

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

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

**CASE NO. 24123**

**APPLICATIONS OF GOODNIGHT  
MIDSTREAM PERMIAN LLC FOR APPROVAL  
OF SALTWATER DISPOSAL WELLS,  
LEA COUNTY, NEW MEXICO**

**CASE NOS. 23614-23617**

**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**

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

**CASE NOS. 24018-24020, 24025**

**EMPIRE NEW MEXICO LLC'S RESPONSE TO GOODNIGHT MIDSTREAM  
PERMIAN LLC'S RENEWED MOTION FOR JUDGMENT ON EXCLUSION OF  
SAN ANDRES FORMATION WITHIN EMSU**

**INTRODUCTION**

Goodnight's "renewed" motion rehashes the same, stale legal question that the Commission has now twice rejected: whether the San Andres formation belongs in the Eunice Monument South Unit ("EMSU") unitized interval (the "Unitization Issue"). This question – settled by the Commission over forty years ago – was expressly excluded from this proceeding. The issue was not part of this proceeding when Goodnight unsuccessfully moved for partial summary judgment on it six months ago or at the evidentiary hearing, and it certainly cannot be

considered now. Procedurally improper, repetitious, and fundamentally unfair, Goodnight's post-hearing motion should be denied.

Goodnight filed applications to exclude the San Andres from the EMSU unitized interval in Case Nos. 24277 and 24278, and following briefing by the parties, the Commission issued an order staying those cases on July 2, 2024.<sup>1</sup> In issuing the stay, the Commission correctly determined that it would evaluate whether a residual oil zone exists in the San Andres formation within the EMSU before addressing Goodnight's unprecedented request to exclude the San Andres formation from the unitized interval that the Commission, New Mexico State Land Office, and United States Bureau of Land Management approved more than 40 years ago. Accordingly, the Commission determined that the evidentiary hearing would address "evidence, testimony, and legal argument on the issue of the existence, extent of and possible interference with a residual oil zone [within] the Eunice Monument South Unit by produced water injection activities undertaken by Goodnight."<sup>2</sup> The Commission also granted Goodnight's request (over Empire's objection) to limit the hearing to Goodnight's injection activities within the EMSU.<sup>3</sup>

On March 4, 2025, the Commission issued its Order Partially Amending the Commission's July 2, 2024 Order with Respect to the Scope of the Hearing to address issues raised by the New Mexico Oil Conservation Division. In that order, the Commission clarified that the scope of the evidentiary hearing would include three discrete issues: (1) whether Goodnight's operations impair correlative rights or cause waste; (2) whether Empire's applications would prevent those outcomes; and (3) whether any party's proposed actions would threaten public health, the environment, or

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<sup>1</sup> Joint Order on Goodnight's Motion to Limit Scope of Hearing on Cases within the EMSU and the Oil Conservation Division Motion Concerning the Scope of the Evidentiary Hearing Set for September 23-27, 2024 (July 2, 2024) (the "Scope Order").

<sup>2</sup> *Id.* ¶ 2.

<sup>3</sup> *Id.* ¶ 3.

freshwater resources.<sup>4</sup> Thus, the Commission confirmed – *through two separate orders* – that the scope of the hearing would not include Goodnight’s argument that the San Andres formation should be excluded from the unitized interval.

Respecting the Commission’s clear directive, Empire did not present evidence on the Unitization Issue at hearing. Nor did Empire request that the Bureau of Land Management or the New Mexico State Land Office, necessary parties to any proceeding seeking to amend the unitized interval, participate in the proceeding. In other words, Empire followed the Commission’s rules.

Goodnight now asks the Commission to disregard its own orders and adjudicate a stayed, collateral issue without an evidentiary basis. Goodnight’s attempt not only sidesteps established procedure but also violates Empire’s due process rights and basic procedural fairness. For these reasons, and those discussed below, the Commission should deny Goodnight’s motion.

## **ARGUMENT**

### **I. The Parties have already litigated – and the Commission has already decided – the scope of this proceeding.**

The Commission’s Scope Orders drew a clear boundary around the issues to be addressed in this proceeding. As noted above, the orders limited the hearing to three statutory questions under NMSA 1978, §§ 70-2-11 and 70-2-12. The Commission expressly excluded and stayed Goodnight’s pending applications in Cases Nos. 24277 and 24278, which seek to exclude the San Andres formation from the EMSU. This alone forecloses Goodnight’s motion.

But even after the Commission stayed Goodnight’s applications, Goodnight pressed the same exclusion theory in its motion for partial summary judgment.<sup>5</sup> The Commission rejected it.

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<sup>4</sup> Order Partially Amending the Commission’s July 2, 2024 Order with Respect to the Scope of the Hearing (March 4, 2025) (the “Amended Scope Order”).

<sup>5</sup> See Goodnight’s Motion for Partial Summary Judgment (Jan. 23, 2025) (arguing that the San Andres “was improperly included within the EMSU’s unitized interval” and demanded its removal “as a matter of law.”).

In a February 14, 2025 order, the Commission held that Goodnight's motion was "precluded by issues of fact" and "otherwise not well-taken." That ruling necessarily reaffirmed the scope of the proceeding and confirmed that the Unitization Issue lies outside it.

Even setting aside that procedural bar, Goodnight's theory fails. In opposing summary judgment and at hearing, Empire submitted detailed expert testimony and supporting data showing that the San Andres formation contains a residual oil zone suitable for enhanced oil recovery. That evidence directly supports the Commission's 1984 determination that unitization of the San Andres would substantially increase the ultimate recovery of oil, the statutory standard under NMSA 1978, § 70-7-1.<sup>6</sup> Goodnight offers no evidence that refutes this. The Commission came to the correct conclusion in 1984, and nothing in this record justifies undoing that conclusion now.

Accordingly, Goodnight's renewed attempt to relitigate a question the Commission has already answered should be denied once again.

## **II. Goodnight's motion violates basic due process.**

Granting Goodnight's motion, despite the Commission's express orders excluding the Unitization Issue from this proceeding, would violate Empire's right to basic procedural due process. Courts apply a three-prong test to determine whether an agency has satisfied due process: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."<sup>7</sup>

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<sup>6</sup> See Order No. R-7765 (Empire Exh. A-6).

<sup>7</sup> *In re Comm'n Investigation Into 1997 Earnings of U S W. Communications, Inc.*, 1999-NMSC-016, ¶ 26, 127 N.M. 254, citing *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893 (1976); see also *TW Telecom of New Mexico, L.L.C. v. New Mexico Pub. Regulation Comm'n*, 2011-NMSC-029, ¶ 17, 150 N.M. 12 (procedural due process).

Here, Empire paid \$17.8 million in cash and assumed substantial liability to acquire the EMSU unit largely due to the significant ROZ that XTO identified within the unitized interval.<sup>8</sup> Thus, excluding the San Andres from the unitized interval would cause extreme harm to Empire. The risk of erroneous deprivation of Empire's interest in the San Andres is tremendous, as Empire never litigated the Unitization Issue because the Commission excluded the issue from this proceeding. Empire presented no evidence, no expert testimony, and no legal arguments on that question, because it was outside the scope of the hearing. Empire had no reason to anticipate that Goodnight would try to revive a stayed issue after the evidentiary record on separate questions had closed. Yet that is precisely what Goodnight now attempts. And, affording Empire the process to which it is due would not impose additional burdens on the Commission, as Goodnight's applications to unilaterally amend the unitized interval are already pending in separate proceedings.

Goodnight's post-hearing motion amounts to a collateral attack on the Commission's rulings, and a bid to bind Empire to a theory it had no opportunity to contest. Granting this relief would undermine the integrity of the Commission's adjudicatory process and deprive Empire of the fair hearing that due process demands. For this reason, the motion should be denied.

### **III. Goodnight's Motion constitutes an improper collateral attack on the Stay Order.**

Besides seeking to violate Empire's due process rights, Goodnight's motion attempts to nullify the Commission's express decision to stay Goodnight's exclusion applications. That is, Goodnight now asks the Commission to do exactly what it said it would not: decide whether the

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affords, at a minimum, the right to "reasonable notice and opportunity to be heard."); see also *Joab*, 1993-NMCA-113, ¶ 15 (opportunity to cross examine applicant on proposed controls was relevant procedural due process determination).

<sup>8</sup> See Empire Exh. A (Wheeler Dir.) at ¶¶ 10-13; Empire Exh. A-5 (Exxon Mobil Sales Brochure and PSA).

San Andres formation should be removed from the EMSU without resolving Cases Nos. 24277 and 24278. But those cases remain stayed. They are the proper venue for litigating any proposed change to the unitized interval, with full notice, a hearing, and participation by all necessary parties.<sup>9</sup> Goodnight's effort to circumvent this process violates the Commission's rules, hearing framework, and procedural orders. It seeks an end-run around the same stay Goodnight's counsel acknowledged and opposed in earlier briefing. It should be denied.

#### **IV. Goodnight cannot unilaterally amend a Federally and State-Approved Unit Agreement.**

Goodnight also ignores the fact that the EMSU Unit Agreement is not a one-party document. It is a federally and state-approved contract that binds multiple entities and stakeholders, including Empire, the Bureau of Land Management, and the New Mexico State Land Office.<sup>10</sup> Any amendment to the unitized interval requires the consent of signatories, not just an *ad hoc* post-hearing motion.

Goodnight's motion assumes the Commission can revise the Unit Agreement with the stroke of a pen. It cannot. Neither the Commission nor Goodnight has the authority to unilaterally alter the terms of a multi-party federal agreement outside of the proper process. Goodnight's effort to secure a backdoor amendment through post-hearing briefing is procedurally improper and unlawful. It should be rejected.

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<sup>9</sup> See NMAC 19.15.4.12(A)(1). With respect to statutory unitization, the Commission's adjudication rule requires notice to "each owner of an interest in the mineral estate of any portion of the lands the applicant proposes to be pooled or unitized whose interest is evidenced by a written conveyance document either of record or known to the applicant at the time the applicant filed the application and whose interest has not been voluntarily committed to the area proposed to be pooled or unitized (other than a royalty interest subject to a pooling or unitization clause)." Because Goodnight seeks to amend the unitized interval, notice to these parties is required. Goodnight has not provided any such notice.

<sup>10</sup> See Empire Exh. A-4 (EMSU Unit Agreement).

## **V. The Commission has an ongoing duty to prevent waste.**

Finally, even if Goodnight's exclusion theory had merit – which it does not – the Commission would still have an independent duty to prevent waste and protect correlative rights.<sup>11</sup> Empire presented extensive, clear evidence that the San Andres formation contains a residual oil zone recoverable through enhanced methods.<sup>12</sup> Goodnight's continued disposal into that zone impairs Empire's correlative rights and risks the permanent loss of producible resources. Simply stated, the Commission's statutory obligation to prevent waste does not vanish simply because Goodnight disputes whether the San Andres formation should have been included in the unitized interval in 1984. Whatever the status of the exclusion applications, the Commission must not sanction waste. Granting Goodnight's motion would do exactly that, in direct violation of the Commission's enabling statute.

## **CONCLUSION**

Goodnight's motion is procedurally improper, legally baseless, and inconsistent with the Commission's own rulings. It should be denied in full, so the Commission can proceed to resolve the applications that were properly noticed, tried, and heard.

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<sup>11</sup> See NMSA 1978, §§ 70-2-11 and 70-2-12.

<sup>12</sup> See Empire's Findings of Fact and Conclusions of Law (July 3, 2025).

Respectfully submitted,

By: /s/ Dana S. Hardy

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served upon the following counsel of record by electronic mail on July 18, 2025.

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