

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

**APPLICATION OF NORTHWIND
MIDSTREAM PARTNERS LLC FOR
APPROVAL OF AN ADDITIONAL
REDUNDANT ACID GAS INJECTION WELL
AND TO AMEND ORDER NO. R-20913, AS
AMENDED, AND SWD-2622 TO AUTHORIZE
AN INCREASED SHARED MAXIMUM
DAILY INJECTION RATE, LEA COUNTY,
NEW MEXICO.**

**CASE NO. 24881
(ORDER NO. R-20913-D, AS AMENDED)**

**MOTION TO STAY NORTHWIND MIDSTREAM PARTNERS LLC'S
APPLICATION TO AMEND ORDER NOS. R-20913-D & SWD-2622**

Desert Ram South Ranch, Inc. (“Desert Ram”), by and through undersigned counsel, moves for a stay of Case No. 24881 pending before the Oil Conservation Commission (“Commission”), including a stay of all of Northwind Midstream Partners LLC’s (“Northwind”) proposed requests to amend Order Nos. R-20913, as amended, and SWD-2622, (collectively, the “Orders”). For the reasons stated below, Desert Ram respectfully asks the Commission to set this Motion for a special hearing, and after notice and hearing, to stay the effectiveness of the Orders pending a decision on the property rights related to this case by the District Court in Lea County, in Case No. D-506-CV-2025-00172, regarding Desert Ram’s Complaint for Declaratory Judgment, Temporary and Permanent Injunctive Relief, and Damages. *See Desert Ram South Ranch, Inc. v. Northwind Midstream Partners LLC*, Case No. D-506-CV-202500172, in the Fifth Judicial District, Lea County, New Mexico (“***Exhibit A***”).

Northwind opposes the requested relief herein; The Oil Conservation Division (“OCD”) takes no position on the Motion.

In support, Desert Ram requests a stay of Northwind's Application to Amend Order Nos. R-20913, as amended, and SWD-2622, as follows:

A. Background & Procedural History

Desert Ram owns the neighboring and adjoining property that is the subject of Case 24881, all located in Sections 17, 21, and 29, all in Township 26 South, Range 36 East, approximately 7.5 miles southwest of Jal in Lea County, New Mexico (the "South Ranch"). In the fall of 2024, Desert Ram's predecessor-in-interest sold approximately 140 acres of the South Ranch to Northwind, in the southwest quarter of Section 21, Township 26 South, Range 36 East, approximately 7.5 miles southwest of Jal in Lea County, New Mexico.

To provide context and background, previously, in Case No. 23943, Northwind applied, through a typical C-108 application for approval to drill, complete, and operate an acid gas (CO₂ and H₂S) injection into the Salt Creek AGI #2 well. As stated then, the proposed well, the Salt Creek AGI #2, "will ensure operational stability and redundancy with respect to acid gas disposal operations at Northwind's Natural Gas Processing Facility and will fulfill the redundant Devonian AGI well requirement of NMOCC Order R-20913 (A-D). The proposed Salt Creek AGI #2 is designed to address the disposal needs of the Northwind Midstream Gas Processing Facility, which needs to safely inject up to a maximum of twelve (12) million standard cubic feet (MMSCF) per day (approximately 6,631 barrels per day) of treated acid gas (TAG) for at least 30 years." *See* Northwind's Application, Case No. 23943, at 16 (citing 1.0 Executive Summary) (filed Oct. 10, 2023). Northwind's application further reflected that, after 30 years of injection, the project would only encompass approximately 138 acres of the pore space surrounding the well. *Id.*

Northwind filed a new application ("Application") in Case No. 24881, on September 25, 2024, with the Commission, pursuant to the provisions of NMSA 1978, § 70-2-12(B)(15) and

19.15.26 NMAC. Northwind now seeks an order (1) authorizing injection of treated acid gas (“TAG”) for purposes of disposal into the proposed Titan AGI #4 well as an additional redundant acid gas injection (“AGI”) well, and (2) to further amend Order No. R-21093-D, as amended, and SWD-2622 to authorize a shared maximum daily injection rate of 28.8 million standard cubic feet per day (MMSCFD) of treated acid gas (“TAG”) for disposal through either or both its permitted Salt Creek AGI #2 well or the proposed Titan AGI #4 well. *See* Northwind’s Application, Case No. 24881, at 1 (filed Sept. 17, 2024).

The Application included the standard C-108 form, with the basis to authorize, a shared maximum daily injection rate of 28.8 million standard cubic feet per day (MMSCFD) of treated acid gas (“TAG”) for disposal into either or both its Salt Creek AGI #2 or the proposed Titan AGI #4 wells. Now, the Application reflects the Plume model will occupy approximately 5.2 square miles: “Following operation of the Titan AGI #4, concurrently with Salt Creek AGI #2, as proposed, the resultant TAG plume will occupy a maximum area of approximately 5.2 square miles and would extend a maximum of approximately 1.8 miles north from the Titan Treatment Facility.” *See* Northwind’s Application, Case No. 24881, at 11 (citing Executive Summary 1.0).

Desert Ram is the owner of the surface acreage surrounding the Application. As provided on page 83 of the Application, a predecessor-in-interest, Hydrosorce Logistics (“Hydrosorce”), was provided the required notice as an adjoining surface owner directly and substantially impacted by Northwind’s proposed injection operations under the Application. After receiving notice as required by Oil Conservation Division Rules, Desert Ram’s predecessor-in-interest, NGL South Ranch Inc. (“NGL”) entered an appearance and intervened as an affected party pursuant to 19.15.4.10(B) NMAC, after its predecessor, Hydrosorce Logistics received notice of the Application in Case No. 24881. Desert Ram intends to present evidence and testimony regarding

its objections to Northwind's proposed requests to amend Order No. R-20913, as amended, and SWD-2622, due to the Northwind's trespass of Desert Ram's subsurface pore space.

As permitted by Section 70-2-29 of the Oil and Gas Act, Desert Ram, separately filed a declaratory judgment action in District Court in Lea County, in Case No. D-506-CV-202500172, *Complaint for Declaratory Judgment, Temporary and Permanent Injunctive Relief, and Damages*. See Ex. A. Prior to filing suit, counsel for Desert Ram contacted counsel for Northwind with a request to lease or obtain some other lawful right to use the subsurface pore space below Desert Ram's property and outlined the anticipated trespass issues if the proposed expansion of the AGI wells is approved by the Commission; however, Northwind refused to negotiate or make any good faith offer to resolve the trespass without court involvement.

B. Legal Standard for Stays of OCD Orders and Commission Orders

In this case, Desert Ram requests a stay, pursuant to 19.15.4.23(B) NMAC. A stay is appropriate here to prevent waste and protect correlative rights, under the New Mexico Oil Conservation Commission Rules, and the New Mexico Oil and Gas Act, Chapter 70, Article 2 of NMSA 1978 ("Oil and Gas Act" or "Act"). The New Mexico Oil and Gas Act permits simultaneous actions for damages "which any person may have or assert against any person violating any statute of the state with respect to conservation of oil and gas, or any provision of this act, or any rule, regulation or order issued thereunder. Any person so damaged by the violation may sue for and recover such damages as he may be entitled to receive." NMSA 1978, § 70-2-29. Moreover, a stay is appropriate to allow the District Court to make a determination on the requested injunction related to the property rights of Desert Ram. See *Hartman v. Texaco Inc.*, 1997-NMCA-032, ¶ 17, 123 N.M. 220, 937 P.2d 979 ("[The New Mexico] Supreme Court has indicated that a landowner whose property is damaged by injected water used in oil and gas operations has a claim

for damages caused by the trespass”) (citing *Snyder Ranches, Inc. v. Oil Conservation Comm’n*, 110 N.M. 637, 640 (NM 1990)). Desert Ram is likely to prevail on the merits and failure of the Commission to issue a stay will result in irreparable harm to Desert Ram. *See* Order No. R-14300-A, at ¶ 5 (adopting standard for administrative stay of *Tenneco Oil Co. v. N.M. Water Quality Control Comm’n*, 1986-NMCA-033, ¶ 10).

C. Commission’s Authority Generally Under the New Mexico Oil and Gas Act

The Oil Conservation Commission was delegated by broad authority by the Oil and Gas Act to: “have . . . jurisdiction, authority and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of this act or any other law of this state relating to the conservation of oil or gas[.]” NMSA 1978, §§ 70-2-1, 70-2-6, 70-2-11. The Commission is specifically empowered by the Act, “and it is its duty, to prevent waste prohibited by this act and to protect correlative rights, as in this act provided.” NMSA 1978, § 70-2-11. Specific to this proceeding, the Commission has the power to: . . .

(7) to require wells to be drilled, operated and produced in such manner as to prevent injury to neighboring leases or properties;

...

(13) to regulate the methods and devices employed for storage in this state of oil or natural gas or any product of either, including subsurface storage;

...

(15) to regulate the disposition, handling, transport, storage, recycling, treatment and disposal of produced water during, or for reuse in, the exploration, drilling, production, treatment or refinement of oil or gas, including disposal by injection pursuant to authority delegated under the federal Safe Drinking Water Act, in a manner that protects public health, the environment and fresh water resources.

NMSA 1978, § 70-2-12(B).

D. Injection Hearing Notice Requirements for Surrounding Adjacent Surface Owners

Division and Commission Rules require certain information in C-108 applications for injection of fluids. *See* 19.15.26.8 NMAC. The C-108 application must include specific

information as to the parties who are provided notice of any C-108 application, to ensure the protection of correlative rights and prevent waste. Furthermore, 19.15.26.8(B)(2) NMAC, requires:

(2) The applicant shall furnish, by certified or registered mail, a copy of the application to each owner of the land surface on which each injection or disposal well is to be located and to each leasehold operator and other affected persons, as defined in Subsection A of 19.15.2.7 NMAC, within any tract wholly or partially contained within one-half mile of the well.

Division Guidance regarding UIC Permits and Division UIC Orders expressly recognize the limited authorization provided by the permit, that may not infringe private property rights:

6. Private Property. This Permit does not convey a property right or authorize an injury to any person or property, an invasion of private rights, or an infringement of state or local law or regulations. [40 CFR 144.51(g)].¹

The purpose and intent of the Division's notice requirements is to give notice of a proposed injection well to affected persons with a known interest in the area of review. *See* 19.15.26.7.A NMAC; 19.15.26.8(B)(2) NMAC.

E. Argument

The basis for this motion to stay Northwind's Application to Amend Order Nos. R-20913, as amended, and SWD-2622, is that Northwind has no legal right in the pore space impacted by the migration of the proposed injection operations. Commission and Division Rules, promulgated pursuant to the Oil and Gas Act, in Chapter 15 of Title 19 of the New Mexico Administrative Code ("Rules"), for C-108 applications require notice be provided to adjacent surface owners, such as Desert Ram. The Commission owes duties to parties provided notice who own interests in the surrounding acreage, such as Desert Ram, and afford such parties certain rights in Commission

¹ See Michelle Lujan Grisham, et al., *Oil Conservation Division Notice to Oil and Gas Operators, Standard Template for Underground Injection Control Permits*. N.M. ENERGY, MINS. & NAT. RES. DEP'T (Feb. 19, 2024, 3:14 PM), https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/ao/20240219/pcjc0919650740_02_19_2024_03_16_04.pdf.

proceedings. Desert Ram, through its predecessor-in-interest, Hydrosource Logistics, received notice of the Application, as required by OCD Rules, and is entitled to rights in this proceeding as an adjacent surface owner.

As recognized in the UIC permits themselves, simply applying for injection authority does not entitle Northwind to use and enjoyment of pore space in subsurface neighboring properties to which it has no right. Even regulatory approval of the requested permitting does not entitle Northwind to enter or use pore space to which it has no right. If the proposed expansion of the AGI injection operation is approved as requested by Northwind in Commission Case No. 24881, Northwind's injection into Desert Ram's subsurface pore space will constitute trespass upon Desert Ram's property. Northwind's injection operations will substantially harm Desert Ram's ability to utilize the subsurface of the South Ranch.

It was not until Desert Ram's predecessor-in-interest received notice of Northwind's Application pending before the New Mexico Oil Conservation Commission in Case No. 24881 that Northwind provided an image of the anticipated plume that would result from the proposed increased injection activities for which Northwind seeks approval in Case No. 24881. Northwind's new application claims it seeks approval of an additional well for "redundancy" purposes. In reality, it seeks authority to almost double the injection rates approved under the existing Orders. It is now undisputed that Northwind's proposed injection operations will migrate into neighboring pore space owned by Desert Ram.

Unlike in forced pooling proceedings before the Division, Northwind cannot seek Commission approval for use and enjoyment of neighboring pore space where its injected fluids will migrate. When the Application was filed, Northwind should have obtained leases from all of the surrounding surface acreage where the plume model reflects expansion into the subsurface

pore space; however, this was not done, and Northwind now seeks to illegally appropriate the subsurface pore space of the adjoining properties, without any right to do so. Any interest in the pore space claimed Northwind is subservient to Desert Ram's rights therein. However, Northwind made no attempt whatsoever to reach a voluntary agreement with the surface interest owners whose unleased interests are now being used by Northwind.

Desert Ram has filed suit, as reflected in *Exhibit A*, and Northwind has not begun injection operations, as reflected on the OCD's Well File for Salt Creek AGI #2 Well. No current injection means no harm to Northwind. The complete and total lack of any effort on the part of Northwind to obtain voluntary agreements for the use of the pore space indicated in the Application is sufficient reason for staying the issuance of any AGI orders issued to Northwind pending a final court determination regarding ownership and rights to title of the pore space purported to be impacted by Northwind's application without proper right to do so.

F. Conclusion

For these reasons, a stay is necessary to prevent the migration of fluids into Desert Ram's pore space pending a final court determination on the trespass and other declaratory judgment claims filed by Desert Ram against Northwind. The Commission's approval of the Application would violate Desert Ram's property rights as a neighboring property owner impacted by the proposed injection operations. As such, Desert Ram requests that the Commission set this Motion to Stay for a special hearing, and after hearing and consideration of the merits, enter an Order staying Commission Case No. 24881, pending the District Court in Lea County's final ruling, and that the Commission grant such further relief as the Commission deems appropriate.

Respectfully,

A handwritten signature in blue ink, appearing to read "Reagan Marble", written over a horizontal line.

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2025, a true and correct copy of the foregoing pleading was served upon counsel of record, and the OCC Clerk, as follows:

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Oil Conservation Commission Clerk

/s/ Kaitlyn A. Luck

**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
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**APPLICATION OF NORTHWIND
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NEW MEXICO.**

**CASE NO. 24881
(ORDER NO. R-20913-D, AS AMENDED)**

[*proposed*] **STAY ORDER**

THIS MATTER, having come before the Oil Conservation Commission upon the *Motion to Stay Northwind Midstream Partners LLC's Application to Amend Order Nos. R-20913-D & SWD-2622* of Desert Ram South Ranch Inc ("Desert Ram"), in which Desert Ram requests the Commission to stay the all proceedings in Case No. 24881 pending a final determination by the Fifth Judicial District Court of Lea County in Cause No. D-506-CV-2025-00172.

The Motion to Stay defines issues impacting the Commission's jurisdiction to prevent waste and protect correlative rights pursuant to the New Mexico Oil and Gas Act, NMSA 1978, Section 70-2-1, *et. seq.* Pursuant to Oil and Gas Act, all proceedings in Case No. 24881, are hereby stayed pending a decision on the merits in the proceedings pending before the Fifth Judicial District Court in Cause No. D-506-CV-2025-00172.

CASE NO. 24881 IS HEREBY STAYED.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**

**GERASIMOS RAZATOS
DIRECTOR (Acting)**

Date: _____

EXHIBIT A

STATE OF NEW MEXICO
FIFTH JUDICIAL DISTRICT
COUNTY OF LEA

FILED
5th JUDICIAL DISTRICT COURT
Lea County
2/17/2025 1:59 PM
NELDA CUELLAR
CLERK OF THE COURT
Cory Hagedoorn

DESERT RAM SOUTH RANCH, INC.

Plaintiff,

D-506-CV-2025-00172

v.

Case assigned to Cortez, Efren A.

NORTHWIND MIDSTREAM PARTNERS LLC,

Defendant.

**COMPLAINT FOR DECLARATORY JUDGMENT,
TEMPORARY AND PERMANENT INJUNCTIVE RELIEF, AND DAMAGES**

Plaintiff, Desert Ram South Ranch, Inc. (“Desert Ram”) formerly known as “NGL South Ranch, Inc.,” by and through undersigned counsel, files this *Complaint for Declaratory Judgment, Temporary and Permanent Injunctive Relief, and Damages* (“Complaint”), and states:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Desert Ram South Ranch, Inc. is a domestic New Mexico for-profit corporation in good standing.
2. Plaintiff owns the property that is the subject of this lawsuit, located in Sections 17, 21, and 29, all in Township 26 South, Range 36 East, approximately 7.5 miles southwest of Jal in Lea County, New Mexico (the “South Ranch”).
3. Defendant Northwind Midstream Partners LLC is a foreign limited liability company organized under the laws of Delaware and may be served with process through its registered agent, CT Corporation Systems, 206 S. Coronado Ave., Espanola, NM 87532.

4. The real property, including the South Ranch that is the subject of this action, is located in Lea County, New Mexico, and the actions complained of herein occurred in Lea County, New Mexico.

5. Plaintiff now seeks declaratory judgment and injunctive relief, as well as damages for trespass, and subsurface damages.

6. The District Court for Lea County, Fifth Judicial District, State of New Mexico, has jurisdiction over this action, under the Declaratory Judgment Act, NMSA 1978, 44-6-1 to 44-6-15.

7. This Court has jurisdiction over Defendant as it conducts business in the State, pursuant to NMSA 1978, Section 38-1-16.

8. Pursuant to NMSA 1978, Section 38-3-1, venue is proper because the real property that is the subject of this action is located in Lea County, New Mexico.

FACTS AND ALLEGATIONS

Sale of Lands to Northwind

9. In the fall of 2024, Plaintiff (operating then as “NGL South Ranch, Inc.”) sold approximately 140 acres of the South Ranch to Defendant Northwind, in the southwest quarter of Section 21, Township 26 South, Range 36 East, approximately 7.5 miles southwest of Jal in Lea County, New Mexico.

10. At the time of the sale, Plaintiff was aware that Northwind intended to use the acreage for proposed AGI wells, but was unaware to the extent Northwind’s AGI plume would extend.

11. As part of that transaction, Plaintiff agreed to a “no interference” clause as set forth below:

“Section 11.2 No Interference. Seller acknowledges that the Property will be used for the treatment and disposal of acid gas, including in acid gas injection wells and uses related thereto. So long as Buyer’s treatment and disposal activities on the Property **are not reasonably likely to have a material adverse effect on Seller’s land and water management operations** in Lea County **or otherwise materially affect or are likely to materially affect the value of Seller’s lands in Lea County** or adjacent counties, **as reasonably determined by Seller**, Seller covenants not to interfere or intervene in any respect with the obtaining of any permits or approvals related to the construction, operation and maintenance of facilities for the treatment and for the disposal of acid gas on the Property, including in acid gas injection wells on the Property, or the usage of the Property for such purposes. The provisions of this Section 11.2 shall survive the Closing.” (emphasis added)

Northwind’s AGI Application

12. On September 25, 2024, Northwind filed a new application before the Oil Conservation Commission, pursuant to the provisions of NMSA 1978, § 70-2-12(B)(15) and 19.15.26 NMAC, for an order (1) authorizing injection of treated acid gas (“TAG”) for purposes of disposal into the proposed Titan AGI #4 well as an additional redundant acid gas injection (“AGI”) well, and (2) to further amend Order No. R-21093-D, as amended, and SWD-2622 to authorize a shared maximum daily injection rate of 28.8 million standard cubic feet per day (MMSCFD) of treated acid gas (“TAG”) for disposal through either or both its permitted Salt Creek AGI #2 well or the proposed Titan AGI #4 well (the “Application”).

13. Plaintiff, through its related operating entity, Hydrosource Logistics, LLC (“Hydrosource”), received notice of the Application, as required by OCD Rules.

14. The Application included the standard C-108 form, with the basis to authorize, a shared maximum daily injection rate of 28.8 million standard cubic feet per day (MMSCFD) of treated acid gas (“TAG”) for disposal into either or both its Salt Creek AGI #2 or the proposed Titan AGI #4 wells.

15. Previously, in Case No. 23943, Northwind applied, through a typical C-108 application for approval to drill, complete, and operate an acid gas (being CO₂ and H₂S) injection

into the Salt Creek AGI #2 well. As stated then, the proposed well, Salt Creek AGI #2, “will ensure operational stability and redundancy with respect to acid gas disposal operations at Northwind’s Natural Gas Processing Facility and will fulfill the redundant Devonian AGI well requirement of NMOCC Order R-20913 (A-D). The proposed Salt Creek AGI #2 is designed to address the disposal needs of the Northwind Midstream Gas Processing Facility, which needs to safely inject up to a maximum of twelve (12) million standard cubic feet (MMSCF) per day (approximately 6,631 barrels per day) of treated acid gas (TAG) for at least 30 years.” Northwind’s application further reflected that, after 30 years of injection, the project would only encompass approximately 130 acres of the pore space surrounding the well. *See* 1.0 Executive Summary, Application, at 16 (filed Oct. 10, 2023).

16. It was not until Hydrosource received notice of Defendant’s Application pending before the New Mexico Oil Conservation Commission in Case No. 24881 that Defendant provided an image of the anticipated plume that would result from the proposed increased injection activities for which Northwind seeks approval in Case No. 24881.

17. For that reason, Desert Ram now has filed suit, and Hydrosource has simultaneously intervened as an affected party in the Commission proceedings, pursuant to 19.15.4.10(B) NMAC.

18. Desert Ram intends to present evidence and testimony regarding its objections to Northwind’s proposed requests to amend Order No. R-20913, as amended, and SWD-2622, due to Northwind’s trespass of Desert Ram’s subsurface pore space as alleged herein.

19. When the Application was filed, Northwind should have obtained leases from all of the surrounding surface acreage where the plume model reflects expansion into the subsurface pore space; however, this was not done, and Northwind now seeks to illegally appropriate the

subsurface pore space of the adjoining properties, without any right to do so. Any interest in the pore space claimed by Defendant is subservient to Plaintiff's rights therein.

20. If the proposed expansion of the AGI injection operation is approved, as requested by Northwind in Commission Case No. 24881, Northwind's injection into Desert Ram's subsurface pore space will constitute trespass upon the lands of Desert Ram. Defendant's injection operations will substantially interfere with Plaintiff's ability to utilize the subsurface of the South Ranch.

21. Prior to filing suit, counsel for Desert Ram contacted counsel for Northwind with a request to lease or obtain some other lawful right to use the subsurface pore space below Desert Ram's property, and outlined the issues with the anticipated trespass if the proposed expansion of the AGI wells is approved by the Commission; however, Northwind failed and refused to negotiate or make any good faith offer to resolve the trespass without court involvement.

COUNT I-
DECLARATORY JUDGMENT

22. Plaintiff incorporates paragraphs 1 to 21 above as if fully set forth herein.

23. Plaintiff seeks a declaration that Defendant will commit trespass, subsurface trespass, and cause serious property damages to Plaintiff and the South Ranch, if Northwind is allowed to proceed with the proposed expansion of the AGI injection as requested in Case No. 24881 pending before the Oil Conservation Commission.

24. Plaintiff is entitled to a declaration from this Court that they are the owners of the surface rights and associated sub-surface pore space of the South Ranch, and a declaration that Case No. 24881 should not be approved by the Commission to prevent Defendant from illegally appropriating subsurface pore space owned by Plaintiff under the South Ranch.

25. Based on the record title and New Mexico law, Plaintiff is entitled to a declaration from this Court that Plaintiff is the owner of the surface and sub-surface pore space surrounding the proposed AGI well expansion under the Application and that Defendant must obtain a subsurface easement or some other form of recognized property interest from Plaintiff to use the pore space.

26. An actual controversy exists amongst the parties. The issues raised in the Complaint are real and not uncertain, abstract, or hypothetical. The issues are appropriate for judicial determination, pursuant to NMSA 1978, Section 44-6-1, and Rule 1-057 of the New Mexico Rules of Civil Procedure.

COUNT II-
INJUNCTION

27. Plaintiff incorporates paragraphs 1 to 26 above as if fully set forth herein.

28. Defendant's action in filing the Application with the proposed plume model have created a condition entitling Plaintiff to relief by an injunction in this case.

29. Any interest in the pore space claimed by Defendant is subservient to Plaintiff's rights therein.

30. The relief requested by Plaintiff would create no hardship to Defendant.

31. The interests for which Plaintiff seeks judicial protection are in real property and Defendant's proposed actions under the Application would significantly or permanently interfere with Plaintiff's ability to use or enjoy such real property interests.

32. If the proposed Application is approved, Defendant would create actual and substantial surface and subsurface damages to the South Ranch.

33. An injunction would be appropriate to remedy the threatened and proposed imminent trespass.

34. If Defendant's unauthorized use of Plaintiff's South Ranch property is not enjoined, Plaintiff will suffer even greater irreparable injury to its property rights and related interests due to the unascertainable nature of the damages.

35. Plaintiff is also at risk of suffering irreparable injury due to the nature of the proposed expansion as reflected in Defendant's plume modeling, for which the remedies at law are inadequate.

36. The Court, therefore, has the power to grant equitable relief and Plaintiff is entitled to preliminary and permanent injunctions.

**COUNT III-
TRESPASS**

37. Plaintiff incorporates paragraphs 1 to 36 above as if fully set forth herein.

38. Pursuant to applicable New Mexico law, a plaintiff is eligible to commence an action for common law trespass and should be granted relief for trespass both on the surface and beneath the surface of their land.

39. Plaintiff owns and has the right to lawfully possess the South Ranch and its subsurface pore space, which is the subject of this case.

40. As provided in the Application, Defendant Northwind intends to illegally enter the South Ranch property pore space, for up to thirty years, and inject millions of gallons of acid gas, without any legal right to do so, and to cause damage to Plaintiff's rights therein.

41. Defendant Northwind is aware of and understands that it has no authority to use subsurface pore space under lands which it has no lawful right to use.

42. Defendant's proposed injection activities into the formation constitutes a direct infringement of Plaintiff's right to development and possession of the subsurface pore space underlying the surface lands of the South Ranch, and if approved, will cause damages to Plaintiff.

43. Northwind intends to trespass on Plaintiff's fee property, in the subsurface, by the injection of acid gas into the subsurface pore space, in violation of Plaintiff's right of development and possession, and Plaintiff is entitled to relief from the Court for the trespass.

44. Northwind's many years of proposed subsurface trespass into Desert Ram's lands will result in damages to Desert Ram, in an amount to be proven at trial, but not less than the value of the temporary and permanent impairment of Desert Ram's subsurface pore space rights.

45. An actual controversy exists between the parties.

46. Desert Ram has no wholly adequate remedy at law.

47. Plaintiff will suffer immediate injury if the Commission approves Northwind's Application as proposed and by exercising dominion over Plaintiff's subsurface pore space.

PRAYER

WHEREFORE, Plaintiff prays that the Court grant the following relief:

A. Pursuant to Rule 1-057 NMRA and NMSA 1978, Section 44-6-1, enter a declaratory judgment declaring that Desert Ram has a property right in the subsurface below its lands, and that the subsurface injection by Northwind of AGI or any other substances into Desert Ram's lands constitute trespass.

B. Issue a temporary restraining order, preliminary injunction, and a permanent injunction enjoining Northwind from obtaining a permit of any kind, under Case No. 24881, or another application, that would permit subsurface trespass of AGI or any other injected substances into the lands of Desert Ram, and specifically enjoining Northwind from injection of substances into Desert Ram's subsurface pore space.

- C. Award damages to Plaintiff and against Northwind in any amount calculated to compensate Desert Ram for the temporary or permanent impairment of the use of its subsurface pore space.
- D. Award Desert Ram attorneys' fees and costs incurred in this matter.
- E. Grant Desert Ram such other and further relief as the Court deems just and proper.

Respectfully submitted,

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