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

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

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. 24018-24027

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

GOODNIGHT MIDSTREAM PERMIAN LLC'S REPLY IN SUPPORT OF MOTION TO LIMIT THE SCOPE OF THE COMMISSION HEARING TO CASES WITHIN THE EUNICE MONUMENT SOUTH UNIT

Goodnight Midstream Permian, LLC ("Goodnight") submits the following reply in support of its Motion to Limit the Scope of the Commission's Hearing to Cases Within the Eunice Monument South Unit (the "Motion"). Goodnight and the Division agree that the Commission hearing presently scheduled for September 23-27, 2024, should be limited to addressing those cases involving existing or proposed disposal wells located within the Eunice Monument South Unit ("EMSU"). Empire New Mexico LLC ("Empire") disagrees and suggests instead that cases involving only Goodnight's operations, both within and outside the EMSU, should be heard together. But as explained below, such an approach would make little sense. Focusing on the wells within the EMSU would facilitate resolution of the central questions presented by the applications in issue, without allowing the hearing to be dominated by highly individualized questions concerning the effects of specific wells. As important, it allows the Commission to address the wells in the EMSU within single legal framework that governs the EMSU pool and unitized interval.

Empire likewise opposes Goodnight's proposal to include in the September hearing Empire's applications directed to wells operated by Rice Operating Company ("Rice"), OWL SWD Operating, LLC ("OWL") and Permian Line Service ("Permian"), all of whom operate disposal wells inside the EMSU.[1] Yet as detailed below, having chosen to file applications

[1] Counsel for Goodnight Midstream was informed on June 12, 2024, that Empire now plans to dismiss all the Rice, OWL, and Permian Line Service cases pending before the Division. However, Goodnight Midstream, an intervenor in those cases, opposes dismissal. Those applications are now the subject of this pending motion to refer them to the Commission so the challenges to injection in the San Andres within the EMSU can be heard at one time, rather than in a piecemeal fashion, which is, at the very least, contrary to administrative efficiency.

directed at wells operated by these entities, Empire makes no convincing argument why these applications should not be heard together with Empire's applications directed at Goodnight's operations within the EMSU.

I. Argument

A. Limiting the September 2024 Hearing to Cases Involving Wells Located Within the EMSU Would Create Efficiencies by Reducing the Amount of Individualized Evidence to be Presented and Considered.

In opposing Goodnight's motion Empire labels Goodnight's distinction between the EMSU and non-EMSU cases "artificial" and a "contrived grievance." Resp. Br. at 3.[2] According to Empire, the "dispositive issues are the same across all of the consolidated matters that involve Goodnight. They do not depend on the location of SWDs relative to the EMSU." *Id.*

Empire may be correct that the "dispositive issues" are the same in both the EMSU and the non-EMSU proceedings, but that is of little relevance when considering how to manage these cases most efficiently. Instead, considerations of efficiency must be guided by whether the dispositive issues will be resolved by the same or largely the same evidence and whether those dispositive issues will yield a common answer for all or most of the wells in question. When viewed through this lens, the most efficient course is to consolidate all cases relating to wells within the EMSU for hearing and to hold a separate hearing for those cases involving non-EMSU wells.

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[2] While stating that "it's not clear what procedural standards govern" Goodnight's motion, Empire makes no real argument that the Commission and the Division lack the authority to hear cases jointly as Goodnight proposes. Resp. Br. at 6. 19.15.4.19 NMAC makes clear that a hearing officer has exactly such authority, noting that an examiner "shall have the power to perform all acts and take all measures necessary and proper for the hearing's efficient and orderly conduct." 19.15.4.19 NMAC.

Empire's first "dispositive issue" is "whether a residual oil zone ("ROZ") exists in the San Andres formation." Resp. Br. at 3. Resolution of that issue will be unaffected by the scope of the hearing. As Empire admits, "determining whether an economically viable ROZ exists in the San Andres does not depend on whether the SWD in question is located inside or outside of the EMSU." Resp. Br. at 7. But contrary to Empire's position, this reality counsels in favor of limiting the present hearing to cases within the EMSU. Given the choice of answering that question through a focused hearing or a sprawling and unwieldy one, the answer is obvious. Indeed, if the answer to that question is "no" such a determination would effectively moot Empire's claims that the non-EMSU wells are impairing possible tertiary recovery efforts directed at the San Andres and any hearing time spent addressing this question will have been wasted.

Empire's second "dispositive issue" is "whether injection of produced water into [the San Andres] formation 'will cause waste, impair correlative rights, or otherwise interfere with the operations in the EMSU.'" *Id.* at 3. While acknowledging that "there are some differences between SWDs located within the EMSU and those located outside of the EMSU" Empire argues that these factual differences are "overstated and can be hashed out at the hearing." *Id*. Yet Empire offers no specifics about the nature or extent of the differences between the EMSU and non-EMSU wells or how those differences can be "hashed out" at a hearing. As noted in Goodnight's motion, including the non-EMSU wells in the September hearing would require consideration of individualized evidence relating to another eight wells beyond the 12 wells Empire has challenged within the EMSU. This would nearly double the amount of well-specific evidence that the Commission would be required to consider. Empire's promise that these fact-

specific issues may simply be addressed at the time of hearing should be cold comfort to the Commission as it determines the most efficient use of the dedicated hearing days.

Empire also points out that the factual differences between the EMSU and non-EMSU wells will also be present as between individual wells within the EMSU. Resp. Br. at 7 ("it is not clear how fact questions related to the migration of wastewater…would meaningfully differ as to SWDs inside the EMSU, and SWDs situated outside the EMSU.") Empire suggests that because factual differences will be present between wells within the EMSU, there is no reason to limit the hearing to those wells.[3]

The implication of Empire's argument is that if *any* well-specific evidence will be presented, the Commission must open the doors to presentation of *all* such evidence for every well Empire has placed in issue. But considerations of efficiency and time management do not dictate such an all-or-nothing approach. The fact that individualized questions may arise as between different wells within the EMSU does not mean that the Commission must compound this challenge by including non-EMSU wells in the scope of the scheduled hearing. As noted above, (and as Empire tacitly recognizes) doing so would inject a myriad of additional individualized factual inquiries into the hearing.

The unavoidable fact that some well-specific evidence is likely to be presented even as to the EMSU wells does not preclude the Commission from taking reasonable commonsense steps

[3] Empire contends that "the Commission can determine whether wastewater from Goodnight's SWDs is impairing Empire's correlative rights without determining the origin of *all* of the wastewater." Resp. Br. at 7-8. The Commission should decline this invitation to rough justice. Even if Empire could show that some of Goodnight's water is interfering with Empire's mineral rights, that is insufficient to justify a sweeping prohibition on injection. Rather, Empire must make specific showings as to the wells and volumes that are allegedly interfering with its current or proposed production activities.

to circumscribe the scope of this hearing and thereby limit the amount of such individualized evidence that may reasonably be expected. Limiting this hearing to wells within the EMSU is a perfectly reasonable step that will make this proceeding both effective and manageable. Also unaddressed by Empire is the fact that limiting the hearing to the EMSU will allow the Commission to evaluate Empire's claims within this discrete area without implicating more broadly the viability of active San Andres disposal in an unconfined area outside and around the EMSU.

B. The Legal Framework Governing the EMSU Substantially Dictates Analysis of the Core Issues.

Empire substantially misapprehends the significance of the Statutory Unitization Act as it pertains to its plans to conduct a tertiary carbon dioxide operation within the San Andres formation. Both Goodnight and the Division noted that limiting this hearing to cases involving wells within the EMSU finds support in the fact that those cases rest on the same "foundational documents." Division Motion at 6. As the Division explains "the EMSU cases come with their own particularized body of law unique to them, a common issue of law for the OCC to consider, justifying the consolidation of the EMSU cases." *Id.*

As an example, and as outlined in the Motion and Goodnight's companion applications under Case Nos. 24277 and 24278, the Statutory Unitization Act requires a showing that the pool or portion of a pool targeted for enhanced oil recovery must have been first reasonably defined by production. At the time of the EMSU hearing in 1984 not only did the evidence demonstrate that the San Andres did not meet the statutory definition of a pool or a portion of a pool because it does not contain a common accumulation of oil or gas, but it also was not, and still has not been, reasonably defined by primary production. The San Andres should be removed from the EMSU unitized interval and special pool.

This legal issue applies only to the EMSU cases and is directly relevant to whether Empire's correlative rights will be impacted. If the San Andres is not a pool and is excluded from the EMSU, Empire has no correlative rights within the EMSU or the San Andres to protect.[4] It is as plain as that.

C. Including Rice and OWL in the Hearing Would Also Be More Efficient.

In addition to challenging Goodnight's injection authority, Empire has also filed applications seeking to revoke injection authority for wells within the EMSU operated by Rice, OWL, and Permian. *See* Case Nos. 24432, 24434, 24436. Those applications are currently pending before the Division. Having filed these additional applications, Empire now opposes the idea of addressing those claims at the September hearing alongside its claims directed at Goodnight's wells.[5] Yet Empire provides little in the way of persuasive reasoning to support that position.

As a practical matter, Empire fails to explain why it so vehemently opposes including in the September hearing the Rice, OWL, and Permian wells for which it seeks to revoke injection authority. Notably, Empire makes no argument that its own position would in any way be prejudiced by referring these cases to the Commission for inclusion in the September hearing.

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[4] *See* NMSA 1978, § 70-2-33(H): "'Correlative rights' means the opportunity afforded, as far as it is practicable to do so, to the owner of each property **in a pool** to produce without waste the owner's just and equitable share of the oil or gas **in the pool**, being an amount, so far as can be practically determined, and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas under the property bears to the total recoverable oil or gas in the pool, and for the purpose to use the owner's just and equitable share of the reservoir energy."

[5] Empire characterizes Goodnight as "suggest[ing] that Empire must join every SWD operator in or around the EMSU in this proceeding." Resp. Br. at 8. Empire has, of its own accord, initiated proceedings against these other SWD operators. Goodnight is only suggesting that, having done so, the matters should be addressed at the same hearing.

Empire then turns to considerations of efficiency and suggests a narrower hearing that addresses only Empire's claims against Goodnight would be more efficient. *See* Resp. Br. at 8 ("limiting the evidentiary hearing to cases involving Goodnight is simpler and more efficient than bringing in additional cases involving OWL, Rice, and Permian."). It is difficult to credit Empire's interest in simplicity and efficiency given its own stated desire to include in the September hearing all cases involving wells outside the EMSU, injecting predominately uncommon evidence that will necessarily yield disparate answers for each non-EMSU well.

But more fundamentally, Empire fails to offer any explanation for how much simpler or more efficient the proceeding would be if the Rice/OWL/Permian wells were heard at a later time. As explained in Goodnight's motion, the same core issues raised by the applications directed at Goodnight's wells within the EMSU are equally applicable to Empire's efforts directed at wells operated by Rice, OWL, and Permian. Contrary to Empire's argument, the more efficient course is to include these claims in the matters to be addressed at the upcoming hearing. Certainly, doing so would be more efficient than proceeding solely as to Goodnight's wells and then convening a separate and subsequent hearing directed at the Rice/OWL/Permian wells, especially when that subsequent hearing would cover much the same ground as any hearing on the applications directed at Goodnight.

Next, Empire suggests that it somehow has a right to pursue its allegations against Goodnight "separately" from other its claims directed at other operators. Resp. Br. at 8. Empire imputes to Goodnight the position that "Empire must join every SWD operator in or around the EMSU in this proceeding." *Id.* Relying on cases arising in the tort context, Empire argues its right to proceed selectively against those wells that it perceives to be doing the most injury to its interests.

But this argument represents an inaccurate framing of the issue. Goodnight is not forcing Empire to "join every SWD operator in or around the EMSU." *Id.* Empire made its own voluntary choice to bring actions directed at injection activities by Rice, OWL, and Permian. But having made that choice, Empire cannot now be heard to complain about Goodnight's suggestion that these challenges be joined together for purposes of a hearing given the common factual and legal issues presented by these actions. Indeed, in arguing against including these third parties in a September hearing, Goodnight notes that "Rice, OWL, and Permian, if not joined to this proceeding, would not be bound by it in any future or collateral proceeding." Resp. Br. at 9. But that is precisely the point; the Commission need not create a situation in which it is faced with the possibility of having to decide these very same questions twice—once in the context of actions directed at Goodnight and a second time in actions directed at Rice, OWL, and Permian.

Finally, Empire argues that the Rice, OWL, and Permian matters should not be joined for hearing because Hinkle Shanor, one of the law firms representing Empire, has a conflict with respect to Rice. But this should not stand as an impediment to the efficient adjudication of these cases. Here, Empire is represented by three separate law firms. The possibility that one such firm would be unable to participate in Empire's prosecution of its application as to Rice is no reason to require that these cases proceed in piecemeal fashion. At any hearing, attorneys from the firm in question may simply abstain from questioning Rice's witnesses or otherwise arguing Empire's case against Rice. In any event, given the significant overlap in the factual and legal issues presented, it is difficult to accept that Hinkle Shanor can vigorously prosecute Empire's cases against Goodnight, OWL, and Permian without simultaneously imperiling Rice's interests.

D. A Stay of Non-EMSU Cases Will Cause No Harm to Empire.

Empire takes the remarkable position that Goodnight's six non-EMSU injection wells—some of which are more than a mile away[6]—threaten immediate impairment to Empire, should be included in the hearing, and must not be stayed. At the same time Empire strenuously argues against including only three additional wells—Division Case Nos. 24432, 24434, and 24436—that actively dispose produced water within the EMSU's unitized interval.

Empire itself filed applications under these three EMSU cases attacking the subject wells—OWL's P 15 #001 SWD, Rice's EME SWD #021, and Permian's N 11 #001 Well—alleging in each case that "[d]isposal in the Well impairs the ability of Empire to recover hydrocarbons within the Unitized Interval and thereby adversely affects the correlative rights of Empire and other interest owners in the Unit and results in waste." *See, e.g.*, Application in Case No. 24432. The three wells at issue have already injected more than 45 million barrels of produced water into the San Andres within the EMSU. *See* **Mot. Ex. C**. That is approximately the same volume Goodnight's four active disposal wells have injected into the EMSU that are being challenged in Case Nos. 24018, 24019, 24020, and 24025.[7] The fact that Empire has no qualms excluding and staying the three non-Goodnight cases involving active injection within the EMSU belies its assertion that Goodnight's non-EMSU cases will cause imminent harm.

Empire compounds its inconsistent position by making an additional argument that defies logic. It contends that four non-Goodnight wells (Rice's EME SWD #033M in Case No. 24433, Rice's N 7 #001 in Case No. 24439, Rice's State E Tract 27 #001 in Case No. 24435, and the

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[6] *See* **Mot. Ex. D**, reflecting well distances from the EMSU boundary based on Division records.

[7] Goodnight's Exhibit A in the Motion, identifying cases to include in the hearing, inadvertently referred to the well in Case No. 24025 as the Ted SWD, when it is the Sosa SWD.

Parker Energy SWD #005[8]) that have injected nearly 110 million barrels of produced water within one to two miles of the EMSU should be excluded and stayed, while two of Goodnight's wells that have not even been drilled must be included in the hearing to avoid immediate injury. *See* **Mot. Ex. C**. It also makes no sense to exclude and stay these four wells from a hearing when they are similarly situated to Goodnight's four active non-EMSU wells that have injected approximately 67 million barrels to date.

Empire's contentions about imminent harm as to the non-EMSU cases have no merit. The Commission should nevertheless prioritize its statutory obligations to prevent waste and protect correlative rights by focusing the hearing on the cases that involve disposal within the EMSU.

CONCLUSION

For the foregoing reasons, the Commission should grant Goodnight's Motion and limit the scope of the September 2024 hearing to cases involving wells located within the EMSU, including cases directed at the injection activities of Rice, OWL, and Permian.

[8] Empire has not filed an application to revoke the injection authority for this well.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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