

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

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

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

**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

**EMPIRE NEW MEXICO LLC'S MOTION FOR FOUR-DAY EXTENSION OF TIME
TO FILE REQUESTS FOR SUBPOENAS**

Pursuant to Rule 19.15.4.16(C) NMAC, Empire New Mexico, LLC ("Empire") requests that the New Mexico Oil Conservation Commission ("Commission") extend the December 16, 2024 deadline to file requests for subpoenas by four days, until December 20, 2024.¹ In support of this request, Empire states as follows.

¹ See December 5, 2024 Amended Prehearing Order at ¶ 3.

1. As explained in Empire's previous filings, this case involves unusually complex technical and geological issues that require substantial pre-hearing discovery.

2. These issues include: (1) whether an economically viable ROZ exists in the portion of the San Andres formation that lies within the EMSU; and (2) whether injection of produced water into that formation will cause waste, impair correlative rights, or otherwise interfere with the operations in the EMSU.

3. Over the past 45 days, the parties have conducted nine depositions of their respective witnesses.

4. As is relevant here, Empire deposed four Goodnight witnesses, three of whom rely on information provided or testimony offered by Goodnight witness Preston McGuire. *See, e.g.*, Davidson Tr. at 35:17-25 (11/22/24); McBeath Tr. at 32:20-23 (11/25/24); Lake Tr. at 26:22-27:1 (11/12/24), attached as **Exhibit A**. In short, Mr. McGuire's testimony is the basis of certain assumptions made by Goodnight's other witnesses who are testifying about the key issues.

5. Because none of the written testimony filed by Goodnight expressly stated that any of these experts were relying on information or testimony provided by Mr. McGuire, however, Empire did not understand, until recently, the extent to which Goodnight's other experts were relying on Mr. McGuire. As a result, Empire was unable to discern before the recent depositions that Empire would need to depose Mr. McGuire.

6. On December 5, 2024, Hearing Officer Harwood issued an Amended Pre-Hearing Order setting a December 16, 2024, deadline for the parties to submit requests for subpoenas, including deposition subpoenas.

7. On Monday, December 16, 2024, which was the deadline to request subpoenas under the scheduling order, counsel for Goodnight, Mr. Rankin, contacted Empire's counsel to request an extension of time to request subpoenas, until Friday, December 20, 2024.

8. In the email, Mr. Rankin stated that he "might not" need additional time but was not sure and needed to complete a deposition scheduled on December 17, 2024, to make that determination.

9. In response, counsel for Empire advised Mr. Rankin that Empire agreed to a mutual extension of time until December 20th.

10. At 2:51 pm on December 16, 2024, Mr. Rankin wrote to counsel for the Oil Conservation Division (the "Division"), Mr. Moander, to request the Division's consent to Goodnight's proposed extension. Division counsel also agreed to the extension, "so long as the extension applies to all parties."

11. Mr. Rankin responded: ***"Agree; extension applies across the board. I will send a request to the hearing officer."*** A copy of the December 16, 2024, email correspondence is attached as **Exhibit B**.

12. Relying in good faith on counsel for Goodnight's written agreement to extend the deadline by four days, Empire filed its request to subpoena Mr. McGuire for deposition on December 20, 2024.

13. Despite having already agreed to the extension, counsel for Goodnight sent an email to the Hearing Examiner, stating: "Empire's subpoena request is untimely and opposed by Goodnight. The amended prehearing order sets a deadline of 12/16 to submit requests for subpoenas. The subpoena deadline has not been extended and the deadline for discovery has lapsed. We oppose extending the deadline, especially for purposes of deposing additional witnesses

at this late date.” See December 20, 2024 email correspondence, attached as **Exhibit C**. Notably, Goodnight failed to inform the Hearing Examiner that it had proposed and agreed to the extension.

14. It is Empire’s understanding that Goodnight intends to argue that Empire’s subpoena request is untimely because Goodnight’s counsel never followed through to request the agreed upon extension. At this point, it is unclear whether Goodnight ever actually intended to extend the subpoena request deadline, or whether Goodnight deliberately proposed the extension so that Empire would not seek additional subpoenas on December 16, 2024, to Empire’s detriment.

15. Goodnight’s counsel did not advise counsel for Empire at any time that he had determined the extension was unnecessary and would not request it, and certainly never indicated that Goodnight would, in fact, *oppose it*. This “bait and switch” or “gotcha game” controverts principles of fundamental fairness and should not be permitted.

16. It is well established in New Mexico that litigants must participate in discovery in good faith, to preserve the integrity of the judicial process and the due process rights of other litigants. *Weiss v. THI of New Mexico at Valle Norte, LLC*, 2013-NMCA-054, ¶ 16, 301 P.3d 875 (discovery sanctions may be imposed when a failure to comply is due to willfulness or bad faith).

17. Moreover, the doctrine of judicial estoppel prevents a party from assuming a position in a legal proceeding that is contrary to a position previously taken, especially if the change would result in an unfair advantage or detriment to the opposing party. *Keith v. ManorCare, Inc.*, 2009-NMCA-119, ¶ 37, 147 N.M. 209 (noting that judicial estoppel is “especially” applicable when the party’s change of position prejudices a party who had acquiesced in the former position).

18. Goodnight’s agreement to request a mutual extension, and subsequent withdrawal of that agreement without any notice to Empire, constitutes a bad-faith abuse of the discovery

process and is barred by judicial estoppel. Goodnight should not be permitted to renege on its agreement to the detriment of Empire.

19. The requested four-day extension will not result in undue delay or prejudice any party. In fact, the extension is needed to avoid prejudice to Empire as a result of Goodnight's actions.

20. Based on the above, good cause exists for the Commission to extend the deadline to file requests for deposition subpoenas until December 20, 2024, and Empire's subpoena request should be considered timely.

21. It is Empire's understanding that the parties' positions on this motion are as follows. Goodnight opposes the motion. Counsel for the Division previously agreed to the requested extension. Counsel for Pilot Water Solutions SWD, LLC and *Rice Operating Company and Permian Line Service, LLC* does not oppose the extension.

For the foregoing reasons, Empire requests that the Commission extend the deadline to request deposition subpoenas until December 20, 2024 and deem Empire's subpoena request should timely.

Respectfully submitted,

HINKLE SHANOR LLP

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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 upon the following counsel of record by electronic mail on this 23rd day of December, 2024.

Michael H. Feldewert Adam G. Rankin Nathan R. Jurgensen Julia Broggi Paula M. Vance Holland & Hart LLP P.O. Box 2208 Santa Fe, New Mexico 87504-2208 Telephone: (505) 986-2678 mfeldewert@hollandhart.com agrarkin@hollandhart.com nrjurgensen@hollandhart.com jbroggi@hollandhart.com pmvance@hollandhart.com <i>Attorneys for Goodnight Midstream Permian, LLC</i>	Jesse K. Tremaine Christopher L. Moander New Mexico Energy, Minerals and Natural Resources Department 1220 South St. Francis Drive Santa Fe, New Mexico 87505 Tel (505) 709-5687 Jessek.tremaine@emnrd.nm.gov chris.moander@emnrd.nm.gov <i>Attorneys for New Mexico Oil Conservation Division</i>
Matthew M. Beck PEIFER, HANSON, MULLINS & BAKER, P.A. P.O. Box 25245 Albuquerque, NM 87125-5245 Tel: (505) 247-4800 mbeck@peiferlaw.com <i>Attorneys for Rice Operating Company and Permian Line Service, LLC</i>	Miguel A. Suazo BEATTY & WOZNIAK, P.C. 500 Don Gaspar Ave. Santa Fe, NM 87505 Tel: (505) 946-2090 msuazo@bwenergyllaw.com <i>Attorneys for Pilot Water Solutions SWD, LLC</i>

/s/ Dana S. Hardy

1 STATE OF NEW MEXICO
2 ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
3 OIL CONSERVATION COMMISSION
4 APPLICATION OF GOODNIGHT
5 MIDSTREAM PERMIAN LLC FOR
6 APPROVAL OF A SALTWATER
7 DISPOSAL WELL, LEA COUNTY,
8 NEW MEXICO. COMM. CASE NO. 24123
9 APPLICATIONS OF GOODNIGHT
10 MIDSTREAM PERMIAN LLC FOR
11 APPROVAL OF SALTWATER
12 DISPOSAL WELLS, LEA
13 COUNTY, NEW MEXICO. DIV. CASE NOS. 23614-23617
14 APPLICATION OF GOODNIGHT
15 MIDSTREAM PERMIAN, LLC TO
16 AMEND ORDER NO.
17 4-22026/SWD-2403 TO
18 INCREASE THE APPROVED
19 INJECTION RATE IN ITS
20 ANDRE DAWSON SWD #1, LEA
21 COUNTY, NEW MEXICO. DIV. CASE NO. 23775
22 APPLICATIONS OF EMPIRE NEW
23 MEXICO LLC TO REVOKE
24 INJECTION AUTHORITY, LEA
25 COUNTY, NEW MEXICO. DIV. CASE NOS. 24018-2420,
24025

REMOTE ORAL DEPOSITION OF

JAMES A. DAVIDSON

November 22, 2024

REMOTE ORAL DEPOSITION OF JAMES A. DAVIDSON,
located in Dallas, Texas, produced as a witness at the
instance of Empire New Mexico LLC, and duly sworn,
taken in the above-styled and numbered cases on
November 22, 2024, from 10:03 a.m. to 3:26 p.m., before
Joseph D. Hendrick, Certified Shorthand Reporter in and
for the State of Texas, reported by machine shorthand,
pursuant to subpoena issued by the New Mexico Oil
Conservation Commission, and any provisions stated on
the record or attached hereto.

Page 1

1 A. Mm-hmm.

2 Q. And taking a look first at this bullet
3 three here where my hand is on the screen, it says, "A
4 residual oil zone analogous to those where CO2 enhanced
5 oil recovery operations have been employed exists only
6 in the Grayburg formation in the EMSU."

7 A. Okay.

8 Q. Is that correct?

9 A. Yes.

10 Q. Would you agree that this opinion is
11 dependent on where the top of the San Andres is picked?

12 A. Would be.

13 Q. And how was the top defined?

14 A. I was given the tops. I don't make any
15 effort to pick the tops. Those were provided by
16 Goodnight.

17 Q. And do you know who picked the tops that
18 were provided?

19 A. I do not. I suspect -- the geologist from
20 Goodnight is Preston McGuire. I assume that Preston
21 picked them, but I don't know that to be the case.
22 Just an assumption on my part.

23 Q. So, you didn't make any effort to verify
24 the tops that you were provided?

25 A. No. That's -- I don't know that anybody

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APPLICATION OF GOODNIGHT
MIDSTREAM PERMIAN LLC FOR APPROVAL
OF A SALTWATER DISPOSAL WELL,
LEA COUNTY, NEW MEXICO. COMM. CASE NO. 24123

APPLICATIONS OF GOODNIGHT
MIDSTREAM PERMIAN LLC FOR APPROVAL
OF SALTWATER DISPOSAL WELLS
LEA COUNTY, NEW MEXICO, DIV. CASE NOS. 23614-23617
APPLICATION OF GOODNIGHT
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ANDRE DAWSON SWD #1,
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APPLICATIONS OF EMPIRE NEW MEXICO LLC
TO REVOKE INJECTION AUTHORITY
LEA COUNTY, NEW MEXICO.
DIV. CASE NOS. 24018-24020
24025

DEPOSITION OF JOHN McBEATH
November 25, 2024
9:01 a.m.
Via Zoom

PURSUANT TO THE FEDERAL RULES OF CIVIL
PROCEDURE, this deposition was:

TAKEN BY: DANA SIMMONS HARDY, ESQ.
ATTORNEY FOR EMPIRE
REPORTED BY: KENDRA D. TELLEZ, RMR-CRR-RPR
Kendra Tellez Court Reporting, Inc.
A Veritext Company
Suite 105
500 4th Street, Northwest
Albuquerque, New Mexico 87102

Page 1

John McBeath - November 25, 2024

Examination by Ms. Hardy

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1 Q. We spoke about the testimony you reviewed
2 from the other witnesses. Who, if any, of
3 Goodnight's other witnesses are you relying on for
4 your testimony?

5 Oh, you're cutting out.

6 Can't hear you.

7 A. Can you hear me now?

8 Q. Yes.

9 A. It's worse when I brought it closer to me,
10 so . . .

11 Do you think it's worth trying to reboot
12 or change something? Because, I mean, we are going
13 to go crazy with this today.

14 MS. HARDY: I think that's good a
15 good idea. Should we take a ten-minute break?

16 THE WITNESS: Yes.

17 MR. RANKIN: No objection.

18 MR. MOANDER: No objection.

19 (Off the Record.)

20 Q. So I think my last question was whether
21 you're -- which other Goodnight witnesses' testimony
22 you are relying on for your testimony?

23 A. Preston McGuire for sure, Jim Davidson,
24 Mr. Knights, and I think the other ones are more
25 tangential. Those would be the three principal.

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APPLICATION OF GOODNIGHT
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APPLICATIONS OF EMPIRE NEW MEXICO LLC
TO REVOKE INJECTION AUTHORITY
LEA COUNTY, NEW MEXICO.
DIV. CASE NOS. 24018-24020
24025

DEPOSITION OF DR. LARRY LAKE
November 12, 2024
9:00 a.m.
Via Zoom

PURSUANT TO THE FEDERAL RULES OF CIVIL
PROCEDURE, this deposition was:

TAKEN BY: SHARON T. SHAHEEN, ESQ.
ATTORNEY FOR EMPIRE

REPORTED BY: KENDRA D. TELLEZ, RMR-CRR-RPR
Kendra Tellez Court Reporting, Inc.
A Veritext Company
Suite 105
500 4th Street, Northwest
Albuquerque, New Mexico 87102

Page 1

Dr. Larry Lake, PE - November 12, 2024

Examination by Ms. Shaheen

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1 McBeath's work; is that right?

2 A. Yes.

3 Q. And that you spoke with McBeath in
4 preparation?

5 A. Yes.

6 Q. And what was the topic of your
7 conversation with McBeath?

8 A. Well, let's see. It was all about this
9 case. Basically, it was about the behavior of
10 pressures in reservoirs. Basically, it was about
11 the interpretation of logs. Other things would have
12 been -- what else would we have talked about?
13 Briefly about ROZ zones and things like that.

14 Q. And did you rely on his work in your
15 report?

16 A. Well, that's a hard question to answer,
17 because what I tried -- I'm sorry. I'll give you an
18 "I don't know" on that because it's more
19 complicated. I would try to form an opinion myself
20 and then discuss it with him back and forth to where
21 we came to an agreement.

22 Q. And I believe you were -- you were talking
23 about some exhibits from Preston McGuire that you
24 identify in your report. And did you rely on some
25 of his work in your opinions?

Page 26

Dr. Larry Lake, PE - November 12, 2024

Examination by Ms. Shaheen

27

1 A. Yes.

2 Q. Anyone else that you can recall that you
3 relied on their work in your opinions?

4 A. Maybe. I don't recall beyond that.

5 Q. Okay. Well, as we go through your
6 statement, your opinions, if you -- if something
7 comes to mind about "Oh, yes, I remember now. I
8 relied on this," feel free to speak up and let me
9 know.

10 And now turning back to your Exhibit 1,
11 did you personally prepare your report for this
12 matter?

13 A. The testimony, yes, I did.

14 Q. Okay. And did you have any assistance in
15 preparing that report?

16 A. Do you mean did I ask somebody to read it
17 and give me comments? Yes, I did do that.

18 Q. Okay. And other than your attorneys -- or
19 Goodnight's attorneys, who did you ask to review it
20 for you?

21 A. McBeath and Kim Gordon.

22 (Exhibit 3 Referred to in Deposition.)

23 Q. Okay. I want to turn briefly now to a
24 scheduling order that was entered in this case. And
25 I will try to share my screen once again here.

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From: [Dana Hardy](#)
To: [Dana Hardy](#)
Subject: FW: [EXTERNAL] RE: Goodnight / Empire - 12/16 deadline to submit discovery subpoenas
Date: Saturday, December 21, 2024 6:45:36 AM
Attachments: [image001.png](#)
[image002.png](#)



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Sent: Monday, December 16, 2024 3:22 PM
To: Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>; Dana Hardy <DHardy@hinklelawfirm.com>; Shaheen, Sharon <sshahen@spencerfane.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Jacqueline F. Hyatt <JFHyatt@hollandhart.com>; Jaclyn McLean <JMcLean@hinklelawfirm.com>
Subject: RE: [EXTERNAL] RE: Goodnight / Empire - 12/16 deadline to submit discovery subpoenas

We did just get it, relatively speaking.

Agree; extension applies across the board. I will send a request to the hearing officer.

EXHIBIT B

Adam Rankin
Partner, Holland & Hart LLP

agrarkin@hollandhart.com | T: (505) 954-7294 | M: (505) 570-0377

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Sent: Monday, December 16, 2024 3:21 PM
To: Adam Rankin <AGRankin@hollandhart.com>; Dana Hardy <DHardy@hinklelawfirm.com>; Shaheen, Sharon <sshaheen@spencerfane.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergyllaw.com>; Jacqueline F. Hyatt <JFHyatt@hollandhart.com>; Jaclyn McLean <JMcLean@hinklelawfirm.com>
Subject: RE: [EXTERNAL] RE: Goodnight / Empire - 12/16 deadline to submit discovery subpoenas

External Email

Didn't we just get that order?

OCD doesn't object so long as the extension applies to all parties.

Chris

From: Adam Rankin <AGRankin@hollandhart.com>
Sent: Monday, December 16, 2024 2:51 PM
To: Dana Hardy <DHardy@hinklelawfirm.com>; Shaheen, Sharon <sshaheen@spencerfane.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergyllaw.com>; Jacqueline F. Hyatt <JFHyatt@hollandhart.com>; Jaclyn McLean <JMcLean@hinklelawfirm.com>
Subject: [EXTERNAL] RE: Goodnight / Empire - 12/16 deadline to submit discovery subpoenas

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Actually,

Chris, any concerns from OCD on extending the deadline until the end of this week?

Adam Rankin
Partner, Holland & Hart LLP

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To: 'Dana Hardy' <DHardy@hinklelawfirm.com>; Shaheen, Sharon <sshaheen@spencerfane.com>; Ernest Padilla <PadillaLawNM@outlook.com>

Cc: Moander, Chris, EMNRD (<Chris.Moander@emnrd.nm.gov> <Chris.Moander@emnrd.nm.gov>; jessek.tremaine@emnrd.nm.gov; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergyllaw.com>; Jacqueline F. Hyatt <JFHyatt@hollandhart.com>; Jaclyn McLean <JMcLean@hinklelawfirm.com>

Subject: RE: Goodnight / Empire - 12/16 deadline to submit discovery subpoenas

Agreed. I will send an email to Mr. Harwood.

Adam Rankin

Partner, Holland & Hart LLP

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From: Dana Hardy <DHardy@hinklelawfirm.com>

Sent: Monday, December 16, 2024 11:39 AM

To: Adam Rankin <AGRankin@hollandhart.com>; Shaheen, Sharon <sshaheen@spencerfane.com>; Ernest Padilla <PadillaLawNM@outlook.com>

Cc: Moander, Chris, EMNRD (<Chris.Moander@emnrd.nm.gov> <Chris.Moander@emnrd.nm.gov>; jessek.tremaine@emnrd.nm.gov; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergyllaw.com>; Jacqueline F. Hyatt <JFHyatt@hollandhart.com>; Jaclyn McLean <JMcLean@hinklelawfirm.com>

Subject: RE: Goodnight / Empire - 12/16 deadline to submit discovery subpoenas

External Email

Adam,

Empire does not oppose a mutual extension until Friday, 12/20.

Thanks,

Dana



Dana S. Hardy
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Sent: Monday, December 16, 2024 10:41 AM
To: Shaheen, Sharon <sshaheen@spencerfane.com>; Dana Hardy <DHardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Moander, Chris, EMNRD (<Chris.Moander@emnrd.nm.gov> <Chris.Moander@emnrd.nm.gov>; jessek.tremaine@emnrd.nm.gov; Matthew M. Beck <mbeck@peiferlaw.com>; Miguel Suazo <msuazo@bwenergylaw.com>; Jacqueline F. Hyatt <JFHyatt@hollandhart.com>; Jaclyn McLean <JMcLean@hinklelawfirm.com>
Subject: Goodnight / Empire - 12/16 deadline to submit discovery subpoenas

Counsel,

I would like to request a short extension to submit requests for subpoenas from today (12/16) until Friday 12/20. I may not need it—much of the material I have noted we need likely falls under the terms of the prehearing order or our existing subpoenas—but I haven't had time to figure it out just yet and we have one more deposition to get through tomorrow.

Please let me know if you will agree to the proposed short extension. If not, I will submit the request to the Hearing Officer directly.

Many thanks.



Adam Rankin

Partner

HOLLAND & HART LLP

110 North Guadalupe Street, Suite 1, Santa Fe, NM 87501

agrankin@hollandhart.com | T: (505) 954-7294 | M: (505) 570-0377

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Cc: Shaheen, Sharon; Sandoval, Yolanda; Jacqueline F. Hyatt
Subject: RE: Goodnight/Empire - Case Nos. 24123, 23614-23617, 23755, 24018-24020, 24025 (Empire New Mexico, LLC's Request for Subpoenas) Goodnight objection and response
Date: Friday, December 20, 2024 8:03:34 PM
Attachments: image001.png
image002.png
image003.png

Mr. Hearing Officer,

Empire's subpoena request is untimely and opposed by Goodnight. The amended prehearing order sets a deadline of 12/16 to submit requests for subpoenas. The subpoena deadline has not been extended and the deadline for discovery has lapsed. We oppose extending the deadline, especially for purposes of deposing additional witnesses at this late date.

If the Hearing Officer is inclined to consider Empire's request, we ask for an opportunity to respond and, if Goodnight's objections are overruled, ask that Goodnight be permitted to depose an additional critical Empire witness—Dr. Robert Lindsay.

Empire has 9 witnesses. Goodnight has 7 witnesses. Both sides have had a fair and equal opportunity to depose the other's witnesses. Both parties have now taken 5 witness depositions. We have a little more than a month before written rebuttal statements and exhibits are due on 2/6/25, along with prehearing statements, and dispositive motions.

Separately, the basis for Empire's request is not supported.

Empire's request states that Empire had no knowledge until the depositions that Mr. McBeath, Dr. Lake, and Dr. Davidson had considered or relied on the testimony of Goodnight's witness, Preston McGuire, in preparation of their own testimony. In fact, both Dr. Lake and Mr. McBeath made clear in their written statements that they did. See below snippets from their written testimony. Moreover, Dr. Lake's deposition was on 11/12, Dr. Davidson's was on 11/22, and Mr. McBeath's was on 12/6, which provided Empire more than enough time to meet the 12/16 deadline.

In his written testimony submitted on 8/26, Dr. Lake stated he considered the testimony of Goodnight's witnesses, discussions with Goodnight personnel, and Mr. McGuire's final testimony was provided among the documents Dr. Lake reviewed and relied on. Similarly, Mr. McBeath also stated in his written testimony that he considered the testimony of Goodnight's witnesses (Mr. McGuire's testimony was not re-produced among his documents to avoid duplication) and discussions with Goodnight personnel. As noted in his deposition testimony, Dr. Davidson's exhibits relied on the geologic tops picked by Mr. McGuire (see deposition snippet below). That information was all provided on 9/17 to Empire among the other documents and information Dr. Davidson reviewed and relied on. Moreover, the basis for Mr. McGuire's geologic picks is spelled out in his written testimony.

Dr. Lake's Written Testimony:

EXHIBIT C

5. Data and information considered:

I have considered the following data and information in forming my opinions:

- a. Data and information produced by Goodnight Midstream ("GM") in this matter.
- b. Data and information produced by Empire in this matter.
- c. Well data obtained from subscription service IHS
- d. Discussions with GM personnel.
- e. Discussions with Netherland Sewell & Associates ("NSAI").
- f. Testimony of GM's witnesses.
- g. SPE papers SPE 129921

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Mr. McBeath's Written Testimony:

Empire's proposed ROZ project in the San Andres; and (4) to evaluate and assess potential impacts from injection of produced water in the San Andres on EMSU operations.

5. I have considered the following data and information in forming my opinions:
- a. Data and information produced by Goodnight Midstream ("GM") in this matter.
 - b. Data and information produced by Empire in this matter.
 - c. Well data obtained from the NMOCD website.
 - d. Well logs obtained from the NMOCD website.
 - e. Well data obtained from subscription service Enverus.
 - f. Previously filed testimony of both Empire's and Goodnight's witnesses provided by Attorneys.
 - g. Discussions with Goodnight Midstream personnel.
 - h. Discussions with Netherland Sewell & Associates ("NSAI").
 - i. Testimony of Goodnight Midstream's witnesses.

Dr. Davidson stated in his deposition that he relied on the tops picked for the San Andres formation—which information was provided on 9/17 among the documents he reviewed or relied on.

1 -- in the Seminole San Andres unit wells, we ran the 2 model and then compared it to some of the core work 3 that Hess had published and see if we were coming up 4 with reasonable matches to the core measurements. 5 Q. I think we're about ready to jump to your 6 report. And I am going to share my screen again. 7 MS. SHAHEEN: Does everyone see 8 Dr. Davidson's statement here? I'm on page 3. 9 MR. MOANDER: Yes. 10 THE WITNESS: Yeah, I can see it. 11 Q. (BY MS. SHAHEEN) And, Dr. Davidson, can 12 you read it? 13 A. I can read a copy of my hard copy. I can't 14 see it on the screen, but I can probably get it on the 15 hard copy I have. 16 Q. Okay. Well, if you'll just let me know if 17 -- if you need Jonathan's assistance, we'd like to have 18 him on camera when he's helping you. And we can take 19 some time to make that happen. 20 A. I can move over and he can help. Not 21 quite. You can almost see him. Let me move over more. 22 And now I'm not in. All right. Now we're both in. 23 Q. Thank you so much. 24 So, here on pages 3 and 4, you have 25 provided a summary of your opinions. Page 34	1 can -- to be honest with you, I don't know that anybody 2 can reliably pick that unless we get paleontological 3 data of some type. 4 Q. I'm sorry, you said what kind of data? 5 A. Like paleo data, critters, bugs, you know, 6 fossils. That sort of thing maybe could be used. I 7 don't know. Again, I'm not a geologist. I don't make 8 zone picks. 9 Q. Did you see any distinct demarker on logs 10 indicating that -- the top of the San Andres? 11 A. No. 12 Q. Turning now to bullet four. And we're 13 going to actually switch back and forth between bullet 14 four and figure 4. 15 A. Okay. 16 Q. At the top of page 4, "The intervals of 17 residual oil in the San Andres aquifer are too thin, 18 too widely spaced, and are not likely areally 19 continuous enough to support efficient enhanced 20 recovery operations." Is that correct? 21 A. Yes. 22 Q. Can you provide some clarification on why 23 you are stating that the potential San Andres ROZ is 24 too thin and too widely spaced, when you are showing 25 continuous oil saturation on the EMSU 746 log Page 36
1 A. Mm-hmm. 2 Q. And taking a look first at this bullet 3 three here where my hand is on the screen, it says, "A 4 residual oil zone analogous to those where CO2 enhanced 5 oil recovery operations have been employed exists only 6 in the Grayburg formation in the EMSU." 7 A. Okay. 8 Q. Is that correct? 9 A. Yes. 10 Q. Would you agree that this opinion is 11 dependent on where the top of the San Andres is picked? 12 A. Would be. 13 Q. And how was the top defined? 14 A. I was given the tops. I don't make any 15 effort to pick the tops. Those were provided by 16 Goodnight. 17 Q. And do you know who picked the tops that 18 were provided? 19 A. I do not. I suspect -- the geologist from 20 Goodnight is Preston McGuire. I assume that Preston 21 picked them, but I don't know that to be the case. 22 Just an assumption on my part. 23 Q. So, you didn't make any effort to verify 24 the tops that you were provided? 25 A. No. That's -- I don't know that anybody Page 35	1 interpretation, which is figure 4? And I can jump to 2 that now. Let me see if I can get the right page. 3 So, this is figure 4, and I believe this 4 relates to that opinion that we just were reviewing. 5 It's the EMSU -- well, actually, this might be 6 figure -- yeah, this is it -- the EMSU 746 7 interpretation? 8 THE WITNESS: Is that in the appendix? 9 That doesn't look like a complete figure... 10 (Indiscernible discussion between Dr. 11 Davidson and Jonathan.) 12 THE REPORTER: I'm sorry, I'm not hearing 13 what Dr. Davidson is saying. 14 THE WITNESS: Okay. Well, we're just 15 trying to -- I'm just trying to find the figure she's 16 pointing to. 17 A. This is -- the figure you're pointing to is 18 just a gamma ray log, not an interpretation -- not the 19 interpreted response. What you see in the left-hand 20 track is just a gamma ray readings. The actual 21 interpretation of this well is in the appendix, I 22 believe. 23 THE WITNESS: Actually, does this one not 24 show up on the one where we show the comparison with 25 the Seminole San Andres. Let's refer to the one that's Page 37

10 (Pages 34 - 37)

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If Empire is going to insist on pursuing an additional witness deposition at this late date, Goodnight must be afforded the opportunity to do the same and asks for the opportunity depose Empire's witness Dr. Lindsay.

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Subject: Goodnight/Empire - Case Nos. 24123, 23614-23617, 23755, 24018-24020, 24025 (Empire New Mexico, LLC's Request for Subpoenas)

External Email

All,

Attached is *Empire New Mexico, LLC's Request for Subpoenas for (1) Deposition of Preston McGuire and (2) Production of Documents* which was submitted for filing today.

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