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

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 MONUMENTOIL POOL WITHIN THE EUNICE MONUMENT SOUT UNIT AREA, LEA COUNTY, NEW MEXICO **CASE NO. 24277**

APPLICATION OF GOODNIGHT PERMIAN MIDSTREAM, LLC FOR APPROVAL OF A SALTWATER DISPOSAL WELL, LEA COUNTY, NEW MEXICO AND, AS A PARTY ADVERSELY AFFECTED BY ORDER R-22869-A, FOR A HEARING DE NOVO BEFORE THE FULL COMMISSION, PURSUANT TO NMSA 1978, SECTION 70-2-13. **CASE NO. 24123**

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 GOODNIGHT MIDSTREAM PERMIAN, LLC FOR APPROVAL OF A SALTWATER DISPOSAL WELL, LEA COUNTY, NEW MEXICO **CASE NOS. 23614-23617**

APPLICATION OF EMPIRE NEW MEXICO TO REVOKE THE INJECTION AUTHORITY GRANTED UNDER ORDER NO. R22026 FOR THE ANDRE DAWSON SWD #001, LEA COUNTY, NEW MEXICO **CASE NOS. 24018-24027**

OCD'S REPLY IN SUPPORT OF ITS EMERGENCY MOTION TO VACATE SCHEDULING ORDER AND HEARING.

COMES NOW the New Mexico Oil Conservation Commission ("OCD"), by and through counsel, and provides its Reply in Support of its Motion to Vacate Scheduling Order and Hearing. OCD notes that Goodnight does not oppose this Motion and thus this Reply is aimed at the arguments of Empire.

I. The Division did agree to the September 2024 setting but did not agree to incessant and needless discovery delays justifying a vacating of the Scheduling Order and Hearing in this Matter.

As a prefatory matter, Empire does not address, in any way, shape, or form, OCD's arguments as to the delay in discovery. Empire has chosen to do so because it knows it is bears some degree of culpability for the consistent delays in discovery through Motions to Quash, foisting of alleged confidentiality agreements upon OCD (to which OCD, as a matter of law under IPRA among other law, cannot agree), non-disclosure agreement proffers, and delays in delivering documents promised to OCD and Goodnight. This, alone, is reason enough to vacate the scheduling order and hearing setting. OCD will not recite here it's opening to its original motion, but OCD contends that the record of this case *via* the Hearing Officer's Orders, demonstrates OCD's concerns.

Secondly, OCD absolutely agreed to the hearing date for September 2024. OCD counsel voiced concern to the OCC about discovery complexity and issues at that very same time. However, there is no record, document, or evidence of any kind at all that shows OCD agreed to, for example, depositions occurring in the first few weeks of September 2024, well after the deadline for subpoenas. For that matter, OCD did not agree to discovery tendering continuing until the eve of the witness testimony and exhibit disclosure.

Empire also makes an inaccurate representation of the timing of OCD's Motion. Undersigned counsel specifically outlined the timing of Hearing Officer Orders, which came out on August 21 and 22, 2024 *on the very topic of discovery disputes*, and of Goodnight's renewed requests for deposition subpoenas on August 22, 2024 to show how discovery was nowhere near complete, in part due to Empire filing motions to quash deposition subpoenas. Those were the proverbial straws that broke OCD's tolerance for further delay, resulting in the OCD filing its Motion *not* a day before the witness testimony and exhibit disclosure deadline, but within a few hours of receiving

Goodnight's subpoenas on August 22nd. Empire claim that OCD filed its Motion one business day before the disclosure deadline is simply inaccurate.

II. Empire makes a dubious claim about "substantial harm" given its role in trammeling full and complete discovery as contemplated by OCC and the applicable rules.

If Empire truly thought or believed that it would suffer substantial harm should the September 2024 hearing date be continued, it would have shown such through its behavior during discovery. Unfortunately, the record does not bear that out, as evidenced by the block quote from the Hearing Officer's August 22, 2024 Order. *See* OCD's Motion at pp. 3-4. Empire might be seen to benefit from incomplete discovery because OCD would remain unable to confirm Empire has, in fact, complied with discovery properly, not to mention the value of depositions of Empire's experts, which are now arguably moot for being inadmissible given the passage of the witness disclosure deadline. OCD contends that Empire seeks to have it both in ways in denying OCD complete of discovery while driving towards a hearing with opposition and intervenor remaining in the dark on various matters. This is patently unjust, unfair, and a rightly discarded argument.

III. Witness preparation and attendance is a known cost of litigation, one mitigated by earlier motion practice on settings.

Empire avers that it should not be required to cancel and reschedule the travel plans for its witnesses because discovery disputes, among other things, are inadequate to justify vacating the hearing setting. *See* Reply at p.8, Section IV. OCD contends this is the exact opposite of what justice requires. When a party in litigation chooses to delay, juke, and otherwise complicate discovery, it should not be heard to complain of delays of trial. As put forth by wiser men than undersigned counsel: *Nullus Commodum Capere Protect De Injuria Sua Propria* ("no man can take advantage of his own wrong"). Thus, Empire's complaint is rightly disregarded here.

IV. OCD is an intervening party whose case does, in fact, concern the subject matter of the hearing before the OCC.

OCD's evidence and anticipated case does, in fact, go to the heart of the applications filed by both Operators. Empire does not like that OCD is taking a "ten-thousand foot" approach to the matter of "the existence, extent of, and possible interference with aa residual oil zone." *See* Scope Motion, ¶ 2. The Scope Order specified the cases at issue, which concern specific wells which

have a history with the UIC Program, injection well permitting, as well as a history with OCD through hearings and other filings relevant to injection. Empire oversimplifies the Scope Order's contents. Additionally, the OCC knows the EMSU is not some discrete geographic location and that injection wells have impact beyond just a specific well and proximate wells.

OCD's evidence will adhere to this scope, which includes the near-mandatory topic of injection, it's effects on the greater area around the subject wells, and possible courses of action to contend with those effects – OCD notes that injection is the subject about which Empire complains in its applications. OCD's case will also address This evidence complicates the cases of both Operators but remains on-topic, within the boundaries of the Scope Order, and therefore OCD is entitled to have discovery in this matter completed in full so it can properly file suitable pleadings in advance of the hearing, as well as prepare for the hearing itself.

V. Summary

As noted in its Motion, OCD did not desire to delay this matter, but undersigned counsel recognized that discovery had completely broken down by August 22, 2024 and a remedy was necessary to rectify that breakdown. What OCD seeks isn't a delay in perpetuity, but rather a renewed scheduling order with a new hearing, ideally within the next few months.

Respectfully submitted,

Christopher Moander

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CERTIFICATE OF SERVICE

I certify that on August 29, 2024, this pleading was served by electronic mail on:

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