

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

APPLICATION OF GOODNIGHT PERMIAN MIDSTREAM, LLC FOR APPROVAL OF A SALTWATER DISPOSAL WELL, LEA COUNTY, NEW MEXICO.

CASE NO. 24123  
ORDER NO. R-22869-A

**GOODNIGHT'S RESPONSE TO THE DIVISION'S MOTION TO VACATE AND CONTINUE THE SEPTEMBER HEARING AND VACATE THE SCHEDULING ORDER**

Goodnight Midstream Permian, LLC ("Goodnight"), by and through undersigned counsel, respectfully submits this response to the Division's Emergency Motion to Vacate and

Continue the September 23-27, 2024 Setting and to Vacate the Scheduling Order (the “Motion”). Goodnight does not oppose the Division’s Motion and sets out additional considerations below.

1. Empire New Mexico LLC and Goodnight each have been awarded the right to take five pre-hearing depositions. Goodnight has been granted a Rule 30(B)(6) deposition of Empire and four separate expert witness depositions. And Empire is authorized to depose five of Goodnight’s expert witnesses.

2. The decision to authorize pre-hearing depositions represents an acknowledgement by the Commission and the Hearing Officer that the parties have made a showing of extraordinary circumstances justifying the depositions. 19.15.4.16.A NMAC (requiring “extraordinary circumstances” to justify a prehearing deposition).

3. Prehearing depositions are exceedingly rare, as they are intended to be. Goodnight counsel is aware of maybe two instances over 30 years where prehearing depositions have been awarded in Division or Commission proceedings. Approving 10 pre-hearing depositions—four of which were granted six days before written testimony and exhibits were due to be filed on August 26, 2024—is clear recognition that the need for prehearing testimony is commensurate with the technical complexities and significance of these cases.

4. Empire supported its arguments favoring deposition of four of Goodnight’s technical witnesses, arguing, as the Division has argued, that “the complex technical and geological issues in this case concerning the migration of produced water from different areas within the EMSU would benefit from early examination through pre-hearing depositions [and] the substantial public and private interests at state that weigh in favor of fulsome and comprehensive discovery[.]” *See* Empire Resp. in Opp. to Mot. to Quash, p. 8, filed 8/15/2024. “

5. On August 26 and 27 in its written direct testimony, the Division has introduced for the first time in this matter a new and unexpected issue that also must be addressed, in addition to the technical issues within the core scope of these contested proceedings, regarding the relationship of the Capitan Reef to the San Andres aquifer within an area the Division refers to as the Hobbs Channel.<sup>1</sup> That concern impacts both Empire and Goodnight, as well intervenors Rice Operating Company/Permian Line Service and OWL/Pilot Water Solutions, and any operator of a San Andres Class II injection well in the Hobbs Channel.

6. Empire claims it has a plan to conduct a water-alternating-gas carbon dioxide Class II injection flood in the purported San Andres residual oil zone. According to the Division, such injection should not be approved until its concerns over the Capitan Reef are resolved.

7. Similar to Goodnight, both Rice Operating Company/Permian Line Service and OWL/Pilot Water Solutions SWD LLC operate or have pending applications for numerous produced water disposal wells in the San Andres within the Hobbs Channel. Pilot's San Andres SWD administrative applications that have been pending since February-March 2024 are all implicated by the Division's announcement that no additional Class II wells should be approved until the Capitan issues are addressed.

8. The Division's unexpected position has far reaching implications for produced water disposal and oil and gas operations in the state—not just within the confines of the

9. Hobbs Channel—but across the Delaware Basin, where Goodnight alone serves 13 dedicated operators with more than 600 producing wells connected through dozens of

---

<sup>1</sup> Goodnight previously addressed the Division's initial concerns regarding the Capitan Reef in prior applications for existing SWDs, and believed those concerns had been resolved because the orders were approved and the Division did not raise the concerns again, (*see, e.g., Exhibit A*, attached), but the new questions raised by the Division are a highly technical in nature that require time and effort to properly address.

different receipt points through its Llano System pipeline, with a throughput capacity of approximately 400,000 barrels of water per day.

10. Sorting through and assessing the data relied on by the Division to support its concerns—in conjunction with reviewing updated analyses, outcrop studies, publicly available water chemistry databases, and other data sources in response—will necessarily take time.

11. A delay in the hearing, and a delay in resolution of these matters, substantially adversely impacts Goodnight. With a halt to approval of additional San Andres disposal in the State of New Mexico, the delay impairs Goodnight's ability to grow its business, which may force Goodnight to turn away produced water volumes in the next twelve months on the order of tens of thousands of barrels per day because it is unable to expand its system capacity due to these proceedings. To the extent operators of oil and gas wells are unable to locate alternative disposal options for these volumes, producing wells may have to be shut in or completions delayed until disposal capacity is secured, which will result in a direct adverse impact to the State of New Mexico. Goodnight appreciates the Division's acknowledgement of this impact in its Motion.

12. Notwithstanding this substantial impact and related business considerations, Goodnight is in a position where it cannot reasonably oppose the Division's motion for the reasons outlined above. But to avoid delay, additional adverse financial impacts, and prejudice, Goodnight requests the hearing in these cases be re-scheduled to the earliest available setting, preferably in November or early December, but no later than commencing on January 13, 2025. A 60-day legislative session starts on January 21, 2025, likely pushing a week-long hearing out to a setting after March 22, 2025, if it cannot be set for the session.

13. A delay in the hearing beyond 2024 will impose a heavy toll on the parties and likely adversely impact existing oil and gas production in the State of New Mexico. Every option should be explored to avoid that outcome.

**Conclusion**

For the reasons outlined above, Goodnight does not oppose the Division's motion, but respectfully requests that the earliest available hearing dates be secured to avoid undue prejudice and delay and, to the extent possible, that new hearing dates be secured in coordination with the parties in advance of the Commission's next meeting.

DATED: August 29, 2024

Respectfully submitted,

**HOLLAND & HART LLP**

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 August 29, 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@spencerfane.com*  
*dgoldberg@spencerfane.com*  
*ec: dortiz@spencerfan.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***



---

Adam G. Rankin

# EXHIBIT A

**From:** [Nathan Alleman](#)  
**To:** [Coss, Dylan](#)  
**Cc:** [Grant Adams](#); [Steve Drake - Retired](#); [Kaitlyn A. Luck](#)  
**Subject:** Goodnight - Andre Dawson and Ernie Banks Capitan Reef Proximity  
**Date:** Sunday, January 24, 2021 9:06:40 PM

---

**[EXTERNAL EMAIL NOTIFICATION]** This message was received from outside the Goodnight Midstream Organization, do not click links or attachments unless you recognize the sender and know the content is safe.

Dylan,

Goodnight's attorney, Ms. Kaitlyn Luck, mentioned that at last week's hearings for Goodnight's Andre Dawson SWD #1 (Case No. 21569) and Ernie Banks SWD #1 (Case No. 21570) OCD asked about the proximity of the proposed SWD locations to the Capitan Reef. OCD did not specifically request that Goodnight follow up with information related to this request, but as a means of resolving this concern, we have provided the distance from each proposed SWD location to the nearest point of the Capitan Reef.

- **Andre Dawson SWD #1:** 3.2 miles to the closest point of the Capitan Reef
- **Ernie Banks SWD #1:** 2.8 miles to the closest point of the Capitan Reef

Additionally, the Capitan Reef is shallower than the proposed injection formation (San Andres) and there is stratigraphic separation between the San Andres and Capitan Reef formations. Based on both the geographic distance and stratigraphic separation, these wells pose no threat of adverse impact to the water quality in the Capitan Reef.

Please let us know if you have any further questions on this.

Regards,

**Nate Alleman**

Energy & Environmental Consultant  
ALL Consulting  
1718 South Cheyenne Avenue  
Tulsa, OK 74119  
Office: 918-382-7581  
Cell: 918-237-0559