

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

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

**Case No. 22626**

**RESPONSE TO SUPPLEMENTAL LEGAL MEMORANDUM**

For its Response to Goodnight Midstream Permian, LLC's Supplemental Legal Memorandum, Empire New Mexico, LLC ("Empire") states:

***A. Introduction.***

Order R-7765 was issued on December 27, 1984. Now, 38 years later, Goodnight chooses to attack that order in a different case. It did not seek to amend Order R-7765 or to reopen Case No. 8397. Goodnight's Supplemental Legal Memorandum is nothing more than a collateral attack on Order R-7765. The attack comes from its SWD case to challenge aspects of an earlier and separate case which unitized and created the Eunice Monument South Unit for secondary recovery operations. Goodnight cannot now collaterally attack Order R-7765 to determine its validity or invalidity.

***B. Argument.***

Lewis v. City of Santa Fe, 2005-NMCA-032, ¶ 10, 137 N.M. 152, 155, 108 P.3d 558, 561 provides a definition of a collateral attack as follows:

A collateral attack is "an attempt to avoid, defeat, or evade [a judgment], or deny its force and effect, in some incidental proceeding not provided by law for the express purpose of attacking" the judgment. *Lucus v. Ruckman*, 59 N.M. 504, 509, 287 P.2d 68, 72 (1955) (internal quotation marks and citation omitted), *overruled on other grounds by Kalosha v. Novick*, 84 N.M. 502, 504, 505 P.2d 845, 847 (1973).

Goodnight argues that the San Andres formation should not have been included within the unitized interval of the order because the Oil Conservation Division did not have jurisdiction over an undeclared water aquifer that was not a common source of oil and gas. To begin with,

no one appealed Order R-7765 to the Oil Conservation Commission or to the District Court to the effect that the San Andres formation underlying the unit was a water aquifer or that it was not a common source of oil and gas.

At the hearing on Empire's motion to dismiss, one the Division's technical examiners, Phil Goetz, asked why had Goodnight not sought to reopen and amend Order R-7765. Goodnight could not then nor now provide a rational answer. The new argument that the San Andres formation aquifer belongs to the public does not coincide with Goodnight's earlier position that pore space belongs to the owner of the surface. Unquestionably, the attack on Order R-7765 is impermissible.

***C. Conclusion.***

The Supplemental Legal Memorandum adds nothing, but a collateral attack on Order R-7765. Empire's motion to dismiss should be granted.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the forgoing was served to counsel of record by electronic mail this 27th day of June, 2022, as follows:

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**/s/ Ernest L. Padilla**

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