and objections without waiver of any right to object to any requested information or documents and without affirming or denying any conclusory or argumentative statements made by Empire in the subpoena requests. Goodnight advises Empire that its responses and document production are based upon the knowledge, information, and belief that it has acquired to the present date. These responses and objections, and any subsequent document production are, therefore, subject to supplementation. Pursuant to the applicable provisions of the New Mexico Rules of Civil Procedure and any other applicable rules, Goodnight reserves its right to amend these responses, assert additional objections, and supplement any subsequent document production, if deemed necessary in its discretion, to respond to these requests.

GENERAL OBJECTIONS

1. Goodnight objects to these requests on the basis and to the extent that they seek documents or information of a non-technical nature outside the scope of permissible discovery as set forth in the June 4, 2024 *Order Partially Granting Empire New Mexico LLC's Objections to and Motion to Quash Goodnight Midstream Permian, LLC's Subpoena Duces Tecum* (the "Discovery Order"), now amended in the July 2, 2024 *Amended Order Partially Granting Empire New Mexico LLC's Objections to and Motion to Quash Goodnight Midstream Permian, LLC's Subpoena Duces Tecum* (the "Discovery Order"), issued in Case Nos. 24278, 24277, 23614-23617, 24018-24027, and 23775. In that Discovery Order, the Commission, in part, set forth the following ruling:

As a general ruling on all requests:

1. In light of Empire's reliance on orders dating back to 1984 in its pending motion to dismiss, the lack of temporal limitation in Goodnight's requests is not unreasonable.
2. To minimize the burden on responding to the subpoena, Empire may properly withhold any documents otherwise responsive to these requests that it determines in good faith are subject to attorney client or attorney work-product privilege without the necessity of creating a privilege log.
3. Goodnight shall sign a confidentiality and nondisclosure agreement that further mandates destruction after the resolution of these cases of all documents produced by Empire that it asserts constitute trade or proprietary secrets.
4. Any documents or other items responsive to requests in the subpoena that are not quashed by this order shall be produced within fourteen (14) days of the date of this order.

...

With respect to specific requests, the Chairman rule[d] as follows:

...

Request No. 8: This request is unduly burdensome with respect to any non-technical analysis that Empire relied upon in its estimates as described in this request. In light of Empire's representation that it will produce all such reports,

this request should be limited to any other documents that reflect technical analysis as relied upon by Empire in such estimates.

Request Nos. 7 and 9: These requests do not appear reasonably calculated to provide relevant discovery on the technical issues in these cases, but on Empire's financial considerations for acquiring its working interest in the EMSU. These requests are hereby quashed.

Request No. 10: This request is unduly burdensome with respect to any non-technical analysis that Empire relied upon in its plans for development as submitted to the New Mexico State Land Office. In light of Empire's representation that it will produce all such plans, this request should be limited to any other documents that reflect technical analysis as relied upon by Empire in its development and submission of such plans.

Request No. 11: This request is unduly burdensome with respect to any non-technical analysis that Empire relied upon in its reports as submitted to the Division. In light of Empire's representation that it will produce all such reports, this request should be limited to any other documents that reflect technical analysis as relied upon by Empire in its development and submission of such reports.

...

Request Nos. 14 -17: The motion is denied with respect to these requests. The Chairman notes that these requests seek purely technical information relevant to the issues, and notes that the scope of the issues before the Commission are currently broader than as characterized by Empire, specifically, as noted at page 7 of Goodnight's response to Empire's motion to dismiss in case nos. 24277 and 24278.

Discovery Order, pp. 2-3. Although Goodnight sought a reconsideration of a narrow portion of that Discovery Order (as to requests Nos. 7-9), the oral ruling by the Commission at its June 20, 2024 did not displace any portion of this general ruling as to all requests, and as to requests Nos. 7-9 only determined that Request No. 8 did, in fact, seek "relevant discovery on the technical issues in these cases" and thus required a response from Empire.

Goodnight recognizes that the instant Subpoena was issued on June 3, 2024, prior to the Discovery Order on June 4, 2024, as amended on July 2, 2024; even so, Empire asserts that these requests are bound by the Discovery Order. Goodnight, thus, also generally objects to the requests

in this Subpoena to the extent they seek documents and information clearly outside the scope of permissible discovery based on the above rulings in the Discovery Order.

2. Goodnight objects to these requests to the extent each seeks information or documents protected by attorney-client privilege, work-product doctrine, and/or any other applicable doctrine, or information that constitutes confidential and proprietary information or trade secrets. *See* Rule 1-026(B)(1) NMRA (discovery limited to matters not privileged); Rule 1-026(B)(4) NMRA (work product not discoverable); Rule 11-503 (lawyer-client and joint defense privilege); Rules 1-026(C)(7) (protective order may prevent or limit disclosure of trade secrets); Rule 11-508 (party may object and refuse to disclose trade secrets); *Wallis v. Smith*, 2001-NMCA-017, ¶ 19, 22 P.3d 682 (timely privilege objection bars discovery until discovery dispute is resolved). This is a categorical assertion of privilege which specifically covers communications that were sent to or from, or at the direction of, Goodnight's outside and in-house counsel either seeking or providing legal advice or collecting information and preparing work product in anticipation of litigation. Although these objections are incorporated in response to each request to which they pertain, to the extent any document or data subject to these privileges or immunity is inadvertently disclosed, this objection is stated in order to avoid any waiver of that privilege or immunity. All documents are produced on the condition that all copies of any inadvertently produced documents subject to any privilege or immunity will be returned or destroyed. Consistent with Commission's ruling in the Discovery Order regarding the burden of producing a privilege log in the scope of these proceedings, Goodnight relies on the Discovery Order to mean that Goodnight, like Empire, need not produce a privilege log as to claims of privilege or immunity in response to this Subpoena. *See* Discovery Order, p. 1, ¶ 2.

3. To the extent that Empire's requests seek production of electronic or magnetic data and/or electronically stored information ("ESI"), Goodnight makes the following objections:
- a. Goodnight objects to the production of all metadata associated with ESI produced in response to Empire's requests, as production of all metadata for all ESI is overly broad, unduly burdensome, and may contain privileged information;
 - b. Goodnight objects to the production of electronically stored documents or information in native format or near-native format, as production in these formats precludes the use of Bates numbers or other methods of specifically marking electronic documents for identification and authentication purposes, precludes the ability to redact privileged information from electronic documents to be produced, and does not permit the application of proper confidentiality designations; and
 - c. Goodnight objects to the production of electronically stored documents or information contained in legacy systems or disaster recovery or archival backup tapes, and to production of deleted or fragmented data, on the grounds that such information is not reasonably available in the ordinary course of business.

Consistent with Rule 1-034, Goodnight will produce documents and information "in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable." NMRA 1-034(B)(2). Goodnight generally objects to the extent Empire seeks to require production of ESI in any other form under any request, given that the Subpoena fails to "specify the form or forms for producing electronically stored information." *Id.*

4. Goodnight objects to these requests to the extent they seek to impose upon Goodnight any requirements beyond those established by the New Mexico Rules of Civil Procedure, by the statutes and regulations governing these proceedings in front of the Commission (specifically including NMSA 1978, § 70-2-8 and NMAC § 19.15.4.16.A), or by the Discovery Order or other rulings set forth by the Commission in the scope of these proceedings.

5. Goodnight objects to these requests to the extent they seek information pertaining to wells and matters outside the scope of the September 23-27, 2024 hearing as limited by the Commission. At the Commission's June 20, 2024 meeting, the Commission orally ruled the scope of the September 23-27 hearing would be limited to applications involving Goodnight's salt-water injection ("SWD") wells located within the Eunice Monument South Unit ("EMSU"). That ruling was memorialized in the Commission's July 2, 2024 *Joint Order on Goodnight Midstream Permian L.L.C.'s Motion to Limit Scope of Hearing on Cases within the Eunice Monument South Unit and the Oil Conservation Motion Concerning the Scope of the Evidentiary Hearing set for September 23-27, 2024* (the "Scope Order"). The Scope Order provided in part that:

...

2. At said hearing, the parties shall submit all evidence, testimony, and legal argument on the issue of the existence, extent of and possible interference with a residual oil zone the Eunice Monument South Unit ("EMSU") by produced water injection activities undertaken by Goodnight.
3. Such evidence, testimony, and legal argument shall be limited to applications and wells by Goodnight or by Empire New Mexico LLC within the EMSU and shall include the following cases:
 - a. Commission Case No. 24123;
 - b. Division Case No. – 23775;
 - c. Division Case Nos – 23614-23617;
 - d. Division Case Nos – 24018-24020, and 24025; and

Scope Order, p. 2. Given that Empire's Subpoena was issued under the auspices of that hearing (see Commission's June 3, 2024 Pre-Hearing Order ruling on subpoenas within the scope of the above-captioned matters) Empire is bound by that ruling related to the information sought in its

Subpoena. Information regarding wells or matters not pertaining to technical issues underlying the factual disputes not pertaining to Goodnight's SWD wells within the EMSU, thus, are outside the scope of the evidentiary hearing. Discovery aimed at non-EMSU matters, thus, is not likely to lead to the discovery of admissible evidence.

6. Finally, Goodnight is filing a motion for protective order and to partially quash Empire's Subpoena for the reasons set forth above and as further set forth in said motion. Therefore, pursuant to Rule 1-010(C) NMRA, Goodnight incorporates the arguments in support of its motion for protective order and to partially quash this subpoena as though set forth as an objection, herein, and generally objects based on those arguments.

Paragraphs 1-6 of these General Objections shall hereafter be referred to as the "**General Objections.**" The foregoing General Objections and Preliminary Statement are hereby incorporated in response to each request, below.

RESPONSES AND OBJECTIONS

1. All modeling of proposed injection operations or of existing disposal within the Eunice Monument South Unit ("Unit").

RESPONSE: Subject to and without waiving the general objections, Goodnight responds: None. To the extent any modelling is completed by Goodnight's experts, those will be produced according to the deadlines set forth in the Pre-Hearing Order, dated June 3, 2024 (the "Scheduling Order"). Goodnight reserves its right to supplement this response should any responsive documents be identified.

2. All economic projections for the proposed injection operations underlying the Unit and all disposal wells operated by Goodnight Midstream Permian, LLC ("Goodnight").

RESPONSE: Goodnight objects to this request as set forth in the general objections. Goodnight further objects that this request seeks internal and external financial information about Goodnight's operations. As such, the information sought is not reasonably calculated to lead to the discovery of admissible evidence in these Commission cases – it is not aimed at technical documents, information, or data underlying whether there are economically recoverable hydrocarbons in the

San Andres formation within the EMSU or whether Goodnight's injection activities have interfered with any correlative rights of Empire. *See* NMSA 1978, § 70-2-6 (Commission and Division have authority "over all matters relating to the conservation of oil and gas . . .") (relied upon by Empire in its Motion to Quash Goodnight's March 5, 2024 subpoena for this very point). In sum, Empire asks for the Commission to allow it discovery of information that Empire asked the Commission to prevent Goodnight from discovering. This request is squarely outside the scope of permissible discovery as set forth in the Discovery Order. It is therefore outside the scope of the hearing in this matter and outside the scope of permissible discovery – instead, it is overbroad and unduly burdensome.

3. Dynamic interaction studies or other studies between produced water and the San Andres formation water, including water compatibility studies of Delaware Basin injected water with San Andres formation water.

RESPONSE: Subject to and without waiving the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds: None. Goodnight reserves its right to supplement this response should any responsive documents be identified.

4. Aside from the water analysis contained in Goodnight's applications, provide water chemistry and analysis of produced water proposed to be injected including:

Dissolved solids,
pH,
suspended solids,
temperature,
specific gravity, and
dissolved gasses

RESPONSE: Subject to and without waiving the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds: Goodnight has already produced water analysis information to Empire. *See* Goodnight Bates_00001 (produced on or about September 27, 2023).

5. Raster images of open hole logs run on the following wells:
 - a. Andre Dawson SWD No. 1 (API #30- 025-50634);
 - b. Ernie Banks SWD No. 1 (API #30-025-50633);
 - c. Pedro SWD No. 1 (API #30-025-50079).

RESPONSE: Subject to and without waiving the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds: None. Goodnight will produce case hole logs on the Andre Dawson SWD No. 1 (API #30- 025-50634) and on the Ernie Banks SWD No. 1 (API #30-025-50633). Goodnight reserves its right to supplement this response should any responsive documents be identified.

6. Summaries, including but not limited to internal and external correspondence and emails, memoranda, assessments, and projections that address, and justification for installation of the Llano Produced Water Pipeline System constructed in Lea County, NM.

RESPONSE: Goodnight objects to this request as set forth in the general objections and further objects as specifically set forth hereafter. This request seeks “[s]ummaries, including but not limited to internal and external correspondence and emails, memoranda, assessments, and projections that address, and justification for installation of the Llano Produced Water Pipeline System constructed in Lea County, NM”. The information sought is not reasonably calculated to lead to the discovery of admissible evidence in these Commission cases – it is not aimed at technical documents, information, or data underlying whether there are economically recoverable hydrocarbons in the San Andres formation within the EMSU or whether Goodnight’s injection activities have interfered with any correlative rights of Empire. *See* NMSA 1978, § 70-2-6 (Commission and Division have authority “over all matters relating to the conservation of oil and gas . . .”) (relied upon by Empire in its Motion to Quash Goodnight’s March 5, 2024 subpoena for this very point). In sum, Empire asks the Commission to allow it discovery of information that Empire asked the Commission to prevent Goodnight from discovering. This request is squarely outside the scope of permissible discovery as set forth in the Discovery Order.

The information sought regarding the “justification for installation of the Llano Produced Water Pipeline System” is has no clear connection issues in dispute. Indeed, the request is objectionably broad and vague, such that counsel is left to guess about what would or would not be responsive. *See Zuniga v. TrueAccord*, 2019 WL 6528759, *3 (D.N.M. December 4, 2019) (Discovery requests must be specific so that the information sought is clear, not leaving opposing counsel “to ponder and to speculate” as to what is being requested) (citations omitted). It is therefore outside the scope of the hearing in this matter and outside the scope of permissible discovery – instead, it is overbroad and unduly burdensome.

7. Summaries, including but not limited to internal and external correspondence and emails, memoranda, and assessments, that address justification for the purchase of the following well:

- a. Penroc State E Tr 27 SWD #2 (30-025-26491)

RESPONSE: Goodnight objects to this request as set forth in the general objections (specifically including but not limited to the EMSU Scope objection), and further objects as specifically set forth hereafter. Goodnight objects that this well is not located within the EMSU and thus is outside the scope of these proceedings – the discovery sought is not likely to lead to the discovery of admissible information. Goodnight further objects that “summaries . . . internal and external correspondence, emails, memoranda, and assessments, that address justification *for purchase* of the” Penroc is not a request for discovery aimed at discovering relevant information probative of the issues in front of the Commission. Moreover, the request is not aimed at any technical analysis of the San Andres formation within the EMSU. It is therefore outside the scope of the hearing in this matter and outside the scope of permissible discovery – instead, it is overbroad and unduly burdensome.

8. Summaries, including but not limited to internal and external correspondence and emails, memoranda, and assessments, that address, justification for the drilling of the following wells:
- a. Andre Dawson SWD #1 (30-025-50634);
 - b. Ernie Banks SWD #1 (30-025-60633);
 - c. Nolan Ryan SWD #1 (30-025-45349);
 - d. Pedro SWD #1 (30-025-50079);
 - e. Snyder SWD #1 with name change to Ryno SWD #1 (30-025-43901);
 - f. Scully State SWD #1 (30-025-46398);
 - g. Sosa SA 17 SWD #2 (30-025-47947);
 - h. Ted 28 SWD #1 (30-025-44386);
 - i. Yaz 28 SWD #1 (30-025-46382).

RESPONSE: Goodnight objects to this request as the information that justifies drilling of those wells is publicly available information maintained by the New Mexico Oil Conservation Division. To the extent Empire is seeking different information or additional document, counsel is left to guess at what Empire might be seeking - the request is objectionably broad and vague. *See Zuniga, 2019 WL 6528759, *3.* Goodnight further objects to this request on the basis that it seeks information pertaining to wells that are no longer the subject of the September 23-27 hearing because they are outside of the EMSU, and thus the discovery sought is not likely to lead to the discovery of admissible information. Finally, Goodnight objects to this request on the basis that “Summaries, including but not limited to internal and external correspondence and emails, memoranda, and assessments” are categories of information that do not address technical issues related to the San Andres formation within the EMSU – as such, this request is outside the scope of the hearing in this matter and outside the scope of permissible discovery – instead, it is overbroad and unduly burdensome.

9. All bottomhole pressure information acquired in the Grayburg and San Andres intervals on all 10 wells in items No. 7 and 8.

RESPONSE: Subject to and without waiving the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds: None. To the extent any information is developed by Goodnight's experts, such information will be produced according to the deadlines set forth in Scheduling Order. Goodnight will produce shut-in fluid levels for the EMSU wells. Goodnight reserves its right to supplement this response should any responsive documents be identified.

10. All Grayburg and San Andres formations reservoir pressure information and data on other wells in Lea County used to justify construction of Llano pipeline network.

RESPONSE: Subject to and without waiving the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds: None. To the extent any information is developed by Goodnight's experts, such information will be produced according to the deadlines set forth in Scheduling Order. Goodnight reserves its right to supplement this response should any responsive documents be identified.

11. Daily water injection rates and wellhead pressures for all wells in items Nos. 7 and 8 since start of injection.

RESPONSE: Goodnight objects on the basis that this request is redundant in that Goodnight has already produced daily water injection rates and well pressures for the Andre Dawson SWD No. 1 and the Ernie Banks SWD No. 1.

Subject to and without waiving the above objection and the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds that it will provide daily water injection volumes and average wellhead injection pressures for EMSU wells to the extent not already provided. Goodnight reserves its right to supplement this response should any responsive documents be identified.

12. All sidewall or rotary core information obtained on any of the wells in items Nos. 7 and 8.

RESPONSE: Subject to and without waiving the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds: None. Goodnight reserves its right to supplement this response should any responsive documents be identified. Goodnight reserves its right to supplement this response should any responsive documents be identified.

13. All interpreted logs which calculate water saturation on the wells in items Nos. 7 and 8.

RESPONSE: Subject to and without waiving the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds: None. The only interpreted logs that Goodnight has are those being developed by its experts in the course of these proceedings, which will be provided in due course under the requirements of the Pre-Trial Order. Goodnight reserves its right to supplement this response should any responsive documents be identified. Goodnight reserves its right to supplement this response should any responsive documents be identified.

14. All mud logs taken on wells in items No. 7 and 8.

RESPONSE: Goodnight objects on the basis that this request is redundant and that Goodnight has already produced mud logs for all the EMSU wells. Subject to and without waiving the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds: Goodnight has no additional EMSU-well mudlogs. Goodnight reserves its right to supplement this response should any responsive documents be identified.

15. All documents relating to the calculation, determination or redetermination by Goodnight, or on its behalf by a third party, of the oil and gas reserves within the San Andres formation underlying the Unit and within two miles of the exterior boundaries of the Unit.

RESPONSE: Goodnight objects to this discovery request on grounds that the information being requested is overly broad because a discovery request that seeks all information “relating to” a subject matter is facially overbroad and unduly burdensome. *See, e.g., Cotracom Commodity Trading Co. v. Seaboard Corp.*, 189 F.R.D. 655, 665 (D. Kan. 1999) (holding that omnibus phrase “relating to” rendered discovery request facially overbroad and unduly burdensome); *Robbins v. Camden City Board of Education*, 105 F.R.D. 49, 50 (D.N.J. 1985) (document request for all documents that “refer or relate” to specific subject was too broad and ambiguous to meet the “reasonable particularity” standard of Fed. R. Civ. P. 34); *Williams v. City of Dallas*, 178 F.R.D. 103, 109 (N.D. Tex. 1998) (discovery requests that seek “all documents” or “all documents relating to” a subject matter are facially overbroad and unduly burdensome); *Dean v. Superior Court In & For Maricopa County*, 324 P.2d 764, 768 (Ariz. 1958) (“A blanket request for all written statements, all memoranda and all other documents, is not sufficient because it lacks specificity and is too sweeping and undetailed to comply with requirements as to designation.”); *Fallon v. CBS Inc.*, 124 A.D.2d 697, 697-98 (N.Y. App. 1986) (holding discovery request broadly seeking all communications and documents is “palpably improper and cannot be sustained”); *see also Pope*, 1998-NMCA-103, ¶ 10 (stating that New Mexico courts may look to federal law for guidance when construing rules of civil procedure).

Goodnight has not performed any formal reserve reporting analysis because there is no indication of economically recoverable hydrocarbons in the San Andres formation within the EMSU. As

stated below, Goodnight has provided the swab tests (showing no economic oil) on the completed EMSU wells. To the extent Empire is seeking different information or additional documents, counsel is left to guess at what Empire might be seeking - the request is objectionably broad and vague. *See Zuniga, 2019 WL 6528759, *3.*

Subject to and without waiving the general objections, Goodnight responds: Goodnight has already produced swab tests related to the completed EMSU wells. Goodnight is presently developing further analyses on these issue through its experts in the course of these proceedings, which will be provided in due course under the requirements of the Pre-Trial Order. Goodnight reserves its right to supplement this response should any responsive documents be identified.

16. All water analyses of injected water into the San Andres formation for each well in items Nos. 7 and 8.

RESPONSE: Goodnight objects that this request is wholly redundant of Request No. 4. Any documents responsive to this request are referenced in the response to Request No. 4. To the extent Empire is seeking different information or additional documents, counsel is left to guess at what Empire might be seeking - the request is objectionably broad and vague. *See Zuniga, 2019 WL 6528759, *3.*

Subject to and without waiving the above objection and the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds: Goodnight's responsive documents are referred to in response to Request No. 4. Goodnight reserves its right to supplement this response should any responsive documents be identified.

17. Provide water samples (in sample bottles) for injected water into wells in items No. 7 and 8 and #3 so that Empire can have them analyzed.

RESPONSE: Goodnight objects based on the general objections. Goodnight further objects to this request as redundant of the information already produced in response to Request No. 4. As such, this request is unduly burdensome, and harassing. A purely redundant and unnecessarily burdensome request is per se harassing. *See Rule 1-026(B) NMRA* (“The Court shall limit use of discovery methods . . . if it determines that the burden or expense of the proposed discovery outweighs its likely benefit[.]”). Moreover, this request is not likely to lead to the discovery of admissible information. *Id.* This request seeks no new information different than the water analyses previously provided by Goodnight and referenced in response to Request No. 4. Goodnight thus objects.

18. Top of structure maps for Grayburg and San Andres intervals with subsea elevation for each well used to generate Goodnight's structure map.

RESPONSE: Subject to and without waiving the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds that it will provide a top of structure map with data points for the mapping. Goodnight reserves its right to supplement this response should any responsive documents be identified.

19. List of chemicals and monthly chemical bill for Wrigley SWD facility.

RESPONSE: Goodnight objects to producing any bill because a bill does not provide any new or different technical information relevant to the scope of these proceedings as already determined by the Commission. Moreover, a bill is not the sort of technical information that falls within the scope of permissible discovery in this matter. Goodnight reserves its right to supplement this response should any responsive documents be identified.

Subject to and without waiving the above objection and the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds that it will provide safety data sheets regarding chemicals used at the Wrigley SWD facility.

20. Facility drawing with list of equipment at Wrigley SWD facility.

RESPONSE: Goodnight objects to this request because the information sought does not appear likely to lead to the discovery of admissible information because it does not pertain to technical information bearing on any issues before the Commission within the scope of this hearing. To the extent Empire is seeking information or documents that bear on technical matters, it is not apparent based upon the request made: Goodnight's counsel is left to guess at what Empire might be seeking - the request is objectionably broad and vague. *See Zuniga, 2019 WL 6528759, *3.*

Subject to and without waiving the above objection and the general objections, Goodnight responds that it will provide a drawing of the Wrigley SWD facility. Goodnight reserves its right to supplement this response should any responsive documents be identified.

21. All records of separator or tank cleanouts at Wrigley SWD facility.

RESPONSE: Goodnight objects to this request because the information sought does not appear likely to lead to the discovery of admissible information because it does not pertain to technical information bearing on any issues before the Commission within the scope of this hearing. To the extent Empire is seeking information or documents that bear on technical matters, it is not apparent based upon the request made: Goodnight's counsel is left to guess at what Empire might be seeking - the request is objectionably broad and vague. *See Zuniga, 2019 WL 6528759, *3.*

Subject to and without waiving the above objection and the general objections, Goodnight responds that it will provide records of tank cleanouts at the Wrigley SWD facility. Goodnight reserves its right to supplement this response should any responsive documents be identified.

22. Documents, correspondence, e-mails, data, analyses, reports, or summaries that address, reflect on, or indicate concerns for the existence or non-existence of hydrocarbons in the San Andres formation within the Unit.

RESPONSE: Goodnight objects that this request is duplicative of Empire's Request No. 1 in its September 19th, 2023 subpoena to Goodnight (issued in Div. Case Nos. 23614-17). Request No. 1 in that subpoena provided as follows:

1. All 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, including any logs, reports, or other data providing downhole information.

Any documents responsive to this request were produced in response to that request. To the extent Empire is seeking different information or additional documents, counsel is left to guess at what Empire might be seeking - the request is objectionably broad and vague. *See Zuniga*, 2019 WL 6528759, *3.

Goodnight further objects to the scope of this request, to the extent it seeks non-technical information that is not reasonably calculated to lead to the discovery of admissible evidence in these Commission cases – it is not only aimed at technical documents, information, or data underlying whether there are economically recoverable hydrocarbons in the San Andres formation within the EMSU or whether Goodnight's injection activities have interfered with any correlative rights of Empire. *See NMSA 1978, § 70-2-6* (Commission and Division have authority “over all matters relating to the conservation of oil and gas . . .”) (relied upon by Empire in its Motion to Quash Goodnight's March 5, 2024 subpoena for this very point). In sum, Empire asks for the Commission to allow it discovery of information that Empire asked the Commission to prevent Goodnight from discovering. This request is squarely outside the scope of permissible discovery as set forth in the Discovery Order. It is therefore, to the extent it goes beyond the Scope Order and the Discovery Order, outside the scope of the hearing in this matter and outside the scope of permissible discovery – instead, it is overbroad and unduly burdensome.

Subject to and without waiving the above objections or the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds: Goodnight's responsive documents were produced in response to Request No. 1 of the September 19, 2023 subpoena. Goodnight's prior production of documents related to the existence/non-existence of hydrocarbons in the San Andres formation within the EMSU are consistent with and supported by the reality that that San Andres formation has long been used as a designated disposal zone with the EMSU operator's participation and consent. Goodnight reserves its right to supplement this response should any responsive documents be identified.

23. All correspondence, emails, contracts or any other written materials by and between the Millard Deck Estate and its representatives, managers or employees, and Goodnight.

RESPONSE: Goodnight objects to this request because the information sought does not appear likely to lead to the discovery of admissible information because it does not pertain to technical information bearing on any issues before the Commission within the scope of this hearing.

24. Please produce all well logs for wells operated by Goodnight within two miles of the exterior boundaries of the Unit that were drilled below 4000’.

RESPONSE: Goodnight objects that this request is duplicative of Request No. 14 as to EMSU wells. Goodnight further objects to this request to the extent it seeks information regarding wells outside the boundary of the EMSU because that information is not likely to lead to the discovery of admissible information. *See Scope Order.*

Subject to and without waiving the forgoing objections or the general objections, Goodnight responds that it will provide well logs for the EMSU wells to the extent they have not already been produced. Goodnight reserves its right to supplement this response should any responsive documents be identified.

25. All side wall or rotary core information for wells operated by Goodnight within two miles of the exterior boundaries of the Unit that were drilled below 4000’.

RESPONSE: Subject to and without waiving the general objections, Goodnight responds: None. Goodnight reserves its right to supplement this response should any responsive documents be identified.

26. All mud logs for wells operated by Goodnight within two miles of the exterior boundaries of the Unit that were drilled below 4000’.

RESPONSE: Goodnight objects that this request is duplicative of Request No. 14 as to EMSU wells. Goodnight further objects to this request to the extent it seeks information regarding wells outside the boundary of the EMSU because that information is not likely to lead to the discovery of admissible information. *See Scope Order.*

Subject to and without waiving the forgoing objections or the general objections, Goodnight responds that it has already provided well logs for the EMSU wells. Goodnight reserves its right to supplement this response should any responsive documents be identified.

27. All cuttings and chromatograph data for wells operated by Goodnight within two miles of the exterior boundaries of the Unit that were drilled below 4000’.

RESPONSE: Goodnight objects that this request is duplicative of Request No. 14 as to EMSU wells. Goodnight further objects to this request to the extent it seeks information regarding wells outside the boundary of the EMSU because that information is not likely to lead to the discovery of admissible information. *See* Scope Order.

Subject to and without waiving the forgoing objections or the general objections, Goodnight responds that any cuttings and chromatograph data for EMSU wells is contained in the mud logs already being produced.

28. All geochemical data for the Grayburg and San Andres formations showing the potential seal or lack thereof.

RESPONSE: Goodnight objects that this request is overbroad and vague. To the extent that Empire is requesting water chemistry data showing the difference between water chemistry in the San Andres formation from water chemistry in the Grayburg formation, Goodnight objects on the basis that Goodnight has already produced swab tests. To the extent Empire is seeking other information or documents, it is not apparent based upon the request made: Goodnight’s counsel is left to guess at what Empire might be seeking - the request is objectionably broad and vague. *See* Zuniga, 2019 WL 6528759, *3.

Subject to and without waiving the general objections, Goodnight responds that is has no new documents to produce beyond the swab tests previously produced for EMSU wells. Goodnight reserves its right to supplement this response should any responsive documents be identified.

29. All San Andres formation top picks and or proof of seal from cross-sections or other calculated methods.

RESPONSE: Goodnight objects to this request because “San Andres formation top pics . . .from cross-sections or other calculated methods” is vague, such that counsel does not understand what Empire is requesting. Goodnight further objects to this request because the other alternative, “San Andres top picks . . . from cross-sections or other calculated methods” is also vague, such that counsel does not understand what Empire is requesting. Indeed, the request is objectionably broad and vague, such that counsel is left to guess about what would or would not be responsive. *See* Zuniga, 2019 WL 6528759, *3 (Discovery requests must be specific so that the information sought is clear, not leaving opposing counsel “to ponder and to speculate” as to what is being requested) (citations omitted).

Subject to and without waiving the forgoing objection or general objections, Goodnight responds that it will produce (1) a map of Goodnight's formation top-picks for both the San Andres and Grayburg inclusive of data points within the EMSU, and (2) a document (called "EMSU SADR Picks") providing a list of Goodnight's top picks for the San Andres formations within the EMSU. Goodnight further responds that it has already produced fluid levels in the San Andres SWD EMSU wells that show the proof of seal. Goodnight reserves its right to supplement this response should any responsive documents be identified.

30. Please produce all documents and data supporting Preston McGuire's representations of formation tops in paragraphs 12-15 of his Exhibit B of Goodnight's exhibits in Case Nos. 23614-23617 and that the San Andres formation underlying the Unit is a "depleted formation".

RESPONSE: Subject to and without waiving the forgoing objection or general objections, Goodnight responds that it will produce the documents identified as supporting Goodnight's Exhibit B-9 in Case Nos. 23614-23617, which includes the San Andres water supply well volumes from the OCD case document 08397_4659 EMSU Tech Committee Report, the OCD case document 08397_4658 EMSU Tech Committee Report, and the years 1989 to 1994 reconstruction from well tests and Tech Committee Charts.

31. With respect to each person Goodnight may call as an expert witness at hearing, please provide:
- a. the name, address, and qualifications of the expert;
 - b. the subject matter on which the expert is expected to testify;
 - c. the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion;
 - d. any reports prepared by the expert regarding the pending action;
 - e. a list of all publications authored by the witness within the preceding ten (10) years; and
 - f. a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four (4) years.

RESPONSE: Subject to and without waiving the general objections, Goodnight responds that it will produce documents related to sub-requests Nos. A, E, and F.

Respectfully submitted,

HOLLAND & HART LLP

/s/ Nathan R. Jurgensen

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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2024, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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