

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

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

CASE NO. 24123

**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

**EMPIRE NEW MEXICO LLC'S BRIEF IN SUPPORT OF ITS INITIAL BRIEF IN
RESPONSE TO ORDER ON LIMITED REHEARING**

TABLE OF CONTENTS

I. INTRODUCTION1

II. ARGUMENT4

 A. Empire’s Response on Issue 1: The Commission has legal authority to suspend Goodnight’s existing injection permits to provide Empire with the opportunity to establish a CO₂ EOR pilot project even if there was insufficient evidence presented at hearing to prove the ROZ is recoverable.....4

 1. The Commission has authority to suspend Goodnight’s permits under 19.15.26.10 NMAC and NMSA 1978, § 70-2-12(B) without a concomitant finding of “recoverability.”5

 2. The Commission already recognized the recoverability of hydrocarbons within the EMSU and has authority to suspend Goodnight’s permits under the Statutory Unitization Act.....7

 3. The Commission’s finding of future impairment or waste within the EMSU is also a sufficient basis to suspend Goodnight’s permits under the OGA.8

 4. The cases relied on by Goodnight in its Brief in Chief are not applicable.11

 B. Response to Issue 2: Authority and Discretion of the Division Under Order R-2400412

III. CONCLUSION.....13

Empire New Mexico, LLC (“Empire”), by and through its undersigned counsel, submits the following Response as directed by the Oil Conservation Commission’s (“Commission”) Order Partially Granting Goodnight Midstream Permian, LLC’s (“Goodnight”) Motion for Rehearing; Denying Empire’s Motion for Rehearing; Granting Goodnight’s Motion for Stay; Holding Empire’s Motion to Enforce in Abeyance (hereinafter “Rehearing Order”), dated October 17, 2025. In support of its Response, Empire states the following.

I. INTRODUCTION

On October 31, 2025, Empire filed its initial brief addressing two questions raised by the Commission in the Rehearing Order: (1) whether the Commission has the legal authority to suspend Goodnight’s injection wells to allow Empire to establish a CO₂ EOR pilot project where there was insufficient evidence presented at hearing to prove recoverability of the ROZ; and (2) whether the Oil Conservation Division (“OCD” or “Division”) has discretion to manage the suspension of Goodnight’s injection permits such that Empire can establish its CO₂ EOR pilot project.¹ In its initial brief, Empire established that the response to Question No. 1 is “absolutely” and the response to Question No. 2 is “yes,” in part. Even if the Commission believes there was insufficient evidence of ROZ recoverability presented at hearing (a finding Empire disputes), it still has authority to suspend Goodnight’s existing SWD permits to allow Empire the fair opportunity to establish a CO₂ EOR pilot project. And OCD has authority to implement the ordered suspension and oversee Empire’s pilot project, but only has discretion, if any, as provided in the statutes and regulations governing EOR pilot projects. The Suspension Order does not give OCD discretion to determine whether, when, or how to implement the suspension.

¹ Rehearing Order at p. 3, ¶ 9(i)-(ii).

In its brief, OCD responded “yes” to both questions posed by the Commission. With respect to the first question, OCD correctly states that the Commission is “duty-bound to prevent waste and protect correlative rights . . . and to do ‘whatever may be reasonably necessary to carry out the purposes of the OGA to advance those duties.’”² In OCD’s view, with respect to SWD permits, the Commission also has broad authority to:

- prevent the drowning by water of any stratum or part thereof capable of producing oil or gas or both oil and gas in paying quantities and to prevent the premature and irregular encroachment of water or any other kind of water encroachment that reduces or tends to reduce the total ultimate recovery of crude petroleum oil or gas or both oil and gas from any pool;³
- and
- regulate the disposition, handling, transport, storage, recycling, treatment and disposal of produced water during, or for reuse in, the exploration, drilling, production, treatment or refinement of oil or gas, including disposal by injection pursuant to authority delegated under the federal Safe Drinking Water Act, in a manner that protects public health, the environment and fresh water resources.⁴

With respect to the second question, OCD believes that it possesses the discretion to manage the ordered suspension of Goodnight’s injection permits and Empire’s CO₂ EOR pilot project, but OCD seeks additional clarification from the Commission as to the contours of the suspension and pilot project. Empire will discuss those concerns below.

In their respective briefs, Goodnight agrees that OCD has the authority to manage the suspension of Goodnight’s wells and oversee Empire’s CO₂ EOR pilot project;⁵ Rice Operating Company and Permian Line Service, LLC (collectively, “Rice”) declined to address the question.⁶

² Oil Conservation Division’s Brief Per the OCC’s October 17, 2025 Order (“OCD Brief”), at 4.

³ § 70-2-12(B)(4).

⁴ § 70-2-12(B)(15).

⁵ Goodnight Midstream Permian, LLC’s Rehearing Brief in Chief (“Goodnight Brief”), at 20-22.

⁶ Rice Operating Company and Permian Line Service, LLC’s Rehearing Brief (“Rice Brief”), at 11.

With respect to the first question, however, both Goodnight and Rice argue in support of largely unfettered wastewater disposal operations within the State of New Mexico. While Goodnight's and Rice's positions are unsurprising, their arguments contravene the Oil and Gas Act ("OGA") and Statutory Unitization Act ("SUA") and run counter to the constitutional directive that the State's natural resources, including oil and gas, be protected for the benefit of the State's citizens. And it would be dangerous and destructive to the State of New Mexico and its natural resources to give harbor and precedent to Goodnight's and Rice's positions.

On November 6, 2025, Pilot Water Solutions SWD, LLC ("Pilot") filed its rehearing brief. Pilot's brief is nearly a week past the October 31, 2025 deadline for briefs set by the Commission. Pilot offers no explanation for the late filing and did not seek leave of the Commission for an extension of time to file. As such, Pilot's brief should not be considered by the Commission. To the extent that the Commission is inclined to consider Pilot's arguments, Empire notes that Pilot's brief merely restates Goodnight's arguments, which, as demonstrated below, are without merit.

The Commission should adopt Empire and OCD's positions regarding the first question and affirm that Goodnight's existing injection permits are suspended. With respect to the second question, no party disputes OCD's authority to manage the suspension or pilot project. Where the parties vary is whether, and to what extent, OCD has discretion in exercising its authority. While Empire's position is that OCD lacks discretion in implementing the ordered suspension, to the extent the Commission is inclined to address concerns raised by OCD or Goodnight with respect to the scope of OCD's discretion, Empire urges the Commission to impose at most a 30-day deadline for Goodnight to suspend operations. And Empire suggests an alternative framework for implementation of its CO₂ EOR pilot project.

II. ARGUMENT

A. **Empire's Response on Issue 1: The Commission has legal authority to suspend Goodnight's existing injection permits to provide Empire with the opportunity to establish a CO₂ EOR pilot project even if there was insufficient evidence presented at hearing to prove the ROZ is recoverable.**

It was apropos that the Commission ordered briefs due on Halloween, as Goodnight's brief is replete with the same tricks that have been reargued by Goodnight and rejected by the Commission (and OCD) both in this case and in other Goodnight SWD matters. By contrast, Empire does not seek to disguise or obscure what is clear and obvious in the plain language of the OGA and SUA: that Goodnight's wastewater operations must be stopped as its wastewater is migrating out of the disposal zone and causing waste and impairing correlative rights throughout the unitized formations by reducing or tending to reduce recoverable hydrocarbons.

Goodnight opens its brief with nearly seven pages of background information regarding the operational histories of the parties that is wholly irrelevant to the two narrow questions posed by the Commission. Goodnight's attempts to obfuscate the issues by attempting to generate sympathy should be rejected by the Commission. Recall it was Goodnight that chose to locate its SWD wells within another operator's producing unit and even went so far as to drill an additional well during this proceeding.⁷ At hearing, Goodnight witness Nate Alleman conceded that Goodnight had actual knowledge of Empire's unit and associated rights but proceeded anyway.⁸ Goodnight knowingly took the risk and must now bear the consequences.

Beyond lack of relevance, Goodnight presents cherry-picked testimony and exhibits that misrepresent the evidence. For example, Goodnight relies on its cross-exhibits to assert that Empire is failing financially,⁹ but Empire witness Jack Wheeler unequivocally testified that "we

⁷ Verlander SWD Well No. 1 (API#30-025-50632).

⁸ 04/24 Tr. 56:19-58:14.

⁹ Goodnight Brief at 7.

have no concern here that the [Empire's] not going to be able to continue to fund its operations"¹⁰ and that Empire "absolutely had the money to be able to fund operations in New Mexico as a very valuable asset."¹¹ Goodnight similarly misstates the evidence regarding whether Empire can begin operations while Goodnight's wastewater injection operations are ongoing.¹² However, the Commission has already correctly found that "Goodnight's SWD wells cannot dispose of water when Empire's active CO₂ flood is being performed without adversely effecting economics."¹³

Straying even farther afield, Goodnight wildly calls into question the very existence of a ROZ.¹⁴ But as the Commission already found (and Goodnight was forced to concede at hearing), a ROZ exists within the Grayburg and San Andres.¹⁵ Indeed, Goodnight's own evidence confirmed that oil saturation exists throughout the San Andres.¹⁶ The Commission should ignore Goodnight's latest tricks and focus instead on whether the Commission's broad authority and discretion is constrained and encumbered by a "recoverability" requirement. As demonstrated below, no such constraint exists. And even if it did, the evidence presented at hearing established that the ROZ is both technically and economically recoverable. For these reasons, the Commission's Suspension Order should stand as written.

1. The Commission has authority to suspend Goodnight's permits under 19.15.26.10 NMAC and NMSA 1978, § 70-2-12(B) without a concomitant finding of "recoverability."

As Empire has repeatedly emphasized in its briefing, the Commission's authority to regulate injection to prevent harm to New Mexico's natural resources (including oil and gas) is broad. Indeed, the Legislature itself has specifically empowered the Commission "to do whatever

¹⁰ 04/08 Tr. 234:8-10.

¹¹ *Id.* 237:1-3.

¹² Goodnight Brief at 6-7.

¹³ Suspension Order, ¶ 40.

¹⁴ Goodnight Brief at 7.

¹⁵ Suspension Order, ¶ II.B.

¹⁶ 04/21 Tr. 242:17-243:14.

may be reasonably necessary to carry out the purpose of [the Oil and Gas Act], *whether or not indicated or specified in any section hereof.*”¹⁷ In its briefing, OCD likewise agrees that the Commission’s authority under the OGA supports the findings and conclusions in the Commission’s Suspension Order.¹⁸

Goodnight and Rice cannot hide from the injection rule at 19.15.26.10(E) NMAC, which expressly authorizes the restriction of injection wells “that have exhibited failure to confine injected fluids to the authorized injection zone or zones.” Further, the Commission has authority “to prevent crude petroleum oil, natural gas or water from escaping from strata in which it is found into other strata.”¹⁹ While Goodnight attempts to read limiting language into these provisions to benefit it and Rice’s commercial wastewater operations, the rules of statutory construction require these provisions be given effect as written and to align with the purpose behind the OGA.²⁰ Moreover, to the extent there could possibly be any question regarding the meaning of these provisions, the Commission should construe them in favor of the protection of the State’s natural resources and not in favor of the injection of wastewater.²¹

Here, in its Suspension Order, the Commission found that the modeling created by Dr. James Buchwalter demonstrated to a reasonable degree of certainty that water is moving from the San Andres zone, up into Empire’s oil producing Grayburg zone.²² Goodnight was unable to dispute this evidence at hearing.²³ Because Goodnight’s injected wastewater is migrating out of

¹⁷ NMSA 1978, § 70-2-3(A).

¹⁸ OCD Brief at 4.

¹⁹ NMSA 1978, § 70-2-12(B)(2) (2019).

²⁰ *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 11, 309 P.3d 1047; *Maes v. Audubon Indem. Ins. Grp.*, 2007-NMSC-046, ¶ 11, 142 N.M. 235, 164 P.3d 934; *Johnson v. N.M. Oil Conservation Comm’n*, 1999-NMSC-021, ¶ 27, 127 N.M. 120, 978 P.2d 327; *N.M. Mining Ass’n v. N.M. Water Quality Control Comm’n*, 2007-NMCA-010, ¶ 12, 141 N.M. 41, 150 P.3d 991.

²¹ *Hartman v. Texaco Inc.*, 1997-NMCA-032, ¶ 17, 123 N.M. 220, 937 P.2d 979; *N.M. Mining Ass’n*, 2007-NMCA-010, ¶ 12.

²² Suspension Order, ¶¶ 47-48; Empire Ex. M-1 to M-20.

²³ Suspension Order, ¶ 49; 04/24 Tr. 197:2-19.

the authorized zone, the Commission has authority to suspend Goodnight's permits under 19.15.26.10 NMAC and NMSA 1978, § 70-2-12(B).

2. The Commission already recognized the recoverability of hydrocarbons within the EMSU and has authority to suspend Goodnight's permits under the Statutory Unitization Act.

Neither Rice nor Goodnight discuss or even mention the Statutory Unitization Act ("SUA")²⁴ in their respective briefs. However, the Commission's and OCD's prior findings on the EMSU are also dispositive here. The recoverability of hydrocarbons within the EMSU has already been recognized by the Commission in its orders approving, and extending, the EMSU.²⁵ More recently, the OCD similarly recognized the recoverability of hydrocarbons within the EMSU in its order denying Goodnight's application for authority to inject produced water into the San Andres Formation using the proposed Piazza well, concluding that "Empire has provided sufficient evidence for continued assessment of the Unitized Interval for potential recovery of any additional hydrocarbon resources remaining in place."²⁶

Here, the Commission correctly found that Goodnight's "injection of hundreds of thousands of barrels a day" of wastewater conflicts with Empire's exclusive rights under the Unit Agreement.²⁷ The SUA requires the Commission to protect the interests of the State, BLM, and interest owners within the unitized interval by suspending the operations of Goodnight within the EMSU, as only Empire is lawfully authorized to operate wells within the EMSU's unitized interval.²⁸ The Commission need not make findings as to recoverability to justify its action under the SUA—those findings have already been made and the Unit Agreement and corresponding

²⁴ NMSA 1978, §§ 70-7-1 to -21 (1975, as amended through 2024).

²⁵ See Order Nos. R-7765, 7767.

²⁶ Order No. R-22869-A.

²⁷ *Id.* ¶¶ 40-41.

²⁸ § 70-7-1; see also Suspension Order ¶ 18, 26-27, 40-41.

orders support suspension of Goodnight's permits (as they also supported denial of Goodnight's new applications). For at least these reasons, the Commission's Suspension Order should stand as written.

3. The Commission's finding of future impairment or waste within the EMSU is also a sufficient basis to suspend Goodnight's permits under the OGA.

The first, and often only step, in statutory construction is to "look first to the plain language of the statute, *giving the words their ordinary meaning*, unless the Legislature indicates a different one was intended."²⁹ Where, as here, "statutory language is clear and unambiguous, [the Commission] must give effect to that language and refrain from further statutory interpretation."³⁰

The OGA defines "waste" in part as:

*...the inefficient, excessive or improper, use or dissipation of the reservoir energy, including gas energy and water drive, of any pool, and the locating, spacing, drilling, equipping, operating or producing, of any well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from any pool[.]*³¹

Waste is integral to correlative rights, which afford the "*opportunity . . . to produce without waste the owner's just and equitable share of the oil or gas or both.*"³² Deprivation of an owner's opportunity to recover its equitable share of oil and/or gas causes waste if it reduces or tends to reduce the total hydrocarbons ultimately recovered.³³ Likewise, Section 70-2-12(B)(4) obligates the Commission "*to prevent the premature and irregular encroachment of water or any other kind of water encroachment that reduces or tends to reduce the total ultimate recovery of crude petroleum oil or gas or both oil and gas from any pool.*" (emphasis added).

²⁹ *Marbob Energy Corp. v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, ¶ 9, 146 N.M. 24, 206 P.3d 135 (emphasis added).

³⁰ *Id.*

³¹ § 70-2-3(A) (emphasis added).

³² § 70-2-17(A) (emphasis added).

³³ *See* § 70-2-3(A).

The operative phrase here is “tends to reduce.” If the language is given its plain and ordinary meaning, it unquestionably covers the Commission’s findings here. The Commission expressly found that “Empire DID adduce substantial evidence of the possibility of FUTURE impairment of correlative rights or waste in the EMSU.”³⁴ That is to say, the mere *possibility* of future waste meets the definition of “waste” under the OGA as well as the standard for prevention of water encroachment under Section 70-2-12(B). The ordinary meaning of “tend” is “to lead or conduce, as to some result or resulting condition.”³⁵ Case law echoes this construction, *i.e.*, that to “tend to” something is to move in that direction.³⁶

This case presents a prime example of the reasons the Legislature chose to empower the Commission to take all steps reasonably necessary to protect the future possibility of harm to the State’s hydrocarbon resources. As demonstrated at hearing, injected wastewater is undisputably migrating throughout the unitized formations, resulting in scale, corrosion, and pressure increases.³⁷ This has significant, irreversible long-term impacts, as Goodnight’s current operations are adding economic barriers that may be prohibitive to a future tertiary recovery project, and beyond that, threaten to close off the ROZ entirely if wastewater operations are allowed to continue.³⁸ Beyond that, confining waste or prevention of water encroachment solely to some sort of present or current recoverability standard ignores technological advances and changes making previously inaccessible hydrocarbons recoverable.

³⁴ Suspension Order ¶ III.A.

³⁵ <https://www.dictionary.com/browse/tend> (last accessed November 5, 2025).

³⁶ *See, e.g., State v. James*, 1990-NMCA-135, ¶ 15, 111 N.M. 473, 806 P.2d 1063 (finding that the word “tend” means that the conduct at issue need not result in an actual harm, but merely the potential to cause harm); *State v. Hogie*, 454 N.W.2d 501, 503 (N.D. 1990) (“[T]ends’ indicates tendency, not certainty.”); *Chandler v. State*, 232 S.W. 318, 318 (Tex. 1921), *aff’d sub nom. Chandler v. State of Texas*, 260 U.S. 708, 43 S. Ct. 247, 67 L. Ed. 474 (1923) (“When we look to the dictionary for a definition of the word ‘tend,’ we find it means: ‘To move in a certain direction;’ ‘to have a leaning;’ ‘to contribute to.’”).

³⁷ 04/11 Tr. 43:7-25.

³⁸ 02/24 Tr. 38:13-39:15; 04/09 Tr. 160:7-17, 180:20-188:18, 190:15-191:17; 04/11 Tr. 43:7-25.

The Commission and OCD have both already found that a ROZ exists in the San Andres and Grayburg.³⁹ As thoroughly discussed in Empire's prior briefing (and previously acknowledged by both the Commission and OCD), the ROZ is both technically and economically recoverable.⁴⁰ In Rice and Goodnight's view, it is immaterial that wastewater injection is presently negatively impacting the unitized formations, and Goodnight's operations should be allowed wholly unconstrained unless Empire makes some sort of additional, nebulous "recoverability" showing beyond what has already been demonstrated at hearing and largely conceded by Goodnight's witnesses. This is not what the law states or requires and the Commission should decline to read additional language into the OGA or SUA to otherwise limit its broad authority and discretion. The Legislature entrusted and charged the Commission with its mission to protect the State's natural resources and avoid waste. The Commission should not adopt Goodnight and Rice's invitation to shirk the duties entrusted to it by the Legislature, because to do so would establish a dangerous precedent of waste. In short, the Commission has made all the findings required by the law to suspend Goodnight's permits and should act accordingly.

Lastly, to the extent any question exists as to recoverability, the Commission appropriately acted to protect the State's oil and gas resources by allowing Empire to engage in a CO₂ EOR pilot project. To hold otherwise would effectively entomb \$5.5 billion in oil and gas resources underground, sealed and unavailable in perpetuity. The Commission and the State get only one opportunity to exercise this right: this and now is that opportunity.

³⁹ See Order Nos. R-7765, 7767; Order No. R-22869-A; Suspension Order at ¶ II.B.

⁴⁰ 02/27 Tr. 802:9-804:19, 848:20-849-9, 856:14-857:7, 862:20-864:6; 02/28 Tr. 1164:2-19; 04/09 Tr. 154:17-156:18; 04/09 Tr. 154:23-155:7; 04/11 Tr. 57:11-20, 169:16-20, 171:3-10, 171:23-172:3, 186:25-188:1, 188:13-15; 04/23 Tr. 137:13-22, 168:24-169:3.

4. **The cases relied on by Goodnight in its Brief in Chief are not applicable.**

Goodnight's brief again recycles arguments regarding prior Commission and OCD orders that it asserts support its narrow interpretation of the OGA.⁴¹ However, these cases are readily distinguishable. The decisions Goodnight cites involve instances where parties objecting to SWD wells: (1) failed to present evidence that the injection intervals contemplated in the applications contained recoverable hydrocarbons,⁴² or (2) the proposed SWD wells targeted an injection interval well above the producing formation.⁴³ Neither scenario is present here.

Goodnight also claims that the orders it cites support the proposition that the OCD will engage in a cost-benefit analysis to balance “the competing interests of (a) the loss of a small volume of oil and gas, which was not producing in paying quantities, against (b) the more substantial economic benefit of supporting new offsetting production.”⁴⁴ In that case, one of the parties objecting to the application protested “on the grounds that the well is still producing in paying quantities.”⁴⁵ However, the objecting party failed to present any evidence at hearing.⁴⁶ And the only evidence presented at hearing was that the producing well was a “stripper well,” because “the cost of producing the well to abandonment will be greater than the revenues generated”—in other words, the well was not producing in paying quantities.⁴⁷ As Empire has pointed out repeatedly, contrary to Goodnight's representations, there was no weighing of competing interests because there was no evidence to balance, and no evidence to show that the well sought to be converted to an injection well was even remotely producing in paying quantities.

⁴¹ Goodnight Brief in Chief at 13-14, 17-18.

⁴² See Order Nos. R-11855-B, R-13889 (Goodnight Ex. 9, 10).

⁴³ See Order Nos. R-7637, R-13922, R-13958 (Goodnight Ex. 11, 12, 13).

⁴⁴ Goodnight Brief in Chief at 14.

⁴⁵ See Order No. R-13922 at ¶ 11 (Goodnight Ex. 12).

⁴⁶ *Id.* ¶ 8.

⁴⁷ *Id.* ¶¶ 11, 12.

In contrast, there is no dispute that a ROZ exists in the San Andres and Grayburg.⁴⁸ Empire and Goodnight witnesses both agree the ROZ is technically recoverable.⁴⁹ Moreover, while Empire is not required to prove the economics of its tertiary recovery project to prevail, it has demonstrated the ROZ is sufficiently oil saturated to be recoverable through CO₂ flooding, that a CO₂ flooding project in the EMSU should yield 18% and may be closer to 30% recovery of the ROZ, and that this project would result in \$1.1 billion in royalties and a half billion dollars in taxes paid to the State of New Mexico.⁵⁰ As a result, the decisions cited by Goodnight do not support its position and should not be relied on by the Commission.

B. Response to Issue 2: Authority and Discretion of the Division Under Order R-24004

No party disputes OCD's authority to carry out the Commission's directive to implement the suspension of Goodnight's permits and manage Empire's CO₂ EOR pilot project. At this point, Empire believes it is premature to outline the pilot project deadlines and notes that the OCD's proposed outline is for a full EOR project, **not** a pilot project.⁵¹ To the extent the Commission is inclined to adopt a framework, Empire suggests the following alternative:

- One year following shut-in of SWD wells within the EMSU for Empire to submit EOR Pilot Project to the Division;
- Six months following approval of EOR Pilot Project by Division for submittal of permits; and
- One year to implement any permits.

Empire further states that the Suspension Order called for the immediate suspension of Goodnight's SWD permits. However, to the extent the Commission is inclined to adopt deadlines

⁴⁸ See, e.g., 04/25 Tr. 104:22-25.

⁴⁹ 4/11 Tr. 186:25 – 188:1; 04/23 Tr. 137:13-22.

⁵⁰ See 02/27 Tr. 862:20-864:6; 02/28 Tr. 1164:2-19; 04/09 Tr. 154:3-7, 154:17-156:18; Empire Exs. I at ¶¶ 30-33, I-26 through I-29.

⁵¹ OCD Brief at 15-16.

for the suspension of Goodnight's wells as requested by OCD,⁵² a deadline of less than 90 days should be adopted due to the prolonged nature of these proceedings. Empire suggests a deadline of 30 days for compliance is more than reasonable. Empire desires to commence the EOR Pilot Project authorized by the Commission in its Suspension Order and cannot do so until Goodnight's injection is actually suspended. So, no ambiguity exists here: If Goodnight's injection is not actually suspended, no EOR tertiary project in the San Andres can be executed. Goodnight will have forever condemned Empire's and the State of New Mexico's minerals in the San Andres formation within the EMSU.

III. CONCLUSION

The Commission should reject Goodnight's and Rice's efforts to eviscerate Commission and OCD authority to regulate the injection of wastewater in New Mexico. Rather, New Mexico law is clear that the Commission has authority to suspend Goodnight's permits to allow Empire to proceed with its CO₂ project. The Commission's decision to suspend Goodnight's permits, as set out in Order R-24004, is correct and must stand.

Respectfully submitted,

By: /s/ Dana S. Hardy

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

⁵² *Id.* at 12.

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

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@swenergylaw.com

Attorneys for Empire New Mexico, LLC

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 November 7, 2025.

Michael H. Feldewert
Adam G. Rankin
Nathan R. Jurgensen
Julia Broggi
Paula M. Vance
Holland & Hart LLP
P.O. Box 2208
Santa Fe, New Mexico 87504-2208
Telephone: (505) 986-2678
mfeldewert@hollandhart.com
agrarkin@hollandhart.com
nrjurgensen@hollandhart.com
jbroggi@hollandhart.com
pmvance@hollandhart.com
***Attorneys for Goodnight Midstream
Permian, 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***

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***

/s/ Dana S. Hardy
Dana S. Hardy