

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

**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**

**APPLICATION OF GOODNIGHT  
MIDSTREAM PERMIAN, LLC TO AMEND  
ORDER NO. R-7767 TO EXCLUDE THE SAN  
ANDRES FORMATION FROM THE EUNICE  
MONUMENT OIL POOL WITHIN THE  
EUNICE MONUMENT SOUTH UNIT AREA,  
LEA COUNTY, NEW MEXICO.**

**CASE NO. 24277**

**EMPIRE NEW MEXICO, LLC'S  
MOTION TO DISMISS APPLICATIONS TO AMEND ORDERS R-7765 AND R-7767**

Empire New Mexico, LLC, ("Empire") by and through its undersigned counsel of record, hereby moves the New Mexico Oil Conservation Commission ("Commission") to dismiss the following applications of Goodnight Midstream Permian, LLC ("Goodnight"):

- Application to Amend Order No. R-7765 As Amended to Exclude the San Andres Formation from the Unitized Interval of the Eunice Monument South Unit, and Lea County, New Mexico;

- Application to Amend Order No. R-7767 to Exclude the San Andres Formation from the Eunice Monument Oil Pool within the Eunice Monument South Unit Area, Lea County, New Mexico.

### **I. Introduction**

The United States Department of the Interior (“Department”) defines a unit agreement, such as the Eunice Monument South Unit (“the unit agreement”), as “a contract between participating parties for joint development and operation of any oil or gas field where substantial amounts of public lands are involved. It is essentially a contract between private parties, approved by the Department when Federal mineral estates are present, setting forth the rights and liabilities of the parties to the agreement. Stanley Mollerstuen et al., GFS(O&G) 34 (1998), 146 IBLA1, WL 781456. Of course, the New Mexico Commissioner of Public Lands and the Oil Conservation Commission had to also approve the unit agreement before it could become effective.

Federal regulations establish criteria that govern the approval of unit agreements, and the Bureau of Land Management (“BLM”) determined approximately 40 years ago that the unit agreement satisfied those criteria because it was “necessary or advisable in the public interest and is for the purpose of more properly conserving natural resources” *See* 43 C.F.R. § 3183.4(a). The Land Commissioner made the same determination. Pursuant to the Statutory Unitization Act, the Oil Conservation Division or Commission, after proper notice and hearing, reached the same conclusion and complied with the requirements of the Act.

For this discussion, certain definitions and provisions of the unit agreement need to be noted. Specifically, in Section 2 of the unit agreement, the definitions of “Working Interest,” “Working Interest Owner” and “Unitized Formation” demonstrate the futility of Goodnight’s applications.

- "Working Interest" is the right to search for, produce and acquire Unitized Substances whether held as an incident of ownership of mineral fee simple title, under an oil and gas lease, operating agreement, or otherwise held, which interest is chargeable with and obligated to pay or bear, either in cash or out of production, or otherwise, all or a portion of the cost of drilling, developing and producing the Unitized Substances from the Unitized Formation and operations thereof hereunder; Provided that any royalty interest created out of a working interest subsequent to the execution of this Agreement by the owner of the working interest shall continue to be subject to such working interest burdens and obligations.
- "Working Interest Owner" is any party hereto owning a Working Interest, including a carried working interest owner, holding an interest in Unitized Substances by virtue of a lease, operating agreement, fee title or otherwise. The owner of oil and gas rights that are free of lease or other instrument creating a Working Interest in another shall be regarded as a Working Interest Owner to the extent of seven-eighths (7/8) of his interest in Unitized Substances, and as a Royalty Owner with respect to his remaining one-eighth (1/8) interest therein.
- "Unitized Formation" is the interval underlying the unit area which in general terms is from the top of the Grayburg formation to the base of the San Andres formation.

Only a Working Interest Owner with an oil and gas interest in the Unitized Formation can seek and expansion of the Unit. UA at 4, Sec. 4(a), attached as Exhibit B. The corollary also holds true-only a Working Interest Owner with an oil and gas interest in the Unitized Formation can seek a contraction of the Unit. Thus, as explained further below, unless a person or entity is a working interest owner in the unitized formation, that person or entity-like Goodnight-has no say in either the expansion or contraction of the unit. In short, Goodnight lacks standing to bring its applications because it lacks any ownership interest in the unit. Goodnight cannot seek to contract the vertical limits of the Unit and the Eunice Monument Oil Pool, and its applications should be dismissed.

## II. Statement of Facts

1. Empire is the majority owner of the Working Interests and is the Operator under the Eunice Monument South Unit Agreement and the Eunice Monument South Unit Operating Agreement (collectively referred to as the "Agreements").

2. Order No. R-7765 (the "Order"), which was entered by this Commission on December 27, 1984, specifically states on page 9, Paragraph 5:

The Eunice Monument South Unit Agreement and the Eunice Monument South Unit Operating Agreement presented by the applicant as Exhibits 3 and 4, respectively, in this case are hereby incorporated by reference into this order.

3. On December 28, 1984, the Commission entered a Nunc Pro Tunc order, which amended the legal description of the Eunice Monument South Unit Area but did not change or amend any other portions of the Order.

4. The Order granted Gulf Oil Corporation its application for statutory unitization, pursuant to the "Statutory Unitization Act," NMSA 1978, Sections 70-7-1 *et seq.*, of 14,189.84 acres more or less, to be known as the Eunice Monument South Unit. (Order, page 1, ¶ 2)

5. Empire, through mesne conveyances, is the successor in interest to Gulf Oil Corporation with regard to the Eunice Monument South Unit (the "Unit").

6. The Commission further found that no interested party had opposed the horizontal limits (Order, page 2, ¶ 6) or the vertical interval proposed to be unitized. (Order, page 3, ¶ 11)

7. Goodnight does not have a working interest ownership oil and gas or mineral interests in the unit area or in the pool, both of which have identical vertical limits.

8. Goodnight is not a working interest owner in the Unit.

9. Goodnight was not a party to the original proceeding in 1984, nor is it in privity of contract with any of the original working interest owners.

10. Section 4 of the Unit Agreement defines how expansion of the Unit may occur.

(See Affidavit of Jack E. Wheeler, attached hereto as Exhibit A in support of Nos. 7, 8, 9 above).

### **III. Argument and Authorities**

#### **A. Goodnight lacks standing to change the vertical limits of the Unit or the pool.**

Goodnight does not have standing to change the vertical limits of the Unit or the pool. The pool was created in conjunction with the approval of the Unit and to conform to the Unit parameters.

Goodnight is not a signatory to, or a successor in interest to, a signatory on the Agreements. Goodnight is not an aggrieved party to the 1984 Order resulting from the original proceeding. In contrast, Goodnight is an aggrieved party in its application for de novo hearing before the Commission in Commission Case No. 24123 resulting from the Division's denial of its application in Division Case No. 22626.

"Standing is a principle that ensures only those with a legitimate interest can participate in a lawsuit." *Wilson v. Massachusetts Mut. Life Ins. Co.*, 2004-NMCA-051, ¶ 13, 135 N.M. 506, 510, 90 P.3d 525, 529, *overruled on other grounds by Schultz ex rel. Schultz v. Pojoaque Tribal Police Dept.*, 2010-NMSC-034, ¶ 13, 148 N.M. 692, 242 P.3d 259.

New Mexico's appellate courts have consistently held that three elements are necessary to establish standing: injury in fact, causation, and redressability. *See ACLU of N.M. v. City of Albuquerque*, 2008-NMSC-045, ¶ 10, 144 N.M. 471, 188 P.3d 1222. "Our courts have generally required that a litigant demonstrate injury in fact, causation, and redressability to invoke the court's authority to decide the merits of a case." *Deutsche Bank Nat. Tr. Co. v. Johnston*, 2016-NMSC-013, ¶ 13, 369 P.3d 1046, 1050. "If these elements are not met, as a logical matter, a plaintiff

generally cannot show that he or she has stated a cause of action entitling him or her to a remedy.”

*Id.* ¶ 16.

Here, Goodnight has no legitimate legal or property interest in the Unit. It is unable to show any injury in fact, or any causation or redressability. Its applications for authorization to inject salt water into the San Andres formation underlying the Unit do not give Goodnight a property interest in the Unit. Section 70-7-17 makes it clear that “all property, whether real or personal, that may be acquired in the conduct of unit operations hereunder shall be acquired for the account of the working interest owners...” (emphasis ours). Goodnight is simply not a working interest owner.

With respect to the application to contract the vertical limits of the pool, Goodnight argues that the Commission made a mistake in combining two formations. This argument is disingenuous and absurd. Numerous units and pools in New Mexico include multiple formations. For example, Apache Corporation operates the North Monument Grayburg San Andres Unit, whose vertical limits include the Grayburg and San Andres formation. The Langley Mattix statutory unit includes the Seven Rivers, Queen and Grayburg formations.<sup>1</sup> There are pools in Southeast New Mexico that include the Yates, Seven Rivers, and Queen formations.<sup>2</sup>

Goodnight’s attempt to label the San Andres formation as a water aquifer has no merit. Goodnight makes no mention of whether the waters in the San Andres formation have been appropriated by anyone for a beneficial purpose. Clearly, the State Engineer would have jurisdiction over the appropriation of water. *See* NM Const. Art. 16, § 2; NMSA 1978, § 72-12-25. Furthermore, under NMSA 1978, § 70-13-4 (C) “a permit or other approval from the state

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<sup>1</sup>*See also, e.g.*, South Justice Unit Area composed of Blinbry, Tubb and Drinkard formations; Burch Keeley Unit Area composed of Seven Rivers-Queen Grayburg, San Andres formations.

<sup>2</sup> *See also, e.g.*, Blinbry, Tubb, Drinkard Oil & Gas Pool; Yates, Seven Rivers, Queen Pool; Atoka-Glorieta, Yeso Pool; North Seven Rivers Glorieta-Yeso Pool.

engineer is not required for the disposition of produced water, recycled water or treated water, including disposition by use, is neither an appropriation of water for beneficial use under Chapter 72 NMSA 1978 nor a waste of water, and no water right shall be established by the disposition of produced water, recycled water or treated water.” Thus, Goodnight has no water right related to the San Andres formation that would somehow, if it existed, provide Goodnight with standing in this proceeding.

Therefore, Goodnight does not have standing to bring its Applications to Amend Order Nos. R-7765 and R-7767.

***B. A proposal for vertical contraction of the Unit Area cannot be approved without amendment of the Unit Agreement.***

Unit agreements are private contracts; the Commission lacks authority to reform such agreements, but the parties to the agreement may do so themselves if they agree that reformation is needed to give expression to their agreement. *See* NMSA 1978, § 70-7-9 (allowing amendment of the Unit by an order of the Division).

The vertical contraction of the Unit as proposed by Goodnight is contrary to the terms of the Unit Agreement. A proposal for vertical contraction of a Unit Area cannot be approved by the Division or Commission without approval of the affected parties to the Unit Agreement. *Id.*

Judging from Section 4 of the Unit Agreement dealing with expansion of the Unit Area, perhaps the only way a change to the Unit Area can be made (after proposals by a working interest owner or the Operator) is “if at least three (3) working interest owners having an aggregate seventy-five percent (75%) agreement agree.”(See Exhibit B, attached hereto). Thereafter, regulator approvals are necessary. *See* § 70-7-9; *see also* NMSA 1978, § 70-7-8. Goodnight is a stranger to the Unit Agreement and cannot unilaterally force an amendment to the Agreement.

In this case, none of the working interest owners agree to the contraction of the Unit Area. Therefore, the proposal for contraction of the Unit Area must fail.

WHEREFORE, Empire requests that the Commission enter an Order dismissing Goodnight's applications and for any other relief to which the Commission may deem Empire to be entitled.

Respectfully submitted,

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*Attorneys for Empire New Mexico, LLC*



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served to counsel of record by electronic mail this 13<sup>th</sup> day of March, 2024, as follows:

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**/s/ Ernest L. Padilla**  
Ernest L. Padilla

**STATE OF NEW MEXICO  
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OIL CONSERVATION DIVISION**

**APPLICATION OF GOODNIGHT  
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**CASE NO. 24277**

**&**

**APPLICATION OF GOODNIGHT  
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**CASE NO. 24278**

**AFFIDAVIT OF JACK E. WHEELER**

**STATE OF TEXAS                    }**  
  **}**  
**COUNTY OF MONTGOMERY        }**

I, Jack E. Wheeler, after being duly sworn, state as follows:

1. I am over the age of 18. I am an Attorney working as Vice President – Land and Legal for Empire Petroleum Corporation (“Empire”), and have personal knowledge of the matters stated herein.

2. I am especially familiar with the Eunice Monument South Unit Agreement, Eunice Monument South Unit and the Eunice Monument Oil Pool, and the oil and gas interests committed to the Eunice Monument South Unit.

**EXHIBIT**  
**A**

3. Goodnight Midstream Permian, LLC ("Goodnight") does not have a working interest ownership oil and gas or mineral interests in the Unit area or in the Pool, both of which have identical vertical limits.

4. Goodnight is not a Working Interest Owner in the Eunice Monument South Unit.

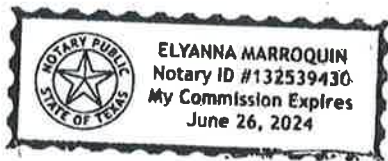
5. Goodnight was not a party to the original proceeding before the New Mexico Oil Conservation Commission in 1984, to approve the Eunice Monument South Unit, nor is it in privity of contract with any of the original working interest owners.

6. None of the Working Interest Owners agree to contraction of the Unit area to eliminating the San Andres formation from the vertical limits of the Unit and the Pool.

FURTHER AFFIANT SAYETH NAUGHT.

*Jack E. Wheeler*  
JACK E. WHEELER

SWORN AND SUBSCRIBED to before me this 12th day of March, 2024  
by Jack E. Wheeler.



*Elyanna Marroquin*  
Notary Public

UNIT AGREEMENT  
AND EXHIBITS "A" & "B"

EUNICE MONUMENT SOUTH  
STATUTORY SECONDARY RECOVERY  
FEDERAL - STATE UNIT  
LEA COUNTY, NEW MEXICO

EFFECTIVE DATE  
FEBRUARY 1, 1985

EXHIBIT  
**B**

the Unit Area and the boundaries and identities of tracts and leases in said Unit Area to the extent known to the Unit Operator. Exhibit "B" attached hereto is a schedule showing, to the extent known to the Unit Operator, the acreage comprising each Tract, percentages and kind of ownership of oil and gas interests in all land in the Unit Area, and Tract Participation of each Tract. However, nothing herein or in said schedule or map shall be construed as a representation by any party hereto as to the ownership of any interest other than such interest or interests as are shown in said map or schedule as owned by such party. The shapes and descriptions of the respective Tracts have been established by using the best information available. Each Working Interest Owner is responsible for supplying Unit Operator with accurate information relating to each Working Interest Owner's interest. If it subsequently appears that any Tract, because of diverse royalty or working interest ownership on the Effective Date hereof, should be divided into more than one Tract, or when any revision is requested by the A.O., or any correction of any error other than mechanical miscalculations or clerical is needed, then the Unit Operator, with the approval of the Working Interest owners, may correct the mistake by revising the exhibits to conform to the facts. The revision shall not include any reevaluation of engineering or geological interpretations used in determining Tract Participation. Each such revision of an exhibit made prior to thirty (30) days after the Effective Date shall be effective as of the Effective Date. Each other such revision of an exhibit shall be effective at 7:00 a.m. on the first day of the calendar month next following the filing for record of the revised exhibit or on such other date as may be determined by Working Interest Owners and set forth in the revised exhibit. Copies of such revision shall be filed with the Land Commissioner, and not less than four copies shall be filed with the A.O. In any such revision, there shall be no retroactive allocation or adjustment of Unit Expense or of interests in the Unitized Substances produced, or proceeds thereof.

**SECTION 4. EXPANSION.** The above described Unit Area may, with the approval of the A.O. and Land Commissioner, when practicable be expanded to include therein any additional Tract or Tracts regarded as reasonably necessary or advisable for the purposes of this Agreement provided however, in such expansion there shall be no retroactive allocation or adjustment of Unit Expense or of interests in the Unitized Substances produced, or proceeds thereof. Pursuant to Subsection (b), the Working Interest Owners may agree upon an adjustment of investment by reason of the expansion. Such expansion shall be effected in the following manner:

(a) The Working Interest Owner or Owners of a Tract or Tracts desiring to bring such Tract or Tracts into this unit, shall file an application therefor with Unit Operator requesting such admission.

(b) Unit Operator shall circulate a notice of the proposed expansion to each Working Interest Owner in the Unit Area and in the Tract proposed to be included in the unit, setting out the basis for admission, the Tract Participation to be assigned to each Tract in the enlarged Unit Area and other pertinent data. After negotiation (at Working Interest Owners' meeting or otherwise) if at least three Working Interest Owners having in the aggregate seventy-five percent (75%) of the Unit Participation then in effect have agreed to inclusion of such Tract or Tracts in the Unit Area, then Unit Operator shall:

(1) After obtaining preliminary concurrence by the A.O. and Land Commissioner, prepare a notice of proposed expansion describing the contemplated changes in the boundaries of the Unit Area, the reason therefor, the basis for admission of the additional Tract or Tracts, the Tract Participation to be assigned thereto and the proposed effective date thereof; and

(2) Deliver copies of said notice to Land Commissioner, the A.O. at the Proper BLM Office, each Working Interest Owner and to the last known address of each lessee and lessor whose interests are affected, advising such parties that thirty (30) days will be allowed for submission to the Unit Operator of any objection to such proposed expansion; and

(3) File, upon the expiration of said thirty (30) day period as set out in (2) immediately above with the Land Commissioner and A.O. the following: (a) evidence of mailing or delivering copies of said notice of expansion; (b) an application for approval of such expansion; (c) an instrument containing the appropriate joinders in compliance with the participation requirements of Section 14, and Section 34, infra; and (d) a copy of all objections received along with the Unit Operator's response thereto.

The expansion shall, after due consideration of all pertinent information and approval by the Land Commissioner and the A.O., become effective as of the date prescribed in the notice thereof, preferably the first day of the month subsequent to the date of notice. The revised Tract Participation of the respective Tracts included within the Unit Area prior to such enlargement shall remain the same ratio one to another.

SECTION 5. UNITIZED LAND. All land committed to this Agreement as to the Unitized Formation shall constitute land referred to herein as "Unitized Land" or "Land subject to this Agreement". Nothing herein shall be construed to unitize, pool, or in any way affect the oil, gas and other minerals contained in or that may be produced from any formation other than the Unitized Formation as defined in Section 2(h) of this Agreement.

SECTION 6. UNIT OPERATOR. GULF OIL CORPORATION is hereby designated the Unit Operator, and by signing this instrument as Unit Operator, agrees and consents to accept the duties and obligations of Unit Operator for the operation, development, and production of Unitized Substances as herein provided. Whenever reference is made herein to the Unit Operator, such reference means the Unit Operator acting in that capacity and not as an owner of interests in Unitized Substances, when such interests are owned by it and the term "Working Interest Owner" when used herein shall include or refer to the Unit Operator as the owner of a Working Interest when such an interest is owned by it.

Unit Operator shall have a lien upon interests of Working Interest Owners in the Unit Area to the extent provided in the Unit Operating Agreement.

SECTION 7. RESIGNATION OR REMOVAL OF UNIT OPERATOR. Unit Operator shall have the right to resign at any time, but such resignation shall not become effective so as to release Unit Operator from the duties and obligations of Unit Operator and terminate Unit Operator's rights as such for a period of six (6) months after written notice of intention to resign has been given by Unit Operator to all Working Interest Owners, the Land Commissioner and the A.O. unless a new Unit Operator shall have taken over and assumed the duties and obligations of Unit Operator prior to the expiration of said period.

The Unit Operator shall, upon default or failure in the performance of its duties and obligations hereunder, be subject to removal by Working Interest Owners having in the aggregate eighty percent (80%) or more of the Unit Participation then in effect exclusive of the Working Interest Owner who is the Unit Operator. Such removal shall be effective upon notice thereof to the Land Commissioner and the A.O.

In all such instances of effective resignation or removal, until a successor to Unit Operator is selected and approved as hereinafter provided, the Working Interest Owners shall be jointly responsible for the performance of the duties of the Unit Operator and shall, not later than thirty (30) days before such resignation or removal becomes effective, appoint a Unit Manager to represent them in any action to be taken hereunder.

The resignation or removal of Unit Operator under this Agreement shall not terminate its right, title or interest as the owner of a Working Interest or other interest in Unitized Substances, but upon the resignation or removal of Unit Operator becoming effective, such Unit Operator shall deliver possession of all wells, equipment, books and records, materials, appurtenances and any