

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

**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

**APPLICATION OF GOODNIGHT MIDSTREAM
PERMIAN, LLC FOR APPROVAL OF A
SALTWATER DISPOSAL WELL,
LEA COUNTY, NEW MEXICO**

**DIVISION CASE NO. 24123
ORDER NO. R-22869-A**

**OIL CONSERVATION DIVISION’S RESPONSE PER THE OCC’S OCTOBER 17, 2025
ORDER**

The New Mexico Oil Conservation Division (“OCD”) hereby submits its Response as ordered by the Oil Conservation Commission (“OCC”) in its October 17, 2025 Order. Concerning the question posed in ¶ 9(i) of the Order, OCD reasserts that the OCC does in fact have legal authority to “[s]uspend existing Goodnight’s injection wells. . .in order to provide Empire with the opportunity to establish the CO2 EOR pilot project. . .” Concerning the question posed in ¶ 9(ii), OCD likewise reasserts that Order No. 24004 does provide OCD with discretion in managing the “[s]uspension of existing Goodnight’s injection wells. . .to provide Empire with the opportunity to establish the CO2 EOR pilot project . . .”

The OCD's Response, in sum, maintains that (1) the OCC's power to suspend Goodnight's SWD injection permits is clear through statute and (2) the OCD possesses authority and jurisdiction to regulate Empire's CO2 EOR project.

I. Introduction.

a. Goodnight's arguments as to the questions posed by the OCC.

In its Brief, Goodnight's positions, as stated in the section titled "Brief Answer to the Commission's Two Issues," pp.1-2, plainly states that Goodnight does not think the OCC has power to suspend its SWD injection permits and that OCD does have the power to both suspend "operations and approving enhanced recovery projects." Goodnight contends that the OCC must find there is sufficient evidence of ROZ recoverability by Empire before the OCC can suspend Goodnight's SWD injection permits. *Goodnight Brief* at § I, pp. 9-20.

b. Empire's arguments as to the questions posed by the OCC.

Empire's positions as to the two questions posed by the OCC to the parties of record in the October 17, 2025 Orders are answered directly in § I of Empire's Brief, to wit: "[t]he answer to Question No. 1 is "absolutely. . ." and "[t]he answer to Question No. 2 is "yes," in part." Empire maintains that OCC Order No. 24004 provides no discretion to the OCD in suspending Goodnight's permits, but that the OCD does maintain authority to "approve and oversee Empire's COS EOR pilot project." *Empire Brief* at § I, p.1. Empire contends that the OCC possesses the legal power to suspend Goodnight's injection permits. *Id.* at § II(A), pp.2-19. Empire also contends that the OCD does have the authority to implement the OCC's suspension of Goodnight's SWD injection permits but also has authority over Empire's CO2 EOR recovery project. *Id.* at § II(B)(1) and (2), respectively.

c. Rice's arguments as to the questions posed by the OCC.

Rice contends, like Goodnight, that the OCC lacks authority to suspend Goodnight's SWD injection permits absent an OCC finding there is sufficient evidence of ROZ recoverability by Empire before the OCC can suspend Goodnight's SWD injection permits. *Rice Brief* at p.2.

d. Pilot did not file a Brief as ordered by the OCC.

Pilot, a party of record in the above-captioned cases, did not file a Brief as ordered by the OCC on October 17, 2025. Therefore, the OCD has nothing to respond to insofar as Pilot. Rice considers the answer to Question No. 1, as posed by the OCC, to be dispositive of Question No. 2 such that argument is not warranted, but considers the OCD as possessing sufficient authority under the Oil and Gas Act ("OGA") and OCC Order No. 24004's broad language to regulate Empire's CO2 EOR project. *Id.* at § II, p. 11.

II. Goodnight and Rice

a. The OCC's authority to suspend injection permits is unequivocal, as outlined in OCD's Brief, § II

OCD sees no benefit to retreading previously and thoroughly trod ground at this point in the proceedings for the above-captioned cases. OCD's position, backed by extensive legal authority cited at length, is that the OCC absolutely has authority to suspend Goodnight's SWD injection permits as a matter of basic statutory law. *OCD Brief* at § II. OCD does not consider this debatable as a legal matter.

b. Both Goodnight and Rice cite to essentially the same law as relied upon by OCD in its October 31, 2025 Brief, buttressing OCD's position as noted directly above.

Both Goodnight and Rice rely upon roughly the same body of law as OCD in arguing their respective cases. Citations made by both include the keystone case of *Cont'l Oil Co. v. Oil*

Conservation Comm’n, 1962-NMSC-062, ¶ 11 that set forth the judicial interpretation of the OCC’s powers and jurisdiction. Likewise, both parties rely heavily upon the OGA which is the statutory root for OCC authority. Neither party introduced law that changes either the standing caselaw nor the standing legislation.

III. Empire

- a. Empire’s contention that the OCD, *via* OCC Order No. 24004, grants the OCD “sufficient regulatory authority” to *immediately* suspend Goodnight’s permits overlooks OCD’s stated concerns and recommendations on suspension of said permits and, therefore, should be disregarded.**

As argued thoroughly in the OCD’s October 31, 2025 Brief, OCD possesses sufficient authority to suspend Goodnight’s permits as ordered by the OCC. However, OCD disagrees about the immediacy of the suspensions and how those are to be accomplished, likewise briefed at length in the OCD’s recently filed brief.

- i. Suspension of an injection permit is not simply flipping a switch, which the OCD addressed at length in its October 31, 2025 Brief in § III.**

OCD will not rehash its prior arguments but points the OCC to OCD’s catalogue of concerns about the need for OCC guidance as to how and when the suspension should take place, given that the OCD simply does not suspend permits *via* the OCC often. *OCD Brief* at § III(a)(i)-(ii). Because of this fact and based on other concerns the OCD has with safety and related concerns of an immediate shut-in of Goodnight SWD injection wells, the OCD continues to aver that it needs clarification from the OCC – Empire’s raw suggestion that suspension should have been accomplished by now, inclusive of Goodnight physically ceasing injection, is folly. *OCD Brief* at § III(a)(iii); *see also Exhibit A, ¶ 5 to OCD’s Response to Goodnight’s Application for Rehearing and Empire’s Motion for Rehearing*. OCD has valid reasons *not* to proceed with immediate

suspension of Goodnight's permits but is obviously not shirking the responsibility; rather, OCD is ensuring it follows OCC orders as the OCC intended.

OCD also points out Empire has not addressed OCD concerns in any way in its Brief, indicating Empire's view that OCD concerns are irrelevant and to be overlooked by the OCC. This is an ironic position given that Empire otherwise recognizes OCD's authority over oil and gas related matters. *Empire Brief* at § II(A), § II(A)(3), § II(A)(3)(ii), and § II(B)(2).

ii. Empire admits twice in its Brief that the OCD has authority to regulate Empire's proposed EOR project, from approval (if granted) to overall supervision of the project.

Despite Empire's efforts to evade the OCD's proposed performance schedule for Empire to prosecute its EOR project, as revealed by Empire's utter lack of commentary on the proposal to date in any pleading, Empire twice admits that the OCD *Empire Brief* at § I, p.1 and § II(B)(2). In fact, Empire is so certain of this position that it stated that "the Division unquestionably has the authority to evaluate, approve, and monitor the project under its regulations. *Id.* at § II(B)(2). Therefore, OCD contends that Empire effectively agreed to OCD's proposed performance schedule *via* this admission and, should it object in its pending Response, the OCC must then determine whether Empire was being deceptive in its Brief or its Response – OCD suggests that Empire's admission, as noted above, is sufficient grounds to grant OCD's request for imposition of the proposed performance schedule for Empire's EOR project.

IV. Summary

Based on the above arguments, OCD reiterates its position that (1) as a matter of law, the OCC possesses legal authority to both suspend Goodnight's SWD injection permits and allow Empire to proceed with its CO2 EOR project and (2) that OCC Order No. R-24004 provides OCD

with discretion in managing both Goodnight's permit suspension and Empire's CO2 EOR project, but the OCD would benefit from clarity as to performance deadlines for each.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 7, 2025, this pleading was served by electronic mail on:

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