

**STATE OF NEW MEXICO
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES
OIL CONSERVATION COMMISSION
CASE NO. 23775**

**APPLICATIONS OF EMPIRE NEW MEXICO LLC
TO REVOKE INJECTION AUTHORITY,
LEA COUNTY, NEW MEXICO**

**CASE NOS. 24021-24024
and 24026-24027**

**EMPIRE NEW MEXICO LLC’S REPLY IN OPPOSITION TO THE OIL
CONSERVATION DIVISION’S RESPONSE TO THE MOTION TO LIFT STAY**

Empire New Mexico LLC (“Empire”) submits this Reply in Opposition to the Oil Conservation Division’s (“OCD”) Response to the Motion to Lift Stay. As demonstrated below, OCD’s arguments are without merit. In support of its Reply, Empire states the following.

I. ARGUMENT

Unsurprisingly, OCD’s position with respect to Empire’s motion is in lockstep with Goodnight’s. OCD opposes lifting the stay on the grounds that the motion is “premature” and “unripe.” OCD Response at 4. OCD also claims that it cannot meaningfully respond to Empire’s motion because Empire did not identify case law in support of its request to lift the stay. *Id.* These arguments are easily rejected.

As an initial matter, the decision to grant or lift a stay is wholly within the discretion of the adjudicatory body. *Belser v. O’Cleireachain*, 2005-NMCA-073, ¶ 3, 137 N.M. 623, 114 P.3d 303. To that end, Empire acknowledges that, much like its decision to stay the above cases, the decision to lift the stay is also within the discretion of the Commission. Accordingly, Empire did not need to identify case law to support its motion to lift the stay. On June 20, 2024, the Commission moved, and unanimously decided, to stay the applications pending completion of the final hearing that was set to proceed in September 2024. 06/20/24 Tr. 94:9-11, 94:25-95:12. The Commission

subsequently entered its Joint Order memorializing its decision to stay the application “pending resolution” of the EMSU cases. Since the EMSU cases have been resolved with final hearing having concluded in May 2025 and a final order issued on December 17, 2025, the reason for the stay no longer exists.

To head off any apparent need for OCD to file a surreply to address *Belser*, Empire points out that citing case law in a reply, even if not in the initial motion, is not grounds for filing a surreply. *See, e.g., James v. Boyd Gaming Corp.*, 522 F. Supp. 3d 892, 903-04 (D. Kan. 2021) (“Plaintiff asserts that citing new cases in a reply to support legal theories already raised in an opening brief doesn't warrant a sur-reply. . . . He's right.”). Additionally, Empire notes that it will cite additional legal authority in the discussion below, but those citations directly address arguments made by OCD in its response, and thus also do not constitute grounds for a surreply. *See id.* at 904 (holding that “defendants’ first reason for seeking leave to file a sur-reply fails” because “plaintiff did nothing wrong by responding to the arguments raised in [defendants’] Response and point[ing] out deficiencies in [defendants’] Response” (internal quotation marks and citation omitted)).

Turning to OCD’s argument that Empire’s request to lift the stay is “premature,” Empire has already demonstrated in the EMSU cases that Goodnight’s operations within the EMSU are causing waste and impairing correlative rights. The Commission agreed and ordered that Goodnight’s well permits within the EMSU be suspended. *See* Order Nos. R-24004 and R-24004-A. Empire considers these issues resolved—its concern on appeal is simply whether the Commission’s remedy of suspending Goodnight’s active wells within the EMSU was appropriate rather than permanently revoking the permits. And Empire’s continuing motions practice before the Division and Commission seek proper enforcement of the Commission’s orders and

specifically concern the Division's implementation of the Commission's orders—actions that are expected and permitted even if a case is on appeal, absent a request for stay in the district court by the appealing parties (which has not occurred). *See generally Kelly Inn No. 102, Inc. v. Kapnison*, 1992-NMSC-005, ¶ 33, 113 N.M. 231, 824 P.2d 1033; *High Mesa Gen. P'ship v. Patterson*, 2010-NMCA-072, ¶ 17, 148 N.M. 863, 242 P.3d 430. These cases should also come of no surprise to OCD as they were identified in Empire's presentation to the Commission on May 13, 2026.

Like Goodnight, OCD also now shifts its position on the EMSU and non-EMSU cases. In its original briefing on the scope of the hearing in 2024, OCD maintained that there were no “common issues of law and fact between EMSU and non-EMSU cases.” OCD's Reply in Support of its Motion Concerning the Scope of the Evidentiary Hearing Set for September 23-27, 2024, at 5 (Jun. 13, 2024). Given that position, OCD's current claim that the non-EMSU cases are somehow beholden to the district court's decision on appeal regarding the EMSU cases is confounding. The Commission should disregard those arguments in determining whether it is appropriate to lift the stay regarding the non-EMSU cases.

Lastly, OCD's ripeness argument is not well founded. “The purpose of the ripeness requirement ‘is and always has been to conserve judicial machinery for problems which are real and present or imminent, not to squander it on abstract or hypothetical or remote problems.’” *Am. Fed'n of State v. Bd. of Cnty. Comm'rs of Bernalillo Cnty.*, 2016-NMSC-017, ¶ 18, 373 P.3d 989, 993-94 (quoting *N.M. Indus. Energy Consumers v. N.M. Pub. Serv. Comm'n*, 1991-NMSC-018, ¶ 25, 111 N.M. 622, 808 P.2d 592 (internal quotation marks and citation omitted)). Far from “abstract or hypothetical or remote,” Goodnight's four active wells within two miles of the EMSU (Nolan Ryan, Pedro, Ted, and Yaz) have injected 114,542,108 barrels since 2019 and have averaged 49,663 barrels of water per day disposal during the first three months of 2026. *See Self-Affirmed*

Statement of William West, attached as **Exhibit A**. This is causing irreparable harm to the San Andres ROZ and is pushing water into the Grayburg through natural fractures. *Id.* The time has come to evaluate Goodnight's operations outside the EMSU—OCD and Goodnight's attempts to further delay disposition of these issues should not be countenanced by the Commission. The stay should be lifted and the matter set for a status conference.

II. CONCLUSION

For these reasons, Empire respectfully requests that the Commission lift the stay placed on Case Nos. 24021-24024 and 24026-24027 and set the pending cases for a status conference.

Respectfully submitted,

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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 May 29, 2026.

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SELF-AFFIRMED STATEMENT OF WILLIAM WEST

1. I am over the age of 18. I am a Petroleum Engineer employed as Senior Vice President of Operations for Empire Petroleum Corporation (“Empire”) and have personal knowledge of the matters stated herein. I have previously testified before the New Mexico Oil Conservation Commission (“Commission”), and my credentials as an expert in petroleum engineering were accepted as a matter of record. In short, I graduated from Marietta College with a Bachelor of Science Degree in Petroleum Engineering in May 1999. I began my career with Marathon Oil Company and have been employed in the oil and gas industry since graduation. I have been the Senior Vice President of Operations for Empire Petroleum Corporation since May 2023. I am a Certified Professional Engineer in the State of Wyoming - WY ID # 12599. I have over 25 years of oil and gas experience and have worked in most of the major oil and gas producing basins and States, including New Mexico, during my career.

2. My area of responsibility for Empire includes Lea County, New Mexico. I am responsible for secondary waterflood operations in the Eunice Monument South Unit (“EMSU” or “Unit”) and am working on developing Empire’s tertiary recovery CO₂ Project there. I submit the following information in support of Empire’s Reply in Support of its Motion to Lift Stay and Response in Opposition to Goodnight Midstream Permian, LLC’s (“Goodnight”) Motion to

EXHIBIT A

Dismiss and Reply in Opposition to the Oil Conservation Division's ("OCD") Response to the Motion to Lift Stay.

3. The EMSU waterflood currently produces approximately 720 BOPD; 70,000 BWPD; 500 MCFPD and injects approximately 70,000 BWPD into the unitized Grayburg / San Andres Reservoir. The EMSU 14,189.84-acre Unit was formed December 27, 1984 and water injection began in November 1986. Empire acquired the EMSU in March 2021 from XTO due to its significant CO₂-EOR potential in the San Andres ROZ and Grayburg Main Pay Zone intervals.

4. The unitized interval of the Unit extends from the top of the Grayburg formation to the bottom of the San Andres formation ("Unitized Interval"). The vertical limits of the Unitized Interval are the same as the vertical limits of the Eunice Monument Grayburg-San Andres Pool covering the Grayburg and San Andres formations.

5. After discovering that Goodnight is disposing of enormous volumes of water into the San Andres and has plans to expand disposal operations into the unitized interval, Empire's focus has been to seek support from the Commission to revoke Goodnight's existing SWD permits and to deny Goodnight's new applications.

6. For Goodnight's active and proposed wells within the boundaries of the EMSU (Case Nos. 24123, 23614-23617, 23775, 24018-24020, and 24025), the Commission has denied Goodnight's Applications to drill new disposal wells in Case No. 24123 (Piazza), Case No. 23614 (Gooden), Case No. 23615 (Hernandez), Case No. 23616 (Hodges), and Case No. 23617 (Seaver). Additionally, the September Order denied Goodnight's application to increase injection into the existing Dawson well in Case No. 23775. Finally, the Commission suspended permits associated with Goodnight's injection wells in Case No. 24018 (Dawson), Case No. 24019 (Banks), Case No. 24020 (Sosa), and Case No. 24025 (Ryno). *See* OCC Order R-24004, R-24004-A.

7. Additionally, Goodnight operates four disposal wells within two miles of the EMSU: Ted 28 SWD No. 1, Yaz 28 SWD No. 1, Nolan Ryan SWD #001, and Pedro SWD #001. Wellhead pressures for these wells are increasing and are pressuring up the San Andres, impacting Grayburg and San Andres oil recovery potential in this area. Empire's plume analysis shows that Goodnight's injection into these wells is already reaching the EMSU. Goodnight has two additional wells, the Verlander SWD #001,¹ drilled in December 2024, and the Rocket SWD No. 1, which is permitted, that are not currently active but once operating will further exacerbate this problem and result in waste.

8. Goodnight's four active wells (*i.e.*, Nolan Ryan, Pedro, Ted, and Yaz) outside the EMSU have disposed of 114,542,108 barrels of water since 2019 and have averaged 49,663 barrels of water per day disposal during the first three months of 2026. This is causing irreparable harm to the San Andres Residual Oil Zone ("ROZ") and is pushing water into the Grayburg through natural fractures.

9. At the time of its initial application for authorization to inject into these wells, Goodnight represented that the San Andres is a non-productive zone known to be compatible with formation water from the Bone Spring, Delaware, and Wolfcamp formations. This is incorrect. Empire recently performed a water compatibility study with Delaware Basin produced water and Eunice Monument produced water and the formation of Calcite (CaCO₃) showed to be very high risk at mixing levels as low as 30% Delaware and 70% EMSU. This is impacting the flow capacity of the reservoir and increasing the operating cost for Empire's wells and facilities.

10. Residual oil zones are found within the San Andres, and Empire has the right to recover hydrocarbons within the EMSU. It was demonstrated during the hearing that more than

¹ Goodnight drilled its Verlander SWD despite Empire's pending application at the Commission to revoke the permit for that well.

900 million barrels of oil exists in the San Andres ROZ and that a ROZ is also present in the Grayburg.

11. Further, there is communication between the Grayburg and San Andres intervals through natural fractures and breaches in this area, which allows San Andres water to enter the Grayburg interval. This influx of San Andres water has been documented by water production maps of wells prior to unitization, increased sulfate ion content of the EMSU produced water, and the pressure drop in the San Andres interval, which occurred before water supply well production. Wells in the central portion of the field produced abnormal volumes of water prior to the waterflood, water which could not have originated from edge water drive and could therefore be only San Andres bottom water. The San Andres water contained sulfate ions not present in the Grayburg water at discovery of the field; the Grayburg water contained barium ions. When these two waters mixed barium sulfate was formed in the wells and facilities prior to the use of San Andres water supply wells for the waterflood. The natural fractures have been demonstrated by oriented fracture studies on core in the Grayburg and San Andres.

12. There is no effective barrier between the Grayburg and San Andres within the EMSU or the surrounding area, including the area that includes the proposed Rocket SWD, as demonstrated by the sulfate ion increase, water production increase in portions of the field, and drop in San Andres reservoir pressure. The high salinity disposal water will move over large distances and find a natural fracture or breach in the barrier and begin interfering with EMSU production.

13. The corrosive disposal water injected into the San Andres will travel long distances over a 1, 5, 10, and 20-year period, thus allowing corrosive disposal saltwater to enter the Grayburg interval through natural fractures and breaches between the two intervals. This corrosive water

will then be produced by Empire's oil wells and San Andres water supply wells located at EMSU and AGU (Arrowhead Grayburg Unit). This disposal will not only increase failure rates in wells and facilities but will also prematurely water out Empire's wells.

14. Disposal in these wells is impairing Empire's ability to recover hydrocarbons within the Unitized Interval and thereby adversely affect the correlative rights of Empire and other interest owners in the Unit and result in waste.

15. I understand this Self-Affirmed Statement will be used as written testimony in this case. I affirm that my testimony above is true and correct and is made under penalty of perjury under the laws of the State of New Mexico. My testimony is made as of the date next to my electronic signature below.

/s/ William West
WILLIAM WEST

May 29, 2025
DATE