

**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 BRIEF IN SUPPORT OF GOODNIGHT'S MOTION TO STAY**

On September 21, 2025, Goodnight Midstream Permian, LLC (“Goodnight”) filed its Emergency Motion to Partially Stay Commission Order No. R-24004 (“Motion to Stay”). Goodnight noted that Rice Operating Company (“Rice”) and Permian Line Service, LLC (“Permian”) support the Motion to Stay. On September 26, 2025, the Oil Conservation Commission (“Commission”) filed its Order on Emergency Post-Hearing Motions (“Motions Order”), providing to all parties who appeared in this case “an opportunity to file responses to” the Motion to Stay “by NOON on October 3, 2025.” Motions Order ¶ 1 at 3. Rice and Permian, therefore, file this brief in support of the Motion to Stay.

1. The New Mexico Statutes Annotated provide that the Commission is empowered to “prevent waste . . . and protect correlative rights,” including by orders. NMSA 1978, § 70-2-11.

2. Accordingly, the Commission provided to the parties notice that the hearing would concern:

(A) Whether the granting of the application[s] by Goodnight would (1) impair correlative rights or cause waste, pursuant to § 70-2-11; . . . and

(B) Whether the granting of the applications by Empire would prevent the impairment of correlative rights or waste, pursuant to § 70-2-11.

Tr. Vol. IV, at 503:11-504:2 (modifying ¶ 2 of the Joint Order on the Motion for the Scope of the Hearing (filed Jul. 2, 2024)).

3. The definition of “waste” is found in NMSA 1978, § 70-2-3, which provides that, in addition to its ordinary meaning, underground waste includes waste as it is “generally understood in the oil and gas business,” and includes operation of that business “in a manner to

reduce or tend to reduce the total quantity of crude petroleum oil or natural gas *ultimately recovered* from any pool.” (Emphasis added.)

4. The definition of “correlative rights” is found in NMSA 1978, § 70-2-33(H), which relates to each owner’s opportunity to produce “without waste” the owner’s share of the oil or gas or both, but only “so far as *it is practicable* to do so.” (Emphasis added.)

5. OCC Order No. R-24004, which was issued after the Hearing on these matters, provides “Empire the opportunity to establish a CO2 EOR pilot project within a period of 3 years to ascertain the recoverability of the ROZ and return to the Commission with further data/analysis.” OCC Order No. R-24004 at 12. The Commission made clear that it based this on an exchange during the Hearing between the Commissioners and Empire witness Jack Wheeler, in which Mr. Wheeler said that – *after* “consent from the Commission to establish and EOR project and . . . committed capital from [Empire],” Empire can “do it within a two-year period.” OCC Order No. R-24004 ¶¶ 64-65. Finally, OCC Order No. R-24004 “[s]uspends existing Goodnight’s injection wells . . . in order to provide Empire with the opportunity to establish the CO2 EOR pilot project.”

6. OCC Order No. R-24004 does not specify when or any certain date that suspension is to happen.

7. Goodnight raised this issue during the September 12, 2025 Special Hearing, in which the Commission filed OCC Order No. R-24004. *Cf.* Motion to Stay at 2 n.2. As Goodnight points out in the Motion to Stay, the Commission, appropriately, made clear that it delegated implementation of the order, including the suspension, to the Oil Conservation Division (“Division”). Motion to Stay at 2.

8. Implicit in OCC Order No. R-24004, paragraphs 64-65, is that the suspension and pilot project relief that the Commission granted was raised *sua sponte* by Commissioner Ampomah. For example, OCC Order No. R-24004 quotes from the transcript in which Commissioner Ampomah raises that idea, and, in response, Mr. Wheeler states: “That is the most fabulous suggestion I’ve heard this whole ten days of hearing.” OCC Order No. R-24004 ¶ 64. While there is nothing inherently wrong with raising the idea, by nature of the Commission’s *sua sponte* raising this possible relief, the issues attendant to a CO2 EOR pilot project, including whether suspension of Goodnight’s injection wells is proper, practical, and prevents waste and protects correlative rights at all – let alone when that suspension should happen if it meets these jurisdictional prerequisites for relief – were not briefed and were not discussed at the Hearing. The Commission was wholly without aid from the parties to address and fully appreciate these important issues.

9. And that Empire didn’t request suspension of Goodnight’s wells while it researched, studied, and then applied for a CO2 EOR project – or mention that possibility anywhere before the Commission raised the idea during the hearing –makes perfect sense. Empire’s expert consulting engineer, L. Stephen Melzer, for the last 22 years “directed much of [his] research into zones below the producing oil/water contacts . . . , now commonly understood to be residual oil zones.” Empire Direct Testimony Exhibit C ¶ 3. As Mr. Melzer states in his direct testimony: ROZs are by definition zones where oil is left behind after “Mother Nature’s water floods,” and is “immobile to water[,] hence the term residual (to water flood) oil applied to the swept zones (ROZs).” Empire Ex. C ¶ 5.

10. In other words, by definition, oil in an ROZ will not be mobilized – or affected – by Goodnight’s injection of produced water. Thus, not surprisingly, this reality that injected

water will not affect the ROZ was recognized by every witness asked about it at the hearing. *See* Apr. 10, 2025 Tr., at 86:3-6 (West); Apr. 23, 2025 Tr., at 226:3-23 (McBeath); Feb. 26, 2025 Tr. 522:13-18; Apr. 21, 2-25 Tr., at 253:3-20.

11. So even if, in three years, Empire proves that there exists an ROZ in Goodnight's disposal zone, which is producible, and which is producible in paying quantities, Goodnight's injection of produced water during that time will not have in anyway affected the alleged ROZ as it exists today.

12. OCC Order No. R-24004 provides as the basis for suspending Goodnight's injection permits that the injection allegedly will interfere with a CO2 EOR flood and its economics. *See* OCC Order No. R-24004 ¶ 40. As the above shows, however, the testimony at the hearing was (unsurprisingly) undisputed that – if there exists an ROZ, which is producible – then injection of produced water until the time that Empire may be approved to attempt to recover that oil via CO2 injection will not affect the ROZ.

13. To properly allow Goodnight to continue with injection unless and until Empire is approved to conduct a CO2 EOR project and commences that project is consistent with the Commission's findings in OCC Order No. R-24004. The Commission found in OCC Order No. R-24004 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." OCC Order No. R-24004 ¶ C, at 9. And the Commission found that the evidence established that Goodnight's injection should cease only to prevent adversely affecting economics of the CO2 EOR project once that project commences: "Goodnight's SWD wells cannot dispose of water when Empire's *active* CO2 flood *is being performed* without adversely effecting [sic] economics." OCC Order No. R-24004 ¶ 40 (emphasis added).

14. Given that continued injection by Goodnight under its permits is not affecting Empire's current production and does not affect the oil in the ROZ, suspending the injection permits before Empire is properly approved to commence a CO2 EOR project and until "Empire's active CO-2 flood is being performed," *id.*, does not cause waste or impair correlative rights. *Cf.* § 70-2-11. Instead, suspending Goodnight's injection permits before Empire has an approved CO2 EOR project and commences operations would be arbitrary and capricious, serving only to prejudice and penalize Goodnight.

15. Based on the evidence at the Hearing, therefore, the Commission properly should stay the suspension of Goodnight's injection permits unless and until Empire is properly approved to commence a CO2 EOR recovery project.

Respectfully submitted,

PEIFER, HANSON, MULLINS & BAKER, P.A.

By: /s/ Matthew M. Beck

Matthew M. Beck

P.O. Box 25245

Albuquerque, NM 87125-5245

Tel: (505) 247-4800

Fax: (505) 243-6458

Email: mbeck@peiferlaw.com

*Attorneys for Rice Operating Company and
Permian Line Service, LLC*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing was served to counsel of record by electronic mail this 3rd day of October 2025, as follows:

Corey F. Wehmeyer
Santoyo Wehmeyer, P.C.
IBC Highway 281 N. Centre Bldg.
12400 San Pedro Avenue, Suite 300
San Antonio, Texas 78216
(210) 998-4190
cwehmeyer@swenergyllaw.com

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

Ernest L. Padilla
Padilla Law Firm, P.A.
P.O. Box 2523
Santa Fe, NM 87504
(505) 988-7577
padillalawnm@outlook.com

Dana S. Hardy
Jaclyn M. McLean
Hardy McLean
125 Lincoln Ave., Suite 223
Santa Fe, NM 87501
(505) 230-4426
dhardy@hardymclean.com
jmclean@hardymclean.com

Attorneys for Empire New Mexico, LLC

Michael H. Feldewert
Adam G. Rankin
Paula M. Vance
Post Office Box 2208
Santa Fe, NM 87504
(505) 998-4421
mfeldewert@hollandhart.com
agrarkin@hollandhart.com
pmvance@hollandhart.com

Attorneys for Goodnight Midstream Permian, LLC

Miguel A. Suazo
Sophia A. Graham
Kaitlyn A. Luck
Beatty & Wozniak, P.C.
500 Don Gaspar Ave.
Santa Fe, NM 87505
(505) 946-2090
msuazo@bwenergylaw.com
sgraham@bwenergylaw.com
kluck@bwenergylaw.com

Attorneys for Pilot Water Solutions SWD, LLC

Jesse Tremaine
Chris Moander
Assistant General Counsels
New Mexico Energy, Minerals, and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
(505) 741-1231
(505) 231-9312
jessek.tremaine@emnrd.nm.gov
chris.moander@emnrd.nm.gov

Attorneys for Oil Conservation Division

PEIFER, HANSON, MULLINS & BAKER, P.A.

/s/ Matthew M. Beck
Matthew M. Beck