

**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-21190 FOR THE SOSA SA 17 NO. 2 WELL
OPERATED BY GOODNIGHT MIDSTREAM
PERMIAN LLC, LEA COUNTY, NEW
MEXICO.**

CASE NO. 24025

**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. 24018-24020

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; ORDER NO. R-22869-A.**

CASE NO. 24123

**RICE OPERATING COMPANY AND
PERMIAN LINE SERVICE, LLC'S REHEARING BRIEF**

On October 17, 2025, the Oil Conservation Commission ("Commission") granted in part a re-hearing in these matters limited to the following two legal questions:

1. Does the Commission have the legal authority to "Suspend[] existing Goodnight's injection wells . . . in order to provide Empire with the opportunity to establish the CO2 EOR pilot project" given that "there was insufficient evidence presented at hearing to prove whether the ROZ is recoverable?"
2. Does Commission Order R-24004 provide OCD with discretion in managing the "Suspen[sion of] existing Goodnight[] injection wells . . . [and] to provide Empire with the Opportunity to Establish the CO2 EOR pilot project"?

Order Partially Granting Goodnight's Motion for Rehearing; Denying Empire's Motion for Rehearing; Granting Goodnight's Motion for Stay; Holding Empire's Motion to Enforce in Abeyance ¶ 9, at 3 (filed Oct. 17, 2025) ("Rehearing Order").

The answer to the first question, which is dispositive, is: **No**. The Commission has broad authority under the Oil and Gas Act, NMSA 1978, §§ 70-2-1 to -39, but that authority is not unbounded. It is bounded by the statutory jurisdictional requirement that the Commission may act only to prevent waste (and protect correlative rights). And prevention of waste requires that there be proof that the activities sought to be restrained reduce or tend to reduce an amount of oil "ultimately recovered." NMSA 1978, § 70-2-3(A). The Commission found, after reviewing 1.3 megabytes of information and taking five weeks of testimony, that Empire New Mexico, LLC ("Empire"), failed to prove that any amount of oil in the alleged ROZ can be recovered. Suspending the injection wells of Goodnight Midstream Permian, LLC ("Goodnight") does not, therefore, prevent waste (or protect correlative rights). Based on the Commission's findings and conclusions, therefore, the Commission lacks legal authority to suspend Goodnight's injection wells.

PROCEDURAL HISTORY

These matters were filed on June 6, 2023, August 31, 2023, and November 7, 2023. On February 7, 2024, the Oil Conservation Division (the “OCD”) referred the matters to the Commission.

As set forth in the Rehearing Order, the Commission’s filing management system reflects “an extensive record of over two hundred and forty distinct documents in these consolidated matters, constituting approximately 1.3 gigabytes of information.” Rehearing Order ¶ 5.

To prepare for the hearing, Empire and Goodnight filed direct testimony, rebuttal testimony, and sur-rebuttal testimony. Empire’s direct testimony was 474 pages; its rebuttal testimony was 284 pages. Goodnight’s direct testimony was 1,239 pages; its rebuttal testimony was 617 pages; and its sur-rebuttal testimony was 49 pages.¹

The Commission then held approximately 18 days of evidentiary hearing on these matters, in February, April and May, 2025. Afterwards, Empire and Goodnight, as well as Intervenor Rice Operating Company (joined by Permian Line Service, LLC) (together, “Rice”), and Pilot Water Solutions SWD, LLC (“Pilot”), filed proposed findings of facts and conclusions of law (all single-spaced) and hearing briefs. Empire’s proposed findings of fact and conclusions of law were 27 pages; Goodnight’s proposed findings of fact and conclusions of law were 29 pages; Rice’s proposed findings of fact and conclusions of law were 16 pages; and Pilot’s findings of fact and conclusions of law were 13 pages.

After the hearing and post-hearing briefing, the Commission issued OCC Order No. R-24004 (“Hearing Order”). Included in the Commission’s findings in the Hearing Order was that “there was insufficient evidence presented at the hearing to prove whether the ROZ is

¹ On February 27, 2025, the Commission granted Goodnight leave to file sur-rebuttal as relief for Goodnight’s Motion to Exclude Improper Rebuttal Statements and Exhibits of Ryan M. Bailey & Stanley Scott Birkhead.

recoverable.” Hearing Order ¶ D, at 10. The Commission found that “[r]ecovery [from an ROZ], however, is site-specific and is based on the conditions at the EMSU.” *Id.* ¶ 58. The Commission pointed out that Empire failed to compare the oil-in-place calculations at other ROZ sites to those in the EMSU. *See id.* ¶ 59. And the Commission recognized that the calculations that Empire presented are “two standard deviations above the mean for oil recovery for a CO2 flood in a conventional reservoir.” *Id.* ¶ 60. Thus, the Commission found that, while an ROZ likely exists in the San Andres, Empire failed to prove that it is recoverable.

After the Hearing Order, Empire and Goodnight moved for a re-hearing. The Commission held a hearing on those motions for rehearing (and other motions) on October 16-17, 2025. After the hearing, the Commission issued the Rehearing Order, granting in part Goodnight’s motion for rehearing to require additional briefing from the parties on whether: (1) the Commission can suspend Goodnight’s injection authority when a preponderance of the evidence failed to prove that the ROZ is recoverable, and (2) whether the Hearing Order provides the OCD discretion to manage the suspension.

RELEVANT LAW

The Oil and Gas Act provides that the Commission has “jurisdiction and authority over all matters relating to the conservation of oil and gas and the prevention of waste” NMSA 1978, § 70-2-6(A); *see* § 70-2-6(B). The Supreme Court has made clear that, as a creature of statute, the Commission’s powers are limited to the conservation of oil and gas in New Mexico by the prevention of waste and protection of correlative rights, the prevention of waste being paramount:

The Oil Conservation Commission is a creature of statute, expressly defined, limited and empowered by the laws creating it. The commission has jurisdiction over matters related to the conservation of oil and gas in New Mexico, but the basis of its power is founded on the duty to prevent waste and to protect

correlative rights. Actually, the prevention of waste is the paramount power, inasmuch as this term is an integral part of the definition of correlative rights.²

Cont'l Oil Co. v. Oil Conservation Comm'n, 1962-NMSC-062, ¶ 11, 70 N.M. 310, 373 P.2d 809 (internal citation omitted); see *Sims v. Mechem*, 1963-NMSC-103, ¶ 11, 72 N.M. 186, 382 P.2d 183 (same).

The definition of “waste” is found in NMSA 1978, § 70-2-3(A), which provides that, in addition to its ordinary meaning, includes waste as it is “generally understood in the oil and gas business,” and includes operation of that business “in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas **ultimately recovered** from any pool.” (Emphasis added); see *Santa Fe Expl. Co. v. Oil Conservation Comm'n*, 1992-NMSC-044, ¶ 27, 114 N.M. 103, 835 P.2d 819 (“In addition to its ordinary meaning, waste is defined to include ‘the locating, spacing, drilling, equipping, operating or producing, of any well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil . . . ultimately recovered from any pool.’” (quoting NMSA 1978, § 70-2-3(A))). Thus, the Commission’s power and jurisdiction is limited to entering orders that prevent conduct that results in the reduction or a tendency to reduce oil (or gas) “recovered.” *Id.*

That the Commission lacks jurisdiction to enter an order affecting a person’s rights without finding that, but for the order, waste would occur, is grounded in the purpose of the Oil and Gas Act, which is to prohibit waste. See NMSA 1978, § 70-2-2 (“The production or handling of crude petroleum oil or natural gas of any type or in any form, or the handling of products

² The protection of correlative rights is, of course, another source of authority and jurisdiction for the Commission under the Oil and Gas Act. It was not at issue in this hearing. Of course, also, correlative rights requires as a prerequisite that any alleged proportion that affects an owner’s correlative rights must be “an amount recoverable” that “can be recovered without waste.” *Cont'l Oil Co.*, 1962-NMSC-062, ¶ 12.

thereof, in such manner or under such conditions or in such amounts as to constitute or result in waste is each hereby prohibited.”).

The Supreme Court has not been reticent to find that the Commission lacks jurisdiction to enter an order affecting a person’s rights when the Commission fails to find that the order is required to prevent waste (or protect correlative rights). In *Sims v. Mechem*, after a hearing on an application to create spacing units, the Commission entered an order setting aside a previous order creating a non-standard spacing unit, and entered an order to create two force-pooled standard spacing units which it found was “the most efficient and orderly development of the acreage.” 1963-NMSC-103, ¶ 4. Owners in the force-pooled sections filed an application to vacate and set aside the Commission’s order as void, contending that the Commission lacked jurisdiction to enter the order “because the commission failed to find that waste was being committed under [the previous order] or that waste would be prevented by the issuance of” the challenged Commission order. *Id.* ¶ 9. The Supreme Court pointed out that the Commission “[u]nquestionably” has authority to force pool property to create spacing units when not agreed on by the owners and has authority to modify existing agreements. *See id.* ¶ 10. “But,” the Supreme Court held, “the statutory authority of the commission to pool property or to modify existing agreements relating to production within a pool . . . ***must be predicated on the prevention of [] waste.***” *Id.* (emphasis added). The Supreme Court noted: “There is nothing in evidence before the commission tending to support a finding of waste or the prevention of waste by pooling the property into two standard units.” *Id.* ¶ 12. The Supreme Court therefore found that the Commission lacked jurisdiction to enter the order, and it is “void,” because the “commission [order] contains no finding as to the existence of waste, or that pooling would prevent waste, based upon evidence to support such a finding.” *Id.* ¶ 13.

Likewise, as it relates to the other statutory jurisdictional requirement of protection of correlative rights, the Supreme Court in *Cont'l Oil Co. v. Oil Conservation Comm'n* held “invalid and void” two Commission orders that “lacked the basic findings necessary to and upon which jurisdiction depended”: a finding that the orders protect correlative rights. 1962-NMSC-062, ¶ 20. The Supreme Court found that the Commission’s order lacked findings that the formula previously used in a Commission order failed to protect correlative rights, or that the new formula in the Commission’s replacement order protected correlative rights, and that the Commission’s order “lack[s] any mention of” the factors to determine “the extent of correlative rights” and whether they are impaired. *Id.* ¶¶ 12, 14. The Supreme Court pointed out that, “although formal and elaborate findings are not absolutely necessary, nevertheless basic jurisdictional findings, supported by evidence, are required to show that the commission has needed the mandate and the standards set out by statute.” *Id.* ¶ 20.

ARGUMENT

The Commission is a creature of the statute in the Oil and Gas Act, and may exercise only powers granted to it under that Act. As it pertains to these matters, the Oil and Gas Act limits the Commission’s jurisdiction and powers to the prevention of waste. The Commission properly found that the evidence at the hearing failed to establish that Goodnight’s injection wells prevent any oil from being ultimately recovered, which means that Goodnight’s injection activities do not cause waste. The Commission, therefore, lacks authority to suspend Goodnight’s injection wells. Thus, Rice does not address the Commission’s second issue: whether it properly may delegate suspension to the OCD.

I. THE COMMISSION PROPERLY CONCLUDED THAT EMPIRE FAILED TO PROVE THAT GOODNIGHT'S INJECTION ACTIVITIES CAUSE WASTE, WHICH RESULTS IN THE COMMISSION LACKING JURISDICTION TO SUSPEND GOODNIGHT'S INJECTION WELLS.

As the Supreme Court recognized, the Commission's authority (and jurisdiction) are limited to exercising powers "founded on the duty to prevent waste and to protect correlative rights." *Cont'l Oil Co.*, 1962-NMSC-062, ¶ 11. If the Commission's order is not founded on the prevention of waste, then the order is "invalid and void." *Id.* ¶ 20.

In addition to creating the Commission, and expressly defining and limiting its powers, *see id.* ¶ 11, the Oil and Gas Act defines waste, including, relevant here, "underground waste," § 70-2-3(A). Underground waste can include several different activities, including but not limited to "operating . . . any well or wells," but all such activities constitute waste only if they "reduce or tend to reduce the total quantity of crude petroleum *oil . . . ultimately recovered* from any pool'" *Santa Fe Expl. Co.*, 1992-NMSC-044, ¶ 27 (quoting NMSA 1978, § 70-2-3(A)). So a necessary jurisdictional finding for the exercise of the Commission's power is that there exists recoverable oil; if the oil is not recoverable, then the Commission does not have authority – or jurisdiction – to enter an order affecting an operator's activities, even if those activities "embrace the inefficient, excessive, or improper, use or dissipation of the reservoir energy." *Id.*

Here, after receiving over 1.3 gigabytes of information from the parties, and after taking evidence in an approximately 18-day contested hearing that included testimony from well over a dozen experts, the Commission found that "there was *insufficient evidence* presented at hearing to *prove whether the ROZ is recoverable.*" Hearing Order ¶ D, at 10 (emphasis added); *see* Rehearing Order ¶ 9(i). In other words, the Commission found that Empire did not prove that Goodnight's injection activities reduce or tend to reduce the total quantity of crude petroleum oil

ultimately recovered from the San Andres ROZ.³ Given that finding, and given that the Commission's authority is expressly limited to preventing waste (or protecting correlative rights), the Commission lacks jurisdiction to suspend Goodnight's injection authority.

This conclusion is required by the Supreme Court's decision in *Sims v. Mechem*.

Here, as in *Sims*, the Commission "unquestionably" has the authority to suspend a SWD operator's injection authority, like Goodnight's. The Commission likewise, "unquestionably" has authority to modify a party's existing agreements. But as in *Sims*, that authority must be "predicated on the prevention of [] waste," such that the Commission must find that suspending the injection authority "would prevent waste." *Id.* ¶¶ 10, 13. To find that the suspension of Goodnight's injection authority would prevent waste, the Commission must find that Goodnight's injection activities reduces the amount of oil ultimately recovered. The Commission found, however, that Empire failed to prove that any amount of oil from the alleged San Andres ROZ will be "ultimately recovered," § 70-2-3(A), as the Commission found that Empire's evidence presented at the hearing was "insufficient" to "prove whether the ROZ is recoverable." Hearing Order ¶ D; see Rehearing Order ¶ 9(i). As in *Sims*, therefore, the Commission's Hearing Order "contains no finding as to the existence of waste, or that [suspending Goodnight's injection authority] would prevent waste, based upon evidence to support such a finding;" therefore, "the [C]ommission [i]s without jurisdiction to" suspend Goodnight's injection wells and the Hearing Order, to that extent, "is void." *Sims*, 1963-NMSC-103, ¶ 13.

To the extent that the Commission's Hearing Order thought it objectively appealing to merely suspend Goodnight's injection wells to allow Empire to attempt to produce the ROZ, that

³ Although not specifically addressed in the Rehearing Order, the Commission likewise found that "Empire DID NOT adduce substantial evidence that their correlative rights in the Grayburg are CURRENTLY impaired by Goodnight's injection into the San Andres." Hearing Order ¶ C, at 9.

relief is analogous to the relief the Commission afforded in *Cont'l Oil Co. v. Oil Conservation Comm'n*, which the Supreme Court held the Commission lacked jurisdiction to provide. In *Cont'l Oil Co.*, the Supreme Court pointed out that the Commission based its orders on the objectively appealing standards that they “will result in a ‘more equitable allocation of the gas production in said pool than under the present gas proration formula,’” and that the orders would “see to it that the gas purchasers can more nearly meet market demand.” *Id.* ¶¶ 17, 18. The Supreme Court held, however, that these findings (or reasons) for the orders are “not tantamount to a finding that the new formula is based on the amounts of recoverable gas in the pool and under the tracts,” which is required, and that these reasons may support a Commission order only if they “are made **necessary by the prevention of waste** or the Protection of correlative rights.” *Id.* ¶ 18 (emphasis added). The findings were not necessary for prevention or waste (or protection of correlative rights), and the Supreme Court found that the Commission lacked a statutory basis to provide the relief:

[I]t is obvious that the commission’s finding that the enabling of gas purchasers to more nearly meet market demand is not an authorized statutory basis upon which a change of allowables may be placed. The same is true of the finding as to “the production of a greater percentage of the pool allowable,” and for the same reasons.

Id. ¶ 19. Thus, the Supreme Court held that “the order of the commission lacked the basic findings necessary to and upon which jurisdiction depended,” and the commission’s orders “are invalid and void.” *Id.* ¶ 20.

Likewise here, whatever merit there may be to the Commission’s idea at the Hearing to suspend Goodnight’s injection authority to “provide Empire with the opportunity to establish a CO2 EOR pilot project within a period of 3 years to ascertain the recoverability of the ROZ,” Hearing Order ¶ 61, there is not an authorized statutory basis on which the Commission may rely

to suspend Goodnight's permitted injection authority to provide to Empire that opportunity. *See Cont'l Oil Co.*, 1963-NMSC-063, ¶ 19. The Commission must first find that such suspension is "made necessary by the prevention of waste," *id.* ¶18, which requires finding that the oil in the alleged San Andres ROZ is ultimately recoverable, *see* § 70-2-3(A). Unlike the orders in *Cont'l Oil Co.*, which lacked the waste findings necessary for the Commission to obtain jurisdiction there, the Commission's Hearing Order here contains the jurisdictional findings of fact for waste. But the Hearing Order's findings establish conclusively that the suspension of Goodnight's injection wells will not prevent waste, because the Commission found that the evidence at the hearing established that the evidence was insufficient to prove that any oil from the alleged ROZ will be recovered. *See* Hearing Order ¶ D.

Accordingly, the Commission properly found that the evidence at the hearing failed to establish that the oil in the alleged San Andres ROZ can ultimately be recovered. That finding precludes and prevents the Commission from finding that suspension of Goodnight's injection permits prevent waste. The Commission does not, therefore, "have legal authority to '[s]uspend existing Goodnight's injection wells.'" Rehearing Order ¶ 9(i) (internal alterations omitted).

II. BECAUSE THE COMMISSION LACKS LEGAL AUTHORITY TO SUSPEND GOODNIGHT'S INJECTION WELLS, RICE DOES NOT ADDRESS THE SECOND QUESTION THAT THE COMMISSION POSED.

The Commission lacks the legal authority to suspend Goodnight's injection permits and wells. There is, therefore, no need to manage suspension of Goodnight's injection wells. Thus, Rice has declined to weigh in on the second question of law that the Commission asked – Whether the Hearing Order provides OCD with discretion to manage suspension of Goodnight's wells – although, Rice cannot think of a reason why it does not, given the Hearing Order's language and the broad authority provided to the OCD in § 70-2-6(A) of the Oil and Gas Act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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