

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

**APPLICATIONS OF EMPIRE NEW MEXICO LLC  
TO REVOKE THE INJECTION AUTHORITY FOR  
WELLS OPERATED BY RICE OPERATING  
COMPANY.**

**Case Nos. 24433-35, and  
24437-39**

**APPLICATION OF EMPIRE NEW MEXICO LLC  
TO REVOKE THE INJECTION AUTHORITY  
GRANTED UNDER ADMINISTRATIVE ORDER NO.  
SWD-1754, LEA COUNTY, NEW MEXICO – N 11#00-  
1 WELL OPERATED BY PERMIAN LINE SERVICE.**

**Case No. 24436**

**NOTICE OF WITHDRAWAL OF OPPOSITION TO MOTION TO DISMISS**

Goodnight Midstream Permian, LLC (“Goodnight”), by and through undersigned counsel, withdraws its opposition to Empire New Mexico, LLC’s Motion to Dismiss (filed June 21, 2024), and provides this notice to explain and qualify its withdrawal of opposition given the Notice of Agreement with Empire New Mexico, LLC’s, Motion to Dismiss that Rice Operating Company (“Rice”) and Permian Line Company, LLC (“Permian”) filed on July 5, 2024.

Goodnight withdraws its opposition to allow Empire, Rice, and Permian to end Empire’s improper pursuit to invalidate Rice and Permian’s saltwater disposal (“SWD”) permits, pursuant to which SWD injection has proceeded in the San Adres formation for over half a century without objection – and without impairing correlative rights or causing waste, or even the suggestion of either. Goodnight explains herein its original hesitance in the context of Empire’s prejudicial procedural history of attempting to litigate its purported claims.

**GOODNIGHT ORIGINALLY OPPOSED IN CASE EMPIRE SOUGHT TO PROSECUTE ITS CASES PIECEMEAL, WHICH IT CANNOT DO.**

Goodnight opposed Empire's motion to dismiss, because Empire's capricious procedural moves belie Empire's ongoing effort to forum shop and issue shop for the right recipe to avoid dealing with this matter on the merits with all parties involved. Empire cannot seem to decide who should decide these issues, and which issues it wants decided. Now that it decided to properly abandon and dismiss its improper attack of Rice's and Permian's saltwater disposal ("SWD") permits, Goodnight does not oppose the dismissals.

But a short summary of these procedural moves exhibits how Empire sought to shop its claims and break apart, piece-by-piece, its unsupported attacks of SWD permits to place a fig leaf over the fact that longstanding disposal in the San Andres formation does not impair its correlative rights or create waste:

- Empire initiated opposition to Goodnight's pending applications for additional wells on or about June 6, 2022 (Case No. 22626), June 26, 2023 (*see* Div. Case Nos. 23614-17), and to increase the injection rate of the Andre Dawson on or about September 6, 2023 (Case No. 23775).
- Empire then filed five cases to reject Goodnight's injection authority in already-permitted wells on November 7, 2023 (*see* Div. Case Nos. 24018-24027).
- Empire then filed a district court action against Goodnight on or about December 11, 2023, raising the *same* technical factual issues. *See Empire New Mexico, LLC v. Goodnight Midstream Permian, LLC*, New Mexico Case No. D-506-CV-2023-01180. By doing so, Empire sought an alternative adjudication of factual issues already pending before the Commission outside the New Mexico Oil Conservation Division. The district court correctly recognized that these issues should be addressed by the

Commission (oral ruling issued at hearing on May 29, 2024, written order pending) and stayed the district court proceedings.

- Only after Goodnight repeatedly pointed out that Empire was unreasonably singling out Goodnight, *see, inter alia*, Goodnight Midstream’s Response *Partially* Opposing Empire’s Motion to Refer Cases to the Commission, p. 5,<sup>1</sup> (January 12, 2024 in Case Nos. 23614-17, 23775, and 2418-27), did Empire file applications to revoke Rice’s and Permian’s injection authority on April 2, 2024 (Case Nos. 24433-39) and Pilot Water Solutions, LLC, and OWL SWD Operating, LLC’s (“Pilot”), injection authority on April 2, 2024 (Case No. 24432).
- Empire then filed a district court action on or about April 24, 2024 against Rice and Permian raising the same factual issues, once again seeking an alternative adjudication of their technical claims outside the Division. *See Empire New Mexico, LLC v. Rice Operating Company, et al.*, New Mexico Case No. D-506-CV-2024-00377.
- Empire *now* seeks to dismiss the Division’s matters against Rice and Permian, in the instant motion, and against Pilot in a similar motion to dismiss in Case No. 24432.

In sum, Empire obviously wanted to hedge its bets by holding off on adjudicating some of these issues until later, perhaps in front of a different forum, perhaps with a more favorable outcome than at a Commission Hearing, but that is not how adjudication works.

---

<sup>1</sup> Goodnight pointed to Page 5 of that response, *e.g.*, showing that: “Empire has arbitrarily excluded from its attack numerous active wells disposing substantial volumes of produced water into the San Andres within the Unit Area and within a one-mile radius of the EMSU boundary. . . . Empire has made no effort to articulate a basis for distinguishing between Goodnight Midstream’s injection—either inside the EMSU or outside it—and injection by these other operators, nor is there is a valid basis for doing so. However, grouping Goodnight Midstream’s disposal wells into a consolidated set of cases for referral to the Commission—to the exclusion of other equally positioned disposal wells operated by others—raises substantial concerns about arbitrary and capricious agency action.” *Id.*

Contrary to the suggestion in Empire's instant motion to dismiss, Empire is *defending* nothing—it was *Empire* who initiated *every single dispute* that is before the Commission in the Goodnight/Empire proceedings, in this Division proceeding, and in the Pilot Division proceeding. Rice, Permian, and Pilot have now intervened into the Goodnight/Empire cases.

Although every party, and intervenor, to the Goodnight/Empire Commission hearing in February 20, 2025, has a lot at stake—indeed, determination of the issues related to the San Andres formation in the Eunice Monument South Unit (“EMSU”) by the Commission will have significant ramifications on all operators, including Empire—Empire should not be permitted the unique position to relitigate those issues against any party. Empire does not get multiple bites at the apple because litigation over claims such as Empire's is not dealt with in piecemeal fashion. A “party cannot by negligence or design withhold issues and litigate them in consecutive actions. He may not split his demands or his defenses.” *Moffat v. Branch*, 2005-NMCA-103, ¶ 25, 118 P.3d 732 (internal quotations omitted) (emphasis added); *accord Town of Beloit v. Morgan*, 74 U.S. 619, 623 (1869). Empire should be, and will be, bound by the determination of the Commission following the Commission Hearing, subject to any rights regarding appeal.

In Empire's Motion to Dismiss, Empire asserts that it “does not have the resources to have a contested hearing where it must defend its position against five different corporations and sets of attorneys, all at the same time.” Mot., pp. 5-6. On that basis, Empire suggests that it seeks dismissal of the Rice and Permian cases because it does not want to have to prove its case against all the parties adverse to its claims.

Notably, Empire seeks to upend decades of injection activities in the San Andres in the EMSU by numerous operators. And Empire seeks this based on its contention that there exists economically recoverable hydrocarbons in the San Andres within the EMSU. This unique

contention was never made or suggested by any prior unit operator—its predecessors in interest. Proving its claims against all the parties adverse to its claims is *exactly* what Empire’s claims seek to do. These sorts of claims, which Goodnight denies and opposes, necessarily pit Empire against “five different corporations and sets of attorneys.” Mot. at 5-6.

Rice and Permian correctly note they are “the only respondents . . . in these applications.” Not., p. 2 (emph. removed). However, Goodnight disagrees that they are the only “adverse parties” in these Division cases. Goodnight has been permitted to intervene, because, contrary to Rice and Permian’s assertions, Goodnight does have a stake in the adjudication of the facts underlying this proceeding—those factual issues are the same or substantially similar to the factual issues Empire has put into issue in the matters now before the Commission.

But given that the Commission permitted intervention by Rice, Permian, and Pilot, into the Goodnight/Empire matters, and that those parties will be permitted to participate in the Commission Hearing, Goodnight understands that the Commission intends for Empire to be bound by its determination at the Commission Hearing as to all facts adjudicated at that hearing. On that understanding, Goodnight provides notice that it withdraws its opposition to Empire’s Motion.

Goodnight does not waive its objection to Empire seeking to relitigate these factual issues after the Commission Hearing by reinitiating any proceeding, like this, it dismissed or initiating any other proceeding to attempt to attack, collaterally, the Commission’s findings and conclusions at the Commission Hearing.

### **CONCLUSION**

Goodnight withdraws its opposition to Empire’s Motion to Dismiss to end Empire’s claims against Rice and Permian’s SWD permits. Goodnight does so because Goodnight, and the other targets of Empire’s claims, are entitled to an end of the litigation defending against Empire’s

improper attacks, and the Commission should not hear Empire to relitigate these issues in any action at a later date if Empire is not successful in proving its claims against Goodnight and all the other saltwater injection operators whose interests those claims impugn.

DATED: October 17, 2024

Respectfully submitted,

HOLLAND & HART LLP

*/s/ Nathan R. Jurgensen*

---

Michael H. Feldewert  
Adam G. Rankin  
Julia Broggi  
Paula M. Vance  
Nathan R. Jurgensen  
Post Office Box 2208  
Santa Fe, New Mexico 87504-2208  
(505) 988-4421  
(505) 983-6043 Facsimile  
*mfeldewert@hollandhart.com*  
*agrarkin@hollandhart.com*  
*jbroggi@hollandhart.com*  
*pmvance@hollandhart.com*  
*nrjurgenen@hollandhart.com*

**ATTORNEYS FOR INTERVENOR GOODNIGHT  
MIDSTREAM PERMIAN, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that on October 17, 2024, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

<p>Ernest L. Padilla  PADILLA LAW FIRM, P.A.  Post Office Box 2523  Santa Fe, New Mexico 87504  (505) 988-7577  <i>padillalawnm@outlook.com</i></p> <p>Sharon T. Shaheen  SPENCER FANE, LLP  325 Paseo De Peralta  Santa Fe, NM 87501-1860  Tel: (505) 982-3873  <i>sshhaheen@spencerfane.com</i>  <i>dortiz@spencerfane.com</i></p> <p><b><i>Attorneys for Empire New Mexico, LLC</i></b></p> <p>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  <i>jessek.tremaine@emnrd.nm.gov</i>  <i>chris.moander@emnrd.nm.gov</i></p> <p><b><i>Attorneys for New Mexico Oil  Conservation Division</i></b></p>	<p>Matthew M. Beck  PEIFER, HANSON, MULLINS &amp; BAKER, P.A.  P.O. Box 25245  Albuquerque, NM 87125-5245  Tel: (505) 247-4800  <i>mbeck@peiferlaw.com</i></p> <p>Earl E. DeBrine, Jr.  Deana M. Bennett  Yarithza Peña  MODRALL, SPERLING, ROEHL, HARRIS &amp;  SISK, P.A.  P.O. Box 2168  500 Fourth St. NW, Suite 1000  Albuquerque, NM 87103-2168  (505) 848-1800  <i>edebrine@modrall.com</i>  <i>deana.bennett@modrall.com</i>  <i>yarithza.pena@modrall.com</i></p> <p><b><i>Attorneys for Rice Operating Company and  Permian Line Service, LLC</i></b></p> <p>Miguel A. Suazo  Sophia A. Graham  BEATTY &amp; WOZNIAK, P.C.  500 Don Gaspar Ave.  Santa Fe, NM 87505  Tel: (505) 946-2090  <i>msuazo@bwenergylaw.com</i>  <i>sgraham@bwenergylaw.com</i></p> <p><b><i>Attorneys for Pilot Water Solutions SWD,  LLC</i></b></p>
--	--

*Nathan R. Jurgensen*

\_\_\_\_\_  
Nathan R. Jurgensen