

**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 EXPEDITED MOTION FOR ISSUANCE OF EXPERT DEPOSITIONS

Goodnight Midstream Permian, LLC (“Goodnight”) respectfully files this motion for issuance of four expert deposition subpoenas to Empire New Mexico, LLC (“Empire”). *See* deposition subpoenas attached as **Exhibits A, B, C, and D**. In support Goodnight states:

CONFERRAL AND SUPPORT

Counsel for Goodnight conferred with OCD counsel and OCD approves of this Motion to advance permissible and OCC-approved discovery in these matters. Intervenors Rice Operating

Company, Permian Line Service, LLC, and Pilot Water Solutions SWD, LLC, also support this motion. Goodnight requested Empire's position on August 20, 2024, prior to filing. Empire opposes this motion.

INTRODUCTION

Goodnight moves the Commission to issue four additional deposition subpoenas to depose some of Empire's expert witnesses on the same bases that Empire's expert witness depositions were granted in the August 19, 2024 Order on Goodnight/Empire Motion to Quash Deposition Subpoenas (the "Deposition Order").

The Deposition Order denies Goodnight's Motion to Quash Empire's Expert Deposition Subpoenas, filed August 2, 2024 (setting forth argument about lack of good cause to depose witnesses on direct written testimony), on the basis that the Hearing Examiner, ruling for the Commission, found extraordinary circumstances and good cause exist to merit depositions on experts, despite written direct testimony:

It is manifest from testimony presented to the Commission on June 20, 2024, that the issues involved in the foregoing scope of the upcoming merits hearing are complex. I conclude that hearings involving complex issues meet the extraordinary circumstances and good cause thresholds for issuance of deposition subpoenas under 19.15.4.16(A) NMAC. OCC interests in full development of factual and expert testimony to be presented at the merits hearing in this matter outweigh the interests of parties in avoiding allegedly undue burden and expense. I reject arguments that allowing these depositions to proceed unfairly prejudices either party or its ability to prepare for hearing. Both parties are ably represented by sophisticated teams of lawyers with more than adequate resources to multi-task and prepare for the upcoming hearing as well as participate in depositions.

Deposition Order at 2, ¶ 2. Based on this ruling, there is no prejudice to Empire that would merit denying this motion. Similarly, the interests of full development of the factual and expert testimony to be presented at the hearing supports granting it. Thus, in the interest of fairness between the

parties, full development of the complex issues before the Commission, and to support complete adjudication of the issues, the Commission should find good cause to grant this motion, extend the July 19, 2024 subpoena deadline to issue these subpoenas, and to permit Goodnight a fair opportunity to depose some of Empire’s witnesses in advance of the hearing.

ARGUMENT

Goodnight is requesting these depositions as a matter of fairness, to fully develop complicated issues, and to mitigate prejudice caused to Goodnight by Empire’s failure to produce documents requested in discovery. Good cause exists to grant this motion and issue the attached deposition subpoenas.

A. The Four Putative Deponents Will Testify on Centrally Complex Issues Meriting a Deposition to Fully Develop Their Testimony.

Goodnight is asking for depositions of Galen Dillewyn, William West, Dr. James L. Buchwalter, and Dr. Robert Trentham. Each of these deponents has been noticed by Empire to provide testimony on exceptionally complex issues and/or contents of factual issues regarding which Empire has not yet provided discovery to Goodnight.

Goodnight seeks to depose Galen Dillewyn because Dillewyn will testify for Empire regarding Empire’s petrophysical analysis. First, a petrophysical analysis is very complicated and highly dependent on inputs and parameters, so Goodnight would like to depose Dillewyn to fully explore the data inputs and parameters—and the basis for using them—that Dillewyn used to perform Empire’s petrophysical analysis. This is expected to be a time-consuming process. It would be more efficient and avoid a potential time crunch at the hearing to depose Dillewyn before the hearing. In support of “full[y] develop[ing]. . . factual and expert testimony” (Deposition Order at 2, ¶ 2) related to the petrophysical analysis purportedly performed by Dillewyn, a deposition would be helpful to Goodnight and to the Commission. Second, Dillewyn is not a petrophysicist,

and so, the opportunity to test Dillewyn's reliability as a petrophysicist expert would be appropriate in advance of the limited time to cross Dillewyn at the hearing in September.

Goodnight also seeks to depose William West, in part, because he will be testifying about increases to Empire's operational costs related to injection activities in the San Andres formation and other alleged impacts on EMSU operations. Consistent with Goodnight's Motion to Compel, Empire has not provided documents related to that testimony, which is necessary for Goodnight to test Empire's ability to meet its burden of proof. *See* Goodnight Motion to Compel, filed August 16, 2024 (incorporated herein, *see* NMRA 1-10(C)). This is both a centrally relevant issue for the Commission and, presumably, will be a complex assessment on the part of Empire.

Goodnight also seeks to depose Dr. James L. Buchwalter. Empire intends to have Dr. Buchwalter testify on a model simulation detailing projections for the EMSU, on alleged communication and migration of produced water between the San Andres and the Grayburg, and alleged pressure increases in the San Andres causing water to migrate through fractures and water-out Grayburg wells. As with Empire's petrophysics analysis, Dr. Buchwalter's model simulations will be heavily dependent on the data inputs, parameters, and assumptions. Understanding what those are—where the inputs came from and what they are based on—will be time consuming at the hearing. The parties and the Commission will be better served if Dr. Buchwalter were subject to a deposition in advance.

Finally, Goodnight seeks to depose Dr. Robert Trentham. Besides providing background testimony on residual oil zones that is not specific to the EMSU or San Andres, Dr. Trentham will be testifying on the impacts of Goodnight's injection to the "economics" of enhanced oil recovery in the EMSU. As Goodnight has repeatedly pointed out, Empire is either unwilling or unable to produce documents reflecting its economic analyses on ROZ development in the EMSU; however,

Dr. Trentham has apparently been retained to testify on just that topic. It is imperative that Goodnight be given the opportunity to depose Dr. Trentham in advance of the hearing. A prehearing deposition will be more efficient and avoid a potential time crunch at the hearing

B. Full and Fair Development of Factual and Expert Testimony About the Complex Issues Before the Commission Necessitates Depositions of Four of Empire's Witnesses.

The Commission is rightfully concerned with ensuring a “full development of factual and expert testimony to be presented at the merits hearing in this matter” and has ruled that such a concern “outweigh[s] the interests of parties in avoiding allegedly undue burden and expense. . .” Deposition Order at 2, ¶ 3. Indeed, most of the necessary witnesses and evidentiary burden in these hearings is borne by Empire. Thus, Goodnight’s opportunity to depose Empire’s witnesses is at least as important to developing the issues as would be Empire’s opportunity to depose Goodnight’s witnesses.

Empire has noticed nine witnesses, the New Mexico Oil Conservation Division (“OCD”) has noticed two witnesses, and Goodnight has noticed seven witnesses. *See* Empire Witness Disclosure, OCD Witness Disclosure, and Goodnight Witness Disclosure, all filed on July 8, 2024. However, there are only five days set for the hearing. If the Commission would benefit from depositions on the factual and expert issues, as determined in the Deposition Order, then it is appropriate for Goodnight to have the opportunity to develop those issues during depositions of Empire’s witnesses—those witnesses will be providing most of the testimony to the Commission.

Moreover, as explained more fully in Goodnight’s Motion to Compel Production of Documents, filed on August 16, 2024, Empire centrally bears the initial burden related to the matters at issue before the Commission. *See, generally*, Mot. to Compel at 5-11 (argument about a portion of Empire’s prima facie burden of proof); *see, e.g., Bass Enters. Prod. Co. v. Mosaic Potash Carlsbad Inc.*, 2010-NMCA-065, ¶ 44, 238 P.3d 885.

In the interest of ensuring the Commission's Deposition Order does not "unfairly prejudice[] either party or its ability to prepare for hearing," as expressly intended (Deposition Order at 2, ¶ 2), it is necessary for Goodnight also to have the opportunity to depose some of Empire's witnesses on their testimony in advance of the hearing. Permitting Empire the opportunity to depose five of Goodnight's witnesses permits Empire up to an additional seven hours¹ per witness to cross-examine Goodnight's witnesses—an opportunity that is not currently available to Goodnight. That means Empire has the benefit of up to 35 additional hours of cross-examination, and the opportunity to develop re-direct testimony for its witnesses based on early cross-examination of Goodnight's witnesses. A denial of Goodnight's instant motion unfairly prevents an equitable development of the parties' testimony in support of their respective positions.

If the "complex issues meet the extraordinary circumstances and good cause thresholds" for Empire to enjoy such extended opportunity to cross-examine Goodnight's witnesses, certainly then, too, the same "complex issues" also "meet the extraordinary circumstances and good cause thresholds" for Goodnight to depose four of Empire's witnesses in advance of the September 23-27 hearing. Permitting both parties to "full[y] develop[] . . . factual and expert testimony to be presented at the merits hearing in this matter" is in the interest of fairness between the parties, full development of the issues for the Commission, and adjudication of the issues.

C. Good Cause Exists to Issue These Deposition Subpoenas After the July 19, 2024 Scheduling Order Deadline.

While Goodnight took a position contrary to the Hearing Examiner's determination in the Deposition Order, nonetheless, the Hearing Examiner's determination serves as adjudication of the issue related to "extraordinary circumstances and good cause thresholds for issuance of

¹ Given there is no deposition time-limit in the Deposition Order, presumably the deposition limitations would be consistent with a witness deposition under Rules 1-030 and 1-045 NMRA.

deposition subpoenas under 19.15.4.16(A) NMAC” in these consolidated matters. *Cordova v. Larsen*, 2004-NMCA-087, ¶ 10, 136 N.M. 87, 91, 94 P.3d 830, 834 (“[A] decision on an issue of law made at one stage of a case becomes a binding precedent in successive stages of the same litigation.”).

The Deposition Order concludes that the nature of the complex issues in this litigation meets the standard in Section 19.15.4.16(A) NMAC for witness deposition. Since Goodnight disagreed with the Hearing Examiner’s determination about the appropriate standard for depositions in these matters, it did not believe expert deposition subpoenas would be issued by the Commission. Empire filed its motion to depose Goodnight’s witnesses on July 18, 2024, the day before the deadline for subpoenas to be issued under the Prehearing Order. Thus, in good faith and based upon a conscious determination of counsel, Goodnight did not move prior to the July 19, 2024 deadline to depose Empire’s experts on their direct written testimony. *See* Pre-Hearing Order, issued June 3, 2024.

As a result, Goodnight’s understanding of the Commission’s position on this legal standard was established *only after* expiration of the Scheduling Order deadline. Had the Commission’s position about witness depositions been known prior to the deadline, Goodnight would have sought to depose four of Empire’s experts on their direct testimony under the Commission’s ruling on the standard for good cause and extraordinary circumstances. For this reason, good cause exists extend the July 19, 2024 deadline for issuance of deposition subpoenas and to issue these requested deposition subpoenas. Caselaw on “good cause” to amend late is instructive on this issue. *See, e.g., Cohen-Esrey Real Estate Servs. v. Twin City Fire Ins. Co.*, Civil Action No. 08-2527-KHV-DJW, 2009 U.S. Dist. LEXIS 145757, at *6 (D. Kan. Oct. 6, 2009) (holding that plaintiff established good cause under Rule 16(b)(4) to allow the amendments out of time because the “failure to amend

its Complaint prior to the Scheduling Order deadline” was not due to any “lack of diligence under the Rule 16(b) standard” given “it was based on an informed and deliberate decision made in light of information gained through the mediation and written discovery that occurred after the . . . amendment deadline”); *c.f.*, *Riggs v. Johnson*, No. 09-cv-01226-WYD-KLM, 2010 U.S. Dist. LEXIS 48125, 2010 WL 1957110, at *3 (D. Colo. Apr. 27, 2010), *adopted by* 2010 U.S. Dist. LEXIS 48124, 2010 WL 1957099 (D. Colo. May 17, 2010). Like in *Cohen-Esrey Real Estate Services*, undersigned counsel has made an “informed and deliberate decision” to seek to depose four additional witnesses and to consider an out of time motion “in light of information gained through the” Deposition Order issued after the deadline. *Cohen-Esrey Real Estate Services*, 2009 U.S. Dist. LEXIS 145757, at *6.

CONCLUSION

For this reason, Goodnight respectfully requests that the Commission grant this motion and issue the four attached subpoenas for deposition, and for such other and further relief as the Commission may deem appropriate and necessary.

DATED: August 20, 2024

Respectfully submitted,

HOLLAND & HART LLP

/s/ Nathan R. Jurgensen

By: _____

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**ATTORNEYS FOR GOODNIGHT MIDSTREAM
PERMIAN, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on August 20, 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
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION**

**APPLICATIONS OF GOODNIGHT MIDSTREAM
PERMIAN, LLC FOR APPROVAL OF
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CASE NOS. 23614-23617

**APPLICATION OF GOODNIGHT MIDSTREAM
PERMIAN LLC TO AMEND ORDER NO. R-22026/SWD-2403
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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**

SUBPOENA

To: Galen Dillewyn
4106 Pine Breeze Dr,
Kingwood, Texas 77345
c/o Padilla Law Firm, P.A.
Attn: Ernest L. Padilla
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EXHIBIT - A

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cc: wmcginnis@montand.com

YOU ARE HEREBY COMMANDED pursuant to NMSA 1978, §70-2-8 and

Rule 19.15.4.16.A NMAC TO APPEAR as follows:

Place: Holland & Hart LLP, 110 North Guadalupe, Santa Fe, New Mexico, 87501

Date: August 29, 2024 Time: 10:00 a.m.

to testify at the taking of a deposition regarding the topics attributed to you in Empire New Mexico, LLC's July 8, 2024, Witness Disclosure (the "Empire Witness Disclosure"). The deposition will be recorded by a certified court reporter and videotaped. This deposition testimony may be used at hearing for any and all purposes permitted by the New Mexico Oil Conservation Commission, the New Mexico Rules of Civil Procedure, and the New Mexico Rules of Evidence.

YOU ARE ALSO COMMANDED pursuant to Section 70-2-8 and Rule 19.15.4.16.A

NMAC to bring with you the following document(s) or object(s):

1. Any documents you reviewed or relied upon to develop your opinions on the subject matter set forth in the Empire Witness Disclosure or with regard to the subject matter set forth in your written direct testimony filed on August 26, 2024; and
2. Any reports or analyses prepared by you, or at your direction, regarding your opinions on the subject matter set forth in the Empire Witness Disclosure or with

regard to the subject matter set forth in your written direct testimony filed on August 26, 2024;

to produce the following documents at the offices of Holland & Hart LLP, 110 North Guadalupe, Santa Fe, New Mexico, 87501, contemporaneous with the taking of the deposition of Empire New Mexico, LLC, to the extent any such document has not already been timely produced by Empire under the June 3, 2024, Pre-Hearing Order issued in this matter.

This subpoena is issued on application of Goodnight Midstream Permian, LLC through its attorney, Adam G. Rankin of Holland & Hart LLP.

Dated this ____ day of August 2024.

NEW MEXICO OIL CONSERVATION COMMISSION

BY: _____

Date: _____

32644283_v1

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

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PERMIAN, LLC FOR APPROVAL OF
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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**

SUBPOENA

To: William West
3510 Triple Crown Dr.
Richmond, TX 77406
c/o Padilla Law Firm, P.A.
Attn: Ernest L. Padilla
Post Office Box 2523
Santa Fe, New Mexico 87504
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EXHIBIT - B

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Montgomery & Andrews, P.A.
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Santa Fe, NM 87504-2307
(505) 986-2678
sshhaheen@montand.com
cc: wmcginnis@montand.com

YOU ARE HEREBY COMMANDED pursuant to NMSA 1978, §70-2-8 and

Rule 19.15.4.16.A NMAC TO APPEAR as follows:

Place: Holland & Hart LLP, 110 North Guadalupe, Santa Fe, New Mexico, 87501

Date: September 5, 2024 Time: 10:00 a.m.

to testify at the taking of a deposition regarding the topics attributed to you in Empire New Mexico, LLC's July 8, 2024, Witness Disclosure (the "Empire Witness Disclosure"). The deposition will be recorded by a certified court reporter and videotaped. This deposition testimony may be used at hearing for any and all purposes permitted by the New Mexico Oil Conservation Commission, the New Mexico Rules of Civil Procedure, and the New Mexico Rules of Evidence.

YOU ARE ALSO COMMANDED pursuant to Section 70-2-8 and Rule 19.15.4.16.A

NMAC to bring with you the following document(s) or object(s):

1. Any documents you reviewed or relied upon to develop your opinions on the subject matter set forth in the Empire Witness Disclosure or with regard to the subject matter set forth in your written direct testimony filed on August 26, 2024; and
2. Any reports or analyses prepared by you, or at your direction, regarding your opinions on the subject matter set forth in the Empire Witness Disclosure or with

regard to the subject matter set forth in your written direct testimony filed on August 26, 2024;

to produce the following documents at the offices of Holland & Hart LLP, 110 North Guadalupe, Santa Fe, New Mexico, 87501, contemporaneous with the taking of the deposition of Empire New Mexico, LLC, to the extent any such document has not already been timely produced by Empire under the June 3, 2024, Pre-Hearing Order issued in this matter.

This subpoena is issued on application of Goodnight Midstream Permian, LLC through its attorney, Adam G. Rankin of Holland & Hart LLP.

Dated this ____ day of August 2024.

NEW MEXICO OIL CONSERVATION COMMISSION

BY: _____

Date: _____

32644286_v1

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

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CASE NOS. 24018-24020, 24025

**APPLICATION OF GOODNIGHT PERMIAN
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SALTWATER DISPOSAL WELL, LEA COUNTY,
NEW MEXICO.**

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

SUBPOENA

To: Dr. James L. Buchwalter
702 Morton Street
Richmond, TX 77469
c/o Padilla Law Firm, P.A.
Attn: Ernest L. Padilla
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EXHIBIT - C

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Santa Fe, NM 87504-2307
(505) 986-2678
sshhaheen@montand.com
cc: wmcginnis@montand.com

YOU ARE HEREBY COMMANDED pursuant to NMSA 1978, §70-2-8 and

Rule 19.15.4.16.A NMAC TO APPEAR as follows:

Place: Holland & Hart LLP, 110 North Guadalupe, Santa Fe, New Mexico, 87501

Date: August 30, 2024 Time: 10:00 a.m.

to testify at the taking of a deposition regarding the topics attributed to you in Empire New Mexico, LLC's July 8, 2024, Witness Disclosure (the "Empire Witness Disclosure"). The deposition will be recorded by a certified court reporter and videotaped. This deposition testimony may be used at hearing for any and all purposes permitted by the New Mexico Oil Conservation Commission, the New Mexico Rules of Civil Procedure, and the New Mexico Rules of Evidence.

YOU ARE ALSO COMMANDED pursuant to Section 70-2-8 and Rule 19.15.4.16.A

NMAC to bring with you the following document(s) or object(s):

1. Any documents you reviewed or relied upon to develop your opinions on the subject matter set forth in the Empire Witness Disclosure or with regard to the subject matter set forth in your written direct testimony filed on August 26, 2024; and
2. Any reports or analyses prepared by you, or at your direction, regarding your opinions on the subject matter set forth in the Empire Witness Disclosure or with

regard to the subject matter set forth in your written direct testimony filed on August 26, 2024;

to produce the following documents at the offices of Holland & Hart LLP, 110 North Guadalupe, Santa Fe, New Mexico, 87501, contemporaneous with the taking of the deposition of Empire New Mexico, LLC, to the extent any such document has not already been timely produced by Empire under the June 3, 2024, Pre-Hearing Order issued in this matter.

This subpoena is issued on application of Goodnight Midstream Permian, LLC through its attorney, Adam G. Rankin of Holland & Hart LLP.

Dated this ____ day of August 2024.

NEW MEXICO OIL CONSERVATION COMMISSION

BY: _____

Date: _____

32644297_v1

**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
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SUBPOENA

To: Dr. Robert Trentham
c/o Padilla Law Firm, P.A.
Attn: Ernest L. Padilla
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(505) 986-2678
sshhaheen@montand.com
cc: wmcginnis@montand.com

YOU ARE HEREBY COMMANDED pursuant to NMSA 1978, §70-2-8 and
Rule 19.15.4.16.A NMAC TO APPEAR as follows:

Place: Holland & Hart LLP, 110 North Guadalupe, Santa Fe, New Mexico, 87501

Date: September 6, 2024 Time: 10:00 a.m.

to testify at the taking of a deposition regarding the topics attributed to you in Empire New Mexico, LLC's July 8, 2024, Witness Disclosure (the "Empire Witness Disclosure"). The deposition will be recorded by a certified court reporter and videotaped. This deposition testimony may be used at hearing for any and all purposes permitted by the New Mexico Oil Conservation Commission, the New Mexico Rules of Civil Procedure, and the New Mexico Rules of Evidence.

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NMAC to bring with you the following document(s) or object(s):

1. Any documents you reviewed or relied upon to develop your opinions on the subject matter set forth in the Empire Witness Disclosure or with regard to the subject matter set forth in your written direct testimony filed on August 26, 2024; and
2. Any reports or analyses prepared by you, or at your direction, regarding your opinions on the subject matter set forth in the Empire Witness Disclosure or with regard to the subject matter set forth in your written direct testimony filed on August 26, 2024;

to produce the following documents at the offices of Holland & Hart LLP, 110 North Guadalupe, Santa Fe, New Mexico, 87501, contemporaneous with the taking of the deposition of Empire New Mexico, LLC, to the extent any such document has not already been timely produced by Empire under the June 3, 2024, Pre-Hearing Order issued in this matter.

This subpoena is issued on application of Goodnight Midstream Permian, LLC through its attorney, Adam G. Rankin of Holland & Hart LLP.

Dated this ____ day of August 2024.

NEW MEXICO OIL CONSERVATION COMMISSION

BY: _____

Date: _____

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