

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

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

CASE NOS. 24018-24027

**RESPONSE IN OPPOSITION TO EMPIRE’S MOTION TO STAY OR
SUSPEND GOODNIGHT’S AUTHORIZATION TO INJECT AND
GOODNIGHT’S COUNTERMOTION TO CONTINUE HEARING ON
EMPIRE’S MOTION UNTIL THE SEPTEMBER 23-27, 2024 HEARING**

Respondent Goodnight Midstream Permian (“Goodnight”) respectfully submits the following response to Empire New Mexico LLC’s Motion To Stay Or Suspend Goodnight Midstream Permian LLC’s Authorization To Inject And For Sanctions For Violation of SWD Orders (“Empire’s Motion”). For the reasons stated, the Empire’s Motion should be denied.

INTRODUCTION

More than eight months ago, Empire initiated these cases by filing applications seeking to revoke Goodnight’s authority to inject pursuant to permits previously issued by the Division. At that time, Empire sought no temporary relief pending adjudication of those applications. Now, more than eight months later, Empire has suddenly decided that its applications merit emergency relief in the form of the Commission “expeditiously” staying or suspending Goodnight’s injection authority pending a final adjudication of Empire’s applications.

The obvious question is—why now? The issues raised by Empire’s applications are already scheduled for a hearing in September, less than two months from now, at which time the Commission will consider the full merits of those applications, the claims, and defenses. And the alleged harm that Empire cites as the basis for this motion is the very same alleged harm that the Commission will consider at that hearing. Empire’s motion appears calculated to invite the

Commission to pre-judge the merits of the issues presented in Empire's applications prior to the September hearing. In addition to such fundamental procedural issues, Empire has failed to make the proper evidentiary showing necessary for a stay under Commission precedent. It also has not followed the requirements of the regulation governing stays under the Commission's rules.

In short, there is no good reason for the Commission to conduct a mini-hearing on these issues only two months before the full merits hearing, or to adjudicate these issues in advance of that full hearing, especially because Empire itself failed to pursue this "emergency" relief in anything resembling a timely manner. The Commission should reject Empire's efforts to fabricate an emergency where none exists. Goodnight, therefore, asks that the Commission vacate the hearing on this motion presently scheduled for August 15, and proceed to consider these matters at the September hearing as scheduled.

ARGUMENT

I. Empire's Motion Fails to Meet the Stringent Requirements Demonstrating a Preliminary Injunction or a Stay is Necessary.

Empire tells the Commission that its motion is intended to maintain the status quo "until the Commission enters a ruling on Empire's application to revoke Goodnight's injunction authority." Mot. at ¶ 44. In this way, Empire's motion is akin to a request for a preliminary injunction under the Rules of Civil Procedure.¹ Courts and this Commission have recognized preliminary injunction as extraordinary relief the issuance of which requires the moving party to show that:

- (1) the plaintiff will suffer irreparable injury unless the injunction is granted;
- (2) the threatened injury outweighs any damage the injunction might cause the defendant;
- (3) issuance of the injunction

¹ While the Commission may make appropriate order in the exercise of its statutory power, it is doubtful that the Commission enjoys statutory authority to issue a preliminary injunction merely for the purpose of preserving the status quo pending a determination of an application on the merits.

will not be adverse to the public's interest; and (4) there is a substantial likelihood plaintiff will prevail on the merits.

Labalbo v. Hymes, 1993-NMCA-010, ¶ 11, 850 P.2d 1017, 1021. Similarly, under the Commission's regulations, a party seeking a stay is required to demonstrate "the stay is necessary to prevent waste, protect correlative rights, protect public health or the environment or prevent gross negative consequences to an affected party." 19.15.4.23.B NMAC (emphasis added). In addition, under agency precedent, parties seeking a stay must show "they are likely to prevail on the merits" and that the party requesting a stay will be irreparably harmed unless a stay is granted. See Order No. R-14300-A ¶ 5 (quoting and adopting the standard for an administrative stay in *Tenneco Oil Co. v. N.M. Water Quality Control Comm'n*, 1986-NMCA-033, ¶ 10).

A "showing" under a motion for stay requires some proffer of evidence. See *id.* ¶ 7; see also Black's Law Dictionary (8th Ed.) ("Showing, n. The act or an instance of establishing through evidence and argument; proof <a prima facie showing>." (emphasis added)). "Mere allegations of irreparable harm are not, of course, sufficient. A showing of irreparable harm is a threshold requirement in any attempt by applicants to obtain a stay." *Tenneco Oil Co.*, 1986-NMCA-033, ¶ 12 (emphasis added). As noted in *Tenneco Oil*, the applicant for a stay must make a showing as to each of the elements necessary for a stay. *Id.*

Empire can make none of these showings and has not made the required showing for even one element.

A. Empire's Delay in Seeking Relief Belies Any Claim That It Will Suffer Irreparable Harm In the Absence of Relief.

First, Empire does not even allege that Goodnight's injection activities pose a threat of irreparable harm or is necessary to prevent waste or protect correlative rights. If Empire truly believed that Goodnight's activities were causing irreparable harm, it would have requested this relief from the Commission when it filed its applications back in November of last year. But

Empire made no such request then, and it fails to offer any cogent explanation for why it is only doing so now.

The closest Empire comes in this respect is to suggest that it learned certain facts “[t]hrough discovery” including Goodnight’s alleged disposal of water in excess of permitted amounts. Mot. at 3. But this allegation is flatly contradicted by the record already developed in this case. For example, while Goodnight vigorously denies the allegations in Empire’s motion, if Goodnight failed to make any required filings with the Division, that information would be publicly available. Likewise, Empire has long believed and alleged that Goodnight is (or was) disposing of water in excess of its permitted amount. Indeed, Empire made that very same allegation in the complaint it filed against Goodnight in Fifth Judicial District Court in December 2023. That Empire fails to allege that it will suffer irreparable harm, and its choice to delay seeking this relief until shortly before the scheduled merits hearing, belies any suggestion that it is entitled to the extraordinary relief it requests.

B. The Balance of Harms Cuts Against an Injunction.

Empire’s motion likewise makes no effort to establish that the injury it will suffer in the absence of an injunction outweighs the injury that the relief sought would inflict on Goodnight. Nor would such an argument even be colorable. Empire’s motion complains that Goodnight is disposing of water in excess of permitted amounts. But Empire makes no effort to quantify the harm, or even proffer any actual evidence, that alleged disposal causes to Empire, or the harm that a preliminary injunction would cause to Goodnight.

Here, Empire asks the Commission to suspend Goodnight’s permits entirely, which would effectively require Goodnight to stop disposing of water altogether through the wells in issue. By contrast, even if Empire were harmed by the purported excess disposal (a dubious assertion at best)

the marginal harm to Empire from any disposal that exceeds permitted amounts is surely less than the harm that would be suffered by Goodnight were its operations shut down altogether.

C. The Public Interest Counsels Against Granting Empire's Relief.

Considerations of the public interest, which lie at the heart of the Commission's remit, also counsel against granting Empire's requested relief. Here, enjoining Goodnight from all injection activities would significantly impair the ability of oil and gas producers in New Mexico to dispose of produced water. Such an effort would be exceptionally detrimental to the public interest. Moreover, imposing this relief against Goodnight without an actual showing of evidence in support of Empire's allegations is contrary to the Commission's rules and the caselaw governing administrative stays.

D. Empire Has Not Shown a Likelihood of Success on the Merits of Its Underlying Applications.

Finally, Empire has failed to make any more showing that it is likely to succeed on the merits of its claims. As the Commission is by now well aware, the merits of Empire claims rest on highly technical and fact-specific evidence, all of which the Commission will consider at the September hearing. Yet Empire's motion offers no further indication that it is likely to succeed on the merits of those claims. It has supplied no evidence in support of the extraordinary relief it requests, as required.

II. Empire's Motion Does Not Meet the Procedural Requirements for a Stay.

The regulation governing issuance of stays requires that an applicant "shall attach a proposed stay order to the motion." NMAC 19.15.4.23.B. The Empire has not met this mandatory procedural requirement, thereby subjecting the motion to an immediate denial.

CONCLUSION

For the foregoing reasons, Goodnight respectfully requests that the Commission deny Empire's motion without a hearing, or alternatively vacate the hearing scheduled on Empire's motion for August 15, 2024, and consolidate that motion with the full hearing on Empire's applications current scheduled for September 2024.

DATED: July 31, 2024

Respectfully submitted,

HOLLAND & HART LLP

/s/ Nathan R. Jurgensen

By: _____

Michael H. Feldewert
Adam G. Rankin
Nathan R. Jurgensen
Paula M. Vance
Post Office Box 2208
Santa Fe, NM 87504
505-988-4421
505-983-6043 Facsimile
mfeldewert@hollandhart.com
agrarkin@hollandhart.com
nrjurgensen@hollandhart.com
pmvance@hollandhart.com

**ATTORNEYS FOR GOODNIGHT MIDSTREAM
PERMIAN, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2024, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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

Dana S. Hardy
Jaclyn M. McLean
HINKLE SHANOR LLP
P.O. Box 2068
Santa Fe, NM 87504-2068
(505) 982-4554
dhardy@hinklelawfirm.com
jmclean@hinklelawfirm.com

Sharon T. Shaheen
Daniel B. Goldberg
Montgomery & Andrews, P.A.
Post Office Box 2307
Santa Fe, NM 87504-2307
(505) 986-2678
sshhaheen@montand.com
dgoldberg@montand.com
cc: *wmcginnis@montand.com*

Attorneys for Empire New Mexico, LLC

Matthew M. Beck
PEIFER, HANSON, MULLINS & BAKER,
P.A.
P.O. Box 25245
Albuquerque, NM 8172-2545
(505) 247-4800
FAX: (505) 243-6458
mbeck@peiferlaw.com

***Attorney for Rice Operating Company and
Permian Line Service, 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 New Mexico Oil Conservation
Division***

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

***Attorneys for Pilot Water Solutions SWD,
LLC***

Nathan R. Jurgensen

Nathan R. Jurgensen