

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

**APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ORDER NO. R-22026 FOR THE ANDRE DAWSON
SWD #001 OPERATED BY GOODNIGHT MIDSTREAM
PERMIAN, LLC, LEA COUNTY, NEW MEXICO** **CASE NO. 24018**

**APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ORDER NO. R-22027 FOR THE ERNIE BANKS
SWD NO. 1 WELL OPERATED BY GOODNIGHT
MIDSTREAM PERMIAN, LLC,
LEA COUNTY, NEW MEXICO** **CASE NO. 24019**

**APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ORDER NO. R-20855 FOR THE NOLAN RYAN
SWD #001 OPERATED BY GOODNIGHT MIDSTREAM
PERMIAN, LLC, LEA COUNTY, NEW MEXICO** **CASE NO. 24024**

**APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ORDER NO. R-21190 FOR THE SOSA SA 17 NO.2
WELL OPERATED BY GOODNIGHT MIDSTREAM
PERMIAN, LLC, LEA COUNTY, NEW MEXICO** **CASE NO. 24025**

**APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ADMINISTRATIVE ORDER NO. SWD-2075
FOR THE TED 28 WELL NO. 1 OPERATED BY
GOODNIGHT MIDSTREAM PERMIAN, LLC,
LEA COUNTY, NEW MEXICO** **CASE NO. 24026**

**APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ORDER NO. R-20865 FOR THE YAZ 28 SWD
WELL NO. 1 OPERATED BY GOODNIGHT MIDSTREAM
PERMIAN, LLC, LEA COUNTY, NEW MEXICO** **CASE NO. 24027**

**EMPIRE NEW MEXICO, LLC'S PROPOSED ORDER TO STAY OR SUSPEND
GOODNIGHT MIDSTREAM PERMIANS AUTHORIZATION TO INJECT**

This matter, having come before the Oil Conservation Commission ("Commission") on Empire New Mexico, LLC's Expedited Motion to Stay or Suspend Goodnight Midstream Permian's LLC's ("Goodnight") authorization to inject and for sanctions for violations of SWD orders, finds that the Motion is well taken, and finds as follows.

Andre Dawson SWD#1 Well No.1

1. Goodnight is the operator of record for the Andre Dawson SWD #1 well, API# 30-025-50634 ("Andre Dawson Well"), a produced water disposal well located 1105' FSL and 244' FEL (Unit P) of Section 17, Township 21 South, Range 36 East, NMPM, Lea County, NM.

2. The Andre Dawson Well is disposing of water within the unitized interval of the Eunice Monument South Unit ("Unit"), which is operated by Empire, and authorized under Division Order R-22026.

3. Goodnight has failed to report volumes of produced water injected into the Andre Dawson Well for the entire 527 days since Goodnight began injecting into the well. Goodnight is also exceeding the disposal volumes and rates authorized by the applicable order. during the first 166 days of disposal, Goodnight exceeded the permitted daily disposal rate for 60 days. During those 60 days of over injection, Goodnight injected a total of 460,350 barrels of produced water in excess of the permitted daily amount under the Order. Goodnight exceeded the daily allowable injection rate by disposing as high as 40,000 BWPD on four (4) days of the 166 days of disposal and injected volumes as high as 41,937 BWPD, which is almost double the authorized injection rate.

Ernie Banks SWD No.1

4. Goodnight is the operator of record for the Ernie Banks SWD No. 1 well, API# 30-025-50633 (“Ernie Banks Well”), a produced water disposal well located 395 feet from the North line and 1,203 feet from the West line (Unit D) of Section 17, Township 21 South, Range 36 East, NMPPM, Lea County, New Mexico.

5. The Ernie Banks Well is disposing of water within the unitized interval of the Unit, which is operated by Empire, and authorized by Division Order R-22027.

6. Goodnight has violated Division regulations by failing to report volumes of produced water injected into this SWD well for the entire 409 days since injection commenced.

Sosa SA 17 SWD Well No. 2

7. Goodnight is the operator of record for the Sosa SA 17 SWD Well No. 2 well, API# 30-025-47947 (“Sosa SA Well”), a produced water disposal well located 470 feet from the South line and 1,815 feet from the West line (Unit N) of Section 17, Township 21 South, Range 36 East, NMPPM, Lea County, New Mexico.

8. The Sosa SA Well is disposing of water within the unitized interval of the Unit, which is operated by Empire, and authorized by Division Order R-21190.

9. Goodnight is exceeding the allowable daily injection rate of 25,000 BWPD by an excess of approximately 4,500 BWPD.

IT IS THEREFORE ORDERED:

A. Goodnight Midstream Permian, LLC shall cease and suspend all injection activities in the Andre Dawson, Ernie Banks and Sosa SA wells until over-injection is balanced with the amount of authorized injection.

B. Goodnight shall also immediately commence reporting all daily injection volumes, injection rates and pressures for the Andre Dawson Well No.1, the Ernie Banks SWD No.1 and the Sosa SA 17 Well No. 2. Such reports shall cover the period from commencement of injection operations to the present time.

C. Goodnight is hereby sanctioned in the amount of _____.

IT IS SO ORDERED

OIL CONSERVATION COMMISSION

By: _____
Chairman

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PERMIAN, LLC, LEA COUNTY, NEW MEXICO** **CASE NO. 24027**

**EMPIRE NEW MEXICO, LLC'S REPLY IN SUPPORT OF ITS EXPEDITED
MOTION TO STAY OR SUSPEND GOODNIGHT MIDSTREAM PERMIAN'S
AUTHORIZATION TO INJECT AND FOR SANCTIONS FOR
VIOLATIONS OF SWD ORDERS**

Empire New Mexico, LLC, (Empire) respectfully submits its *Reply in Support of its Expedited Motion to Stay or Suspend Goodnight Midstream Permian's Authorization to Inject and for Sanctions for Violations of SWD Orders*. In this *Reply*, Empire will show why it is crucial for the Commission to act expeditiously in deciding its *Motion*.

ARGUMENT

The most important thing to note about Goodnight's *Response* to Empire's *Motion* is what it doesn't say. Nowhere in the *Response* does Goodnight state that it has stopped injecting water in excess of permitted amounts into the Eunice Monument South Unit (EMSU). Nowhere in the *Response* does Goodnight state that it is in compliance with the Division's orders and regulations. Nowhere in the *Response* does Goodnight state that it has begun reporting injection volumes for two of its SWD wells.

Why doesn't the *Response* mention these issues? Because Goodnight has not stopped injecting excessive amounts of water into the EMSU. Goodnight is still not in compliance with the Division's orders and regulations. In fact, as of August 1, 2024, Goodnight still had not reported those injection volumes, in direct violation of the Division orders and regulations.

And why is Goodnight still refusing to report those injection volumes? Because they far exceed the amounts Goodnight is authorized to inject under the Division's orders.

The injection of water into the EMSU is causing direct, immediate harm to Empire. Empire is experiencing migration of produced water from the injection interval into the Grayburg

formation. Empire's only recourse is an expedited motion to stay or suspend this unlawful injection.

Goodnight facetiously asks, 'Why is Empire bringing this motion now?' (*Response*, page 1), and then erroneously states that this issue will be addressed at the September hearing. (*Id.*) The fact that Empire waited to give Goodnight an opportunity to remedy its noncompliance does not mean that Empire slept on its rights and certainly does not remove Empire's ability to bring a motion at any time. In addition, much of Empire's Motion was based on facts ascertained after the filing of Goodnight's Application to Amend the EMSU's unitized interval in February, 2024.

More importantly, this issue is not scheduled to be heard at the September hearing. That hearing will address whether a residual oil zone exists within the San Andres Formation and whether Goodnight's injection into the San Andres Formation is impairing correlative rights or resulting in waste. Empire's *Motion* is based on a completely separate issue that needs to be addressed expeditiously because Empire is being harmed every day by Goodnight's actions.

I. Empire's *Motion* meets the requirements for a stay or suspension.

Assuming for the sake of argument that the New Mexico Rules of Civil Procedure regarding preliminary injunctions apply to a motion for stay or suspension before the Commission, Empire's *Motion* meets those requirements.

A. Empire has shown that it has suffered injury.

As more specifically set forth in the *Motion*, Empire has suffered injury from the intrusion of the produced water into the EMSU. And if the injection of excess water is not stayed, Empire will continue to suffer damage.

B. The threatened injury outweighs the damage the injunction might cause Goodnight.

By its *Motion*, Empire is requesting that Goodnight be made to comply with the Division's existing regulations and orders. Goodnight cannot show that it would suffer any damage at all. The only loss of income that Goodnight would suffer is purely theoretical and would be caused by its current unlawful acts being restrained.

Goodnight's injection activities are continuing to cause and, if not curtailed in the future will cause, irreparable damage to the EMSU and the oil and gas wells operating therein.

C. Issuance of the injunction is in the public's best interest.

There can be no doubt that issuance of the injunction is in the public's best interest. One of the purposes of the Commission is to safeguard the public's interests in oil and gas production in this State. If Goodnight is permitted to continue to inject produced water in excessive amounts into the EMSU, more damage to oil and gas production will occur.

D. There is a substantial likelihood that Empire will prevail on the merits.

All of the facts are in Empire's favor. The record is clear that Goodnight has continuously injected produced water in excessive amounts into the Eunice Monument South Unit (EMSU), that Goodnight is not in compliance with the Division's orders and regulations, and that Goodnight has not been reporting injection volumes for two of its SWD wells. A review of Goodnight's *Response* shows that it does not deny these facts. Therefore, there is a substantial likelihood that Empire will prevail on the merits.

E. The stay is necessary to prevent gross negative consequences to an affected party.

In addition to the requirements listed above, NMAC § 19.15.4.23(B) provides that:

The director may grant a stay pursuant to a motion for stay or upon the director's own initiative, after according parties who have appeared in the case notice and an opportunity to respond, if 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. (Emphasis added.)

The *Motion* clearly shows that a stay is necessary in order to prevent gross negative consequences to Empire

F. The failure to attach a proposed stay order to the Motion does not warrant denial.

Rule 19.15.4.23(B) NMAC does state that, “The party shall attach a proposed stay order to the motion.” Goodnight argues – without citing any authority – that “Empire has not met this mandatory procedural requirement, thereby subjecting the motion to an immediate denial.” “Where a party cites no authority to support an argument, we may assume no such authority exists.” *Curry v. Great Nw. Ins. Co.*, 2014-NMCA-031, ¶ 28, 320 P.3d 482, 489. “We assume where arguments in briefs are unsupported by cited authority, counsel after diligent search, was unable to find any supporting authority.” *Doe v. Lee*, 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329.

Despite diligent search, Empire has found no New Mexico case holding that failure to attach a proposed order subjects a motion to denial, either under Commission regulations or the Rules of Civil Procedure. Goodnight’s argument illustrates its continuing effort to use procedural technicalities as a basis to continue illegal injection into the EMSU. The Commission should not enable Goodnight to do so. Regardless, Empire is attaching a proposed order to this reply.

In light of the immediate harm being caused to Empire by Goodnight’s actions, Empire respectfully requests that the Commission waive this procedural requirement in this case.

II. Sanctions and Penalties.

In its *Response*, Goodnight did not offer any argument against the imposition of sanctions and penalties as set forth in Rule 19.15.5.10 NMAC. That regulation allows the Commission to seek sanctions, including a temporary cessation order and civil penalties including fines as set forth

in paragraph D of that Regulation. For the reasons discussed in Empire's *Motion*, sanctions and penalties are appropriate here.

CONCLUSION

Empire respectfully requests that Goodnight's injection into the Wells be stayed and suspended to prevent further damage to Empire until the Commission enters a ruling on Empire's application to revoke Goodnight's injection authority under the Orders.

WHEREFORE, having fully replied, Empire respectfully requests that the Commission:

A. Immediately require Goodnight to account for the volumes of produced water it has injected into the Wells since the inception of injection.

B. Immediately require Goodnight to report injection volumes for the Andre Dawson and Ernie Banks Wells and to the extent to any over-injection, immediately suspend further disposal into the wells until over-injection is balanced with the amount of authorized injection.

C. For the four other SWD wells for which over-injection has occurred, immediately suspend injection until over-injection is balanced with the amount of authorized injection.

D. Issue sanctions, including but not limited to:

1. Monetary penalties pursuant to NMAC 19.15.5.10 for Goodnight's violation of the orders;
2. Cessation of the orders until a hearing to revoke the orders is held by the Commission; and
3. For such other and further relief as the Commission finds appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served upon counsel of record by electronic mail this 13th day of August, 2024, as follows:

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