

**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 ADMINISTRATIVE ORDER SWD-1750  
FOR THE P 15 #001 WELL OPERATED BY  
OWL SWD OPERATING, LLC,  
LEA COUNTY, NEW MEXICO**

**CASE NO. 24432**

**GOODNIGHT MIDSTREAM'S RESPONSE OPPOSING  
EMPIRE'S MOTION TO DISMISS**

Goodnight Midstream Permian, LLC ("Goodnight") files this response *opposing* Empire New Mexico LLC's ("Empire") Motion to Dismiss the above-referenced case.

**INTRODUCTION**

While Goodnight agrees that Empire's case against OWL SWD Operating, LLC is without merit, it opposes Empire's Motion to Dismiss (the "Motion") to preserve its arguments and because Empire is using the Division's administrative hearings as a tool to improperly litigate, and re-litigate, issues in a piecemeal fashion. Having already determined that (1) alleged hydrocarbons in a purported residual oil zone ("ROZ") in the Eunice Monument South Unit ("EMSU") have not been proven to be recoverable and (2) injection into the San Andres disposal zone is not impairing Empire's EMSU waterflood operations, the Commission's findings against Empire in Case Nos. 24123, 23614-23617, 23775, 24018-24020, and 24025 (the "Goodnight/Empire Matters") should be binding on Empire's claims in this case that are based on the same grounds. In support of its position, Goodnight states the following.

**ARGUMENT**

From the outset of these matters involving Empire and its claims in and around the EMSU, Empire has been selectively filing and pursuing actions within the state's court system, while

simultaneously pursuing administrative remedies from the Oil Conservation Division and Commission. In fact, over the last three years, Empire has brought more than a dozen administrative cases and multiple lawsuits in its attempts to thwart, and ultimately shut in, the injection activities of disposal operators in and around the EMSU. The largest of the matters being the Goodnight/Empire Matters currently awaiting resolution through competing Applications for Rehearing in front of the Commission. Empire's desire to dismiss this case is another attempt to hedge its bets by holding off on adjudicating some of its claims until later, perhaps in front of a different forum, perhaps with a more favorable outcome, but that is not how adjudication works.

Empire claims that all produced water disposal in the San Andres within the EMSU should be terminated and barred because it is (1) preventing recovery of hydrocarbons in an alleged ROZ and (2) impairing its waterflood operations in the EMSU.<sup>1</sup> Allowing Empire to dismiss this case, without prejudice, would be to allow it to refile the same claims that have already been heard by the Commission at a later date of its choosing. Accordingly, it is both inefficient and a waste of administrative resources to allow Empire to dismiss and refile this case later depending on whether Empire gets a favorable result from the Commission. In fact, Empire should be collaterally estopped from relitigating its claims in a future action, because the pending matter will decide the Empire's two key claims.<sup>2</sup> See *Shovelin v. Cent N.M. Elec. Coop., Inc.*, 1993-NMSC-015, ¶ 10. As to both claims, the Commission has already determined that the purported ROZ hydrocarbons have not been proven to be recoverable and that Goodnight's injection into the San Andres disposal zone is not impairing Empire's EMSU operations. See Commission Order No. R-24004 at III(C)

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<sup>1</sup> Testimony of William West, Empire Amended Exhibits Case Nos. 23614-23617, Empire Exhibit G-2, addressing active and proposed SWDs inside the EMSU: "Any and all third-party water disposal oil and gas unit [sic] must be immediately stopped. 1. no increases on disposal volumes. 2. any new applications must be revoked[.] 3. existing well permits should be revoked." (emphasis added).

<sup>2</sup> While Empire's claims are subject to collateral estoppel, OWL SWD Operating, LLC/Pilot has not had the opportunity to present evidence in response to Empire's claims.

¶¶ 54-56, III(D) ¶¶ 57-60. Under its own theory of this matter, Empire should be bound by the Commission's rulings on these claims in all other cases before the Division and Commission.

Additionally, it would be disingenuous for Empire to now take an inconsistent position to the one it has maintained throughout the entirety of this dispute: that all injection of produced water into the San Andres in and around the EMSU should be immediately terminated on the grounds that it causes damage to Empire's operations. Empire itself has argued that determination of the issue as to whether an economic ROZ exists would have the same impact on all of the cases. *See* Empire's Resp. in Opposition to Motion to Limit Scope. Empire is judicially estopped from now taking an inconsistent position to try and gain favorable advantage by seeking to dismiss this case without prejudice and collaterally estopped from re-litigating its claims that an ROZ in the EMSU is recoverable or that injection into the San Andres disposal zone is impairing EMSU operations. Because this case was stayed pending resolution of the Goodnight/Empire Matters, it should remain stayed or, because Empire is collaterally estopped on its two main claims, it should be dismissed with prejudice.

### **CONCLUSION**

For the reasons stated above, the Division should deny Empire's Motion to Dismiss and the case should remain stayed pending the outcome of the proceedings between Goodnight and Empire currently being evaluated by the Commission or, because Empire is collaterally estopped on its two main claims, it should be dismissed with prejudice.

Respectfully submitted,

HOLLAND & HART LLP

/s/ Adam G. Rankin

Michael H. Feldewert

Adam G. Rankin

Paula M. Vance

Post Office Box 2208

Santa Fe, New Mexico 87504-2208

(505) 988-4421

(505) 983-6043 Facsimile

mfeldewert@hollandhart.com

agrarkin@hollandhart.com

pmvance@hollandhart.com

**ATTORNEYS FOR GOODNIGHT MIDSTREAM  
PERMIAN**

**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 14, 2025.

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

Sharon T. Shaheen  
**SPENCER FANE LLP**  
P.O. Box 2307  
Santa Fe, NM 87504-2307  
(505) 986-2678  
sshaheen@spencerfane.com

***Attorneys for Empire New Mexico, LLC***

Miguel A. Suazo  
BEATTY & WOZNIAK, P.C.  
500 Don Gaspar Ave.  
Santa Fe, NM 87505  
Tel: (505) 946-2090  
msuazo@bwenergylaw.com  
sgraham@bwenergylaw.com  
kluck@bwenergylaw.com  
***Attorneys for Pilot Water Solutions SWD,  
LLC***

Matthew M. Beck  
PEIFER, HANSON, MULLINS & BAKER,  
P.A.  
P.O. Box 25245  
Albuquerque, NM 87125-5245  
Tel: (505) 247-4800  
mbeck@peiferlaw.com  
***Attorneys for Rice Operating Company and  
Permian Line Service, LLC***

/s/Adam G. Rankin  
Adam G. Rankin