

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

**APPLICATION OF GOODNIGHT
MIDSTREAM PERMIAN, LLC TO AMEND
ORDER NO. R-22506 (SWD-2392) FOR A
ONE YEAR EXTENSION TO COMMENCE
INJECTION OPERATIONS, LEA COUNTY,
NEW MEXICO**

Case No. 24491

EMPIRE NEW MEXICO, LLC'S BRIEF ON STANDING

Pursuant to the Hearing Examiner's October 2, 2025 request, Empire New Mexico, LLC ("Empire") submits this brief on Empire's standing to object in the above-captioned matter. As discussed below, Empire has standing to object to Goodnight Midstream Permian LLC's ("Goodnight") Application.

1. In this case, Goodnight seeks to extend the time to commence injection operations for the Rocket SWD #1 ("Rocket SWD" or "Well") under Order SWD-2392 to March 2, 2025. Application at 1.

2. The proposed injection disposal interval is within the San Andres formation. *Id.* at 2, ¶ 5.

3. The Well is located approximately one mile from Empire's Eunice Monument South Unit ("EMSU"). The EMSU's unitized interval includes the San Andres formation.

4. In Case No. 24021, which is currently pending before the Commission, Empire filed an application to revoke Goodnight's injection authority for the Rocket SWD. A copy of that application is attached as **Exhibit 1**.

5. Empire filed other applications to revoke Goodnight's permits for saltwater disposal wells located near the EMSU, which are also pending before the Commission as Case Nos. 24022-24024, 24026, and 24027.

6. At Goodnight's request and over Empire's objection, the Commission stayed Case Nos. 24021-24024, 24026, and 24027 pending resolution of Empire's and Goodnight's applications that involve wells within the EMSU. *See* Case No. 24021, Order to Stay Proceedings (July 26, 2024).

7. On May 23, 2024, Goodnight filed a motion requesting that the Commission dismiss Empire's Applications in Case Nos. 24021-24024, 24026, and 24027 on the ground that Empire lacked standing to challenge the wells identified in those proceedings, including the Rocket SWD #1. *See* Exhibit 2.

8. Empire responded to Goodnight's Motion to Dismiss on June 6, 2024. Empire's Response is attached as Exhibit 3 and is incorporated by reference.

9. On June 13, 2024, during a status conference in this case, counsel for Goodnight argued that Empire's objection should be dismissed for lack of standing. 06/13/24 Tr. 149:16 – 150:10, attached as Exhibit 4. Counsel for Empire informed the Hearing Examiner that Goodnight had filed a Motion to Dismiss based on standing in Commission Case Nos. 24021-24024, 24026, and 24027 and requested that the Division stay this case pending a decision by the Commission on Goodnight's pending motion. Ex. 4, 150:12 – 151:5.

10. Counsel for Goodnight conceded that the Commission's decision on Goodnight's Motion to Dismiss in Case Nos. 24021-24024, 24026, and 24027 would also answer the question of whether Empire has standing in the instant case. Ex. 4, 153:15-20.

11. The Hearing Examiner stayed this matter pending a ruling from the Commission on the standing question in Case Nos. 24021-24024, 24026, and 24027. Ex. 4, 154:1-4, 154:24 – 155:5.

12. On June 20, 2024, the Commission denied Goodnight's Motion to Dismiss in Case Nos. 24021-24024, 24026, and 24027. 06/20/24 Tr. 94:25 – 95:12, attached as **Exhibit 5**.

13. On July 25, 2024, the Hearing Examiner held a Status Conference in this matter. During that conference, counsel for Goodnight stated that Goodnight was likely going to file a motion to dismiss on the question of standing. 07/25/24 Tr. 28:3-17, attached as **Exhibit 6**. In response, counsel for Empire informed the Hearing Examiner that the standing issue had been resolved by the Commission when it denied Goodnight's Motion to Dismiss in Case Nos. 24021-24024, 24026, and 24027 on June 20, 2024. **Ex. 6**, 29:10-14.

14. Based on the foregoing, the question of Empire's standing has been resolved by the Commission in its denial of Goodnight's Motion to Dismiss in Case Nos. 24021-24024, 24026, and 24027. Further, as articulated in **Exhibit 3**, Empire's Response to Goodnight's Motion to Dismiss in Case Nos. 24021-24024, 24026, and 24027, Empire has met and exceeded the requirements to allege standing regarding Goodnight's Rocket SWD #1 in a Commission or Division proceeding.¹

15. As a matter of law, establishing standing at the pleading stage requires only "generalized allegations" showing concrete and particularized injury. *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 561 (1992). Empire is not required to detail and provide conclusive evidentiary support explaining every aspect of causation.

¹ Commission Rule 19.15.4.8(A) requires "standing" to bring an application for an adjudicatory proceeding before the Commission. See 19.15.4.8 NMAC ("...[A]n operator or producer or other person *with standing* may file an application with the division for an adjudicatory hearing.") (emphasis added). Although the Rule does not define "standing," the Commission has previously embraced the standing analysis applicable in civil court cases. See, e.g., Commission Order No. R-10987-A(2), ¶¶ 13. Thus, to plead standing in an application for an adjudication, applicants need only allege facts that, if true, give rise to an inference that: "(1) they are directly injured as a result of the action they seek to challenge; (2) there is a causal relationship between the injury and the challenged conduct; and (3) the injury is likely to be redressed by a favorable decision." *ACLU of N.M. v. City of Albuquerque*, 2008-NMSC-045, ¶ 1, 188 P.3d 1222 (reciting traditional three-part test for standing).

16. Here, Empire alleges that saltwater injected into Goodnight's SWDs – in some cases in excess of Goodnight's daily injection limit – migrates into the unitized interval within the EMSU, thereby impairing Empire's ability to extract hydrocarbons from areas that Goodnight previously misrepresented as non-productive. *See* Self-Affirmed Statement of William West, attached as **Exhibit 7**. These allegations give rise to standing. Empire need not demonstrate in its objection the exact mechanics of how this migration occurs. That question must be resolved based on evidence presented at hearing. Thus, as discussed above, the standing question has already been resolved by the Commission in Empire's favor and the governing law on standing supports that determination.

WHEREFORE, Empire requests that the Division find that Empire has standing to object to Goodnight's Application in this matter and for any such further relief as the Division may deem appropriate.

Respectfully submitted,

By: /s/ Dana S. Hardy

Dana S. Hardy
Jaclyn M. McLean
Jaime R. Kennedy
Timothy B. Rode
HARDY MCLEAN LLC
125 Lincoln Ave.
Suite 223
Santa Fe, NM 87505
(505) 230-4410
dhardy@hardymclean.com
jmclean@hardymclean.com
jkennedy@hardymclean.com
trode@hardymclean.com

Corey F. Wehmeyer
SANTOYO WEHMEYER, P.C.
IBC Highway
281 N. Centre Bldg.
12400 San Pedro Avenue
Suite 300
San Antonio, Texas 78216
(210) 998-4190
cwehmeyer@swenergy.law.com

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 October 16, 2025.

Michael H. Feldewert
Adam G. Rankin
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
pmvance@hollandhart.com
***Attorneys for Goodnight Midstream
Permian, LLC***

Jesse Tremaine
Chris Moander
Assistant General Counsels
New Mexico Energy, Minerals, and
Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
(505) 741-1231
(505) 231-9312
jessek.tremaine@emnrd.nm.gov
chris.moander@emnrd.nm.gov
***Attorneys for New Mexico Oil
Conservation Division***

/s/ Dana S. Hardy
Dana S. Hardy

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

**APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ORDER NO. R-22027 FOR THE ROCKET SWD
NO. 1 WELL OPERATED BY GOODNIGHT MIDSTREAM
PERMIAN LLC, LEA COUNTY, NEW MEXICO**

CASE NO. _____

APPLICATION

Empire New Mexico LLC (“Empire”) respectfully applies for an order revoking the injection authority granted under Order No. R-22506 in Case No. 21527 (“Order”). In support, Empire states as follows:

1. Goodnight Midstream Permian, LLC (“Goodnight”) is the operator of record for the Rocket SWD Well No. 1, API# 30-025-pending (“Well”), a produced water disposal well to be located 565 feet from the South line and 245 feet from the West line (Unit M) of Section 28, Township 21 South, Range 36 East, NMPM, Lea County, New Mexico.

2. The Well is located approximately 4,715’ from the Unit and will dispose of water at the same depths as the unitized interval of the Eunice Monument South Unit (“Unit”), which is operated by Empire.

3. The unitized interval of the Unit extends from the top of the Grayburg formation to the bottom of the San Andres formation (“Unitized Interval”). The vertical limits of the Unitized Interval are the same as the vertical limits of the Eunice Monument Grayburg-San Andres Pool covering the Grayburg and San Andres formations.

4. The Well will dispose into the San Andres formation through an open-hole interval from 4330 feet to 5750 feet below surface, and disposed water has the potential to migrate into the Unitized Interval.

5. At the time of the application, Goodnight misrepresented that the San Andres is a non-productive zone known to be compatible with formation water from the Bone Spring, Delaware, and Wolfcamp formations (“Produced Water”).

6. However, residual oil zones (“ROZ”) are found within the San Andres, and Empire has the right to recover hydrocarbons therein.

7. Moreover, the salinity levels of Produced Water are substantially greater than the salinity levels of water in the Unitized Interval, including the San Andres formation.

8. Disposal in the Well will impair the ability of Empire to recover hydrocarbons within the Unitized Interval and thereby adversely affects the correlative rights of Empire and other interest owners in the Unit and results in waste.

9. Empire has requested that Goodnight voluntarily refrain from drilling the Well, but as of the date of filing this application, Goodnight has not indicated it will do so.

10. Revocation of the disposal authority granted by Order No. R-22506 will prevent the waste of recoverable hydrocarbons and will protect correlative rights.

WHEREFORE, Empire requests that this case be heard as a status conference on December 7, 2023 and, at that time, be set for a contested hearing on the same docket as Case No. 23775.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A

/s/ Sharon T. Shaheen

Sharon T. Shaheen

Samantha H. Catalano

P.O. Box 2307

Santa Fe, NM 87504-2307

(505) 986-2678

sshhaheen@montand.com

scatalano@montand.com

ec: wmcginnis@montand.com

Ernest L. Padilla

PADILLA LAW FIRM

P.O. Box 2523

Santa Fe, NM 87504

(505) 988-7577

padillalawnm@outlook.com

and

Dana S. Hardy

Jackie McLean

HINKLE SHANOR LLP

P.O. Box 2068

Santa Fe, NM 87504-2068

(505) 982-4554

dhardy@hinklelawfirm.com

jmclean@hinklelawfirm.com

Attorneys for Empire New Mexico, LLC

Application of Empire New Mexico LLC to Revoke the Injection Authority Granted Under Order No. R-22506 for the Rocket SWD Well No. 1 Operated by Goodnight Midstream Permian LLC, Lea County, New Mexico. Applicant in the above-styled cause seeks an order revoking the injection authority granted by Order No. R-22506, issued in Case No. 21527 on March 2, 2023, to dispose of produced water in the Rocket SWD Well No. 1, API# 30-025-pending ("Well"), a produced water disposal well to be located 565 feet from the South line and 245 feet from the West line (Unit M) of Section 28, Township 21 South, Range 36 East, NMPM, Lea County, New Mexico. The approved injection zone is the San Andres formation, an interval which is potentially productive of hydrocarbons since the advent of horizontal drilling. The Well is located approximately 7 miles West of Eunice City, New Mexico.

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

**APPLICATION OF GOODNIGHT
MIDSTREAM PERMIAN, LLC TO AMEND
ORDER NO. R-7767 TO EXCLUDE THE SAN
ANDRES FORMATION FROM THE EUNICE
MONUMENT OIL POOL WITHIN THE
EUNICE MONUMENT SOUTH UNIT AREA,
LEA COUNTY, NEW MEXICO.**

CASE NO. 24277

**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

**APPLICATIONS OF GOODNIGHT MIDSTREAM
PERMIAN, LLC FOR APPROVAL OF
SALTWATER DISPOSAL WELLS
LEA COUNTY, NEW MEXICO**

CASE NOS. 23614-23617

**APPLICATIONS OF EMPIRE NEW MEXICO LLC
TO REVOKE INJECTION AUTHORITY,
LEA COUNTY, NEW MEXICO**

CASE NOS. 24018-24027

**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

MOTION TO DISMISS EMPIRE CASE NOS. 24021-24024, 24026, 24027

Empire New Mexico, LLC has submitted six applications urging the Commission to revoke the injection authority provided to Goodnight Midstream Permian, LLC to operate six saltwater-disposal (“SWD”) wells outside the Eunice Monument South Unit (“EMSU”) (Case Nos. 24021–24024 and 24026–24027). The Commission should dismiss these applications because Empire has failed to show that it has standing to challenge those six wells.

Empire does not allege concrete, particularized facts showing that it has suffered injury, or will suffer imminent injury, from Goodnight’s injection of produced water into these six wells. Instead, Empire puts forward nothing more than a one-sentence speculative hunch—based solely on cryptic “information and belief”—that produced water from these wells might somehow be migrating into the San Andres formation of the EMSU, thereby impairing Empire’s ability to recover hydrocarbons within the EMSU. But a speculative, conclusory one-liner is insufficient to meet Empire’s burden to show injury in fact.

Nor has Empire alleged facts showing that the produced water allegedly interfering with its recovery operations comes from Goodnight’s six wells outside the EMSU. And it is hard to see how it could. Empire itself, along with Goodnight and other operators, also operate saltwater-disposal wells that inject produced water into the San Andres formation both within and near the EMSU. How Empire knows that any of the produced water within the San Andres formation of the EMSU comes from Goodnight’s six wells outside the EMSU is anyone’s guess. That Empire’s factual allegations shed zero light on this subject means that Empire has also failed to establish the causation and redressability elements necessary to create standing.

Simply put, because Empire’s applications in Case Nos. 24021–24024, 24026, and 24027 fail on all three standing elements—injury, causation, and redressability—the Commission should dismiss those applications.

BACKGROUND

Goodnight is a midstream company whose business includes receiving produced water from oil-and-gas producers and disposing of it in various ways, including injection into SWD wells. Between 2019 and 2022, and consistent with New Mexico law, the Division approved Goodnight's applications to inject produced water into several SWD wells in Lea County, New Mexico.

Empire New Mexico, LLC is an oil-and-gas production company. It owns the mineral rights associated with the Eunice Monument South Unit ("EMSU"). The EMSU is an oil-and-gas production area subject to a unitization order issued under the Statutory Unitization Act, NMSA 1978 §§ 70-7-1 through -21. Two geological formations underlie the EMSU: the Grayburg formation and the San Andres formation. The Grayburg formation sits directly atop the San Andres formation, and these two formations make up the Unitized Interval within the EMSU. Empire is currently producing oil and gas from the Grayburg formation within the Unitized Interval. According to Empire—and contrary to historical practice, common wisdom, and prior Division findings—the San Andres formation within the Unitized Interval also contains residual hydrocarbons that Empire hopes to recover at some point in the future.

In November 2023, Empire submitted applications urging the Division to revoke Goodnight's injection authority for ten SWD wells. Four applications seek to revoke Goodnight's permits for four SWD wells within the EMSU that inject produced water into the San Andres formation.¹ Empire contends that these four wells are impairing Empire's ability to recover hydrocarbons from the Unitized Interval.

¹ These applications are Case Nos. 24018, 24019, 24020, and 24025.

The remaining six applications—the focus of this motion to dismiss—challenge Goodnight’s injection authority for six wells that fall outside the EMSU and that are injecting or will inject produced water into the San Andres formation:

1. Case No. 24021: This application challenges Order No. R-22506 in Case No. 21527, which granted injection authority to Goodnight to operate the Rocket SWD Well No. 1 (API# 30-025-pending). Goodnight has not yet drilled this well. When drilled, Empire alleges that the well will be about 4,715 feet from the EMSU.^{2,3} Empire alleges that water injected into this well might at some point migrate over to the EMSU. Were that to happen, Empire says, Empire’s ability to recover hydrocarbons within the Unitized Interval would be impaired.

2. Case No. 24022: This application challenges Administrative Order No. SWD-2391, which granted injection authority to Goodnight to operate the Pedro SWD #001 Well (API# 30-025-50079). Goodnight is currently injecting produced water into this well. Empire alleges that the well is about 4,235 feet from the EMSU.⁴ Empire alleges—based solely “[u]pon information and belief”—that water injected into this well is migrating over to the EMSU, impairing Empire’s ability to recover hydrocarbons within the Unitized Interval.

3. Case No. 24023: This application challenges Order No. R-22030 in Case No. 20825, which granted injection authority to Goodnight to operate the Verlander SWD Well No. 1 (API#

² Empire appears to misapprehend the location and boundary of its own unit. Under the Unit Agreement, Tracts 14 and 71 exclude the S/2 S/2 of Sections 21 and 22, Township 21 South, Range 36 East, NMPM, Lea County, New Mexico. Ex. 3 (Ex. A and B to EMSU Agreement). This misapprehension causes Empire to substantially miscalculate the distances of Goodnight Midstream’s Rocket SWD #1, Ted 28 SWDW #001, Yaz 28 SWD #001, and Pedro SWD #001 from EMSU’s southern boundary.

³ The actual distance is 6,019 feet based on Division records establishing the EMSU boundary and approved location of the Rocket SWD Well No. 1. Ex. 1.

⁴ The actual distance is 5,580 feet based on Division records establishing the EMSU boundary and approved location of the Pedro SWD #001 Well. Ex. 1.

30-025-50632). Goodnight has not yet drilled this well. Empire alleges that the well is about 2,482 feet from the EMSU.⁵ Empire mistakenly alleges that Goodnight is currently injecting produced water into this well and alleges—based solely “[u]pon information and belief”—that water injected into this well is migrating over to the EMSU, impairing Empire’s ability to recover hydrocarbons from the Unitized Interval.

4. Case No. 24024: This application challenges Order No. R-20855 in Case No. 20555, which granted injection authority to Goodnight to operate the Nolan Ryan SWD Well No. 1 (API# 30-025-45349). Goodnight is currently injecting produced water into this well. Empire alleges that the well is about 3,285 feet from the EMSU.⁶ Empire alleges—based solely “[u]pon information and belief”—that water injected into this well is migrating over to the EMSU, impairing Empire’s ability to recover hydrocarbons from the Unitized Interval.

5. Case No. 24026: This application challenges Administrative Order No. SWD-2075, which granted injection authority to Goodnight to operate the Ted 28 SWD Well No. 1 (API# 30-025-44386). Goodnight is currently injecting produced water into this well. Empire alleges that the well is about 2,402 feet from the EMSU.⁷ Empire alleges—based solely “[u]pon information and belief”—that water injected into this well is migrating over to the EMSU, impairing Empire’s ability to recover hydrocarbons from the Unitized Interval.

6. Case No. 24027: This application challenges Order No. R-20865 in Case No. 20558, which granted injection authority to Goodnight to operate the Yaz 28 SWD Well No. 1 (API# 30-

⁵ The actual distance is 2,671 feet based on Division records establishing the EMSU boundary and approved location of the Verlander SWD Well No. 1. Ex. 1.

⁶ The actual distance is 3,264 feet based on Division records establishing the EMSU boundary and approved location of the Nolan Ryan SWD Well No. 1. Ex. 1.

⁷ The actual distance is 3,782 feet based on Division records establishing the EMSU boundary and approved location of the Ted 28 SWD Well No. 1. Ex. 1.

025-46382). Goodnight is currently injecting produced water into this well. Empire alleges that the well is about 230 feet from the EMSU.⁸ Empire alleges—based solely “[u]pon information and belief”—that water injected into this well is migrating over to the EMSU, impairing Empire’s ability to recover hydrocarbons from the Unitized Interval.

Goodnight, however, is not the only entity with active SWD wells in or near the EMSU. Empire itself operates a SWD well within the EMSU. **Ex. 1.** Permian Line Service, LLC operates two SWD wells within the EMSU (EME SWD 021 and N 11 001). So does Pilot Water Solutions (P 15 001). Rice Operating Company operates three SWD wells near the EMSU (EME SWD 033M, N 7 001, and State E Tract 27 #001). And another company, Parker Energy Support, operates a SWD well near the EMSU (Parker Energy SWD 005).

ARGUMENT

An applicant such as Empire may pursue an application with the Division or Commission only if the applicant has standing. 19.15.4.8(A) NMAC. An application is subject to dismissal if “the applicant does not have standing.” *Id.* To have standing, the applicant must establish that there is (1) an injury in fact, (2) a causal relationship between the injury and the challenged conduct, and (3) a likelihood that the injury will be redressed by a favorable decision. *ACLU of N.M. v. City of Albuquerque*, 2008-NMSC-45, ¶ 1, 188 P.3d 1222. The burden falls on the applicant to show that the applicant has standing. *See* 19.15.4.8(A) NMAC; *accord id.* 19.15.4.11(C) (stating that the Division or Commission may strike a notice of intervention “if the intervenor fails to show that the intervenor has standing, unless the intervenor’s participation will contribute substantially to the prevention of waste, protection of correlative rights or protection of public health or the

⁸ The actual distance is 1,575 feet based on Division records establishing the EMSU boundary and approved location of the Yaz 28 SWD Well No. 1. Ex. 1.

environment”). For Goodnight’s six wells outside the EMSU, Empire’s applications fail on all three standing elements.

1. Empire has failed to allege facts showing that it has suffered, or imminently will suffer, injury from Goodnight’s injection activities from the six wells outside the EMSU.

For these six wells, Empire has not carried its burden to allege facts showing that Goodnight’s injection activities have caused or will imminently cause Empire to suffer injury. The most it can muster is a single conclusory sentence that, based on nothing more than unspecified “information and belief,” water has migrated or will migrate from these wells over to the EMSU. But this bare-bones allegation does not satisfy Empire’s burden under the rules to *show* that it has standing. Instead, to satisfy its burden, Empire must allege the facts and “information” it is relying on to form its belief that produced water from these wells is migrating or will migrate to the EMSU. Because Empire has not provided any of those facts or information in its applications, it has failed to establish that it has standing to bring these six applications.

For the five wells that are more than a half mile away from the EMSU (Case Nos. 24021, 24022, 24023, 24024, and 24026), Empire has another, independent problem: the Division’s precedent set down in Order No. R-12811, *In re Application of Gandy Corp.*, Case No. 13962 (N.M. Oil Conservation Div. Sept. 24, 2007) (**Ex. 2**). In that case, a competitor of the applicant sought to intervene to oppose the applicant’s request for injection authority for a SWD well. Ex. 2, ¶ 9. Similar to Empire here, the competitor raised concerns that water from the applicants well might migrate and adversely affect the competitor’s own SWD well. *Id.* ¶ 11. But the Division determined that the competitor lacked standing. *Id.* ¶ 12. One reason for that determination was that the competitor’s well was beyond the “1/2 mile cutoff required for consideration of ‘affected’ parties as per Division Rule 701(B)(2).” *Id.* ¶ 12(b). That reasoning applies with equal force to these five wells. The Rocket, Pedro, Verlander, Nolan Ryan, and Ted wells are all more than a half mile from

the EMSU. Ex. 1. That fact provides another, independent ground to dismiss Empire's challenges to those five wells for lack of standing under *Gandy*.

Empire's applications in Case Nos. 24021 and 24023 suffer from a third, independent deficiency: Goodnight has not yet drilled the challenged Rocket 1 or the Verlander wells. Because of that, Empire's asserted injury is "simply too speculative" at this point. *ACLU of N.M.*, 2008-NM-045, ¶ 24. This future injury depends on a string of contingencies: (1) Goodnight will inject a sufficiently large volume of produced water into the wells; (2) some of that water will somehow migrate 6,019 feet (Rocket) and 2,671 feet (Verlander) over to the EMSU; and (3) enough of this water will migrate to the EMSU to materially impair Empire's ability to produce hydrocarbons from the Unitized Interval. Because Empire has not alleged facts shedding any light on if or when these contingencies will come to pass, it has failed to carry its burden to establish a "high likelihood" that it will suffer imminent future injury from Goodnight's Rocket SWD Well No. 1 and Verlander SWD Well No. 1. *Id.* ¶ 29.

2. Empire has failed to allege facts showing that water from Goodnight's six wells outside the EMSU has caused or will cause injury, and that revoking the permits for those wells will redress that injury.

Empire has failed to allege facts showing that the produced water from Goodnight's six wells outside the EMSU is materially contributing to the produced water within the San Andres formation of the Unitized Interval that is allegedly interfering with Empire's recovery operations. As noted above, Empire itself operates a SWD well that injects produced water into the San Andres formation within the EMSU. Ex. 1. Goodnight similarly operates four SWD wells that inject produced water into the San Andres formation within the EMSU. *Id.* Two other companies, Permian Line Service, LLC and Pilot Water Solutions, operate three more SWD wells that do the same thing. *Id.* Beyond these existing sources of produced water, there are other potential sources of

produced water, too: Rice Operating Company operates three SWD wells near the EMSU, and Parker Energy also operates a SWD well near the EMSU. *Id.*

Given these other existing sources, and potential sources, of produced water within the San Andres formation of the EMSU, how does Empire know that any of the produced water within that formation of the EMSU comes from Goodnight's six wells outside the EMSU? Empire's applications do not say. That is a fatal shortcoming. Because Empire's applications include no factual allegations on this point, it is "purely speculative" whether the produced water from these six wells is in fact causing any alleged impairment in Empire's recovery operations. *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 45–46 (1976). In standing parlance, Empire has failed to allege facts showing that the produced water within the San Andres formation of the EMSU is "fairly traceable" to Goodnight's six SWD wells outside the EMSU. For that reason, Empire has failed to establish the causation element of standing for its applications challenging those six permits.

Much the same can be said on the redressability element. Nothing in Empire's applications establishes a "substantial likelihood" that revoking the permits for these six wells would solve the problem Empire is complaining about, given the multiple other existing and potential sources of produced water within the San Andres formation of the EMSU. *Id.*; *cf. Duke Power Co. v. Carolina Env't Study Grp.*, 438 U.S. 59, 74–78 (1978) (concluding that the causation element was met because the plaintiffs had shown that, but for the challenged statute, the plaintiffs would not have suffered their alleged harms). After all, even if the Commission were to shut off the water allegedly coming from Goodnight's six SWD wells outside the EMSU, that would hardly solve Empire's alleged problems, because there would still be produced water coming from SWD wells within the EMSU—including Empire's own SWD well—and potentially produced water coming from other SWD wells near the EMSU operated by Rice and Parker Energy. In short, even if the Commission were to revoke Goodnight's permits for the six SWD wells outside the EMSU, Empire has failed

to allege facts showing that doing so would eliminate produced water injected into the San Andres and remove this impediment to Empire's producing hydrocarbons from the Unitized Interval. *Cf. Linda R.S. v. Richard D.*, 410 U.S. 614, 618 (1973) (concluding that the plaintiff lacked standing based on redressability because, even providing the plaintiff with the injunction she requested, it was "speculative" that the injunction would redress her injury). Empire has thus failed to establish the redressability element of standing for its applications challenging Goodnight's six wells outside the EMSU.

CONCLUSION

Because Empire has failed to allege facts showing that it has standing to challenge Goodnight's six SWD wells outside the EMSU, the Commission should dismiss Case Nos. 24021–24024 and 24026–24027.

Respectfully submitted,

HOLLAND & HART LLP

By: 

Michael H. Feldewert
Adam G. Rankin
Paula M. Vance
Post Office Box 2208
Santa Fe, NM 87504
505-998-4421
505-983-6043 Facsimile
mfeldewert@hollandhart.com
agrankin@hollandhart.com
pmvance@hollandhart.com

**ATTORNEYS FOR GOODNIGHT MIDSTREAM
PERMIAN, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2024, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

Ernest L. Padilla
Padilla Law Firm, P.A.
Post Office Box 2523
Santa Fe, New Mexico 87504
(505) 988-7577
padillalawnm@outlook.com

Dana S. Hardy
Jaclyn M. McLean
HINKLE SHANOR LLP
P.O. Box 2068
Santa Fe, NM 87504-2068
(505) 982-4554
dhardy@hinklelawfirm.com
jmclean@hinklelawfirm.com

Sharon T. Shaheen
Daniel B. Goldberg
Montgomery & Andrews, P.A.
Post Office Box 2307
Santa Fe, NM 87504-2307
(505) 986-2678
sshaheen@montand.com
dgoldberg@montand.com
cc: wmcginnis@montand.com

Attorneys for Empire New Mexico, LLC

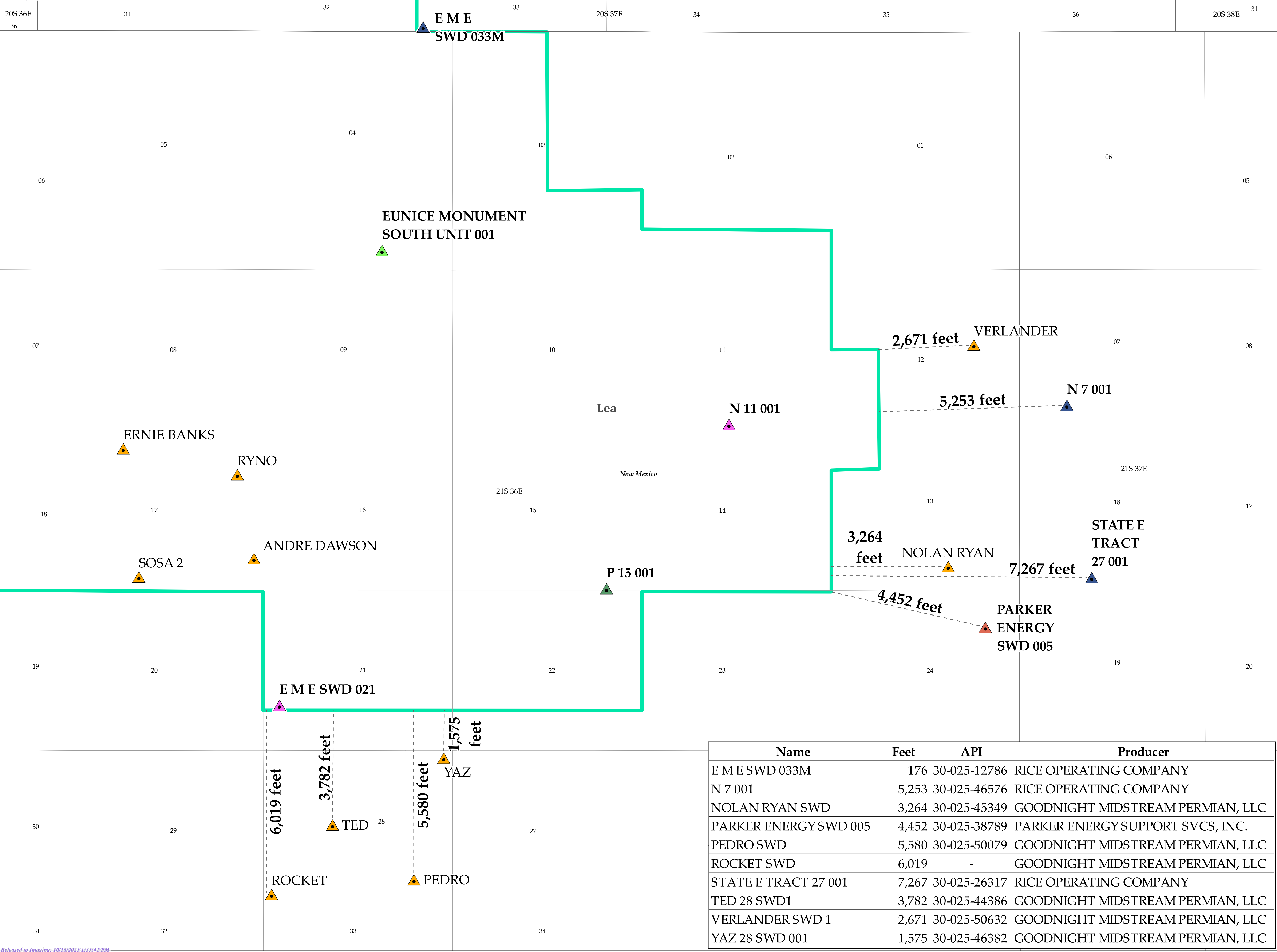
Jesse Tremaine
Chris Moander
Assistant General Counsels
New Mexico Energy, Minerals, and
Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
(505) 741-1231
(505) 231-9312
jessek.tremaine@emnrd.nm.gov
chris.moander@emnrd.nm.gov

***Attorneys for New Mexico Oil Conservation
Division***



Adam G. Rankin

EXHIBIT 1



EMSU + GNM Wells

SWD's

Producer

EMPIRE PETROLEUM CORP

MERIT ENERGY

PARKER ENERGY SUPPORT

PERMIAN LINE SERVICE, LLC

PILOT WATER SOLUTIONS

RICE OPERATING COMPANY

EMSU Outline

Printed Date: May 22, 2024

Montana

North Dakota

Minnesota

Idaho

Wyoming

South Dakota

Wisconsin

Utah

Colorado

Nebraska

Iowa

Illinois

Kansas

Missouri

Arkansas

Mississippi

Louisiana

Oklahoma

Texas

New Mexico

N

W

E

S

0

0.225

0.45

0.9

Miles

1 in = 0 miles

1 inch = 1,335 feet

Coordinate System: GCS WGS 1984

Datum: WGS 1984

Units: Degree

Information depicted on this map is the sole property of Goodnight Midstream. Electronic reproduction of any portion of this map is strictly prohibited absent the written consent of Goodnight Midstream.

This information is to be used for reference purpose only. Goodnight Midstream does not guarantee the accuracy of this material and is not responsible for any

GOODNIGHT

MIDSTREAM

5910 N. CENTRAL EXPWY SUITE 800 | DALLAS, TX 75206

Name	Feet	API	Producer
E M E SWD 033M	176	30-025-12786	RICE OPERATING COMPANY
N 7 001	5,253	30-025-46576	RICE OPERATING COMPANY
NOLAN RYAN SWD	3,264	30-025-45349	GOODNIGHT MIDSTREAM PERMIAN, LLC
PARKER ENERGY SWD 005	4,452	30-025-38789	PARKER ENERGY SUPPORT SVCS, INC.
PEDRO SWD	5,580	30-025-50079	GOODNIGHT MIDSTREAM PERMIAN, LLC
ROCKET SWD	6,019	-	GOODNIGHT MIDSTREAM PERMIAN, LLC
STATE E TRACT 27 001	7,267	30-025-26317	RICE OPERATING COMPANY
TED 28 SWD1	3,782	30-025-44386	GOODNIGHT MIDSTREAM PERMIAN, LLC
VERLANDER SWD 1	2,671	30-025-50632	GOODNIGHT MIDSTREAM PERMIAN, LLC
YAZ 28 SWD 001	1,575	30-025-46382	GOODNIGHT MIDSTREAM PERMIAN, LLC

Released to Imaging: 10/16/2025 1:35:41 PM

EXHIBIT 2

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

**IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:**

**CASE NO. 13962
ORDER NO. R-12811**

**APPLICATION OF GANDY CORPORATION FOR AUTHORIZATION TO
INJECT INTO THE JULIA CULP WELL NO 2, LEA COUNTY, NEW MEXICO**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came before the Oil Conservation Division at 8:15 a.m. on July 26, 2007, at Santa Fe, New Mexico, before Examiner William V. Jones.

NOW, on this 24th day of September, 2007, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

(1) Due public notice has been given, and the Division has jurisdiction of this case and its subject matter.

(2) The applicant, Gandy Corporation ("Gandy"), seeks authority to re-enter the plugged and abandoned Julia Culp Well No. 2 (API No. 30-025-30879) located 2310 feet from the North line and 660 feet from the East line (Unit H) of Section 34, Township 15 South, Range 35 East, NMPM, Lea County, New Mexico, and to utilize this well for commercial disposal of oil field waste waters into the Devonian formation at perforated and open hole depths of 13,865 to 14,500 feet.

(3) Gandy filed on February 1, 2007 an administrative application to re-enter and inject into this well. On February 12, after reviewing the application, the Division sent an email requesting clarification of certain items in Gandy's submittal. Gandy's consultant, Mr. Terry Duffey, replied to the data request on February 14. As part of the Division's requirements, notice was sent to approximately 93 affected parties. Prior to the 15-day suspense period, the Division received protest letters and deferred the application until such time as settlement could be reached between Gandy and the protesting parties. Protests or letters of concern were received from P. Kay Stokes and D.B. Wharton of Arkansas, Jerry and Jan Carlisle of Lovington ("J&J Service, Inc"),

Case No. 13962
Order No. R-12811
Page 2 of 7

Edgar J. Huffman ("VISA Industries of Arizona") and Energen Resources Corporation ("Energen").

(4) On June 13, 2007, after reaching a tentative agreement with Energen, Gandy submitted a letter to the Division requesting this matter be heard before an Examiner and on July 19 submitted its pre-hearing statement.

(5) Energen entered an appearance in this case and submitted a pre-hearing statement. At the July 26 hearing, Energen stated through counsel it no longer protested the application.

(6) At the hearing, Mr. Jerry Carlisle of J&J Service, Inc. appeared to make a statement in opposition to the proposed injection well. J&J Service, Inc. did not file an entry of appearance or pre-hearing statement for this hearing. Mr. Carlisle presented a letter from Visa Industries of Arizona ("VISA") protesting Gandy's proposed injection well. Mr. Carlisle further stated that P. Kay Stokes and her uncle, Mr. Wharton, had called him prior to the hearing and stated they had already objected to Gandy's application.

(7) VISA also did not file an official entry of appearance or pre-hearing statement for this hearing and did not appear at the hearing. The letter dated July 24th from VISA authorized Jerry Carlisle to represent VISA's interests at the hearing. The letter expressed concerns of VISA's that (i) its remaining interest in the lease would be lost if this injection is approved, (ii) Gandy's injection in this area may have caused or could cause corrosion to wellbores in, or damage to production from, its Strawn wells in the West Lovington Strawn Unit.

(8) Mr. Carlisle made a statement that his company, J&J Service, Inc., helped pay for the drilling of the subject well, and now owns an interest in the Wolfcamp formation within this well, and wished to retain the well for possible production from the Wolfcamp formation. Further, Mr. Carlisle does not understand how Gandy could assume ownership of the well without dealing with all existing owners of record.

(9) DKD, LLC entered an appearance in this case by fax to the Division on July 22nd and entered a pre-hearing statement by fax on July 23rd as an "interested party who may present testimony based on the applicants presentation". By fax on July 23rd, DKD, LLC filed a "notice of intervention" as a competitor of the applicant who has concerns about the application. The reason given for late filing was (i) intervenor's usual attorney was conflicted out and (ii) DKD, LLC called its new attorney on time, but attorney was moving his office and did not get filings done until Sunday.

(10) On July 25th, applicant's attorney filed a motion with the Division to determine DKD as a non-party and to prohibit DKD's participation in the upcoming hearing. Reasons given, included; (i) DKD was not a person to whom Division rules require notice of the original administrative application or of the Division hearing; (ii) DKD is simply a competitor to Gandy in this area; and (iii) DKD did not timely file entry

Case No. 13962
Order No. R-12811
Page 3 of 7

of appearance or pre-hearing statement. Gandy asked therefore that DKD be limited at the discretion of the Examiner in the hearing to "making a relevant statement, and being subject to cross-examination."

(11) At the hearing, DKD presented argument and reasoning for status as a party with "standing." DKD's owner, Mr. Danny Watson, stated that:

(a) DKD operates a commercial disposal in this area, the Watson "6" Well No. 1, and therefore is a competitor to Gandy's proposed commercial operations;

(b) DKD is also concerned about possible corroded casing and poor cement in Gandy's proposed injection well over the equivalent interval that DKD is using for injection; and

(c) Injection or casing leaks in this area have been shown in previous Division cases to affect wells located more than ½ mile away.

(12) After listening to arguments, the Examiner decided to not allow DKD to have standing in this case for the following reasons:

(a) This matter was first considered by the Division in February at which time newspaper notice within Lea County was provided. Gandy finally made application for a hearing in June, and the hearing date was in late July. Despite this extended time period, DKD did not timely file an objection to the application.

(b) DKD's nearest injection well is located over a mile from Gandy's proposed well and therefore much further than the ½ mile cutoff required for consideration of "affected" parties as per Division Rule 701B(2).

(c) Gandy's proposed injection well would inject into the Devonian while DKD's nearest injection well uses a shallower interval for injection.

(d) Within Gandy's well or any other proposed injection wells, the Division would not allow injection without adequate casing and cement and would require periodic internal Mechanical Integrity Testing ("MIT") to ensure injection is confined to the permitted injection interval.

(e) Enforcement cases related to any future alleged rule or permit violations by the operator of the proposed injection well can be proposed by offset operators [such as DKD] and the merits would be considered at a Division hearing.

(13) Gandy produced two witnesses at this hearing who testified as follows:

Case No. 13962
Order No. R-12811
Page 4 of 7

(a) Gandy has a need for additional disposal in this area and chose the Devonian as an injection horizon because it may take water on a vacuum and would not pressure up as other injection formations have done, restricting injection or causing problems with offset wells. Also, it is below the deepest producing horizon in this general area which is the Strawn.

(b) The proposed well was drilled in 1990 and therefore is a relatively new wellbore compared to other Devonian wells. The well is not near any Devonian production and is in fact located in a structural trough. The well is wet in the Devonian and likely has adequate permeability as shown by the drill stem test done by the driller from 13,865 to 13,900 feet. Due to interest in the Mississippian at 13,391 to 13,522 feet, casing was run on this well to 13,950 feet.

(c) Gandy proposes to re-enter this plugged well, tie in new 5-1/2 inch casing, squeeze off perforations in the depleted gas interval in the Mississippian and in the unproductive Atoka formation, squeeze cement to cover the corrosion prone interval in the upper Glorieta and lower San Andres formations, test the wellbore for mechanical integrity, test the Devonian injection capability and, if necessary, drill out of the casing to a maximum open hole depth of 14,500 feet to add additional injection capacity.

(d) There is only one well within 1/2 mile of this well that penetrated the Devonian. The Daisy Chambers Well No. 1 is located approximately 1/2 mile from the proposed injection well. It was drilled in 1955, produced from the Permo Penn formations at approximately 10,500 feet, and was plugged and abandoned in 1992.

(e) Gandy will run a water pipeline to this well from its existing injection facility and will obtain a permit for this pipeline separately from this application.

(f) Gandy provided notice and received no protest from the surface owner of the wellsite, Mr. Dan Fields. Gandy also worked out agreement with Energen Resources and provided notice to approximately 90 other affected parties within the 1/2 mile Area of Review. The parties who lodged a protest were primarily concerned about use of the wellbore – especially in the Permo Penn formations.

(g) Gandy did a study of possible productivity of the Permo Penn (Wolfcamp) formation in the vicinity of the proposed injection well and concluded that attempting to perforate and produce this interval would be risky. Wolfcamp production would be poor at best and probably already drained by previous nearby production.

(h) Many types of oil field waste waters will be injected into this well. The Devonian waters are relatively compatible with those waste waters. The

Case No. 13962
Order No. R-12811
Page 5 of 7

Devonian water quality is very saline and is not protectable under the federal Safe Drinking Water Act or the New Mexico Water Quality Act.

(i) All fresh water intervals will be protected with casing and cement in the proposed injection well.

(14) Gandy did not provide testimony from a Landman, but did state in the hearing through counsel that its position is that the landowner now owns this wellbore, and Gandy has reached agreement with the landowner. In addition, and in case the landowner does not own this wellbore, Gandy has also reached an agreement with Energen as the operator of a lease which has production holding this wellbore. Thus Gandy demonstrated a good faith claim of ownership. In any case, ownership disputes are not within the jurisdiction of the Oil Conservation Division.

(15) The Division concludes that Gandy's proposed injection well should be approved and the proposed injection operation can be conducted in a safe and responsible manner, without causing waste, impairing correlative rights or endangering fresh water, public health or the environment.

IT IS THEREFORE ORDERED THAT:

(1) Gandy Corporation ("Gandy" or "operator") OGRID 8426, is hereby authorized to inject for disposal purposes into its Julia Culp Well No. 2 (API No. 30-025-30879) which will be re-entered at a location 2310 feet from the North line and 660 feet from the East line (Unit H) of Section 34, Township 15 South, Range 35 East, NMPM, in Lea County, New Mexico. Within this well, oil field waste waters are permitted for disposal into the Devonian formation through perforations from approximately 13,865 feet to 13,885 feet and through an open-hole interval from 13,950 feet to 14,500 feet, through plastic coated tubing set in a packer located within 100 feet of the top injection perforation or interval being used for injection.

(2) Prior to injecting into this well, the plugged wellbore shall be re-entered, new casing installed as deep as is practical, the existing cement top at 9280 feet raised with squeeze cementing operations to tie-in to the intermediate casing so as to cover all potential corrosive intervals, existing perforations in the Mississippian and the Atoka squeezed off, and the wellbore tested for mechanical integrity. If additional injection capacity is needed after perforating and testing the upper Devonian, the well shall be deepened to a maximum of 14,500 feet.

(3) After perforating the Devonian or while deepening the well, Gandy shall monitor the well for hydrocarbon shows and shall report any shows or swab test results to the Hobbs district office on sundry forms.

(4) After equipping the well with plastic coated tubing and packer, the casing-tubing annulus shall be loaded with an inert, corrosion resistant fluid as specified by the

Case No. 13962
Order No. R-12811
Page 6 of 7

Hobbs district office and equipped with a leak detection device capable of determining any leakage in the casing, tubing, or packer.

(5) Mechanical integrity testing is required after installation of the injection tubing and prior to commencing injection operations and thereafter as required by Division rules.

(6) The operator shall notify the Hobbs district office of the time of the setting of the tubing and packer and of any mechanical integrity test ("MIT") so that such operations can be witnessed.

(7) The tubing shall have a gauge and pressure limiting device installed in order to control and to record injection pressures. The surface injection pressure shall be continuously regulated such that it never exceeds 2,773-psi. The Director may administratively authorize an increase in this injection pressure if the operator shows that a higher pressure will not result in formation fracturing or migration of injected fluids from the permitted injection formation. As justification, the operator must submit results of an injection test such as a Step-Rate-Test.

(8) The operator of the well (Gandy or any successor operator) shall take all steps necessary to insure that injected fluids enter the proposed injection interval and do not escape to other formations or onto the surface.

(9) Without limitation on the duties of the operator as provided in Division Rules 19 and 116, or otherwise, the operator shall immediately notify the Hobbs district office of any failure of the tubing, casing or packer in the well, or of any leakage or release of water, oil or gas from or around any produced or plugged and abandoned well in the area, and shall take such measures as may be timely and necessary to correct such failure or leakage.

(10) The operator shall submit monthly reports of injection volumes of waste water on Form C-115, in accordance with Division Rules 706 and 1115.

(11) The injection authority granted herein shall terminate one year after the effective date of this order if the operator has not commenced injection operations pursuant hereto; provided however, the Division Director, upon written request of the operator received by the Division prior to the end of one year, may extend this time for good cause.

(12) Compliance with this order does not relieve the operator of the obligation to comply with other applicable federal, state or local laws or rules, or to exercise due care for the protection of fresh water, public health, and the environment.

(13) At the discretion of the Division Director and after proper notice is provided, any proposed amendments or changes to this order may be done administratively; provided however, proposed amendments to raise the depth of the

Case No. 13962
Order No. R-12811
Page 7 of 7

injection interval or change the target injection formation shall be done only after notice and hearing.

(14) Jurisdiction is retained by the Division for the entry of further orders as may be necessary for the prevention of waste and/or protection of correlative rights or upon failure of the operator to conduct operations (i) to protect fresh water or (ii) consistent with the requirements in this order, whereupon the Division may, after notice and hearing, terminate the injection authority granted herein.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION


for MARK E. FESMIRE, P.E.
DIRECTOR

EXHIBIT 3

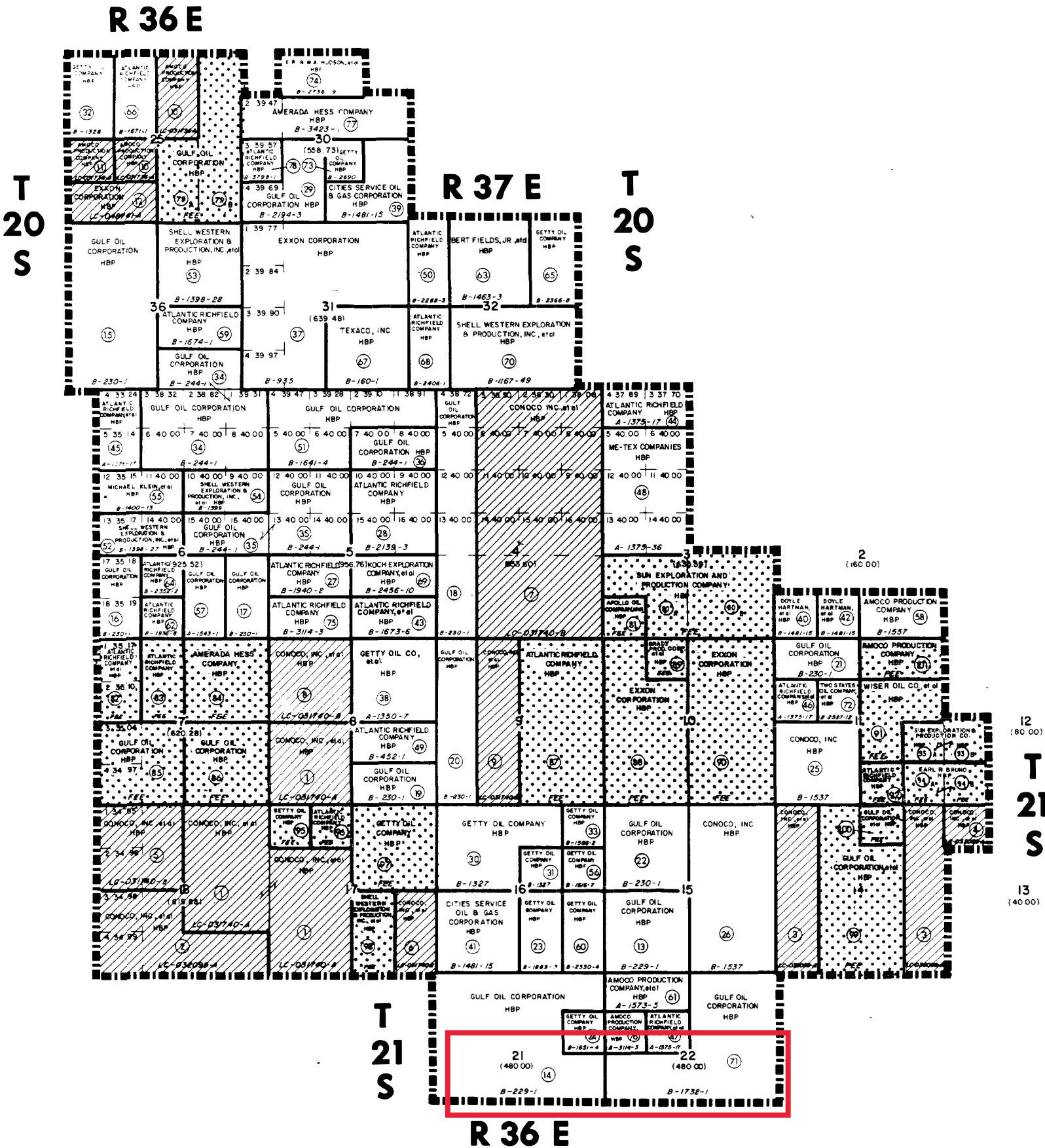
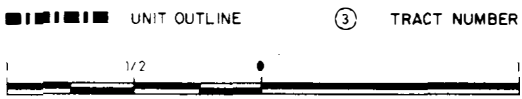


EXHIBIT "A"

**EUNICE MONUMENT SOUTH
UNIT AREA**

LEA COUNTY, NEW MEXICO

	ACREAGE	PERCENTAGE
 FEDERAL LANDS	2,734.76	19.27 %
 STATE LANDS	8,274.80	58.32 %
 PATENTED LANDS	3,180.28	22.41 %
TOTAL	14,189.84	100.00 %



NOTE: UNLESS OTHERWISE INDICATED, THE VARIOUS SECTIONS ON THIS PLAT CONTAIN 640.00 ACRES

GULF OIL CORPORATION
MIDLAND, TEXAS

EXHIBIT "B"

SCHEDULE SHOWING THE PERCENTAGE AND KIND OF OWNERSHIP OF OIL AND GAS INTERESTS
IN ACCORDANCE WITH THE PARTICIPATION FORMULA FOR THE UNITIZED FORMATION FOR THE
EUNICE MONUMENT SOUTH UNIT AREA
LEA COUNTY, NEW MEXICO

September 27, 1984

TRACT NO. AND TRACT NAME	DESCRIPTION OF LAND	ACRES	SERIAL NO. AND EFFECTIVE DATE	BASIC ROYALTY OWNER AND PERCENTAGE	LESSEE OF RECORD	OVERRIDING ROYALTY OWNER AND PERCENTAGE	WORKING INTEREST OWNER AND PERCENTAGE
<u>Federal Lands:</u>							
1. Meyer "A-1" (was Tract 81)	R21S-R36E, N.M.P.M. Sec. 8: SW $\frac{1}{4}$ Sec. 17: SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 18: NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$	640.00	LC-031740-A HBP 2-19-31 Exchanged 2-1-51	U.S.A. Schedule "C"	A. E. Meyer	Atlantic Richfield Co. .92105 Helen L. Bedford .01842 Henry De Graffenreid Bedford .01842 Rachel Bedford Bowen .01842 Triton Oil & Gas Corp. .11513 Charles H. Coll .13239 Jon F. Coll .13239 James N. Coll .13241 Max W. Coll, II .13241 Etz Oil Properties, Inc. .17269 George H. Etz, Jr., Trustee of George H. Etz, Sr. Trust .17269 Ima Hays .30703 Kirby Exploration Co. .57422 Munro L. Lyeth and Patricia D. Lyeth, First of Denver A/C 11033-00-8 .41447 Onez Norman Rooney .41447 Ellis Rudy .00143 Alann P. Bedford, Trustee Alann P. Bedford Trust .01842 Southland Royalty Co. 1.38158	Conoco Inc. Amoco Producti Company Atlantic Richf Company Chevron U.S.A. Inc.

TRACT NO. AND TRACT NAME	DESCRIPTION OF LAND	ACRES	SERIAL NO. AND EFFECTIVE DATE	BASIC ROYALTY OWNER AND PERCENTAGE	LESSEE OF RECORD	OVERRIDING ROYALTY OWNER AND PERCENTAGE	WORKING INTEREST OWNER AND PERCENTAGE	PARTICIPAT OF TRACT IN UNIT
<u>STATE LANDS:</u>								
13. J.F. Janda (NCT-C) (was Tract 95)	T21S-R36E, N.M.P.M. Sec. 15: SW $\frac{1}{4}$	160.00	B-229-1 HBP 2/28/28	State of New Mexico 12 $\frac{1}{2}$	Gulf Oil Corporation	None	Gulf Oil Corporation 100%	1.055350
14. Arnott-Ramsay (NCT-C) (was Tract 102)	T21S-R36E, N.M.P.M. Sec. 21: NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$	440.00	B-229-1 HBP 2/28/28	State of New Mexico 12 $\frac{1}{2}$	Gulf Oil Corporation	None	Gulf Oil Corporation 100%	2.739613
15. R.R. Bell (NCT- F) (was Tract 17)	T20S-R36E, N.M.P.M. Sec. 36: W $\frac{1}{2}$	320.00	B-230-1 HBP 2/28/28	State of New Mexico 12 $\frac{1}{2}$	Gulf Oil Corporation	None	Gulf Oil Corporation 100%	3.195507
16. R.R. Bell (NCT- D) (was Tract 35)	T21S-R36E, N.M.P.M. Sec. 6: Lots 17,18	70.37	B-230-1 HBP 2/28/28	State of New Mexico 12 $\frac{1}{2}$	Gulf Oil Corporation	None	Gulf Oil Corporation 100%	.682139
17. R.R. Bell (NCT- B) (was Tract 38)	T21S-R36E, N.M.P.M. Sec. 6: E $\frac{1}{2}$ SE $\frac{1}{4}$	80.00	B-230-1 HBP 2/28/28	State of New Mexico 12 $\frac{1}{2}$	Gulf Oil Corporation	None	Gulf Oil Corporation 100%	3.726787
18. Bell-Ramsey (NCT- A) (was Tract 47)	T21S-R36E, N.M.P.M. Sec. 4: Lots 4,5, 12,13 W $\frac{1}{2}$ SW $\frac{1}{4}$	238.72	B-230-1 HBP 2/28/28	State of New Mexico 12 $\frac{1}{2}$	Gulf Oil Corporation	None	Gulf Oil Corporation 100%	1.459570
19. R.R. Bell (NCT- A) (was Tract 63)	T21S-R36E, N.M.P.M. Sec. 8: S $\frac{1}{2}$ SE $\frac{1}{4}$	80.00	B-230-1 HBP 2/28/28	State of New Mexico 12 $\frac{1}{2}$	Gulf Oil Corporation	None	Gulf Oil Corporation 100%	.426101
20. Bell-Ramsey (NCT- A) (was Tract 64)	T21S-R36E, N.M.P.M. Sec. 9: W $\frac{1}{2}$ W $\frac{1}{2}$	160.00	B-230-1 HBP 2/28/28	State of New Mexico 12 $\frac{1}{2}$	Gulf Oil Corporation	None	Gulf Oil Corporation 100%	.796347
21. R.R. Bell (NCT- E) (was Tract 71)	T21S-R36E, N.M.P.M. Sec. 11: N $\frac{1}{2}$ NW $\frac{1}{4}$	80.00	B-230-1 HBP 2/28/28	State of New Mexico 12 $\frac{1}{2}$	Gulf Oil Corporation	None	Gulf Oil Corporation 100%	.355963
22. R.R. Bell (NCT- C) (was Tract 94)	T21S-R36E, N.M.P.M. Sec. 15: NW $\frac{1}{4}$	160.00	B-230-1 HBP 2/28/28	State of New Mexico 12 $\frac{1}{2}$	Gulf Oil Corporation	None	Gulf Oil Corporation 100%	2.683321
23. State "D" (was Tract 92)	T21S-R36E, N.M.P.M. Sec. 16: W $\frac{1}{2}$ SE $\frac{1}{4}$	80.00	B-1889-3 HBP 6/8/28	State of New Mexico 12 $\frac{1}{2}$	Getty Oil Company	None	Getty Oil Company 100%	.918559

TRACT NO. AND TRACT NAME	DESCRIPTION OF LAND	ACRES	SERIAL NO. AND EFFECTIVE DATE	BASIC ROYALTY OWNER AND PERCENTAGE	LESSEE OF RECORD	OVERRIDING ROYALTY OWNER AND PERCENTAGE	WORKING INTEREST OWNER AND PERCENTAGE	PARTIAL OF TRACT IN U
						9.375%		
70. State "J" (was Tract 27)	T20S-R37E, N.M.P.M. Sec. 32: SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$	240.00	B-1167-49 HBP 9/15/32	State of New Mexico 12%	El Paso Natural Gas Company and Shell Western Exploration and Production, Inc.	None	Shell Western Exploration and Production, Inc. 100%	.287522
71. Harry Leonard (NCT-A) (was Tract 107)	T21S-R36E, N.M.P.M. Sec. 22: NE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ N $\frac{1}{2}$ SE $\frac{1}{4}$	320.00	B-1732-1 HBP 2/28/33	State of New Mexico 12 $\frac{1}{2}$	Gulf Oil Corporation	None	Gulf Oil Corporation 100%	.825987
72. State "B" (was Tract 73)	T21S-R36E, N.M.P.M. Sec. 11: SE $\frac{1}{4}$ NW $\frac{1}{4}$	40.00	B-2527-12 HBP 2/10/34	State of New Mexico 12 $\frac{1}{2}$	Two States Oil Company	None	Two States Oil Company 81.25% The Herman R. Crile Sr. Revoc- able Trust dated 9-28-76 18.75%	.073299
73. Skelly "G" (was Tract 12)	T20S-R37E, N.M.P.M. Sec. 30: NW $\frac{1}{4}$ SE $\frac{1}{4}$	40.00	B-2690 HBP 4/2/34	State of New Mexico 12 $\frac{1}{2}$	Getty Oil Company	None	Getty Oil Co. 100%	.081241
74. Phillips (was Tract 7)	T20S-R37E, N.M.P.M. Sec. 30: NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$	80.00	B-2736-9 HBP 4/10/34	State of New Mexico 12 $\frac{1}{2}$	Wm. A. and Edward R. Hudson	William A. Hudson .072917 B.D. and Edward R. Hudson .145833	W.A. and E.R. Hudson 85% E.R. Hudson, Agent 15%	.029017
75. State "G" (was Tract 45)	T21S-R36E, N.M.P.M. Sec. 5: S $\frac{1}{2}$ SW $\frac{1}{4}$	80.00	B-3114-3 HBP 9/24/34	State of New Mexico 12 $\frac{1}{2}$	Atlantic Richfield Co.	Bradley Resources Corp. 5.46870	Atlantic Richfield Company 100%	.693134
76. State "J" (was Tract 105)	T21S-R36E, N.M.P.M. Sec. 22: SW $\frac{1}{4}$ NW $\frac{1}{4}$	40.00	B-3114-4 HBP 9/24/34	State of New Mexico 12 $\frac{1}{2}$	Amoco Production Co.	None	Atlantic Richfield Company 37.5% Amoco Production Co. 31.794% Landreth Production Corporation (carried working interest) 30.706%	.233315
77. State "W" (was Tract 8)	T20S-R37E, N.M.P.M. Sec. 30: Lot 2, SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$	159.47	B-3423-1 HBP 10/29/34	State of New Mexico 12 $\frac{1}{2}$	Amarada Hess Corporation	None	Amerada Hess Corporation 100%	.148770
78. State "193" (was Tract 9)	T20S-R37E, N.M.P.M. Sec. 30: Lot 3	39.57	B-3798-1 HBP 4/22/35	State of New Mexico 12 $\frac{1}{2}$	Atlantic Richfield Co.	None	Atlantic Richfield Company 100%	.055491
66 STATE	TRACTS	TOTALING	8,274.80	ACRES	OR	58.32% OF	UNIT AREA	

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

**APPLICATION OF GOODNIGHT
MIDSTREAM PERMIAN, LLC TO AMEND
ORDER NO. R-7767 TO EXCLUDE THE SAN
ANDRES FORMATION FROM THE EUNICE
MONUMENT OIL POOL WITHIN THE
EUNICE MONUMENT SOUTH UNIT AREA,
LEA COUNTY, NEW MEXICO.**

CASE NO. 24277

**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

**APPLICATIONS OF GOODNIGHT MIDSTREAM
PERMIAN, LLC FOR APPROVAL OF
SALTWATER DISPOSAL WELLS
LEA COUNTY, NEW MEXICO**

CASE NOS. 23614-23617

**APPLICATIONS OF EMPIRE NEW MEXICO LLC
TO REVOKE INJECTION AUTHORITY,
LEA COUNTY, NEW MEXICO**

CASE NOS. 24018-24027

**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

EMPIRE EXHIBIT 3

EMPIRE NEW MEXICO, LLC'S RESPONSE IN OPPOSITION TO
GOODNIGHT PERMIAN LLC'S MOTION TO DISMISS
CASE NOS. 24021-24024, 24026, 24027

Empire New Mexico, LLC, ("Empire"), by and through its undersigned counsel of record, submits the following response in opposition to Goodnight Midstream Permian, LLC's ("Goodnight") Motion to Dismiss Case Nos. 24021-24024, 24026, 24027 ("MTD" or "Motion"). For the reasons that follow, the Motion should be denied.

INTRODUCTION

In Case Nos. 24021-24024, 24026, and 24027, Empire seeks to revoke Goodnight's authority to inject produced water into the San Andres formation via six saltwater disposal wells ("SWDs") located in proximity to Empire's Eunice Monument South Unit ("EMSU"). The San Andres formation is included in Empire's unitized interval, and Goodnight admits it has capacity to inject approximately 400,000 barrels of water *per day* into the formation.¹ In Case Nos. 23614-23617, in which Goodnight seeks approval of new SWDs, Empire previously filed testimony and hearing exhibits that include extensive engineering and geological evidence that a Residual Oil Zone exists in the San Andres that will be developed through tertiary recovery and that Goodnight's massive injection enterprise will impair production within the EMSU. Those exhibits include testimony that by 2028, Goodnight's cumulative disposal volume will amount to 1.08 billion barrels inside the EMSU *and another .28 billion barrels outside the unit.*² These injection volumes dwarf injection by any other operators within and surrounding the EMSU. Given the

¹ See Goodnight's Response to Empire's Motion to Dismiss Case Nos. 24277 and 24278 at 2-3 (filed April 4, 2024).

² See Case Nos. 23614-23617, Self-Affirmed Statement of William West (Exhibit G), at 3 (filed November 3, 2023).

Commission's statutory obligation to prevent waste and protect correlative rights, these issues are highly concerning and must be expeditiously addressed. *See* NMSA 1978, § 70-2-11.

Despite the serious concerns raised by Empire's applications, Goodnight seeks to preclude the Commission from deciding these cases based on arguments that conflate standing and causation and rely on non-existent heightened pleading standards. Goodnight's MTD, though styled as a motion to dismiss for "lack of standing," demands far more specificity in a Commission application than anything the standing doctrine requires. What the Motion *really* seeks is a preemptive decision on the merits; namely, whether Empire has proven that Goodnight's injection into its SWDs located outside of the EMSU has impaired Empire's correlative rights within the EMSU. Goodnight's argument controverts extensive authority – including United States Supreme Court precedent on establishing standing at the pleading stage – and must be rejected.

First, Empire has met and exceeded the requirements for pleading standing in a Commission proceeding. All that is required to *plead* standing – as opposed to proving standing or injury at a hearing – are generalized allegations of harm. Here, Empire alleges that saltwater injected into Goodnight's SWDs – in some cases in excess of Goodnight's daily injection limit – migrates into the unitized interval within the EMSU, thereby impairing Empire's ability to extract hydrocarbons from areas that Goodnight previously misrepresented as non-productive. If true, these allegations give rise to standing. The MTD demands a degree of specificity in a Commission application beyond anything required in a state or federal court. Empire need not demonstrate in its *applications* the exact mechanics of how this migration occurs. That question must be resolved based on evidence presented at hearing.

Second, as noted above, the MTD does not address *standing* so much as *causation*, a fact question that must be resolved based on evidence. The MTD asserts two principal arguments: (1)

that Empire has failed to explain how produced water from SWDs located outside of the EMSU could potentially impact Empire's operations inside the EMSU, and (2) that if produced water is migrating into the San Andres formation and impacting Empire's operations, Empire has not ruled out the possibility that companies other than Goodnight might be responsible. Both of these contentions seek to challenge causation under the guise of standing: one attempts to negate the nexus between Goodnight's injection and over-injection and Empire's harm, and the other attempts to present alternative theories for how that harm might have occurred. Thus, the MTD is a standing challenge in name only. It actually seeks to circumvent the evidentiary hearing phase of this proceeding and obtain an immediate, premature ruling on disputed fact questions. Moreover, Goodnight's causation argument is unfounded because it incorrectly assumes Empire must prove Goodnight's injection is the only cause of harm, and it ignores Empire's extensive evidence that supports Empire's requests. That other operators may inject into approximately seven (7) SWDs in and around the EMSU does nothing to refute Empire's standing. Goodnight's existing and proposed injection of massive volumes of water into sixteen (16) wells within and surrounding the EMSU is causing harm.

Third, the MTD engages in confused and impermissible burden-shifting. It is well established that Goodnight, as the moving party seeking pre-hearing dismissal, bears the burden of showing why it is entitled to the relief it seeks in its motion; *i.e.*, of showing why Empire lacks standing. To meet this burden, Goodnight must either affirmatively disprove Empire's standing (*i.e.*, with evidence), or demonstrate that Empire's applications fail to allege facts that, even if true, give rise to a cognizable claim of standing. Goodnight does neither. Instead, Goodnight simply bemoans the fact that Empire has not presented what it deems to be sufficient evidence at the pleading stage, drawing an "imaginary line" between injection wells inside and outside of the

EMSU, beyond which it claims no produced water can migrate. This is insufficient to meet *Goodnight's* burden of showing why its motion should be granted.

For these reasons, and those set forth below, the MTD should be denied.

ARGUMENT

I. The Commission should reject Goodnight's attempt to impose heightened, inapplicable pleading requirements.

Goodnight's Motion misconstrues well-established standing requirements, particularly at the pleading stage. For example, Goodnight claims that Empire fails to "allege concrete, particularized facts showing that it has suffered injury, or will suffer imminent injury, from Goodnight's injection of produced water . . ." ³ and that "Empire has failed to allege facts showing that the produced water from Goodnight's six wells outside the EMSU is materially contributing to the produced water within the San Andres formation." ⁴ Goodnight's characterization of these pleading standards is inaccurate. Neither New Mexico law nor the United States Supreme Court decisions Goodnight cites support its exacting view of standing.

As is relevant here, Commission Rule 19.15.4.8(A) requires "standing" to bring an application for an adjudicatory proceeding before the Commission. *See* 19.15.4.8 NMAC ("...[A]n operator or producer or other person *with standing* may file an application with the division for an adjudicatory hearing.") (emphasis added). Although the Rule does not define "standing," the Commission has previously embraced the standing analysis applicable in civil court cases. *See, e.g.,* Commission Order No. R-10987-A(2), ¶¶ 13. Thus, to plead standing in an application for an adjudication, applicants need only allege facts that, if true, give rise to an inference that: "(1) they are directly injured as a result of the action they seek to challenge; (2) there is a causal

³ Motion at 2.

⁴ Motion at 8.

relationship between the injury and the challenged conduct; and (3) the injury is likely to be redressed by a favorable decision.” *ACLU of N.M. v. City of Albuquerque*, 2008-NMSC-045, ¶ 1, 188 P.3d 1222 (reciting traditional three-part test for standing).

Contrary to Goodnight’s claims, Empire need not allege concrete, particularized facts showing that it has suffered injury, will suffer imminent injury, or that Goodnight is materially contributing to the produced water within the San Andres formation. None of the cases Goodnight cites support this draconian position. In *Simon v. East Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976), the Supreme Court held that charitable organizations lacked standing to sue the Secretary of the Treasury and Commissioner of Internal Revenue for issuing a revenue ruling that “encouraged” hospitals to deny services to low-income individuals. The Court found that it was entirely speculative whether the revenue ruling actually encouraged hospitals to deny care and whether withdrawing the ruling would have any impact. The case has no bearing here, where it is undisputed that Goodnight is injecting millions of barrels of produced water into the San Andres formation via wells adjacent to the EMSU. In fact, the case only demonstrates that Empire’s allegations establish standing. *Cf. Duke Power Co. v. Carolina Env’t Study Group*, 438 U.S. 59 (1978) (plaintiffs had standing to challenge a statute that limited the liability of power companies for nuclear accidents based on concerns about nuclear radiation).

Further, the evidentiary showing required to establish each standing element – *i.e.*, injury-in-fact, causation, and redressability – is relaxed at the pleading stage. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561, 112 S. Ct. 2130, 2137 (1992). At the pleading stage, even “*general factual allegations* of injury-in-fact resulting from an adverse party’s conduct may suffice to establish standing.” *Id.* (on a motion to dismiss, courts “presum[e] that general allegations embrace those specific facts that are necessary to support the claim”) (emphasis added); *see also In re*

LIBOR-Based Fin. Instruments Antitrust Litig., 299 F. Supp. 3d 430, 459 (S.D.N.Y. 2018) (for standing purposes, “an injury-in-fact need not be capable of sustaining a valid cause of action,” and a plaintiff may have standing even if his claim is later debunked for lack of causation).

Additionally, because Goodnight challenges Empire’s standing at the pleading stage, New Mexico’s liberal, “notice” pleading standard applies. Under that standard, which is even more favorable to Empire, a motion to dismiss hinges on the legal sufficiency of a pleading and not the facts supporting it. *Herrera v. Quality Pontiac*, 2003–NMSC–018, ¶ 2, 134 N.M. 43 (internal quotation marks and citation omitted).⁵ That is, courts accept all factual allegations in a pleading as true and resolve all doubts in favor of its sufficiency. *Madrid v. Village of Chama*, 2012–NMCA–071, ¶¶ 17–18, 283 P.3d 871 (noting that “New Mexico is a notice-pleading state, requiring only that the plaintiff allege facts sufficient to put the defendant on notice of his claims.”); *see also* Rule 1-008 NMRA (requiring a short and plain state of the claim entitling the pleading party to relief). Unless the pleading party can neither recover nor obtain relief under any provable state of facts alleged, a motion to dismiss should be denied. *Village of Logan v. Eastern New Mexico Water Utility Authority*, 2015–NMCA 103 ¶ 8, 357 P.3d 433.46; *see also Healthsource, Inc. v. X-Ray Associates of New Mexico*, 2005–NMCA–97 ¶ 16, 138 N.M. 70 (holding that a complaint should not be dismissed unless there is a total failure to allege some matter essential to the relief sought). New Mexico’s pleading requirements that govern standing are far more lenient than Goodnight suggests.

⁵ The same standard governing motions to dismiss for failure to state a claim applies to a motion to dismiss based on an alleged lack of standing. *Forest Guardians v. Powell*, 2001–NMCA–028, ¶ 5, 130 N.M. 368 (in reviewing a motion to dismiss for lack of standing, the court accepts as true all material allegations of the complaint and construes the complaint in favor of the complaining party); *Deutsche Bank Nat. Tr. Co. v. Johnston*, 2016–NMSC–013, ¶ 11, 369 P.3d 1046 (“As a general rule, “standing in our courts is not derived from the state constitution, and is not jurisdictional.”).

II. Empire has adequately pled standing.

With these principles in mind, there is no question that Empire alleges facts that, if true, establish Empire's standing to bring the applications. As Goodnight concedes, "an *identifiable trifle* is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation." *See* Motion at 11-12 (Apr. 4, 2024) (citing *Ramirez v. City of Santa Fe*, 1993-NMCA-049, ¶ 9, 852 P.2d 690). First, Empire has plead injury-in-fact. Empire alleges that saltwater injected into Goodnight's SWDs – in some cases in excess of Goodnight's daily injection limit – migrates into the unitized interval within the EMSU, thereby impairing Empire's ability to extract hydrocarbons there. Although some of Empire's allegations are pled based on information and belief, they will be substantiated by evidence presented at hearing.

Accepting Empire's allegations as true, Empire raises more than an "identifiable trifle" giving rise to a potential injury-in-fact. *See, e.g.*, Case No. 24021, Application at ¶¶ 2 and 8 (stating that Goodnight's well will inject into the same depths as the unitized interval and that "disposal in the Well will impair the ability of Empire to recover hydrocarbons within the Unitized Interval and thereby adversely affects the correlative rights of Empire and other interest owners in the Unit and results in waste."); *see also S. Utah Wilderness All. v. Palma*, 707 F.3d 1143, 1155 (10th Cir. 2013) ("Neither our court nor the Supreme Court has ever required an environmental plaintiff to show it has traversed each bit of land that will be affected by a challenged agency action."). It does not matter for standing purposes if Empire is ultimately proved wrong, because standing can exist even without a viable claim. *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 299 F. Supp. 3d 430, 459 (S.D.N.Y. 2018) (for standing purposes, "an injury-in-fact need not be capable of sustaining a valid cause of action").

In arguing that Empire failed to sufficiently allege an injury-in-fact, Goodnight contends that Empire should have included specific “facts and information” explaining how “produced water from [Goodnight’s] wells is migrating or will migrate to the EMSU.” See MTD at 7. But this argument goes to loss causation – *i.e.*, the causal link between Goodnight’s injection and over-injection and harm to Empire’s operations – not whether Empire has alleged a “concrete and particularized” injury-in-fact for standing purposes. *S. Utah Wilderness All. v. Palma*, 707 F.3d 1143, 1156 (10th Cir. 2013) (reversing district court’s finding that plaintiffs had failed to allege injury-in-fact).⁶ As already noted, establishing standing at the pleading stage requires only “generalized allegations” showing concrete and particularized injury. *Lujan*, 504 U.S. at 561. It does not require the applicant to detail and provide conclusive evidentiary support explaining every aspect of causation, particularly where doing so would require expert testimony on produced water migration.

Goodnight also relies on the Division’s decision in *In re Application of Gandy Corp.*, Case No. 13962 (N.M. Oil Conservation Div. September 24, 2007) (“*Gandy*”) to advocate a bright-line rule that if any SWD is located more than a half a mile away from the EMSU, Empire cannot have suffered an injury in fact from Goodnight’s injection into that SWD. See MTD at 7, citing Division Rule 701(B)(2). *Gandy*, however, did not involve a motion to dismiss for lack of standing at the application stage, but rather after the Division held a full evidentiary hearing. *Gandy*, ¶¶ 4-6. And, the party whom the Division determined lacked standing belatedly sought to intervene in the proceeding, did not timely file an objection to the application, and operated a competing injection well located more than a mile away from the applicant’s proposed well that would inject at a

⁶ Similarly, Goodnight’s last-ditch argument on the “redressability” element of standing is really a loss causation argument; *i.e.*, that because Empire can’t prove that Goodnight is responsible for causing the produced water impairing Empire’s operations, the impairment is not “redressable” or traceable to a particular actor. See MTD at 10.

shallower interval. *Id.* ¶ 12.⁷ In fact, Goodnight mistakenly claims that Empire is “a competitor” like the party at issue in *Gandy*. *See* Motion at 12. Empire is not a competitor – it is the designated operator of the EMSU and owns correlative rights that are being violated. None of the facts at issue in *Gandy* exist here and the case is inapposite. Empire’s applications sufficiently allege injury-in-fact, causation, and redressability.

III. The MTD conflates loss causation with standing, then proceeds to misstate causation standards.

As noted above, the MTD is primarily concerned with making a premature, causation argument on the merits. This argument has two parts: first, that Empire failed to demonstrate, at the pleading stage, exactly how produced water from Goodnight’s SWDs could impair Empire’s operations within the EMSU; and second, that Empire did not rule out the possibility that companies other than Goodnight – namely, Permian Line Service, LLC; Pilot Water Solutions; Rice Operating Company; Parker Energy – might have contributed to the migration into the productive portions of the San Andres. *See* MTD at 8-9. In Goodnight’s own words, “[i]n standing parlance, Empire has failed to allege facts showing that the produced water within the San Andres formation of the EMSU is ‘fairly traceable’ to Goodnight’s six SWD wells outside of the EMSU.” MTD at 9.

For the reasons set forth above, Empire is not required to plead allegations that marshal evidence definitively resolving the causation issues raised in the MTD. All that is required for an injury to be “fairly traceable” to challenged conduct is a potential “causal relationship” between the two. *Hernandez v. Grisham*, 499 F. Supp. 3d 1013, 1047 (D.N.M. 2020) (Browning, J.). Empire

⁷ The Division’s half-mile guideline for providing notice of injection applications, even if relevant to standing, would not apply to Goodnight’s Yaz SWD (Case No. 24027), which is located less than a half mile from the EMSU.

has alleged that by injecting, and over-injecting, produced water into the SWDs in question, including the Yaz well located approximately 1550 feet from the EMSU, Goodnight has caused produced water to migrate into the productive portions of the San Andres. Although Goodnight argues that Empire miscalculated the distances of the SWDs from the EMSU boundary,⁸ the footage differences do not alter the fact that Goodnight's significant injection surrounding the unit is pressuring the reservoir and causing water to migrate into the unitized interval, resulting in waste and violating Empire's correlative rights.

Goodnight's causation arguments are intertwined with the merits of Empire's case, are premature, and should be rejected. *Citizen Ctr. v. Gessler*, 770 F.3d 900, 910 (10th Cir. 2014) ("We reject the court's rationale because it conflates standing with the merits.") ("For purposes of standing, the question cannot be whether the Constitution, properly interpreted, extends protection to the plaintiff's asserted right or interest. If that were the test, every losing claim would be dismissed for want of standing.").

Moreover, Goodnight's causation argument is unfounded because New Mexico law does not – as Goodnight seems to claim – require a party to demonstrate that a respondent's conduct is the *only* cause of an alleged injury to establish causation. Rather, an applicant need only establish that a respondent's actions are *a* cause of an alleged injury. *See, e.g., Herrera v. Quality Pontiac*, 2003-NMSC-018, ¶ 34, 134 N.M. 43 ("A proximate cause of an injury need not be the only cause . . . It is sufficient if it occurs with some other cause acting at the same time, which in combination with it, causes the injury.") (internal citation omitted). That other operators are also

⁸ *See* Motion at footnotes 2 through 8. As shown on Exhibit 3 to Goodnight's Motion, the EMSU map shows that the boundary includes the S/2 S/2 of Sections 21 and 22, Township 21 South, Range 36 East, but the tract descriptions on the exhibit do not include this acreage. As a result, it appears Goodnight is correct regarding the well location footages. However, many of the differences are minor, and one of the wells, the Nolan Ryan SWD Well No. 1, is closer to the EMSU than Empire had alleged. As discussed herein, Goodnight's injection is substantial, and Empire will present evidence at hearing to establish the injection is resulting in waste and violating correlative rights.

injecting produced water into the San Andres formation – albeit at far lower volumes than Goodnight – does not alleviate the fact that Goodnight’s injection is impairing correlative rights and causing waste. As Goodnight has admitted and as discussed above, Goodnight has extensive capacity to inject produced water and is in fact doing so. Goodnight’s persistent focus on injection by others and arguments regarding well location footages only constitute an attempt to evade the critical issue in these cases – whether Goodnight’s injection of millions of barrels of produced water into the San Andres formation in close proximity to the EMSU violates Empire’s correlative rights and results in waste.

Goodnight also ignores that prior to the transfer of these matters to the Commission, Empire filed several hundred pages of geology and engineering testimony and exhibits that explain how Goodnight’s injection is impairing Empire’s correlative rights. *See* Empire’s Hearing Exhibits in Case Nos. 23614-23617 (filed October 27, 2023). Although Empire is not required to prove causation to establish standing as Goodnight claims, Empire’s initial exhibits establish causation and it will provide further evidence on that issue at hearing.

IV. Goodnight’s argument that Empire lacks standing to challenge permitted wells that have not yet been drilled controverts New Mexico law and ignores Goodnight’s own claims.

Goodnight argues that because it has not begun drilling the Rocket 1 or Verlander wells, any injury-in-fact is “too speculative” to pass standing muster. MTD at 8. If true, Goodnight’s argument would preclude parties from opposing permit applications because no injury has occurred. That is clearly not the case, as the Oil and Gas Act and Division rules allow parties to challenge permit applications. Indeed, that is the entire focus of the Commission’s Adjudication Rule, set out in 19.15.4.1 through 19.15.4.26 NMAC.

Goodnight's claim that any harm resulting from these permitted wells would be speculative also ignores Goodnight's admission that it has constructed and operates extensive SWD infrastructure in this area. *See* Goodnight's Response to Empire's Motion to Dismiss Case Nos. 24277 and 24278 at 2-3 (filed April 4, 2024) (stating that Goodnight owns and operates 116 miles of pipeline with a projected capacity of approximately 400,000 barrels of water per day with 11 approved SWDs in this area). The notion that Empire (and presumably any other party) cannot challenge permitted wells directly controverts established New Mexico law and policy.

Further, this timing-based argument raises an issue of ripeness more than standing.⁹ Whereas standing relates to whether a person is the proper party to bring suit, ripeness is intended to prevent courts from engaging in "premature adjudication" or "entangling themselves in abstract disagreements" before they have materialized. *See City of Sunland Park, Santa Teresa Services Co., Inc. v. Macias*, 2003-NMCA-098, ¶ 23, 134 N.M. 216 (reversing trial court decision dismissing, on ripeness grounds, petition for declaratory and injunctive relief).

Here, Goodnight has obtained injection permits for Rocket 1 and Verlander and can begin injecting into those wells at any time. The mere fact that Goodnight has so far opted not to do so does not render the harm alleged Empire's applications "abstract" or "hypothetical." In fact, the mere preparation to construct or operate a challenged facility may satisfy the ripeness test. *See, e.g., E. Navajo Dine Against Uranium Mining v. Martin*, No. 32,447, 2013 WL 597042 (N.M. Ct. App. Jan. 14, 2013) (unpublished) (in challenge to groundwater injection system, "triggering events" would make the challenge ripe for review included construction of system or ordering

⁹ Although standing and ripeness often overlap, the two doctrines are distinct in that "[w]hen determining standing, a court asks whether [the challenged] persons are the proper *parties* to bring the suit, thus focusing on the qualitative sufficiency of the injury and whether the complainant has personally suffered the harm. When determining ripeness, a court asks whether this is the correct *time* for the complainant to bring the action." *S. Utah Wilderness All. v. Palma*, 707 F.3d 1143, 1157 (10th Cir. 2013), citing Erwin Chemerinsky, *Federal Jurisdiction* § 2.4.1 (1989).

materials for the construction of the system). For these reasons, Empire has alleged an injury-in-fact sufficient to establish standing at the pleading stage.

V. The MTD should be denied because it impermissibly seeks to shift to Empire the burden of persuasion on Goodnight's MTD.

Goodnight repeatedly suggests in the MTD that it is Empire's burden, on Goodnight's motion, to show that Empire has standing. MTD at 6; *id.* at 7 ("Empire has not carried its burden to allege facts showing that Goodnight's injection activities have caused or will imminently cause Empire to suffer injury."); *id.* ([T]his bare-bones allegation does not satisfy Empire's burden under the rules to *show* that it has standing. Instead, to satisfy its burden, Empire must allege the facts and 'information' it is relying on...). This argument conflates Empire's general burden of persuasion to establish the elements of its case – including standing – with Goodnight's burden, as the moving party, to demonstrate its entitlement to the relief sought in its motion.

No doubt, Empire, as the applicant, bears the burden of establishing standing to bring its applications. *ACLU of N.M. v. City of Albuquerque*, 2008-NMSC-45, ¶ 1. As discussed above, Empire has met that burden at this stage. Nevertheless, on a motion to dismiss for lack of standing, the moving party has the burden of establishing the relief sought in the motion. *See* 35B C.J.S. Federal Civil Procedure § 849 (on a motion to dismiss for failure to state a claim the moving party bears the burden of showing that no claim has been stated); *see also Golden Jubilee Realty, LLC v. Castro*, 196 A.D.3d 680, 682 (2021) ("On a defendant's motion to dismiss the complaint based upon the plaintiff's alleged lack of standing, the burden is on the moving defendant to establish, *prima facie*, the plaintiff's lack of standing.").

In this case, Goodnight has not met its burden, as the moving party, to demonstrate Empire's lack of standing. Goodnight does not provide any affirmative evidence rebutting Empire's standing, or showing how produced water injected into the six SWDs at issue could under

“no set of facts” migrate into the EMSU, or impact Empire’s operations within the EMSU. *See Village of Logan*, 2015-NMCA-103, at ¶ 8 (unless the pleading party can neither recover nor obtain relief under any provable state of facts alleged, a motion to dismiss should be denied). Goodnight simply complains that Empire has not yet provided technical evidence explaining how this migration could occur. This is not enough to demonstrate a lack of standing.

Nor has Goodnight demonstrated that Empire’s applications do not adequately *allege* standing, as the standard for pleading standing is relaxed at this early stage. Accordingly, Goodnight has not met its burden, as the moving party, to demonstrate its entitlement to the extraordinary relief sought in the MTD.

CONCLUSION

For the foregoing reasons, Goodnight’s MTD should be denied and these matters should proceed to an evidentiary hearing.

Respectfully submitted,

HINKLE SHANOR, LLP

By: Dana S. Hardy
Dana S. Hardy
Jaclyn McLean
Timothy B. Rode
P.O. Box 2068
Santa Fe, NM 87504-2068
Phone: (505) 982-4554
Facsimile: (505) 982-8623
dhardy@hinklelawfirm.com
jcmlean@hinklelawfirm.com
trode@hinklelawfirm.com

Ernest L. Padilla
P.O. Box 2523
Santa Fe, NM 87504-2523
(505) 988-7577
padillalawnm@outlook.com

Sharon T. Shaheen
Montgomery & Andrews, P.A.
P.O. Box 2307
Santa Fe, NM 87504-2307
(505) 986-2678
sshaheen@montand.com

Attorneys for Empire New Mexico, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent to the following counsel of record by electronic mail this 6th day of June, 2024:

Michael H. Feldewert	mfeldewert@hollandhart.com
Adam G. Rankin	agrarkin@hollandhart.com
Paula M. Vance	pmvance@hollandhart.com
Chris Moander	chris.moander@emnrd.nm.gov

/s/ Dana S. Hardy
Dana S. Hardy

1 STATE OF NEW MEXICO
2 ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
3 OIL CONSERVATION DIVISION SANTE FE, NEW MEXICO
4

5 IN THE MATTER OF THE HEARING Docket No.
6 CALLED BY THE OIL CONSERVATION 20-24
7 DIVISION FOR THE PURPOSE OF
8 CONSIDERING:

9 Case Nos. 24042, 24195, 24196,
10 24197, 24198, 24199, 24205,
11 24206, 24207, 24367, 24368,
12 24369, 24370, 24457, 24459,
13 24460, 24462, 24463, 24479,
14 24161, 24162, 24440, 24441,
15 24442, 24451, 24452, 24453,
16 24455, 24266, 24267, 24268,
17 24269, 24270, 24271, 24231,
18 24232, 24481, 24482, 24483,
19 24484, 24259, 24260, 24262,
20 24263, 24416, 24499, 24500,
21 24273, 24472, 24121, 24126,
22 24127, 24146, 24147, 24148,
23 24149, 24163, 24189, 24190,
24 24380, 24389, 24391, 24392,
25 24393, 24480, 24485, 24486,

Page 1

1 24487, 24488, 24489, 24490,
2 24491, 24492, 24493, 24496,
3 24497, 24498, 24501, 24502,
4 24503, 24504, 24505, 24506,
5 24507, 24508, 24509, 24510,
6 24511, 24512, 24513, 24514,
7 24537, 24538, 24539, 24540

8

9

HEARING

10 DATE: Thursday, June 13, 2024
11 TIME: 8:32 a.m.
12 BEFORE: Gregory A. Chakalian, Hearing Examiner
13 LOCATION: Pecos Hall, Wendell Chino Building
14 1220 South Saint Francis Drive
15 Santa Fe, NM 87505
16 REPORTED BY: James Cogswell
17 JOB NO.: 6724122

18

19

20

21

22

23

24

25

Page 2

1 the Commission. So we did prepare it to put this case
2 forward on the narrow issue of good cause.

3 Because of the Division's denial of the
4 motion to refer this to the Commission, but in light
5 of the fact that we have an objection now to
6 proceeding, we're happy to consider the Division's
7 preference on how to proceed.

8 If this should go forward at the
9 Division on a contested matter on the narrow issue of
10 good cause, we're happy to do that. Or we can refer
11 the case to the Commission and just have it be grouped
12 with the rest of the -- with the rest of the cases.

13 THE HEARING EXAMINER: So if we had a
14 contested hearing in this case, when would you like it
15 set?

16 MR. RANKIN: Well, I would -- would I
17 would say that there are some legal issues that might
18 want to be -- that the Division may want to address,
19 and the first being standing. Empire filed its
20 objection on the basis that this -- on the basis that
21 they have a pending application to revoke this
22 injection well's authority because it impacts the
23 unit.

24 It's more than a mile away. There's
25 Division precedent that if you're more than half a

Page 149

1 mile away and you can't establish a basis for
2 impairment -- which it's hard to imagine how they
3 could, because this well hasn't been drilled, hasn't
4 been injecting -- that the proposed intervenor should
5 be denied standing.

6 I'm happy to provide that precedent to
7 the Division, but our view is that this objection
8 should be denied for lack of standing. They have
9 improperly intervened and there's no basis for Empire
10 to object.

11 THE HEARING EXAMINER: Ms. Hardy?

12 MS. HARDY: Mr. Examiner, I strongly
13 disagree. Mr. Rankin has filed a motion to dismiss
14 based on an alleged lack of standing with the
15 Commission. We have filed a response. We oppose
16 that.

17 Empire does have standing because we
18 will establish at hearing that injection from this
19 well as well as Goodnight's other wells surrounding
20 the unit are reaching the unit and causing damage to
21 the reservoir and impairing Empire's ability to
22 produce the unit.

23 So it's, I think, incorrect that Empire
24 lacks standing. They absolutely have standing. But I
25 think that issue is going to be addressed by the

Page 150

1 Commission on Mr. Rankin's motion to dismiss for lack
2 of standing that is not yet fully graved. So I would
3 submit at this point that it probably makes sense for
4 the Division to stay this case pending a decision by
5 the Commission on those matters.

6 THE HEARING EXAMINER: And, Ms. Hardy,
7 this motion practice before the Commission regarding
8 standing, does it -- how would it impact -- I mean, if
9 each well is a different distance from the Eunice
10 Monument, wouldn't that -- wouldn't that make a
11 difference in standing?

12 MS. HARDY: Well, we have to show that
13 the wells are impacting the unit regardless, I think,
14 of where they're located, and that's what we're
15 prepared to establish. And I think that Mr. Rankin's
16 view of the half-mile radius is really for notice
17 purposes with respect to injection wells, and that
18 does not control whether a party has standing if the
19 party can show that it's perrelative rights are being
20 impaired.

21 THE HEARING EXAMINER: I see.
22 Mr. Rankin?

23 MR. RANKIN: I think that's part of the
24 question. I don't -- again, this is a well that
25 hasn't been drilled. So there's that issue. In

Page 151

1 prepared to go drill the well until the regulatory
2 issues and the injections are resolved.

3 So for that reason, we simply wanted to
4 extend the authority. So I -- you know, it doesn't
5 impact at all Empire's application to revoke. And so
6 my request, I guess, would be for the Division to take
7 into consideration the request to extend
8 administratively the injection authority for this.

9 It doesn't impair Empire's application
10 or efforts to revoke the injection authority and would
11 allow essentially the status quo to be maintained. So
12 happy to have this matter stayed or for it to be
13 referred to the Commission and stand by whatever the
14 Division would prefer.

15 THE HEARING EXAMINER: So, Mr. Rankin,
16 when the Commission decides this issue of standing, do
17 you believe it would -- it would answer the question
18 of whether Empire has standing in this case?

19 MR. RANKIN: I believe it would, Mr.
20 Examiner.

21 THE HEARING EXAMINER: Okay. All
22 right.

23 Ms. Hardy, do you believe the same?

24 MS. HARDY: I do.

25 THE HEARING EXAMINER: Okay. Very

Page 153

1 good. So why don't we stay this case until we get a
2 ruling from the Commission on standing, and then we
3 can move forward either by affidavit or a contested
4 hearing on your issue of good cause to extend.

5 MR. RANKIN: And just to confirm, Mr.
6 Examiner, the issues to be heard would be limited to
7 that narrow question about good cause.

8 THE HEARING EXAMINER: That's what it
9 sounds like to me from the argument I've heard today.

10 MR. RANKIN: Okay. That's my
11 understanding as well, Mr. Examiner. That's the scope
12 of the application. I just wanted to confirm. Thank
13 you.

14 THE HEARING EXAMINER: So, Ms. Hardy,
15 this idea of revoking -- this idea of revoking the
16 injection authority, it would impact many different
17 wells from Goodnight; wouldn't it?

18 MS. HARDY: Yes. I believe we have
19 somewhere in the neighborhood of ten applications
20 pending to revoke. Yes.

21 THE HEARING EXAMINER: But this well --
22 this well is also subject to an application to revoke?

23 MS. HARDY: It is. That's correct.

24 THE HEARING EXAMINER: I see. Okay.

25 So once the issue of standing is resolved, we'll

1 either -- well, I think we'll have to make a decision
2 at that time whether to refer it or whether to go
3 through with the hearing -- contested hearing. Or if
4 there is no standing then, of course, we'll go forward
5 on a -- on an affidavit hearing. When do you
6 anticipate a decision from the Commission?

7 MR. RANKIN: Well, typically, Mr.
8 Examiner, the Commission will recess after argument
9 and may deliberate in a closed session. And they may
10 reconvene and announce their decision the day of the
11 argument.

12 I don't know, given the scope of the
13 arguments being presented on June 20th, that they will
14 be able to work through all those issues that day.
15 And I don't want to presume their timing for the
16 deliberation on these matters.

17 So I don't know if it will be something
18 we'll learn about that day or it's something that they
19 will recess and then reconvene for further
20 deliberations. So I don't know.

21 THE HEARING EXAMINER: Okay. Perfect.

22 Ms. Hardy, I would ask you the same
23 question, but I get the point. You don't have
24 anything to add to that; do you?

25 MS. HARDY: I do not. I agree.

Page 155

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Public Meeting
STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

Agenda No. 5-24

Moderated by Dylan Fuge, Commissioner
Thursday, June 20, 2024
9:00 a.m.

Pecos Hall, Wendell Chino Building
1220 South Saint Francis Drive
Santa Fe, NM 87505

Reported by: James Cogswell
JOB NO.: 6734835

Page 1

1 on those.

2 So, therefore, I would like to make a
3 motion that The Commission deny the motion to dismiss
4 -- deny Goodnight's motion to dismiss -- sorry. Let
5 me start again. I'm going to make a motion denying
6 Empire's motion to dismiss the applications to amend
7 orders R-7765 and R-7767 that were filed by Goodnight
8 and those are in case no. 24277 and 24278 and that
9 those -- that that motion be denied and that those
10 applications be stayed pending the conclusion of the
11 currently scheduled hearing for September.

12 MR. RUBIN: Mr. Chairman, by stay you
13 mean it'll proceed to hearing in September.

14 THE COMMISSIONER: No. They will be
15 stayed and the OCC will revisit, putting them back on
16 the docket with the parties after the hearing --

17 MR. RUBIN: Oh, yes, yes. Okay.

18 MR. BLOOM: Mr. Rubin, it's okay to do
19 both those -- it sounds like we're doing two things on
20 one motion. Is that okay?

21 MR. RUBIN: Yeah. That's fine.

22 MR. BLOOM: And we're good? Okay. All
23 right. Then I so move.

24 DR. AMPOMAH: I second.

25 THE COMMISSIONER: Let the record

Page 94

1 reflect that motion was approved unanimously. The
2 second motion I'm proposing to make is that we dismiss
3 the motion to dismiss filed by Goodnight to dismiss
4 cases 24021 through 24024 and 24026 and 24027. Those
5 are Division case numbers that are all part of case of
6 -- Commission case 24123. And much like the first,
7 those cases be stayed until some future date following
8 the hearing in September.

9 MR. BLOOM: I so move.

10 DR. AMPOMAH: I second.

11 THE COMMISSIONER: Let the record

12 reflect that that motion was approved unanimously.

13 And then the final motion I would make as to the scope
14 of the hearing, and I think this flows from the
15 actions that were just approved on the motions to
16 dismiss, that the hearing in September have the
17 following scope: that it is to address the potential
18 for a recoverable oil zone, residual oil zone in the
19 San Andres within the EMSU unit and that it covers any
20 applications to inject or applications to revoke the
21 authority to inject for SWDs located within the EMSU
22 boundary.

23 MR. BLOOM: I so move.

24 DR. AMPOMAH: I second.

25 THE COMMISSIONER: Let the record

Page 95

1 STATE OF NEW MEXICO
2 ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT
3 OIL CONSERVATION DIVISION
4

5 -----
6 IN THE MATTER OF THE HEARING
7 CALLED BY THE OIL CONSERVATION
8 DIVISION FOR THE PURPOSE OF

9 CONSIDERING:

Docket No.

Case Nos. 24394, 24395, 24457,

28-24

24459, 24460, 24462, 24463,

24479, 24635, 24636, 24637,

24642, 24643, 24644, 24645,

24646, 24647, 24648, 24649,

24650, 24485, 24491, 24499,

24500, 24551, 24632, 24633,

24684, 24685, 24686, 24687,

24688, 24603, 24427, 24428,

24429, 24430, 24431, 24595,

24596, 24597, 24598, 24599,

24600, 24601, 24613, 24614,

24615, 24618, 24619, 24626,

24627, 24628, 24629, 24630,

24631, 24634, 24651, 24652,

24653, 24654, 24659, 24660,

24670, 24671, 24672, 24675,

Page 1

1 24676, 24677, 24674, 24689,
2 24690, 24691, 24692, 24161,
3 24162, 24440, 24441, 24442,
4 24451, 24452, 24453, 24455

5

6

HEARING

7

DATE: Thursday, July 25, 2024

8

TIME: 8:30 a.m.

9

BEFORE: Hearing Examiner Gregory A. Chakalian

10

LOCATION: Pecos Hall

11

Wendell Chino Building

12

1220 South Saint Francis Drive

13

Santa Fe, NM 87505

14

REPORTED BY: James Cogswell

15

JOB NO.: 6773966

16

17

18

19

20

21

22

23

24

25

Page 2

1 THE HEARING EXAMINER: You're familiar
2 with that?

3 MS. HARDY: Yes.

4 THE HEARING EXAMINER: And what you're
5 saying is Empire has a case asking the Division to
6 revoke authority for Goodnight in this case, 24491?

7 MS. HARDY: It is a case pending that's
8 been transferred to the Commission because it's one of
9 Empire's applications to revoke Goodnight's injection
10 authority into this rock at SWD. So that's pending at
11 the Commission, but the Commission decided to hear the
12 case involving the wells within the unit first.

13 THE HEARING EXAMINER: So, Mr. Rankin,
14 that being said, you still feel like it's prudent to
15 move forward with this case?

16 MR. RANKIN: Mr. Examiner, as you may
17 recall, we did file a joint motion with Empire to
18 request that the Division refer this particular case
19 to extend the deadline to the commission so that they
20 could all be grouped together. The Division and the
21 Division director denied that request, you know, the
22 assumption being that they didn't want it to be up at
23 the Commission.

24 And now it's been stayed to allow for
25 the Commission to determine the scope of the hearing

Page 26

1 at the commission level. The Commission decided the
2 scope would be limited only to those cases within the
3 EMSU and only those involving Goodnight. For that
4 reason, I don't see any reason not to proceed with
5 this case, which is a very narrow issue simply whether
6 or not there's good cause to allow the injection
7 authority to be extended.

8 Now, extending the injection authority
9 doesn't mean that Goodnight's going to go out and
10 drill this well and start injecting. It needs to get
11 this other issue resolved. It's not going to go out
12 and drill this well when there's an application to
13 revoke its injection authority pending. So the narrow
14 issue here that's all that's before the Division is
15 whether there's good cause to extend the injection
16 authority.

17 As we laid out in our application --
18 and actually, we've already filed our testimony in
19 this case -- the reason for the extension is largely
20 because of Empire's applications to revoke, which were
21 filed in midcourse during the one-year period of time
22 in which they had to drill the well. So because of
23 that, we've asked for an extension of authority. So
24 we think that the narrow issue can be heard by the
25 Division. There is good cause, and we should be

Page 27

1 allowed to present that. And then the case will be
2 eventually heard by the Commission.

3 Now, the other thing I wanted to raise
4 is that we may -- there is Division precedent where a
5 case -- objections that are more than half a mile
6 outside of the boundary of view are dismissed unless
7 the party can show standing. Now, this well is more
8 than a mile away from the EMSU where they're claiming
9 that there's impairment. Now, not only is it more
10 than a mile away, but it hasn't even been injected
11 yet. So we don't think that there's a basis for
12 standing. So we may likely file a motion to dismiss.

13 Now, with that said, you know, I would
14 prefer to go forward with this case and allow for
15 parties to make their position on standing and
16 authority to inject or extending the authority to
17 inject.

18 THE HEARING EXAMINER: So, Ms. Hardy
19 and Mr. Padilla and Ms. Shaheen, if we did go forward
20 and hear this case on that narrow issue, your case to
21 revoke is still alive. It's just stayed until the
22 issues are resolved. What argument do you have
23 against forward on what seems like a simple good cause
24 issue?

25 MS. HARDY: Well, Mr. Examiner, this

Page 28

1 situation is complicated with the unit and the well
2 injecting into them and around it. So nothing is
3 simple in this, from what I can determine. So I
4 expect that if this did go to hearing before the
5 division, it would be a litigated hearing on this
6 issue, and I think that's a waste of time and
7 resources when we've got this other application
8 pending at the Commission on revoking the injection
9 authority.

10 And as for standing, Mr. Rankin
11 actually moves to dismiss our condition applications
12 for wells outside of the unit, and that was denied
13 already. So I think that issue's basically been
14 decided by the Commission. So I think it just doesn't
15 make -- I think it makes more sense, actually, to
16 refer this case to the Commission or to stay it rather
17 than have a litigated hearing at the Division.

18 THE HEARING EXAMINER: The reason that
19 we didn't refer this case to the Commission is because
20 it seemed at the time that if the Commission resolved
21 the two issues I already stated at the beginning of
22 this case, then this case could move forward at the
23 division level without having to complicate what's
24 going on at the Commission. That's why this was kept
25 at the division level. You're now suggesting that we

Page 29

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

**APPLICATION OF GOODNIGHT
MIDSTREAM PERMIAN, LLC TO AMEND
ORDER NO. R-22506 (SWD-2392) FOR A
ONE YEAR EXTENSION TO COMMENCE
INJECTION OPERATIONS, LEA COUNTY,
NEW MEXICO**

Case No. 24491

SELF-AFFIRMED STATEMENT OF WILLIAM WEST

1. I am over the age of 18. I am a Petroleum Engineer employed as Senior Vice President of Operations for Empire Petroleum Corporation (“Empire”) and have personal knowledge of the matters stated herein. I have previously testified before the New Mexico Oil Conservation Commission (“Commission”), and my credentials as an expert in petroleum engineering were accepted as a matter of record. In short, I graduated from Marietta College with a Bachelor of Science Degree in Petroleum Engineering in May 1999. I began my career with Marathon Oil Company and have been employed in the oil and gas industry since graduation. I have been the Senior Vice President of Operations for Empire Petroleum Corporation since May 2023. I am a Certified Professional Engineer in the State of Wyoming - WY ID # 12599. I have over 25 years of oil and gas experience and have worked in most of the major oil and gas producing basins and States, including New Mexico, during my career.

2. My area of responsibility for Empire includes Lea County, New Mexico. I am responsible for secondary waterflood operations in the Eunice Monument South Unit (“EMSU” or “Unit”) and am working on developing Empire’s tertiary recovery CO₂ Project there. I submit the following information in support of Empire’s Brief on Standing.

3. The EMSU waterflood currently produces approximately 720 BOPD; 70,000 BWPD; 500 MCFPD and injects approximately 70,000 BWPD into the unitized Grayburg / San

EMPIRE EXHIBIT 7

Andres Reservoir. The EMSU 14,189.84-acre Unit was formed December 27, 1984 and water injection began November, 1986. Empire acquired the EMSU in March 2021 from XTO due to its significant CO₂-EOR potential in the San Andres ROZ and Grayburg Main Pay Zone intervals.

4. The unitized interval of the Unit extends from the top of the Grayburg formation to the bottom of the San Andres formation (“Unitized Interval”). The vertical limits of the Unitized Interval are the same as the vertical limits of the Eunice Monument Grayburg-San Andres Pool covering the Grayburg and San Andres formations.

5. After discovering that Goodnight Midstream Permian, LLC (“Goodnight”) is disposing of enormous volumes of water into the San Andres and has plans to expand disposal operations into the unitized interval, Empire’s focus has been to seek support from the Commission to revoke Goodnight’s existing SWD permits and to deny Goodnight’s new applications.

6. Goodnight has applied for an extension of time to commence injection operations through its proposed Rocket SWD Well No. 1 (“Rocket SWD” or “Well”), which will be located 565’ FSL and 245’ FWL (Unit M) of Section 28, Township 21 South, Range 36 East, in Lea County, New Mexico. The Well will be located approximately one mile from the EMSU.

7. The administrative extension request was protested by Empire New Mexico LLC (“Empire”). Empire has also separately filed an application to revoke Goodnight’s injection authority for the Rocket SWD #1 under Case No. 24021, which is pending before the Commission.

8. The Rocket SWD will inject wastewater into the San Andres formation between 4,380 feet and 5,750 feet. The Well will inject into the San Andres formation through a perforated completion and will allow disposed water to migrate into the Unitized Interval.

9. At the time of its initial application for authorization to inject into the Rocket SWD, Goodnight misrepresented that the San Andres is a non-productive zone known to be compatible

with formation water from the Bone Spring, Delaware, and Wolfcamp formations. This is incorrect.

10. Goodnight operates three other disposal wells in Section 28 – the Ted 28 SWD No. 1, Yaz 28 SWD No. 1, and Pedro SWD No.1. Wellhead pressures for these wells have reached high levels and are pressuring up the San Andres, impacting Grayburg and San Andres oil recovery potential in this area. Empire's plume analysis shows that Goodnight's injection into these wells is already reaching the EMSU. Adding a fourth disposal well in Section 28 will exacerbate this problem and result in waste.

11. Residual oil zones ("ROZ") are found within the San Andres, and Empire has the right to recover hydrocarbons within the EMSU.

12. Further, there is communication between the Grayburg and San Andres intervals through natural fractures and breaches in this area, which allows San Andres water to enter the Grayburg interval. This influx of San Andres water has been documented by water production maps of wells prior to unitization, increased sulfur content of the EMSU produced water, and the pressure drop in the San Andres interval, which occurred before water supply well production.

13. There is no effective barrier between the Grayburg and San Andres within the EMSU or the surrounding area, including the area that includes the proposed Rocket SWD, as demonstrated by the sulfur increase, water production increase in portions of the field, and drop in San Andres reservoir pressure. The high salinity disposal water will move over large distances and find a natural fracture or breach in the barrier and begin interfering with EMSU production.

14. The corrosive disposal water injected into the San Andres will travel long distances over a 1, 5, 10, and 20-year period, thus allowing corrosive disposal saltwater to enter the Grayburg interval through natural fractures and breaches between the two intervals. This corrosive water

will then be produced by Empire's oil wells. This disposal will not only increase failure rates in wells and facilities but will also prematurely water out Empire's wells.

15. Disposal in the Well will impair Empire's ability to recover hydrocarbons within the Unitized Interval and thereby adversely affect the correlative rights of Empire and other interest owners in the Unit and result in waste.

16. Empire has requested that Goodnight voluntarily refrain from drilling the Well, but as of the date of filing this application, Goodnight has not indicated it will do so.

17. Goodnight drilled its Verlander SWD despite Empire's pending application at the Commission to revoke the permit for that well. I expect Goodnight will take the same action here.

18. There is no good cause to extend Goodnight's authorization to inject into a Well for which the permit should be revoked.

19. Denial of Goodnight's Application and revocation of the disposal authority granted by Order No. R- 22026 will prevent the waste of recoverable hydrocarbons and will protect correlative rights.

20. I understand this Self-Affirmed Statement will be used as written testimony in this case. I affirm that my testimony above is true and correct and is made under penalty of perjury under the laws of the State of New Mexico. My testimony is made as of the date next to my electronic signature below.

/s/ William West
WILLIAM WEST

October 15, 2025
DATE