

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

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

CASE NOS. 23614-23617

**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

**APPLICATIONS OF EMPIRE NEW MEXICO LLC
TO REVOKE INJECTION AUTHORITY,
LEA COUNTY, NEW MEXICO**

CASE NOS. 24018-24020, 24025

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

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

GOODNIGHT'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Goodnight Midstream Permian, LLC ("Goodnight Midstream") respectfully files this motion to compel Empire New Mexico, LLC ("Empire") to produce all material documents responsive to the subpoena issued July 2, 2024 ("Subpoena"). In support Goodnight states:

INTRODUCTION

On July 2, 2024, the New Mexico Oil Conservation Commission issued a subpoena to Empire to produce documents (the "Subpoena") to which Empire responded on August 1, 2024.

See Empire Response, attached as **Exhibit 1**. While Empire produced some responsive documents, Empire refused to produce documents to several requests, or produced only a limited set of documents responsive to other requests, in many cases under the screen of misplaced objections.

Given the very limited time to review the production set and discovery responses, on August 8, 2024, Goodnight sent a good faith letter to Empire asking for further production of documents that were responsive to the requests and should have been produced (“Good Faith Email”). See Good Faith Email, attached as **Exhibit 2**. That same day, Goodnight sent an email to the Commission challenging Empire’s objections and seeking to compel a production. See Motion to Compel Email, attached as **Exhibit 3**. In its Good Faith Email, Goodnight requested a conferral with opposing counsel prior to the August 15, 2024 commission meeting in order to deal with the deficient responses from Empire but did not receive any response from Empire’s counsel. Ultimately, the Commission notified the parties on August 9, 2024, that this and other issues would be dealt with by the assigned Hearing Examiner and not at the August 15, 2024 hearing. Goodnight files this Motion because these documents are centrally necessary for the September 23-27 hearing in this matter.

The crux of the matter is that Empire served incomplete responses and interposes objections aimed at preventing Goodnight from discovery of documents and information centrally relevant to Empire’s initial burden of proof at the September 23-27 hearing. Empire must be made to produce those documents and that data. If Empire does not, Empire cannot prove that economically recoverable hydrocarbons exist in the San Andres and that the disposal of saltwater as proposed by Goodnight impairs Empire’s correlative rights. If Empire has those documents and data, but merely refuses to produce them, Goodnight is unfairly prejudiced and impeded from refuting Empire’s claims. Whether Empire intends to use those documents as support for its own

testimony, Goodnight is entitled to discovery apart from what Empire wishes to present or rely on. This motion and the documents Goodnight seeks to compel, thus, are key to a fair hearing.

ARGUMENT

To give Goodnight a fair opportunity to evaluate Empire's claims and ensure a contested hearing results in a reasonable approximation of the objective truth, Empire must be compelled to produce all responsive documents—not just the documents and data that favor its position. Accordingly, an order to compel is necessary to preserve the integrity of the Commission's adjudicatory proceedings and its statutory authority to require production of data and documents. *See* NMSA 1978, § 70-2-8 (“No person shall be excused . . . from producing books, papers and records before the commission or the division, or from obedience to the subpoena[.]”).

A. Standard.

“[S]ubject to” the Division's subpoena powers, the hearing examiner “*shall* afford full opportunity to the parties at an adjudicatory hearing . . . to present evidence and to cross examine witnesses.” NMAC § 19.15.4.17.A (emphasis added). The rules of evidence do not control but serve as guides. *Id.*

Under the New Mexico Rules of Civil Procedure, parties “may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery” NMRA 1-026(B)(1). Rule 1-026(B)(1)'s use of the term “relevant” is to be broadly construed. *See United Nuclear Corp. v. Gen. Atomic Co.*, 1980-NMSC-094, ¶ 70, 629 P.2d 231. Thus, rules governing discovery “are designed to enable parties to easily discover all of the relevant facts and therefore the discovery provisions *should be given as liberal an interpretation* as possible in order to effectuate this design.” *Carter v. Burn Constr. Co.*, 1973-NMCA-156, ¶ 10, 508 P.2d 1324 (emphasis added); *accord Griego v. Grieco*, 1977-NMCA-018, ¶ 1, 561 P.2d 36. The information sought in discovery

“need not be admissible at the trial” and is proper so long as it appears reasonably calculated to lead to the discovery of admissible evidence. *See* Rule 1-026(B)(1); *Marchiondo v. Brown*, 1982-NMSC-076, ¶ 12, 649 P.2d 462 (“*It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.*”) (emphasis in original).

Under Section 19.15.4.16.A NMAC, the Commission has authority to issue subpoenas to produce “books, papers, records, other tangible things or electronic data in a proceeding” before the Commission. *See also* NMSA § 70-2-8. The subpoena power is necessary to afford parties to an adjudicatory hearing a full opportunity to present evidence and cross examine witnesses. Accordingly, the Commission’s rules governing presentation of evidence at hearings is subject to the requirement for all parties to obey the production requirements of a subpoena.

Accordingly, only limited exceptions apply to prevent production of relevant information. Here, Empire has failed to fully respond to the requests, or has objected on grounds that do not provide a valid shield to Goodnight’s discovery requests.

B. Improper and Evasive Objections: Requests Nos. 12, 13, and 14

Goodnight’s twelfth, thirteenth, and fourteenth requests epitomize the issues in this motion, and the overwhelming good cause meriting consideration of it. In those requests, Goodnight seeks:

12. Documents, data, analyses, reports, and summaries, including internal and external correspondence, that address, reflect on, or concern assessments for capital costs and expenditures estimated to be necessary to institute a tertiary recovery operation in the San Andres formation within the EMSU using carbon dioxide.

13. Reservoir studies reflecting monthly carbon dioxide volumes (including total, purchased, and recycled carbon dioxide) Empire estimates will be required to conduct tertiary recovery in the San Andres formation within the EMSU.

14. Communications with potential suppliers of carbon dioxide for tertiary recovery operations in the San Andres formation within the EMSU.

In response to all three requests, Empire interposed the following objection, and based upon it, refused to provide *any* responsive documents:

Empire objects to Request[s] No[s]. 12[-14] because it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. The Commission's jurisdiction does not include authority to consider "assessments for capital costs and expenditures estimated to be necessary to institute a tertiary recovery operation in the San Andres formation." See NMSA 1978, §§ 70-2-6; 70-2-11, **70-2-12**[.] Further, the Commission has expressly narrowed the scope of this hearing. See [] Order on Goodnight's Motion to Limit Scope of Hearing ('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 [in the EMSU] by produced water injection activities undertaken by Goodnight.').

(emphasis added). Because this objection is improper, the Commission should compel production of the materials sought by Goodnight.

First, Empire misstates the scope of the Commission's jurisdiction, *and its own burden of proof*. Empire asserts that a key issue in these proceedings is whether Goodnight has adversely affected Empire's correlative rights in an alleged San Andres ROZ. Those rights are premised on the concept that Empire must have an "opportunity" to "produce without waste" that alleged ROZ "so far as can be practicably determined and so far as can be practicably obtained without waste" See NMSA § 70-2-33(H). Similarly, Empire's claim that Goodnight's San Andres injection activities are drowning out its operations in the Grayburg formation fall squarely within the Commission's jurisdiction "to prevent the drowning by water of any stratum or part thereof *capable of producing oil or gas or both oil and gas in paying quantities*[" See NMSA 1978, § 70-2-12(B)(4).

If Empire claims that Goodnight's activities must cease on these bases, Empire must prove (1) that Empire *can* practicably produce in the San Andres ROZ it claims exists, (2) that the San Andres ROZ are recoverable *in paying quantities*; and thus, (3) that **“the production of”** whatever hydrocarbons may exist in that ROZ **“yields revenue in excess of operating expenses” by Empire to produce them.** NMAC § 19.15.2.7(Q). If Empire cannot show expected revenue from an ROZ exceeds the necessary operating expenses to recover those hydrocarbons, Empire *cannot* show that Goodnight's injection activities interfere with Empire's correlative rights in that alleged San Andres ROZ. Empire faces a nearly identical issue with claiming that Goodnight's injection activities are causing watering out of Empire's production wells in the Grayburg. *See* NMSA 1978, § 70-2-12(B)(4). It is specious and incorrect for Empire to suggest the Commission *lacks* jurisdiction to consider elements Empire must prove.

Empire objected that Sections 70-2-6, -11, and -12 NMSA cause the information sought by Goodnight not to be “relevant [or] reasonably calculated to lead to the discovery of admissible evidence” (*see* Exh. A at 5) because the Commission does not have jurisdiction of matters to which that information could be relevant. Not true. Reading the plain text of the New Mexico Oil and Gas Act, NMSA 1978, §§ 70-2-1 through 70-2-39 (the “OGA”), and relevant OGA regulations, makes clear that the Commission can consider and *must* put to test Empire's proposed operating costs and revenues related to proposed production of the San Andres ROZ.

While Empire's is a convoluted argument, at bottom, the argument turns on whether economic data *could be* relevant to the issues in dispute here. As Empire puts the issues:

The core disputed facts are: (1) whether recoverable hydrocarbons exist in the San Andres and (2) whether the disposal of saltwater as proposed by Goodnight impairs the ability of Empire. . . . to recover the hydrocarbons found within the unitized interval of the EMSU.

Empire Pre-Hearing Statement in Case Nos. 23614-17 (filed October 26, 2023) at p. 5. Economic data and documents most certainly bear on whether hydrocarbons are recoverable from an ROZ, based on the plain language of the OGA and pertinent regulations.

Under Sections 70-2-6 and -11 NMRA, the Commission has concurrent jurisdiction and authority with the Oil Conservation Division. NMSA 1978, §§ 70-2-6(B) and -11(B).

Moreover, Section 70-2-11(A) provides that the Division

is hereby empowered, and it is its duty, *to prevent waste prohibited by this act and to protect correlative rights*, as in this act provided. To that end, the division is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof.

NMSA § 70-2-11(A) (emphasis added). At the heart of the issues Empire has raised are the concepts of “correlative rights.” The OGA defines “correlative rights” to mean:

the opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste the owner’s just and equitable share of the oil or gas or both in the pool, being an amount, so far as can be practicably determined and *so far as can be practicably obtained without waste*, substantially in the proportion that the quantity of *recoverable oil* or gas or both under the property bears to the total *recoverable oil* or gas or both in the pool and, for such purpose, to use the owner’s just and equitable share of the reservoir energy;

NMSA § 70-2-33(H) (emphasis added); *see also* NMAC § 19.15.2.7(C)(16). In turn, the concept of a “producer” is defined as “the owner of a well capable of producing oil or natural gas or both in paying quantities[.]” NMSA § 70-2-33(F); *see also* NMAC § 19.15.2.7(P)(11). Similarly, the Division is empowered to

prevent the drowning by water of any stratum or part thereof *capable of producing oil or gas or both oil and gas in paying quantities* and to prevent the premature and irregular encroachment of water or any other kind of water encroachment that reduces or tends to reduce the

total ultimate recovery of crude petroleum oil or gas or both oil and gas from any pool[.]”

NMSA 1978, § 70-2-12(B)(4). Helpful to clarify “paying quantities” is the venting and flaring rule, in Section 19.15.27.7(Q), which defines “producing in paying quantities,” to mean “**the production of a quantity of oil and gas that yields revenue in excess of operating expenses.**”

Id. (emphasis added).

In sum, the language of the OGA allows for the Commission “to include economic considerations in its reasoning.” *Cf. Earthworks’ Oil & Gas Accountability Project v. N.M. Oil Conservation Comm’n*, 2016-NMCA-055, ¶ 28, 374 P.3d 710 (affirming rulemaking by Commission of 2013 version of NMAC § 19.15.17 (June 28, 2013) based, in part, on economic considerations). Any doubt is resolved by Section 70-2-6(A), which expressly provides that the Division

shall have, and is hereby given, jurisdiction and authority over all matters relating to the conservation of oil and gas and the prevention of waste of potash as a result of oil or gas operations in this state. It shall have ***jurisdiction***, authority and control of and over all persons, ***matters or things necessary or proper to enforce effectively the provisions of this act*** or any other law of this state relating to the conservation of oil or gas and the prevention of waste of potash as a result of oil or gas operations.

NMSA § 70-2-6(A) (emphasis added); *see also* NMSA § 70-2-11. On this basis, in part, the New Mexico Court of Appeals in *Earthworks’ Oil & Gas Accountability Project*, affirmed the Commission’s ruling in a rulemaking contest. 2016-NMCA-055, ¶ 26, 374 P.3d 710 (noting that “Petitioners assert that the Commission acted improperly in promulgating the 2013 Rule because it did so in order to further economic development, and the furtherance of economic development is not part of the Commission's duties under the Oil and Gas Act. The Commission asserts that

economic considerations exist as the very core of its statutory obligations. Petitioners' argument is misconceived.”).

Second, when read together, Section 19.15.27.7(Q) NMAC (defining “producing in paying quantities”), Section 70-2-33(H) NMSA and Section 19.15.2.7(C)(16) (each defining “correlative rights”), Section 70-2-3 (defining “waste”), and Sections 70-2-6, -11, and -12 NMSA (defining authority and jurisdiction of Division and Commission), provide a strong background for 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.

Scope Order at 2. Clearly the question of the “existence” and “extent of” the San Andres ROZ implicates a necessary showing by Empire that it can “produc[e] a quantity of oil and gas” from that San Andres ROZ “that yields revenue in excess of operating expenses.” NMAC § 19.15.2.7(Q). The question of whether “possible interference” with the San Andres ROZ is caused by “produced water injection activities undertake by Goodnight” similarly implicates the question whether Goodnight’s injections in the San Andres formation prevent economic production by Empire of the alleged San Andres ROZ. The Scope Order facially includes, even necessitates, consideration of whether the San Andres ROZ can be economically produced by Empire. Certainly, the Scope Order does not exclude consideration of cost to recover and technically producible hydrocarbons.

Third, the documents sought by Goodnight in the July 2 Subpoena center around the “producing in paying quantities” analysis. Goodnight is entitled to discovery information underlying and relevant to the burden of proof Empire bears to show that economically recoverable hydrocarbons exist in the San Andres formation in the form of an alleged ROZ. Goodnight seeks:

12. Documents, data, analyses, reports, and summaries, including internal and external correspondence, that address, reflect on, or concern assessments for capital costs and expenditures estimated to be necessary to institute a tertiary recovery operation in the San Andres formation within the EMSU using carbon dioxide.

13. Reservoir studies reflecting monthly carbon dioxide volumes (including total, purchased, and recycled carbon dioxide) Empire estimates will be required to conduct tertiary recovery in the San Andres formation within the EMSU.

14. Communications with potential suppliers of carbon dioxide for tertiary recovery operations in the San Andres formation within the EMSU.

These three requests go to question of whether (1) practicably producible hydrocarbons exist (based on a CO₂ recovery project recently proposed by Empire, *see* Davis Memo, Doc. No. OCD 23614-17 03483 through 03521); and (2) whether such an ROZ project would be economically viable – i.e., much as in the flaring rule, can Empire use such a project to produce a “quantity of oil and gas that yields revenue in excess of operating expenses.” NMAC § 19.15.27.7(Q).

Such evidence is centrally relevant to Empire’s burden of proof. *See, e.g., Bass Enters. Prod. Co. v. Mosaic Potash Carlsbad Inc.*, 2010-NMCA-065, ¶ 44, 238 P.3d 885 (affirming Commission denial of applications for permits to drill and finding that “[t]he OCC was not incorrect in concluding that Devon had alternative ways of reaching the resources and still could reach the resources if it so chose. Whether those methods were economical were not specifically addressed. No figures were provided by Devon regarding costs of vertical as opposed to directional or horizontal drilling, and no estimates were provided to the OCC regarding amounts of expected

oil or gas reserves. In the case for the proposed Devon wells, we conclude the decision of the OCC was supported by substantial evidence.”). Empire should be required to produce the documents.

C. Incomplete, Non-Responsive Discovery Responses: Requests Nos. 3, 6, 8, and 9

Empire’s responses to Goodnight’s third, sixth, eighth and ninth requests are impermissibly incomplete, and thus, is non-responsive. *See, e.g., Cache La Poudre Feeds, LLC v. Land O’Lakes Farmland Feed, LLC*, 244 F.R.D. 614, 631 (D. Colo. 2007) (noting principle, treated incomplete response as non-response, and quoting Fed. R. Civ. P. 37(a)(3), that for purposes of a motion to compel, “an evasive or incomplete answer is to be treated as a failure to answer”).

None of Empire’s responses state objections, and none fully responds to Goodnight’s requests. Goodnight’s third request seeks:

3. Documents, communications, reports, analyses, and protocols reflecting treatment, including volumes and concentrations of chemicals used, and a description of filtering media and size of filters used on injected fluids, and Safety Data Sheets (SDS) for treating chemicals used, conducted by Empire New Mexico LLC to address scaling, H2S, and corrosion in Grayburg production wells, Grayburg injection wells, and San Andres water supply wells within the EMSU from Empire’s acquisition of the EMSU to the present.

Empire’s response to Request No. 3 stated no objection: “*See* documents Bates# OCD 23614-17 03558-3562, produced herewith.” Empire produced documents bates labeled OCD 23614-17 03558-3562, but those documents are dated January 2024 – May 2024.

Documents responsive to the third request from the time Empire acquired the EMSU are highly relevant because Empire has repeatedly claimed that Goodnight is causing corrosion to Empire’s wells based on Goodnight’s recent injection activity, or that Goodnight is otherwise causing Empire’s wells to water out – as such, historical data prior to Goodnight’s injection activities “*from Empire’s acquisition of the EMSU to the present*” is directly relevant.

Empire's response to Goodnight's sixth request is also impermissibly incomplete, and thus, is non-responsive. Goodnight's sixth request seeks:

6. All documents, communications, reports, analyses, and data provided by XTO to Empire relating to the residual oil zone ("ROZ") referenced in Empire's Exhibit A-5, including but not limited to documents and data provided by XTO in the data room as part of Empire's due diligence review of the EMSU, as well as complete, conforming and legible copies of the analyzed logs used to create the cross section titled "Eunice Area ROZ Cross-section" presented on page 7 of Empire's Exhibit A-5.

Empire's response to Request No. 6 stated no objection: "See document(s) Bates# OCD 23614-17 03563-3622, produced herewith." Empire produced a single document in response under Bates OCD 23614-17 03563-3622, that Empire had previously produced. It seems unlikely that single document is the only responsive technical document or data provided to Empire relating to the alleged San Andres residual oil zone ("ROZ") in the EMSU as part of Empire's EMSU due diligence. Empire's response defies common sense because what was presumably a multi-million-dollar purchase would involve significant due diligence, and if the value is (as Empire asserts) centrally surrounding an ROZ planned project, then one would expect to see significant amounts of data reflecting due diligence related to the alleged plan.

There is no dispute that a central issue relevant to the September 23-27 hearing is whether the San Andres ROZ that Empire alleges to exist does, in fact, exist; and it is also centrally relevant whether any such ROZ is producible in economic quantities. Goodnight needs the documents in Request No. 6 to prepare its defense and to test Empire's claims. Empire has no reason, and has expressed no objection, to providing all such responsive documents and data. Empire, thus, must produce *all* responsive documents or confirm that Empire has none.

Empire's responses to Goodnight's eighth and ninth requests are similarly incomplete and non-responsive. Goodnight's eighth request seeks:

8. Documents and data reflecting Grayburg Formation pressure in EMSU production wells and injection wells for the years 2021, 2022, and 2023.

Goodnight's ninth request seeks:

9. Documents and data reflecting shut-in well pressure measurements, including shut-in fluid levels, for Grayburg waterflood injection wells within the EMSU for the period beginning immediately after Empire acquired its operating interest(s) the EMSU to Present.

In response Empire states: "See documents Bates# OCD 23614-17 03623-3627, produced herewith" (Req. No. 8) and "See documents Bates# OCD 23614-17 03628, produced herewith" (Req. No. 9).

As to the eighth requests, the referenced documents do not address data prior to November 2023 – not as to 2021-Oct. 2023, as requested. As to the ninth request, Empire's response is less complete still. Empire produced a single summary spreadsheet bates labeled OCD 23614-17 03628 that has one table showing pressure values for 2024 (without specific dates) in only four EMSU Grayburg wells and one purported San Andres EMSU well. That document includes one additional table showing pressure values in a different EMSU well purportedly for the Grayburg and San Andres. Presumably data and documents provided the source data for these tables created by Empire. Empire did not produce those – though directly responsive.

Historical pressure in the Grayburg formation during the years 2021-2023 is centrally relevant to Empire's claim that Goodnight's injection activities in the San Andres formation in the EMSU is causing communication with the Grayburg formation - matters subject to *Empire's* burden of proof, discussed above. Empire has no reason, and has expressed no objection, to providing all responsive documents and data. Empire, thus, must produce all responsive documents requested in Goodnight's third, sixth, eighth and ninth requests or confirm that Empire has none.

D. Response Inconsistent with Prior Sworn Empire Testimony: Subpoena Request No. 17

Empire's response to Goodnight's seventeenth request inherently contradicts prior sworn testimony from Empire. Goodnight seeks:

17. Documents, data, and/or communications, whether internal or external, addressing the use of the San Andres formation in the EMSU as a carbon capture project, whether in the alternative to or in association with Empire's proposed carbon flood tertiary recovery project.

Empire responded that "Empire has conducted a diligent and thorough search of the records within its possession, custody, or control and discovered that no responsive documents." That does not appear to be accurate.

Empire's witnesses have provided sworn testimony submitted to the Division previously in these cases alleging that the EMSU can receive value and tax credits for injection of anthropogenic CO₂. William West, Empire's witness, testified that

Exhibit G-14 shows the location of a CO₂ pipeline that runs south from Hobbs and within 7.5 miles east of EMSU. This pipeline can be used to transport natural (subsurface CO₂ resources) or anthropogenic (industrial emissions) CO₂ supplies to be used for the CO₂ flood. *With 45-Q tax credits paying \$60/tonne (\$3.19/MCF) of CO₂ sequestered, parties interested in obtaining this tax credit for 12 years will have a location to inject the anthropogenic CO₂ they capture.*

Empire's Am. Exhibits to Include Revised Exhibit E-2 and Exhibits F-1 – F-6 in Case Nos. 23614-17 (dated Nov. 2, 2023) ("Empire November 2023 Testimony"), at Exhibit G (Self-Affirmed Statement of William West, dated October 26, 2023), ¶ 14. Similarly, Stephen Melzer testified:

One of the evolving modern tragedies in our oilfields today is the condemnation of the ROZ oil recovery potential via produced water disposal. This is especially true today with the recent passage of the Inflation Reduction Act's 45Q tax credit enhancements. The lost oil is bad enough but the enormous potential for large volume CO₂ storage that would otherwise occur while producing the oil makes it even more tragic. CO₂ EOR is now well established as a proven large and permanent storage process for emission captured CO₂. Large reservoirs are needed for the storage and the thick and

laterally continuous ROZs are ideally suited for the storage. Disposal water injected into the ROZ reservoirs is effectively condemning them for oil exploitation and CO2 storage.

Empire November 2023 Testimony, at Exhibit C (Self-Affirmed Statement of Laurence Stephen Melzer, dated October 25, 2024), ¶ 9. Empire's testimony is presumably based on fact and documents within Empire's possession and control - otherwise William West and Stephen Melzer could not have appropriately affirmed "that [their] testimony . . . [was] true and correct." *Id.* Empire, thus, must produce all responsive documents requested in Goodnight's third, sixth, eighth and ninth requests or confirm that Empire has none.

E. Improper Expert Preparation Materials Objection: Subpoena Request No. 18

Empire's objection to Goodnight's eighteenth request interposes an improper objection that should be stricken. Empire's reservoir simulation motion should be produced. Goodnight seeks:

The reservoir simulation model of the EMSU "to evaluate performance and impact to SWD injection and long-term flooding into the San Andres" that is referenced in the May 16, 2024 Form 8-K and attached as Exhibit 99, Press Release of Empire Petroleum, dated May 15, 2024, along with data relied on to construct the model, parameters and inputs, and analyses, reports, and summaries, including internal and external correspondence, that address, reflect on, or concern the reservoir model.

Empire responds that the reservoir model is trial preparation material being prepared by its expert and is not complete:

The reservoir simulation model of the EMSU, which is the work of Empire's expert, is not complete. The model and data relied on to construct the model will be produced in accordance with the Commission's Pre-Hearing Order in this matter. *See New Mexicans for Free Enterprise v. The City of Santa Fe*, 2006-NMCA-007, 138 N.M. 785.

Empire's claim that the model is trial preparation material is belied by the fact that Empire refers to it and relies on it in Empire's publicly filed Form 8-K. Goodnight is not asking for Empire's trial prep material. Goodnight is asking for that publicly referenced document.

Moreover, even if the Empire's publicly advertised model is *actually* hearing preparation material of its experts and an objection to its disclosure and production in advance of the timelines set out in the scheduling order is proper, the objection pertains *only to* that the model itself. The underlying data is not subject to the Scheduling Order. Underlying data used to create the model is discoverable and should be produced. And while the expert's work may be subject to the scheduling order, Empire has no basis to contend Empire's internal technical communications, reports, and summaries regarding the model are protected against discovery. Also not protected are Empire's internal and external communications that reflect on technical aspects of the model. Empire, thus, must produce all responsive documents requested in Goodnight's third, sixth, eighth and ninth requests or confirm that Empire has none.

F. Good Cause to Grant This Motion Out of Time

While New Mexico "courts have not yet defined 'good cause' within the context of amending the scheduling order deadlines pursuant to Rule 1-016[,]" as explained below, good cause to grant this motion exists here. *See Kuckelman Pump Serv.-Acculectric v. Hacienda Del Cerezo, LTD*, 2014 N.M. App. Unpub. LEXIS 23, at *26-27 (Ct. App. Jan. 30, 2014).

Empire provided discovery responses on August 2, 2024. The deadline for motions to compel was August 12, 2024, merely five business days after Empire's discovery responses. Given the need to fully brief and explain the issues to the Commission, it was not reasonably feasible for Goodnight to prepare the instant motion on a timely basis. Within the course of those five days, among other matters, Goodnight's counsel prepared for a different contested hearing in front of the Division (Case Nos. 24528 and 24541); prepared for a NMRA 1-030(B)(6) deposition set on Thursday, August 8, 2024 in *DASCO Cattle Company, Inc., v. Goodnight Midstream Permian, LLC*, Case No. D-506-CV-2023-00122; and prepared for and participated in a Federal Court

settlement conference set on August 8, 2024, in *Martha Trujillo v. Synchrony Bank*, United States District Court for the District of New Mexico Case No. 1:23-cv-01035-JCH-JMR.

Goodnight timely sought to have Empire's objections noticed for hearing in its email dated August 8, 2024, even while Goodnight was evaluating the discovery responses. *See* Email, attached as **Exhibit 3**. Though informal, the Motion to Compel Email timely raised the deficiencies in Empire's responses. *See* Exh. 3. Goodnight further sent along its Good Faith Email (*see* Exh. 2) to Empire's counsel late on August 8, 2024, requesting conferral on the discovery issues consistent with Rule 1-037 NMRA, Section 70-2-8 NMSA, and Section 19.15.4.16.A NMAC.

Goodnight has been generally diligent in this litigation and its failure meet the motion to compel deadline with the instant formal motion, even if its informal email motion is deemed insufficient, was as a result of the fact that it could not reasonably meet the deadline based on the timing of Empire's response. *See Gallegos v. CitiMortgage, Inc.*, No. CIV 21-0486 JB/GJF, 2022 U.S. Dist. LEXIS 38405, at *82 (D.N.M. Mar. 4, 2022); *Rowen v. State*, 210 F.R.D. 250, 252 (D.N.M. 2002)). Good cause exists to grant this motion.

CONCLUSION

For this reason, Goodnight respectfully requests that the Commission grant this motion to compel, requiring Empire to provide responsive documents no later than August 20, 2024, and for such other and further relief as the Commission may deem appropriate and necessary.

DATED: August 16, 2024

Respectfully submitted,

HOLLAND & HART LLP

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CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2024, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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

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-22024/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 RESPONSES TO GOODNIGHT MIDSTREAM PERMIAN LLC’S THIRD SUBPOENA DATED JULY 2, 2024

In accordance with the Subpoena issued July 2, 2024, Empire New Mexico, LLC (“Empire”) submits the following responses. A link to responsive documents is provided in the email transmitting this response.

1. Documents, communications, reports, protocols, and analyses reflecting treatment of Grayburg production wells within the EMSU for scale, H₂S, or corrosion prior to

commencement of waterflooding operations in the EMSU.

RESPONSE: *See document(s) Bates# OCD 23614-17 03538-3557, produced herewith.*

2. Documents, communications, reports, analyses, and protocols reflecting treatment, including chemicals used with concentrations, volumes, and a description of filtering media and size of filters used on injected fluids, conducted by Gulf Oil, Chevron, and XTO to address scaling, H₂S, and corrosion in Grayburg production wells, Grayburg injection wells, and San Andres water supply wells within the EMSU from creation of the EMSU until acquisition of the EMSU by Empire.

RESPONSE: Empire has conducted a diligent and thorough search of the records within its possession, custody, or control and discovered no responsive documents.

3. Documents, communications, reports, analyses, and protocols reflecting treatment, including volumes and concentrations of chemicals used, and a description of filtering media and size of filters used on injected fluids, and Safety Data Sheets (SDS) for treating chemicals used, conducted by Empire New Mexico LLC to address scaling, H₂S, and corrosion in Grayburg production wells, Grayburg injection wells, and San Andres water supply wells within the EMSU from Empire's acquisition of the EMSU to the present.

RESPONSE: *See documents Bates# OCD 23614-17 03558-3562, produced herewith.*

4. Documents, communications, reports, and analyses reflecting any changes made to treatment protocols or plans to address scaling, H₂S, and corrosion in Grayburg production wells, Grayburg injection wells, and San Andres water supply wells within the EMSU from the

time Empire acquired the EMSU to the present.

RESPONSE: Empire has conducted a diligent and thorough search of the records within its possession, custody, or control and discovered no responsive documents.

5. Please produce a complete, conforming, and legible copy of the ExxonMobil document titled “EMSU, EMSUB, and AGU Upside Potential – Infill Drilling and ROZ” attached, at least in part, as Exhibit A-5 in Empire’s Amended Exhibits filed on November 2, 2023, in Division Case Nos. 23614-23617 (“Empire’s Exhibit A-5”).

RESPONSE: Empire has conducted a diligent and thorough search of the records within its possession, custody, or control and discovered no responsive documents.

6. All documents, communications, reports, analyses, and data provided by XTO to Empire relating to the residual oil zone (“ROZ”) referenced in Empire’s Exhibit A-5, including but not limited to documents and data provided by XTO in the data room as part of Empire’s due diligence review of the EMSU, as well as complete, conforming and legible copies of the analyzed logs used to create the cross section titled “Eunice Area ROZ Cross-section” presented on page 7 of Empire’s Exhibit A-5.

RESPONSE: *See* document(s) Bates# OCD 23614-17 03563-3622, produced herewith.

7. Documents and data provided by XTO/ExxonMobil to the EMSU data room as part of Empire’s due diligence review prior to acquiring the EMSU reflecting any of the following:

- Scaling, H₂S, and corrosion in Grayburg production wells, Grayburg injection wells, and San Andres water supply wells within the EMSU;

- Potential for ROZ development within the EMSU, including but not limited to reserves estimates and estimated recoveries;
- Communication between the Grayburg and San Andres formations; and
- Well remediation work and any related analyses reflecting potential causes.

RESPONSE: Empire has conducted a diligent and thorough search of the records within its possession, custody, or control and discovered no responsive documents.

8. Documents and data reflecting Grayburg Formation pressure in EMSU production wells and injection wells for the years 2021, 2022, and 2023.

RESPONSE: *See* documents Bates# OCD 23614-17 03623-3627, produced herewith.

9. Documents and data reflecting shut-in well pressure measurements, including shut-in fluid levels, for Grayburg waterflood injection wells within the EMSU for the period beginning immediately after Empire acquired its operating interest(s) the EMSU to Present.

RESPONSE: *See* documents Bates# OCD 23614-17 03628, produced herewith.

10. Empire records, prior-operator records, internally or externally created documents, and data reflecting production (water, oil, or gas) from the EMSU #457, EMSU #458, EMSU #459, EMSU #460, EMSU #461, and EMSU #462 prior to 1994.

RESPONSE: Responsive information was previously produced in supplemental production relating to Goodnight's second subpoena.

11. Documents, data, analyses, reports, and summaries, including but not limited to internal and external correspondence, that address, reflect on, or concern studies prepared by

Empire on the feasibility of conducting tertiary recovery operations in the San Andres formation within the EMSU using carbon dioxide.

RESPONSE: Empire has conducted a diligent and thorough search of the records within its possession, custody, or control and discovered that all responsive documents were previously produced.

12. Documents, data, analyses, reports, and summaries, including internal and external correspondence, that address, reflect on, or concern assessments for capital costs and expenditures estimated to be necessary to institute a tertiary recovery operation in the San Andres formation within the EMSU using carbon dioxide.

RESPONSE: Empire objects to Request No. 12 because it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. The Commission's jurisdiction does not include authority to consider "assessments for capital costs and expenditures estimated to be necessary to institute a tertiary recovery operation in the San Andres formation." *See* NMSA 1978, §§ 70-2-6; 70-2-11, 70-2-12 Further, the Commission has expressly narrowed the scope of this hearing. *See* Join Order on Goodnight's Motion to Limit Scope of Hearing ("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 [in the EMSU] by produced water injection activities undertaken by Goodnight.").

13. Reservoir studies reflecting monthly carbon dioxide volumes (including total, purchased, and recycled carbon dioxide) Empire estimates will be required to conduct tertiary recovery in the San Andres formation within the EMSU.

RESPONSE: Empire objects to this request for the same reasons stated in response to Request No. 12.

14. Communications with potential suppliers of carbon dioxide for tertiary recovery operations in the San Andres formation within the EMSU.

RESPONSE: Empire objects to this request for the same reasons stated in response to Request No. 12.

15. Communications from Empire to Nutech, including documents, analyses, and data, reflecting “client information and experience” provided by Empire to establish “permeability threshold values” as it pertains to the San Andres formation referenced in Empire Exhibit E-1 in Empire’s Amended Exhibits filed on November 2, 2023, in Division Case Nos. 23614-23617.

RESPONSE: Empire has conducted a diligent and thorough search of the records within its possession, custody, or control and discovered no documents reflecting “client information and experience” provided to Nutech by Empire. To Empire’s knowledge, the reference to “client information and experience by Mr. Dillewyn relates to information that Nutech had previously received from XTO and other clients operating within the area and Nutech’s experience with those clients.

16. To the extent Empire provided instructions to Nutech on input parameters, produce documents and communications between Empire and Nutech reflecting the modified Simandoux equation parameters used for each well (a, R_w , R_{sh} , n, m, V_{sh}) referenced in Galen

P. Dillewyn's testimony submitted on November 2, 2023, in Empire's Amended Exhibits filed on November 2, 2023, in Division Case Nos. 23614-23617.

RESPONSE: See response to Request No. 16.

17. Documents, data, and/or communications, whether internal or external, addressing the use of the San Andres formation in the EMSU as a carbon capture project, whether in the alternative to or in association with Empire's proposed carbon flood tertiary recovery project.

RESPONSE: Empire has conducted a diligent and thorough search of the records within its possession, custody, or control and discovered that no responsive documents.

18. The reservoir simulation model of the EMSU "to evaluate performance and impact to SWD injection and long-term flooding into the San Andres" that is referenced in the May 16, 2024 Form 8-K and attached as Exhibit 99, Press Release of Empire Petroleum, dated May 15, 2024, along with data relied on to construct the model, parameters and inputs, and analyses, reports, and summaries, including internal and external correspondence, that address, reflect on, or concern the reservoir model.

RESPONSE: The reservoir simulation model of the EMSU, which is the work of Empire's expert, is not complete. The model and data relied on to construct the model will be produced in accordance with the Commission's Pre-Hearing Order in this matter. *See New Mexicans for Free Enterprise v. The City of Santa Fe*, 2006-NMCA-007, 138 N.M. 785.

19. Documents, data, and/or communications, whether internal or external, related to

the any pilot project for CO₂ flood in the San Andres within the EMSU, to the extent such a pilot project is related to the “[p]rimary, secondary units with CO₂ potential” and the “[p]ilot to begin end of 2024” referenced in slide 12 of the Empire Petroleum Q1 2024 Earnings Slides, dated May 15, 2024, hosted on the “Investor Relations” > “Events & Presentations” page of Empire’s website (see <https://empirepetroleumcorp.com/investor-relations/events-presentations/>).

RESPONSE: The reference to a “pilot” in slide 12 pertains to infill drilling and not to CO₂ development. Thus, there are no responsive documents.

20. With respect to each person Empire 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: Empire previously provided information responsive to subparts a-b in its witness disclosure filed July 8, 2024. See documents Bates# OCD 23614-17 03629-3645 for information responsive to subpart e.

Respectfully submitted,

By: /s/ Sharon T. Shaheen

Sharon T. Shaheen

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Attorneys for Empire New Mexico, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following by electronic mail on August 1, 2024.

/s/ Sharon T. Shaheen

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From: Adam Rankin
Sent: Thursday, August 8, 2024 5:59 PM
To: Shaheen, Sharon
Cc: Sandoval, Yolanda; mbeck@peifer.com; Chris.Moander@emnrd.nm.gov; Jesse.tremaine@emnrd.nm.gov; msuazo@bwenergyllaw.com; sgraham@bwenergyllaw.com; Kaitlyn Luck; Michael Feldewert; Paula M. Vance; Nathan R. Jurgensen; dhardy@hinklelawfirm.com; Jaclyn McLean; trode@hinklelawfirm.com; padillalawnm@outlook.com; Ortiz, David
Subject: RE: NMOCD - Empire NM (Responses to Subpoenas) - GNM effort to confer on discovery
Attachments: Empire's Responses to Goodnight Midstream's Third Subpoena Issued July 2, 2024 (01742341xB76D6).PDF

Sharon,

I am following up to confer with Empire on the production made on August 1 in response to GNM's third subpoena for documents. Please review and let me know Empire's responses and when we can expect supplemental discovery or confirmation that Empire has no additional responsive documents.

Given the timing, I am going to ask that the Commission address Empire's objections at the August 15 meeting next week. Of course, we if reach agreement on any or all these items we may not have to seek the Commission's relief or can at least narrow the scope of the disputed issues.

Separately, please supplement Empire's production and provide all monthly EMSU plans provided to the OCD required under Order No. R-22869-A. Empire previously stated in response to discovery that the monthly reports would be provided once they are submitted to the Division. Unless I have missed it, we have not seen a single report submitted to the Division. It has been 9 months since the order was issued.

Request No. 3:

GNM's seeks "Documents, communications, reports, analyses, and protocols reflecting treatment, including volumes and concentrations of chemicals used, and a description of filtering media and size of filters used on injected fluids, and Safety Data Sheets (SDS) for treating chemicals used, conducted by Empire New Mexico LLC to address scaling, H2S, and corrosion in Grayburg production wells, Grayburg injection wells, and San Andres water supply wells within the EMSU from Empire's acquisition of the EMSU to the present." Empire produced documents bates labeled OCD 23614-17 03558-3562, however, those documents are dated January 2024 – May 2024.

Please produce all responsive documents from the time Empire acquired the EMSU or confirm that Empire has no responsive documents from before January 2024.

Request No. 6:

GNM seeks "All documents, communications, reports, analyses, and data provided by XTO to Empire relating to the residual oil zone ("ROZ") referenced in Empire's Exhibit A-5, including but not limited to documents and data provided by XTO in the data room as part of Empire's due diligence review of the EMSU, as well as complete, conforming and legible copies of the analyzed logs used to create the cross section titled "Eunice Area ROZ Cross-section" presented on page 7 of Empire's Exhibit A-5."

Empire produced a single document in response under Bates OCD 23614-17 03563-3622 that it had previously produced. It seems unlikely that is the only technical document provided to Empire relating to the alleged ROZ in the EMSU as part of Empire's EMSU due diligence.

Please produce all responsive documents or confirm that Empire has no additional responsive documents to this request.

Request No. 8

GNM seeks "Documents and data reflecting Grayburg Formation pressure in EMSU production wells and injection wells for the years 2021, 2022, and 2023." In response, Empire produced documents bates labeled OCD 23614-17 03623-3627, which are 5 different spreadsheets: (1) EMSU injection wells with data from November 2023 until February 2024; (2) 4 s/s purporting to show fluid levels for certain wells for certain months in 2021, all months in 2022, certain wells for all months in 2023, and certain wells in January-July 2024.

Please provide all EMSU injection well data prior to November 2023 or confirm that Empire has no additional responsive documents.

Request No. 9

GNM seeks "Documents and data reflecting shut-in well pressure measurements, including shut-in fluid levels, for Grayburg waterflood injection wells within the EMSU for the period beginning immediately after Empire acquired its operating interest(s) the EMSU to Present."

In response, Empire produced a single summary spreadsheet bates labeled OCD 23614-17 03628 that has one table showing pressure values for 2024 (without specific dates) in 4 EMSU Grayburg wells and 1 purported San Andres EMSU well and one table showing pressure values in a different EMSU well purportedly for the Grayburg and San Andres.

Please produce the underlying documents and data used to create the summary tables in OCD 23614-17 03628 and confirm Empire has no additional responsive documents.

Request Nos. 12, 13, & 14

GNM seeks information on capital costs for a tertiary ROZ project in the San Andres, CO2 volumes, and communications with potential CO2 suppliers.

Empire objects to these requests on the grounds the information sought is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Empire points to the Commission's enumeration of powers statute and argues that the requested information is outside the scope of the hearing. We disagree.

First, the enumeration of powers statute Empire relies on expressly incorporates the "in-paying quantities" standard under NMSA § 70-2-12(A)(4) when evaluating whether a potentially prospective zone is at risk of being "drowned out."

Second, the Piazza order, which is one of the cases at issue before the Commission here, denied GNM's application in part on the basis that it is the Division's obligation under that same provision "to prevent the drowning by water of any stratum or part thereof capable of producing oil or gas or both oil and gas in paying quantities and to prevent the premature and irregular encroachment of water or any other kind of water encroachment that reduces or tends to reduce the total ultimate recovery of crude petroleum oil or gas or both oil and gas from any pool." See Order No. R-22869-A (citing NMSA § 70-2-12(A)(4)).

Third, in every one of Empire's applications to revoke GNM's injection authority within the EMSU, Empire alleges that GNM is watering out a purported ROZ in the San Andres. See, e.g., Case No. 24025. These claims directly implicate NMSA § 70-2-12(A)(4).

Whether there are recoverable hydrocarbons in the purported San Andres ROZ that can be produced in paying quantities is the central issue in these cases.

Please withdraw Empire's objections and produce all responsive documents or confirm as to each request that Empire has no responsive documents.

Request No. 17

GNM seeks information and communications about whether Empire is seeking to use the EMSU as a carbon capture project.

Empire states it has searched but found no responsive documents.

Empire's witnesses have provided sworn testimony submitted to the Division previously in these cases alleging that the EMSU can receive value and tax credits for injection of anthropogenic CO₂.

See Testimony of William West, referring to Empire Exhibit G-4: "**Exhibit G-14** shows the location of a CO₂ pipeline that runs south from Hobbs and within 7.5 miles east of EMSU. This pipeline can be used to transport natural (subsurface CO₂ resources) or anthropogenic (industrial emissions) CO₂ supplies to be used for the CO₂ flood. With 45-Q tax credits paying \$60/tonne (\$3.19/MCF) of CO₂ sequestered, parties interested in obtaining this tax credit for 12 years will have a location to inject the anthropogenic CO₂ they capture."

See Testimony of Stephen Melzer: "9. One of the evolving modern tragedies in our oilfields today is the condemnation of the ROZ oil recovery potential via produced water disposal. This is especially true today with the recent passage of the Inflation Reduction Act's 45Q tax credit enhancements. The lost oil is bad enough but the enormous potential for large volume CO₂ storage that would otherwise occur while producing the oil makes it even more tragic. CO₂ EOR is now well established as a proven large and permanent storage process for emission captured CO₂. Large reservoirs are needed for the storage and the thick and laterally continuous ROZs are ideally suited for the storage. Disposal water injected into the ROZ reservoirs is effectively condemning them for oil exploitation and CO₂ storage."

Please confirm, notwithstanding the fact Empire has alleged the EMSU can be used for carbon storage and sequestration in testimony in these cases, that it has nevertheless identified no responsive documents.

Request No. 18.

In this request, GNM asks for the "The reservoir simulation model of the EMSU 'to evaluate performance and impact to SWD injection and long-term flooding into the San Andres' that is referenced in the May 16, 2024 Form 8-K and attached as Exhibit 99, Press Release of Empire Petroleum, dated May 15, 2024, along with data relied on to construct the model, parameters and inputs, and analyses, reports, and summaries, including internal and external correspondence, that address, reflect on, or concern the reservoir model."

Empire's response clarifies that this publicly advertised model is actually hearing prep material of its experts and objects to its disclosure and production in advance of the timelines set out in the scheduling order. We agree that the model itself and its parameters and inputs are subject to the scheduling order and its disclosure provisions. But the underlying data is not. Underlying data used to create the model is discoverable and should be produced.

And while the expert’s work may be subject to the scheduling order, Empire has no basis to contend Empire’s internal technical communications, reports, and summaries regarding the model are protected against discovery. Also not protected are Empire’s internal and external communications that reflect on technical aspects of the model.

Please withdraw Empire’s objections and produce all responsive documents and information.

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CONFIDENTIALITY NOTICE: This message is confidential and may be privileged. If you believe that this email has been sent to you in error, please reply to the sender that you received the message in error; then please delete this email.

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Cc: Shaheen, Sharon <sshahen@spencerfane.com>; Sandoval, Yolanda <ysandoval@spencerfane.com>
Subject: NMOCD - Empire NM (Responses to Subpoenas)

External Email

All, attached are the following:

Empire New Mexico LLC's Responses to the Oil Conservation Division's First Subpoena, along with its corresponding ShareFile link to its documents (see below)
<https://montand.sharefile.com/public/share/web-s9d4020f9303e4fec124b01f3556691e>

And

Empire New Mexico LLC's Responses to Goodnight Midstream Permian LLC's Third Subpoena Dated July 2, 2024, along with its corresponding ShareFile link to its documents (see below)
<https://montand.sharefile.com/public/share/web-s62fde34ce16145339b87b4058ee58064>

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Nathan R. Jurgensen

From: Adam Rankin
Sent: Thursday, August 8, 2024 6:16 PM
To: drubin@nmag.gov; Apodaca, Sheila, EMNRD
Cc: Dana Hardy; Shaheen, Sharon; Ernest Padilla; Moander, Chris, EMNRD (Chris.Moander@emnrd.nm.gov); jessek.tremaine@emnrd.nm.gov; mbeck@peifer.com; msuazo@bwenergylaw.com; sgrahaham@bwenergylaw.com; Kaitlyn Luck; Jaclyn McLean; Nathan R. Jurgensen; Michael Feldewert
Subject: Oil Conservation Commission Meeting on August 15, 2024 - Preliminary Agenda - Goodnight / Empire matters for inclusion
Attachments: RE: NMOCD - Empire NM (Responses to Subpoenas) - GNM effort to confer on discovery ; August 15 2024 OCC Preliminary Agenda.pdf; Empire's Responses to Goodnight Midstream's Third Subpoena Issued July 2, 2024 (01742341xB76D6).PDF

Mr. Rubin and Ms. Apodaca,

Counsel have conferred on the items listed for the Commission’s August 15 meeting in the attached preliminary agenda and note that two additional items should be included for consideration and possible action in the Goodnight/Empire contested cases:

- Empire and Goodnight Cross motions to quash witness depositions – these motions are expected to be fully briefed and ready for argument on 8/15
- Goodnight’s Motion to Quash in Part Empire's June 3 subpoena for production of documents – this motion will be fully briefed and ready for argument on 8/15

In addition, we have a brewing dispute over Empire’s objections to Goodnight’s third subpoena for documents. The objections were served on August 1, 2024. See attached Responses. Given the nature of the documents requested and the time remaining to prepare testimony and exhibits, Goodnight is asking the Commission hear the parties’ arguments on Empire’s objections on August 15 and decide whether Empire should be compelled to produce responsive documents. We will try to resolve our differences or to at least narrow the dispute (see attached email conferring), but in the event we are unable to do so, Goodnight asks the Commission to include Empire’s objections as an item it may consider and take possible action on at the meeting next week.

I’ve advised counsel for Empire that I would request Empire’s objections to Goodnight’s third subpoena be placed on the agenda, but Empire has not agreed that issue should be heard on August 15.

We appreciate consideration of this request and are happy to discuss or respond to any questions.

Very best,
Adam

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Sent: Tuesday, August 6, 2024 5:32 PM

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Subject: Oil Conservation Commission Meeting on August 15, 2024 - Preliminary Agenda

External Email

Good Afternoon:

Please find attached the Preliminary Agenda for the OCC Meeting & Hearing on August 15, 2024.

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Law Clerk

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