

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

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

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

PRE-HEARING STATEMENT

Desert Ram South Ranch, Inc. ("Desert Ram"), by and through undersigned counsel, files this pre-hearing statement as required by the Commission's Hearing Rules.

APPEARANCES

APPLICANTS

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PROPOSED EVIDENCE

WITNESSES

Tim Jurco

EST. TIME

30 min.

EXHIBITS

1. Northwind's Application in Case No. 24881
2. Purchase and Sale Agreement and Escrow Instructions By and Between Northwind Midstream Partners LLC, and Hydrosurface Logistics, LLC and NGL South Ranch, Inc.
3. First Amendment to Purchase and Sale Agreement and Escrow Instructions
4. Image of AGI Wells and Plume Underlying Desert Ram's Acreage

STATEMENT OF THE CASE

I. Northwind Has Failed to Establish a Good Faith Claim to Title to the Property Indisputably Impacted by Its Application.

Northwind Midstream Partners LLC ("Northwind") seeks an order authorizing injection

authority of treated acid gas (“TAG”), but it has failed to establish a good faith claim to the property rights that will indisputably be impacted by the proposed injection. *See* Northwind’s Application, Case No. 24881, at 1 (filed Sept. 17, 2024).

An Operator who files an application for a permit to drill must do so under a **good faith claim to title** or a **good faith belief** that it is authorized to drill the well applied for. “When an application for a permit to drill is filed, the Division does not determine whether an applicant can validly claim a real property interest in the property subject to the application[.]” *See* Order No. R-11700-B, Case No. 12731 & Case No. 12744, at ¶ 27–28. This is largely because the Division has no jurisdiction to determine the validity of title, and such jurisdiction belongs exclusively to the District Courts of New Mexico. *Id.* Thus, the operator seeking Division or Commission approval to drill, or approval for injection authority, must first establish a good faith claim to title to the property which will be impacted by its proposed operations.

In Commission Case 13589, the Commission specifically recognizes the limitations on jurisdiction in the context of issuing an injection permit, providing: “The New Mexico Supreme Court in *Snyder Ranches, Inc. v. Oil Conservation Commission*, 789 P.2d 587 (NM Sup 1990) indicated that the Commission’s issuance of an injection permit constitutes only a license to engage in activities **otherwise within the property rights** of the Applicant.” *See* Order R-12546, Case No. 13589, at ¶ 26. The Applicant should not **and cannot** seek the Commission’s issuance of an injection permit to engage in activities outside the scope of its property rights.

Northwind’s Application seeks to appropriate Desert Ram’s real property rights for which it has not established, and cannot establish, a good faith claim to title. Desert Ram is the owner of the surface acreage impacted by the proposed TAG injection. In its Application, Northwind provided an image of the anticipated plume that would result from the proposed increased injection

activities for which it seeks approval. These injections, as demonstrated by the plume model, indisputably impede upon Desert Ram's real property. *See* Exhibit D.

When Desert Ram learned of this, counsel for Desert Ram contacted counsel for Northwind with a request whether Northwind planned lease or obtain some other lawful right to use the subsurface pore space below Desert Ram's property, and Desert Ram outlined the anticipated trespass issues if the proposed expansion of the AGI wells is approved by the Commission. Northwind refused to negotiate or make any good faith offer to resolve the trespass without court involvement. Desert Ram separately filed a declaratory judgment action in District Court in Lea County, in Case No. D-506-CV-202500172, Complaint for Declaratory Judgment, Temporary and Permanent Injunctive Relief, and Damages. Accordingly, because Northwind has failed to establish a good faith claim to title to real property that will indisputably be impacted by its proposed operations, Desert Ram objects to Northwind's Application and requests the Commission stay further proceedings until the title issues are properly adjudicated in state court.

II. This Case is Analogous to Commission Case No. 20780, and Northwind Cannot Ignore Title Issues Raised by Its Proposed Injections.

In Case No. 20780, Salt Creek Midstream, LLC ("Salt Creek") filed an application seeking authorization for a TAG injection. *See* Order No. R-20913-C, Case No. 20780, at ¶ 1. The proposed well was slated to inject through perforations into the Bell Canyon and Cherry Canyon formations of the Delaware Mountain Group ("DMG"). *Id.* at ¶4. The New Mexico State Land Office ("SLO") filed an Entry of Appearance and Notice of Intervention. *Id.* at ¶ 11. The OCD also filed an Entry of Appearance and Notice of Intervention. *Id.* at ¶ 12.

SLO's Pre-Hearing Statement expressed concern about the well's proximity to State Trust Lands and Minerals, specifically the SLO was concerned that the "TAG migrating from the Well could impact production and horizontal wells[.]" *Id.* at ¶ 11. After these filings, the Applicant,

OCD, and SLO negotiated permit conditions that would address the concerns raised by the SLO and OCD. *Id.* at ¶ 13. The SLO filed an amended Pre-Hearing Statement reiterating that its concerns were resolved because the Applicant agreed to compensate SLO for the intrusion of the TAG into its pore space. *Id.* at ¶ 15.

This is precisely the issue that Desert Ram seeks to address before the Commission. Northwind's proposed injections will indisputably result in the intrusion and migration of TAG into Desert Ram's pore space. However, Northwind continues to move forward with its Application and refuses to negotiate with Desert Ram relating to the TAG migration and pore space at issue. And until those issues are addressed or the parties, like in Case No. 20780, execute a valid lease agreement or other valid compensation scheme to remedy the intrusion of TAG into Desert Ram's pore space, this case should be stayed.

III. Desert Ram's Reply to Northwind's Response to Motion to Stay.

A. Desert Ram Offers a Procedural Basis for a Stay of Commission Case No. 24881 Seeking to Amend Order R-20913-, as amended.

Desert Ram has provided the procedural basis to support a stay. In this case, the Commission retains jurisdiction over the orders it enters, including Order No. R-20913, all previous amendments, and the requested amendments in this case. The Commission has authority to Stay its own cases as recognized in 19.15.4.23 NMAC. As provided in subsection B of Rule 19.15.4.23 NMRA, "A party requesting a stay of a division or commission order shall file a motion with the commission clerk and serve copies of the motion upon the other parties who appeared in the case, as Subsection A of 19.15.4.10 NMAC provides." This is the appropriate procedure for a stay of a Commission case requesting to amend a past Commission order.

B. Desert Ram has Standing to Seek a Stay of the Hearing.

NGL South Ranch, Inc. (“NGL”), subsequently Desert Ram, both filed entries of appearance, reflecting the entry was being filed pursuant to 19.15.4.10(B) NMAC. Rule 19.15.4.10 provides: “parties to an adjudicatory proceeding shall include: ... (2) a person to whom statute, rule or order requires notice (not including those persons to whom 19.15.4.9 NMAC requires distribution of hearing notices, who are not otherwise entitled to notice of the particular application), who has entered an appearance in the case; and (3) a person who properly intervenes in the case.” As a party that received notice, NGL timely entered pursuant to 19.15.4.10(B), and Desert Ram timely intervened pursuant to 19.15.4.11 NMAC, if it is not considered a party of record. *See* Rule 19.15.4.11(A) (providing any “person with standing with respect to the case’s subject matter may intervene by filing a written notice of intervention with the division or commission clerk, as applicable, at least one business day before the date for filing a pre-hearing statement.”). Because Desert Ram properly and timely appeared in this case, it can seek a stay of the case pending the outcome of pending litigation.

NGL South Ranch Inc. changed its name to Desert Ram and appropriately intervened as an affected party pursuant to 19.15.4.10(B) NMAC. Hydrosource is only the operator of the acreage at issue, and NGL South Ranch Inc. was always the owner of the acreage, prior to the name change to Desert Ram. NGL was the party to the Purchase and Sale Agreement and Amendments, filed as Desert Ram’s Exhibits B and C, in which NGL sold lands involved in the Application to Northwind. Desert Ram, through NGL, received notice of this Application and intervened because Northwind’s plume model reflects its injection operations will migrate below the property owned by Desert Ram, although Northwind has no right to utilize the subsurface still owned by Desert Ram on acreage next to the injection wells at issue in the Application.

C. Desert Ram has a Substantive Basis for the Stay.

As will be provided in the testimony of Tim Jurco at the Hearing, and as reflected in Desert Ram's Exhibits A, B, C, and D, Desert Ram is the owner of neighboring acreage to the Application in this case and received notice due to the rights of an adjoining surface owner to the injection application. Desert Ram's ownership interests in its subsurface pore space are directly and substantially impacted by the requests of Northwind's Application and has standing to appear in this proceeding.


PROCEDURAL MATTERS

Northwind filed its Application for Approval of an Additional Redundant Acid Gas Injection Well and to Amend Order No. R-20913, As Amended, and SWD-2622 to Authorize an Increased Share Maximum Daily Injection Rate ("Northwind's Application" or "the Application") on September 17, 2024. Upon receiving notice of the Application, Desert Ram, entered an appearance in the case and provided notice of its objection to Northwind's Application on the grounds that the proposed injection authority sought by Northwind will indisputably impede into Desert Ram's pore space.

Desert Ram filed suit in Case No. D-506-CV-2025-00172, in the Fifth Judicial District Court of Lea County, New Mexico, seeking a declaration of its property rights in the surface acreage for which Northwind is attempting to appropriate and damages for trespass. On March 4, 2025, before the Commission, Desert Ram filed a Motion for Stay Northwind Midstream Partners LLC's Application to Amend Order Nos. Order No. R-20913-D & SWD-2622 requesting the Commission stay proceedings in this case pending the outcome of Case No. D-506-CV-2025-00172, in the Fifth Judicial District Court of Lea County, New Mexico.

As set forth above, Desert Ram respectfully requests the Commission hear the Motion to Stay prior to any evidentiary hearing in this matter because Northwind has failed to establish a good faith claim to title for the property rights indisputably impacted by its Application. But even if the Commission intends to hear the evidence regarding Northwind's Application, Desert Ram also intends to present evidence and testimony regarding its objections to Northwind's proposed requests to amend Order No. R-20913, as amended, and SWD-2622.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2025, a true and correct copy of the foregoing pleading was served upon counsel of record, and the OCC Clerk, as follows:

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