

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

**APPLICATION OF EMPIRE NEW MEXICO
LLC TO REVOKE THE INJECTION
AUTHORITY GRANTED UNDER ORDER NO.
R-21190 FOR THE SOSA SA 17 NO. 2 WELL
OPERATED BY GOODNIGHT MIDSTREAM
PERMIAN LLC, LEA COUNTY, NEW
MEXICO.**

CASE NO. 24025

**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. 24018-24020

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

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

CASE NO. 24123

**RICE OPERATING COMPANY AND PERMIAN LINE SERVICE,
LLC'S RESPONSE TO THE REHEARING BRIEFS**

On October 17, 2025, the Oil Conservation Commission ("Commission") granted in part a re-hearing in these matters limited to addressing two very narrow legal questions:

1. Does the Commission have the legal authority to "Suspend[] existing Goodnight's injection wells . . . in order to provide Empire with the opportunity to establish the CO2 EOR pilot project" given that "there was insufficient evidence presented at hearing to prove whether the ROZ is recoverable?"
2. Does Commission Order R-24004 provide OCD with discretion in managing the "Suspen[sion of] existing Goodnight[] injection wells . . . [and] to provide Empire with the Opportunity to Establish the CO2 EOR pilot project"?

Order Partially Granting Goodnight's Motion for Rehearing; Denying Empire's Motion for Rehearing; Granting Goodnight's Motion for Stay; Holding Empire's Motion to Enforce in Abeyance ¶ 9, at 3 (filed Oct. 17, 2025) ("Rehearing Order"). Also in the Rehearing Order, the Commission found that "all parties have had ample opportunity to present evidence and arguments before the Commission"; therefore, the Commission foreclosed the parties from presenting additional facts or "relitigate[ing] the Commissions' findings of fact." *Id.* ¶¶ 7-8.

On October 31, 2025, Goodnight Midstream Permian, LLC ("Goodnight"), Empire New Mexico, LLC ("Empire"), the Oil Conservation Division ("OCD"), and Rice Operating Company and Permian Line Service, LLC (together "Rice"), filed their rehearing briefs.

Goodnight and Rice heeded the Commission's guidance in the Rehearing Order and addressed the narrow legal questions that the Commission asked, answering in response to the first question that, given the finding that the evidence did not establish that the alleged ROZ is recoverable, the Commission cannot suspend Goodnight's injection authority, because it does not have jurisdiction to do so given that finding.

The OCD, apparently, did not appreciate the Commission's prompt in the Rehearing Order's first question, and failed to analyze whether the Commission can suspend Goodnight's injection wells when it found that Empire failed to prove that the alleged ROZ is recoverable. The OCD instead points out the "obvious," that the Commission has authority to suspend an operator's authority – like that of Goodnight and has authority to adjudicate Empire's CO2 EOR project. OCD Brief at 7-8. But the OCD failed to appreciate that the Commission may only exercise that obvious authority to prevent "waste" of hydrocarbons by *first* finding that its actions are addressed at activities that "reduce or tend to reduce the total quantity of crude petroleum oil or natural gas *ultimately recovered* from any pool." NMSA 1978, § 70-2-3(A).

Empire, on the other hand, appreciated the import of the Commission's narrow legal question, and so it largely ignored the Commission's direction not to re-litigate the findings of fact. Empire devotes the lion's share of its brief to rehashing testimony from the hearing which it contends supports its contention that the alleged ROZ is recoverable, which the Commission already properly found failed to prove that by a preponderance of the evidence. It then avoids the import of the Commission's finding by pointing to other statutes and the Constitution to attempt to divert the Commission's attention away from its jurisdictional limits – to prevent waste, allowing the Commission to act *only if* its action results in oil actually being ultimately recovered.

Thus, focusing in on the narrow legal issue that the Commission identified as problematic given its findings at the hearing, the Parties' briefs make plain that the Commission's finding that Empire failed to prove the ROZ is recoverable results in the Commission lacking jurisdiction to suspend Goodnight's injection wells. The Commission should therefore amend its order to remove the suspension of Goodnight's injection wells.

**RESPONSE TO THE OCD'S REHEARING BRIEF
REGARDING THE COMMISSION'S FIRST QUESTION**

In response to the Commission's first question whether it may suspend Goodnight's injection authority given that it found that the evidence failed to establish that the ROZ is producible, the OCD's Brief per the OCC's October 17, 2025 Order ("OCD Brief") focuses on "the broad scope" of the Commission's authority. OCD Brief at 3. The OCD points out that "[b]oth New Mexico and Federal Courts have long recognized that the [Commission] maintains . . . broad authority." *Id.* at 4 (citing cases).

But the OCD fails to appreciate the prompt in the Commission's first narrow legal question: what may the Commission do when it found "that there was insufficient evidence presented at hearing to prove whether the ROZ is recoverable?" *Id.* at 2 (quoting Rehearing Order ¶ 9(i)). In other words, the OCD's brief fails to wrestle with the question whether the Commission may take any action against Goodnight on the basis of alleged hydrocarbons in the alleged ROZ when it found that Empire failed to prove that any of the oil in the alleged ROZ is recoverable.

On that question, the OCD's brief is silent.

The OCD asserts: "the basis of OCC power is couched in its dual duties to prevent waste and protect correlative rights, with particular emphasis on the prevention of waste." OCD Brief at 3. For that proposition, the OCD cites to *Cont'l Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, ¶ 11, 70 N.M. 310, 373 P.2d 809. In the context of the OCD's argument – that the Commission has broad powers to prevent waste and protect correlative rights, including to regulate CO2 EOR projects and SWD injection permits, *see* OCD Brief at 5 – that is generally correct. But in the context of the Commission's narrow question – whether it may regulate

Goodnight's injection permits in relation to the alleged ROZ when it found that Empire failed to prove that the alleged ROZ is recoverable – it is not correct.

To be precise, the basis of the Commission's power is not "**couched** in its dual duties to prevent waste and protect correlative rights." OCD Brief at 3 (emphasis added). Rather, the Supreme Court said in *Cont'l Oil Co.* (the case to which OCD cites) that, because the "Commission is a creature of statute, expressly defined, limited and empowered by the laws creating it **the basis of its power is** founded on the duty to prevent waste and to protect correlative rights." 1962-NMSC-062, ¶ 11. As the Supreme Court pointed out a year later in *Sims v. Mechem*, the duty to prevent waste is a precondition to exercise of the Commission's power such that exercise of the Commission's power, including suspension of injection authority, "**must be predicated on** the prevention of [] waste." 1963-NMSC-103, ¶ 10 (emphasis added). If, as here, where the Commission found Empire failed to prove the ROZ is recoverable, "[t]here is nothing in evidence before the commission tending to support a finding of waste or the prevention of waste by" suspending Goodnight's injection wells, *id.* ¶ 12, then the Commission's suspension of Goodnight's injection wells is "void," because the "commission [order] contains no finding as to the existence of waste, or that [suspension] would prevent waste, based upon evidence to support such a finding." *Id.* ¶ 13.

This is not to say that the OCD Brief is incorrect; it just fails to appreciate the Commission's first question. With regard to the OCD's arguments, Rice largely agrees with the OCD. Rice agrees that the Commission has broad authority under the Oil and Gas Act, including "all" the authority to take actions "necessary and proper" to prevent waste, including the "authority to regulate CO2 EOR projects . . . and SWD injection permits." OCD Brief at 4, 5 (citations omitted). But where the Commission found that "there was insufficient evidence

presented at hearing to prove whether the ROZ is recoverable,” the OCD should have recognized that finding results in the lack of the necessary finding of waste, and should have answered that the Commission cannot, therefore, exercise even its broad powers to “suspend existing Goodnight’s injection wells in order to provide Empire with the opportunity to establish the CO2 EOR pilot project.” Rehearing Order ¶ 9(i).

**RESPONSE TO EMPIRE’S REHEARING BRIEF
REGARDING THE COMMISSION’S FIRST QUESTION**

Like the OCD Brief in response to the first narrow legal question, Empire’s Brief in Response to Order on Limited Rehearing (“Empire Brief”), fails to address head-on that question. But unlike the OCD, Empire’s failure is intentional. The Commission made clear in its Rehearing Order that it was denying the parties’ motions for rehearing “in so far as they seek to reopen the factual record for this matter, or to relitigate the Commission[’s] findings of fact.” Rehearing Order ¶ 8. But that’s exactly what Empire’s Brief focuses on first and foremost. And that focus is unsurprising, as it follows the “old adage of trial advocacy which advises, ‘if the facts are against you, argue the law, and if the law is against you, argue the facts.’” *U.S. v. Delgado*, 981 F.3d 889, 892 (8th Cir. 2020). Given the Commission’s dispositive finding that the evidence failed to prove that oil in the alleged ROZ may be recovered, the law is plainly and certainly against Empire.

Empire’s first focus in its brief is to attempt to contradict the Commission’s finding by asserting that “**Empire established the San Andres ROZ is recoverable.**” Empire Brief ¶ 1. This is directly – virtually *verbatim* – contrary to the Commission’s finding that “the Commission found there was insufficient evidence presented at hearing to prove whether the ROZ is recoverable.” Commission Order R-24004 (“Hearing Order”) ¶ D. It’s also directly – virtually *verbatim* – contrary to the language in the narrow legal question that the Commission

asked the parties: “Does the Commission have the legal authority to “‘Suspend[] existing Goodnight’s injection wells . . . in order to provide Empire with the opportunity to establish the CO2 EOR pilot project’ given that ‘there was insufficient evidence presented at hearing to prove whether the ROZ is recoverable?’” Rehearing Order ¶ 9(i). The Commission found that Empire failed to prove that. And reading through the actual testimony to which Empire cites in the footnotes in this section, *see* Empire Brief footnotes 5-19, confirms the Commission’s finding: the evidence failed to establish that the oil in the alleged ROZ is physically recoverable, let alone economically recoverable.

Likewise, rather than answer the Commission’s narrow legal question, the second focus in Empire’s brief is to attempt to argue that the Commission properly could suspend Goodnight’s injection wells based on purported “wastewater . . . migrating into the Grayburg and . . . not confined to the approved injection interval,” which again is contrary to the Commission’s findings. Empire Brief ¶ 2, at 6-8. Again, Empire is relitigating the Commission’s findings, as its brief in this portion fails to cite to the Hearing Order at all for this proposition, and instead cites only to hearing testimony from its own witnesses. *See id.* The Commission, of course, hearing the evidence from both Empire’s and Goodnight’s witnesses, instead found that **“Empire DID NOT adduce substantial evidence that their correlative rights in the Grayburg are CURRENTLY impaired by Goodnight’s injection into the San Andres.”** Hearing Order ¶ C, at 9. The Commission also found that “Empire has not identified production data . . . that shows evidence of impacts from Goodnight’s disposal operations,” and that it “‘is just amazing’ and ‘a unique situation’” that there is “no communication between the San Andres and Grayburg” based on “material balance.” *Id.* ¶¶ 55-56.

Finally, after attempting to relitigate the Commission's findings that result in the conclusion that the Commission did not find that Goodnight's injection wells cause waste of the alleged ROZ, Empire attempts to argue the law. But Empire's legal arguments in its brief over the course of 12 pages (pages 8-19), fail from the same undiscerning gloss found in the OCD Brief: the failure to acknowledge that the necessary precondition to exercise of the Commission's power – waste, *i.e.*, that Goodnight's injection wells reduce or tend to reduce hydrocarbons in the alleged ROZ are actually recovered – is absent given that “the Commission found there was insufficient evidence presented at hearing to prove whether the ROZ is recoverable.” Hearing Order ¶ D.

Like the above discussion in relation to the OCD Brief, Rice largely – almost entirely – agrees with Empire on the broad scope of the Commission's authority. Rice agrees that “[t]he Commission has broad and plenary authority to prevent waste, protect correlative rights, and regulate wastewater injection.” Brief at 10. Of course, where there is no waste – because there is no proof that the oil is capable of being “ultimately recovered,” NMSA 1978, § 70-2-3(A) – the Commission may not exercise that authority, *see Cont'l Oil Co.*, 1962-NMSC-062, ¶ 11; *Sims*, 1963-NMSC-103, ¶ 10.

Rice also largely agrees that “the Oil and Gas Act must be applied in a manner that effectuates the legislature's intent to protect oil and gas resources and the Commission must take all steps reasonably necessary to do so.” Empire Brief at 9. But the Oil and Gas Act itself makes clear the legislature's intent in enacting it: to prohibit waste. *See* NMSA 1978, § 70-2-2 (“The production or handling of crude petroleum oil or natural gas of any type or in any form, or the handling of products thereof, in such manner or under such conditions or in such amounts as to constitute or result in waste is each hereby prohibited.”). So all steps reasonable to effectuate the

intent still require the necessary precondition, that the Commission's actions "must be predicated on the prevention of [] waste." 1963-NMSC-103, ¶ 10. Where the Commission found that there is not evidence to show that the alleged ROZ is recoverable, suspending Goodnight's injection authority is not a reasonable action to prevent waste.

And finally, Rice agrees that the Unitization Act provides to Empire the exclusive rights to produce, store, allocate and distribute the "Unitized Substances," which "are all oil, gas, gaseous substances, sulphur contained in gas, condensate, distillate and all associated and constituent liquid or liquefiable hydrocarbons, other than outside substances, within and produced from the Unitized Formation." Ex. A-4, at 2; *see* Empire Brief at 16 (quoting Hearing Order ¶ 18). Rice agrees that the "Commission is statutorily required to administer" the Statutory Unitization Act. Empire Brief at 15. But like the Commission's authority in the Oil and Gas Act, the Commission's authority under the Statutory Unitization Act is bounded by the requirement that actions under the Statutory Unitization Act must be predicated on waste. *See* NMSA 1978, § 70-7-1 ("The legislature finds and determines that it is desirable and necessary under the circumstances and for the purposes hereinafter set out to authorize and provide for unitized management, operation and further development . . . to the end that . . . waste [is] prevented"). The Commission, of course, recognized Empire's exclusive right to produce hydrocarbons from the EMSU. *See* Hearing Order ¶ A(14) – (27). And based on this recognition, it denied Goodnight's applications for new wells and to increase its injection authority in the Dawson well as inconsistent with its "responsibility . . . to prevent the drowning by water of any stratum or part thereof capable of producing oil." Hearing Order ¶ 41. Where the Commission found that the addition of that hundreds of thousands of barrels per day of produced water "could lead to communication between the Grayburg," where Empire is currently producing oil in secondary

recovery operations, “and San Andres,” where Goodnight intended to inject the additional produced water, is logical and consistent with Empire’s current approved operations to extract oil from the Grayburg. *Id.* ¶ 47. It is equally consistent with the Commission’s finding that that “Empire DID NOT adduce substantial evidence that their correlative rights in the Grayburg are CURRENTLY impaired by Goodnight’s injection into the San Andres.” *Id.* ¶ C. And it is likewise equally consistent with the Commission’s finding that Goodnight’s current approved injection wells do not cause waste of the alleged ROZ, because “there was insufficient evidence presented at the hearing to prove whether the ROZ is recoverable.” *Id.* ¶ D.

Empire’s closing argument in its brief is that the Commission’s proper conclusion that it cannot suspend Goodnight’s injection wells when it found that there is no proof that the alleged ROZ is recoverable “lead[s] to an absurd result.” Empire Brief ¶ iv, at 17. That is not the case. Rather, that conclusion is proper under the Supreme Court’s guidance in *Cont’l Oil Co., Sims*, and other cases interpreting the Oil and Gas Act to confer jurisdiction on the Commission to act only if the action prevents waste (or protects correlative rights). Because waste requires a finding that the targeted activity reduces or tends to reduce the oil “ultimately recovered,” § 70-2-3(A), the Commission’s proper recognition that it cannot – currently, under the record established at the hearing – suspend Goodnight’s injection wells is not an absurd result; it’s the correct result because it’s the result that the Oil and Gas Act demands. *See Cont’l Oil Co., 1962-NMSC-062*, ¶ 11; *Sims, 1963-NMSC-103*, ¶ 10. If at some future point in time, Empire is able to bring an application to the OCD and/or Commission with proof that the alleged ROZ contains oil that may be “ultimately recovered,” § 70-2-3(A), then the Commission may exercise jurisdiction under the Oil and Gas Act and take action based on the prevention of waste (or impairment of

correlative rights). But the Commission cannot do so now based on the findings in the Hearing Order.

In the meantime, Empire may continue to produce from the Grayburg as it has done and plans to continue to do. Empire may analyze core taken from the additional wells for which it sought approval to drill in order to take core samples and prove whether the ROZ exists in Goodnight's injection zone. And if Empire believes it can produce the alleged ROZ, it can apply for the CO2 EOR project. During all of that time, if there is oil in the alleged ROZ that it can prove can be ultimately recovered, Goodnight's injection wells will not affect that oil and "Empire will not suffer substantial harm because the Residual Oil Zone at issue in these consolidated cases, by definition, contain[s] only oil that cannot be mobilized by injection waters." Rehearing Order ¶ 16.

**RESPONSE TO THE OCD'S AND EMPIRE'S BRIEFS
REGARDING THE COMMISSION'S SECOND QUESTION**

OCD and Empire agree, in relation to the second question, that the Hearing Order gives the OCD discretion to implement the order. They disagree on the scope of the OCD's discretion.

Empire, for its part, argues that all the OCD may do to "implement" the Hearing Order is receive notification of the discontinuance of injection operations and the reasons for discontinuance. *See* Empire Brief at 19. While that's certainly appealing in its simplicity; it defies common sense and plain language. To passively receive a document from an operator is not implementation. *See* Merriam-Webster.com, *implement* ("Carry Out; accomplish").

OCD, for its part, asks for more guidance from the Commission on the Commission's order to suspend Goodnight's injection wells, including whether that suspension is "immediate" or is "to occur at a later date." OCD Brief at 12. If immediate, OCD asks for tiered performance deadlines for the shutdown process. *See id.* And if it occurs at a later date, OCD asks the

Commission to implement deadlines for Empire to meet in proposing its CO2 EOR pilot project.

Id.

OCD's requests of the Commission in how to implement the order make sense. They suggest the underlying problem in the Commission's Hearing Order (which the Commission appears to understand given the first question posed to the parties in the Rehearing Order): If no waste is occurring (because oil in an ROZ is by definition immobile with water), and waste will not occur until Empire establishes that the alleged ROZ is recoverable (which the Commission found Empire has not established), why would OCD shut in Goodnight's injection wells?

Getting past that obvious predicament, the OCD's brief suggests that it has the tools and knows the path to suspend Goodnight's injection wells when the time comes. To implement a suspension when appropriately ordered, the OCD should, and may, do so in a tiered performance-deadline process "to ensure the wind-down of injection wells is done in an orderly and safe fashion." OCD Brief at 12. After all, the OCD has "jurisdiction and authority over all matters relating to the conservation of oil and gas and the prevention of waste" NMSA 1978, § 70-2-6(A). Again, given that "the Residual Oil Zone at issue in these consolidated cases, by definition, contain[s] only oil that cannot be mobilized by injection waters," Rehearing Order ¶ 16, there is no reason to suspend Goodnight's injection wells if Empire isn't timely making progress towards permitting a CO2 EOR project (whenever that comes to pass). So if Empire at some point proves that oil in the alleged ROZ is recoverable, and should the Commission find that – with that new evidence – Goodnight's injection wells should be suspended, then the OCD should, and may, set deadlines with which Empire must comply to permit its CO2 EOR project.

Thus, it appears as though, given OCD operations and its duty to prevent waste, OCD has the knowledge and ability to properly implement a suspension order. Nevertheless, OCD

understandably asks the Commission to make plain that when the OCD proceeds with the orderly and safe wind down of Goodnight's injection wells, that procedure properly is "implement[ing]" the Court's Hearing Order. Hearing Order at 13. While Rice believes that is unnecessary, it doesn't oppose the Commission formally directing the OCD to so proceed.

CONCLUSION

Thus, given the Commission's finding that "there was insufficient evidence presented at the hearing to prove whether the ROZ is recoverable," it lacks jurisdiction to order suspension of Goodnight's existing injection wells, and that order is void. For the second question, Order R-24004 provides OCD with discretion in managing a Commission-ordered suspension injection wells to ensure that an orderly shut-in process prevents waste.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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