

**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

**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'S RESPONSE TO GOODNIGHT'S MOTION TO COMPEL

Empire New Mexico LLC ("Empire") hereby responds to the Motion to Compel filed by Goodnight Midstream Permian, ("Goodnight") on January 24, 2025. Goodnight's Motion is the latest in its harassment of Empire with incessant, repetitive, and confusing demands for documents and data. Undersigned counsel has expended countless hours in an effort to satisfy these demands, many of which bear no relation to the issues identified by the Commission for the upcoming evidentiary hearing. See Joint Order on Goodnight'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 at 2, ¶ 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.”) (“Order on Scope”). It appears that Goodnight is fishing for a smoking gun that simply does not exist.

To date, Empire has produced 1,967 files of various types, many of which have numerous pages or consist of spreadsheets with several tabs or other native files containing thousands of data points. See Exhibit 1, attached hereto. Moreover, Empire filed detailed written testimony for nine witnesses on August 26, 2024. Prior to that, Empire originally filed direct testimony in the fall of 2023, which Goodnight has had almost 18 months to analyze. In addition, Empire produced five of its expert witnesses and a corporate Rule 1-030(B)(6) witness for all-day depositions. Yet, Goodnight is still not satisfied.

Frankly, Empire is at a loss as to what Goodnight is seeking. At this point, Empire is reproducing documents that have been previously produced and producing documents that it believes are not responsive, in an effort to satisfy Goodnight’s constant demands. No matter what Empire produces, Goodnight complains. Goodnight’s actions in this regard implicate the old adage: Me thinks thou protesteth too much. For these reasons and those detailed below, the Motion should be denied.

A. Empire Has Produced All Documents from Its So-Called “Evaluation File” that Relate to the Residual Oil Zone in the San Andres Formation Within the EMSU.

Goodnight continues to demand what it calls the “Evaluation File,” purportedly in reliance on the deposition testimony of William West. Motion at 2. However, review of the transcript, highlighted by Goodnight and attached to its Motion as unlabeled Exhibit E, clearly reveals that Goodnight counsel is putting words in the mouth of the deponent and then complaining when Empire does not produce documents that fall within the scope of counsel’s understanding of his own words:

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10 Q. Just saying it for the record. Has Empire ever
11 evaluated a residual oil zone for development through
12 tertiary recovery?

13 A. Yes.

14 Q. Where?

15 A. So define "evaluated."

16 Q. Well, what do you mean by evaluated?

17 A. So was the zone evaluated or be a part of the
18 evaluation process of the purchase of the asset in the
19 plans of purchasing it from the beginning, yes.

20 Q. Which -- which property was that?

21 A. EMSU, EMSU B, AGU.

22 Q. Prior to the review of those properties as part of
23 the purchase, has Empire ever evaluated a potential property
24 for development of an ROZ through tertiary recovery?

25 A. So you're -- restate your question here, that

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1 you're looking for that if Empire, as a company, looked
2 before the purchase of these assets in '21 adds stuff for
3 CO2 evaluate -- CO2 EOR if we've ever looked at anything in
4 the company?

5 Q. Yeah.

6 A. I'll have to get back with you on that answer.
7 It's before my time.

8 Q. Okay. But as to your -- as you sit here today,
9 you're not aware of any -- any prior evaluation assessment
10 or characterization of an ROZ that was conducted by Empire
11 prior to the EMSU, EMSU B or an AGU?

12 A. Not to my knowledge.

13 Q. Okay.

14 A. As I sit here right now.

15 Q. But you're -- but you're aware that Empire did
16 conduct an evaluation of -- prior to purchasing the EMSU,
17 EMSU B and an AGU, it evaluated those three properties.
18 Agree?

19 A. So define "evaluation."

20 Q. I'm asking you. I mean, do you -- they reviewed
21 it; right?

22 A. So evaluation would be -- as you're purchasing to
23 evaluate the property, you would look at other offsetting
24 fields and prospects, and you would see that the San Andres
25 is a very prolific ROZ zone and you would refer that and

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1 that would go to part of your evaluation process to
2 purchase.

3 Q. Okay. So in this situation, have you evaluated
4 or -- have you, yourself -- let me step back and ask this
5 question again.

6 Empire conducted what you described as an evaluation,
7 in the way you described it, before it purchased these
8 properties. Agree?

9 A. So Exxon presented, you know, in their
10 presentations, you know, potential for ROZ in the
11 San Andres, so those presentations, and they're stating
12 that as part of their evaluation to purchase it.

13 Q. Did Empire conduct, itself, a separate independent
14 evaluation of the information that ExxonMobile presented to
15 Empire?

16 A. Prior to purchase?

17 Q. Yes.

18 A. I don't know.

19 Q. Okay. Does Empire keep records -- did Empire keep
20 records of what it did prior to purchasing these properties?

21 A. I'd have to look to see if there's anything we
22 can find in the evaluation files.

23 Q. Okay. But there are evaluation files?

24 A. To what extent there are evaluation files, I
25 don't know. But would there be, you know, information

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1 going to the purchase of it, yes. I don't know what's in
2 those files. But we can look -- we can look through them
3 and see what we find.

4 Q. Do you understand that we've asked for those files
5 previously, you understand that?

6 A. So an evaluation. So for the purchase, whenever
7 you evaluate a deal, they say, Hey, this is what our PDP
8 is, this is what the other prospectives are, that goes into
9 part of the process of the evaluation. That is not an
10 in-depth study.

11 Q. Okay. What is it -- you mentioned this phrase
12 PDP. What does that mean?

13 A. Develop producing properties.

See Motion at unlabeled Exhibit E, pdf pages 29-32 (excerpts 12-3-24 Depo. Tr. of William West).

Thus, Empire's witness William West testified (1) that he did not know to what extent any evaluation files existed and (2) generally, whenever a company evaluates an acquisition, it looks at developed producing properties. *Id.* at 18:24-19:13.

Notably, developed producing reserves at the EMSU are not at issue in this proceeding and, thus, not relevant. *See* Order on Scope at 2, ¶ 2. And Goodnight admits that Empire produced the one document that addresses the potential for ROZ development in the San Andres that was created by XTO. *Id.* at 2. Yet, Goodnight insists that there is an evaluation file with documents pertaining to evaluation of the residual oil zone in the San Andres (which is not a developed producing property) and that Empire should be compelled to produce it. *See, e.g.*, Motion at 2 ("Goodnight also learned that XTO made 'presentations' on the 'potential for ROZ in the San Andres[.]'" (brackets in original)). Moreover, as Goodnight is well aware, none of the persons with Empire at the time of the acquisition are at Empire now.

Notwithstanding Goodnight's discovery machinations in this regard, Empire continues to look for additional documents that could possibly be responsive to Goodnight's elusive definition of an "evaluation file." Empire has produced and will produce additional documents that relate to the developed producing properties, which are not at issue in this proceeding, in the hopes of satisfying Goodnight's illusory demands.

B. Empire Has Produced Numerous Documents and Data that Support Nutech's Analysis and Cannot Separately Produce All "Data Nutech Relied on to Validate Input Parameters and Log Interpretations."

As explained in the testimony of Galen Dillewyn, filed August 26, 2024, Nutech's analysis "utilizes an eight-step process for analysis," which is reflected in Exhibit F-1 to his testimony. Revised Self-Affirmed Statement of Galen Dillewyn at 2, filed Dec. 4, 2024 as Empire Revised Exhibit F, excerpts attached hereto as Exhibit 2. Mr. Dillewyn explained his work in detail in his

deposition on Nutech's performs its analysis using a model that contains large amounts of data from the San Andres within a multitude of datasets. See Galen Dillewyn Depo. Tr. at 166:6-10, excerpts attached hereto as Exhibit 3. The supporting database contains information that is either publicly available or provided to Nutech by its clients over the past 26 years. As you might expect, the database is proprietary, though specific analyses are available for purchase by the public. Indeed, Goodnight could have hired a company with a similar database and software to provide an analysis on behalf of Goodnight.

Moreover, to provide all of the data in Nutech's proprietary database would be overly broad and unduly burdensome. Notably, much of the data is publicly available. To assist Goodnight in acquiring much of the data contained in the Nutech database, Empire will produce a list of the wells in the database with a San Andres top along with a related map showing the locations of the wells that have helped inform the model.

As for the RW values, Nutech uses its previous analyses or client-supplied information as a starting point. When the analysis runs, Nutech verifies that the SW calculated from the RW does not invalidate physics or nature by being greater than 100%.

C. Empire Does Not Have Within Its Possession, Custody, or Control Nutech's RR Bell #4 Well Log Interpretation and Analysis.

Nutech did not conduct the RR Bell #4 analysis for XTO or for Empire. It is publicly available for a fee, \$2500 + \$200 for digitizing the image. Empire did not pay for this analysis. Under the terms of agreement between Nutech and its client that provided the data to Nutech originally, Nutech will not provide the RR Bell #4 analysis to anyone without payment. Thus, the RR Bell #4 analysis is not within the possession, custody, or control of Empire. See Rule 1-034(A) NMRA (stating that a party may request documents "which are in the possession, custody, or control of the party on whom the request is served"); see also Rule 1-045(D)(1)(c)(d) NMRA ("A

person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost.”). The Pre-Hearing Order, para. 7 (June 3, 2024) is consistent with the rules: “The parties agree to provide copies of documents that are (1) within the respective party’s possession, custody, or control, (2) upon which each party (including their witnesses) relied in preparation for the merits hearing and (3) referenced in the direct testimony and exhibits” (emphasis added). Further, “[a]n expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed.” Rule 11-703 NMRA. If Goodnight wants the RR Bell #4 analysis, it can pay Nutech the fee and obtain it.

D. Documents and Data Reflecting Empire’s Plans to Drill New San Andres Wells.

Again, Goodnight demands documents that are not relevant to the issues before the Commission in the upcoming hearing. As all of the parties are well aware, the two issues identified by the Commission are (1) whether a residual oil zone is contained within the San Andres and (2) if so, whether Goodnight’s injection is impairing recovered or related hydrocarbons. See Order on Scope at 2, ¶ 2. There are few documents that are responsive to this request, most of which have been created or been in the process of being created only within the last two months. This is, in part, because Empire has been required to prepare for a regulatory proceeding as if it were litigation and, as a business decision, has refrained from expending extensive resources preparing for development of a formation while Goodnight continues to dump millions of barrels of foreign saltwater. Nonetheless, in a final effort to appease Goodnight’s unprecedented demands, Empire will produce the preliminary cost proposal for the EMSU-800 that Empire is in the process of drafting.

For all the reasons stated herein, the Motion should be denied.

Respectfully submitted,

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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 January 31, 2025.

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