

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

**APPLICATION OF GOODNIGHT MIDSTREAM
PERMIAN, LLC FOR APPROVAL OF A SALTWATER
DISPOSAL WELL, LEA COUNTY, NEW MEXICO
CASE NO. 24123 ORDER No. R-22869-A**

**APPLICATIONS OF GOODNIGHT MIDSTREAM
PERMIAN, LLC FOR APPROVAL OF SALTWATER
DISPOSAL WELLS LEA COUNTY, NEW MEXICO
CASE NOS. 23614-23617**

**APPLICATION OF GOODNIGHT MIDSTREAM
PERMIAN LLC TO AMEND ORDER NO. R-22026/SWD-2403
TO INCREASE THE APPROVED INJECTION RATE
IN ITS ANDRE DAWSON SWD #1, LEA COUNTY, NEW MEXICO.
CASE NO. 23775**

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

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

This matter is before me on Empire New Mexico LLC's (hereafter "Empire"), motion to extend the Amended Pre-trial Order deadline for subpoena issuance from December 16, 2024 to December 20, 2024. Having reviewed the Motion, Response, and related communications, I find and order as follows:

1. Goodnight Midstream Permian, LLC's (hereafter "Goodnight") contention that the subpoena deadline extension it proposed was a limited extension is at best obtusely referenced in its December 16th email. Goodnight's counsel initiated this

proposal and it was incumbent on him to make clear that he intended nothing more than a mutual Rule 1-045.C(2) extension. No such limitation is expressed in the emails.

2. Goodnight's communication induced reliance by other parties upon Goodnight's representation that it would seek (and honor), a mutual four-day extension of the Amended Pre-trial Order subpoena deadline.

3. In light of its failure to clearly delineate its apparently limited intentions, Goodnight's opponents' reliance on Goodnight's communication and representations was reasonable.

4. Goodnight's communications and representations may have induced Empire to delay seeking a deposition subpoena for witness, Preston McGuire, from December 16, 2024 to December 20, 2024. Even if viewed by Goodnight as tactical chicanery, it is still an unintended consequence of communications that Goodnight should have made clearer.

5. Empire may have detrimentally relied on Goodnight's communications and representations and would be prejudiced by Goodnight's claim that the December 16, 2024 subpoena deadline should be enforced.

6. The doctrine of equitable estoppel bars Goodnight's claim that the December 16, 2024 subpoena deadline should be enforced as to Empire's subpoena. *Cont'l Potash, Inc. v. Freeport-McMoran, Inc.*, 1993-NMSC-039, ¶ 28.

7. Empire's Motion is granted with respect to Preston McGuire. Empire may request a subpoena to depose this witness, which subpoena may be dated December 20, 2024 regardless of its actual date of issuance and will be deemed valid and binding for all Rule 1-045 purposes.

8. Initiating communications seeking to extend the subpoena issuance deadline and then purporting to renege on a mutual agreement between the parties to extend that deadline resulting from those communications because Goodnight determined it no longer needed the extension would be a deceptive and bad faith practice but for Goodnight's explanation, which finds some support between the lines of its initiating December 16th email. Accordingly, no sanctions are appropriate. Goodnight's failure to adequately communicate is balanced out by the possibility that Empire took advantage of an unintended opportunity.

9. All is fair in love and war. Goodnight may request a subpoena to depose Dr. Lindsay, which subpoena may be dated December 20, 2024 regardless of its actual date of issuance and will be deemed valid and binding for all Rule 1-045 purposes.

10. As a final point of clarification, paragraph 3 of the Amended Pre-trial Order is a deadline applicable to discovery only, and does not bar anyone from seeking subpoenas to compel the attendance of witnesses at the scheduled February hearing in this matter.

IT IS SO ORDERED.

Respectfully Submitted,

RIPLEY B. HARWOOD, P.C.

/s/ Rip Harwood

By:

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