

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

**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

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

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

**OIL CONSERVATION DIVISION’S BRIEF PER THE OCC’S OCTOBER 17, 2025
ORDER**

The New Mexico Oil Conservation Division (“OCD”) hereby submits its Brief as ordered by the Oil Conservation Commission (“OCC”) in its October 17, 2025 Order. Concerning the question posed in ¶ 9(i) of the Order, OCD contends that the OCC does in fact have legal authority to “[s]uspend existing Goodnight’s injection wells. . .in order to provide Empire with the opportunity to establish the CO2 EOR pilot project. . .” Concerning the question posed in ¶ 9(ii), OCD contends that Order No. 24004 does provide OCD with discretion in managing the “[s]uspension of existing Goodnight’s injection wells. . .to provide Empire with the opportunity to establish the CO2 EOR pilot project . . .” but remains steadfast in its request for clarity as to the date-certain, if that is the OCC’s intention, of the suspension of Goodnight’s SWD injection permits and that Empire’s permission to proceed with its CO2 EOR project be done in compliance

with OCD's regulations and proposed performance framework. In support thereof, OCD provides the following:

I. Introduction.

On October 17, 2025, the OCC issued its *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* ("Order"), which ordered the following at ¶ 9, p.3 of the Order:

"The Commission GRANTS a LIMITED REHEARING on an expedited basis with a compressed briefing schedule for only the following two questions of law:

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?" Commission Order R-24004 pages 13 and 10, respectively.
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"? Commission Order R-24004 page 13."

The OCC also set forth procedures for briefing, including reiterating that the factual record is closed, that ordered briefs are to be comprised of legal argument only, that the Parties are permitted one consolidated response brief with page limitations due on November 7, 2025, and otherwise laying out how oral arguments on the briefs and responses shall be heard. *Order* at ¶¶ 10-14, pp. 3-4.

For purposes of clarity and brevity, OCD will not outline the entire procedural history of this case and instead will focus solely on the questions posed by the OCC in the Order, which

originated with a flurry of motions filed by parties of record concerning rehearing of the above-captioned cases, possible enforcement of Order No. R-24004, and Goodnight's Motion to Stay.

II. The OCC possesses legal authority to suspend Goodnight's injection permits and/or provide Empire with the right to proceed with a CO2 pilot project.

As both a legal and practical matter, OCC's jurisdiction is broad, broad enough to provide a justified legal basis for suspension of SWD injection permits and allowance for an operator to proceed with a CO2 EOR project. OCD provides the following breakdown of relevant law.

a. Bases of OCC legal authority.

The OCC, like all New Mexico state agencies, boards, and commissions, is a creature of statute and its powers and duties are defined by the OCC's enabling act. *Cont'l Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, ¶ 11, 70 N.M. 310, 318, 373 P.2d 809, 814. Further, the basis of OCC power is couched in its dual duties to prevent waste and protect correlative rights, with particular emphasis on prevention of waste. *Id.* 70-2-4 NMSA is the enabling act for the OCC, which states that "[t]here is created an "oil conservation commission", hereinafter in the Oil and Gas Act [this article] called the "commission". . ."

70-2-6 NMSA outlines the broad scope of the OCC's statutorily enabled powers and states as follows:

A. The division shall have, and is hereby given, jurisdiction and authority over all matters relating to the conservation of oil and gas and the prevention of waste of potash as a result of oil or gas operations in this state. It shall have jurisdiction, authority and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of this act or any other law of this state relating to the conservation of oil or gas and the prevention of waste of potash as a result of oil or gas operations.

B. The commission shall have concurrent jurisdiction and authority with the division to the extent necessary for the commission to perform its duties as required by law. In addition, any hearing on any matter may be held before the commission if the division

director, in his discretion, determines that the commission shall hear the matter.

Thus, the OCD and OCC maintain concurrent jurisdiction over “all matters relating to the conservation of oil and gas. . .,” including “jurisdiction, authority and control of and over all. . . matters or things necessary or proper to enforce” the Oil and Gas Act (“OGA”). *Id.* OCD contends 70-2-6 NMSA, in using terms such as “all” and “necessary or proper” indicate that the New Mexico Legislature empowered the OCC to address the entirety of the oil and gas industry in New Mexico, with some minor exceptions such as surface water discharge permits.

70-2-11 NMSA sets forth the primary duties of both the OCC and the OCD, as follows:

- A. The division is hereby empowered, and it is its duty, to prevent waste prohibited by this act and to protect correlative rights, as in this act provided. To that end, the division is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof.
- B. The commission shall have concurrent jurisdiction and authority with the division to the extent necessary for the commission to perform its duties as required by law.

As is clear from a plain reading of 70-2-11 NMSA, both the OCC and OCD are duty-bound to prevent waste and protect correlative rights, including adopting rules, enforcing such rules, and to do “whatever may be reasonably necessary to carry out the purposes” of the OGA to advance those duties. Again, we see the OCD and OCC share concurrent jurisdiction as to both statutorily imposed duties. Both New Mexico and Federal Courts have long agreed that the OCC maintains such broad authority. *Harvey E. Yates Co. v. Cimarex Energy Co.*, No. 12-857 JH/SMV, 2014 WL 11512599, at *7 (D.N.M. Mar. 5, 2014); *see also Sims v. Mechem*, 1963-NMSC-103, ¶ 10, 72 N.M. 186, 189, 382 P.2d 183, 185; *Cont'l Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062,

¶ 11, 70 N.M. 310, 318, 373 P.2d 809, 814; *Mountain States Nat. Gas Corp. v. Petroleum Corp. of Texas*, 693 F.2d 1015, 1017, fn.2 (10th Cir. 1982).

70-2-12 NMSA enumerates specific powers the OCC, through the concurrent jurisdiction language found in both 70-2-6 and 70-2-11 NMSA, possesses to achieve its duties as outlined in 70-2-6 NMSA. Of acute relevance to the above-captioned cases are 70-2-12(B)(4), (B)(14) and (B)(15). 70-2-12(B) states as follows:

“B. The oil conservation division may make rules and orders for the purposes and with respect to the subject matter stated in this subsection:

(4) to prevent the drowning by water of any stratum or part thereof capable of producing oil or gas or both oil and gas in paying quantities and to prevent the premature and irregular encroachment of water or any other kind of water encroachment that reduces or tends to reduce the total ultimate recovery of crude petroleum oil or gas or both oil and gas from any pool. . .

(14) to permit the injection of natural gas or of any other substance into any pool in this state for the purpose of repressuring, cycling, pressure maintenance, secondary or any other enhanced recovery operations. . .

(15) to regulate the disposition, handling, transport, storage, recycling, treatment and disposal of produced water during, or for reuse in, the exploration, drilling, production, treatment or refinement of oil or gas, including disposal by injection pursuant to authority delegated under the federal Safe Drinking Water Act, in a manner that protects public health, the environment and fresh water resources;”

Thus, the OCC enjoys statutorily-granted authority to regulate CO2 EOR projects (70-2-12(B)(14) NMSA) and SWD injection permits (70-2-12(B)(15) NMSA), including prevention of drowning recoverable hydrocarbons (70-2-12(B)(4) NMSA). Further, under 70-2-12 NMSA, the OCC also enjoys the power of adjudicating matters as outlined under 70-2-12(B), per New Mexico Courts. *Earthworks' Oil & Gas Accountability Project v. New Mexico Oil Conservation Comm'n*, 2016-

NMCA-055, ¶ 5, 374 P.3d 710, 714, *citing Uhden v. N.M. Oil Conservation Comm'n*, 1991–NMSC–089, ¶ 7, 112 N.M. 528, 817 P.2d 721; *Rauscher, Pierce, Refsnes v. Taxation and Revenue Dep't*, 2002–NMSC–013, ¶ 42, 132 N.M. 226, 46 P.3d 687; and *Rayellen Res., Inc. v. N.M. Cultural Props. Review Comm'n*, 2014–NMSC–006, ¶ 27, 319 P.3d 639.

70-2-3 and 70-2-2 NMSA define the concept of “waste” and prohibit waste, respectively, which tie directly to the OCC’s duties and concurrent jurisdiction pursuant to 70-2-6 and 70-2-11 NMSA. 70-2-3 NMSA states: “The production or handling of crude petroleum oil or natural gas of any type or in any form, or the handling of products thereof, in such manner or under such conditions or in such amounts as to constitute or result in waste is each hereby prohibited.” 70-2-3 NMSA defines “waste,” in relevant part, as follows with emphasis added:

As used in this act the term “waste,” in addition to its ordinary meaning, shall include:

A. “underground waste” as those words are generally understood in the oil and gas business, and in any event to embrace the inefficient, excessive or improper, use or dissipation of the reservoir energy, including gas energy and water drive, of any pool, and 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 or natural gas ultimately recovered from any pool, and the use of inefficient underground storage of natural gas;

As part of the OCC’s purview to create rules, as found in 70-2-7, 70-2-11, and 70-2-12 NMSA, the OCC adopted a body of rules applicable to both the topic of SWD injection permits and EOR projects in 19.15.26.8 NMAC, all to avoid waste as addressed in 70-2-2 through 3 NMSA. Subsections of 19.15.26.8 NMAC include the requirement for a permit to inject produced water or for EOR projects (19.15.26.8(A) NMAC), the application requirements for such a permit (19.15.26.8(B) NMAC), administrative approval for a permit or hearing is the application for the

permit is subject to a protest (19.15.26.8(C)), and requirements of an operator seeking to initiate an EOR project (19.15.26.8(F)).

The OCC also elected to adopt a body of regulations, pursuant to 70-2-6 NMSA, that provide an adjudicative process for disputes concerning OCD regulations. *See* 19.15.4 NMAC generally, but specifically 19.15.4.3 NMAC. Finally, the OCC adopted a body of regulations allowing for enforcement against operators that violate OCD regulations, inclusive of penalties ranging from fines through permit suspensions. *See* 19.15.5 generally, but specifically 19.15.5.9-10 NMAC.

b. As a matter of law, OCC's authority to impose suspension of SWD permits and to allow for CO2 EOR projects is clear based on the relevant statutes, regulations, and caselaw.

As stated elsewhere in this Brief, the OCD contends that the OCC absolutely has the legal authority to adjudicate the legal issues of SWD injection permit suspension and the allowance for an operator to proceed with a CO2 EOR. As a matter of law:

- (1) The New Mexico Legislature enabled the creation of the OCC. 70-2-4 NMSA;
- (2) The OCC, sharing concurrent jurisdiction with the OCD, possesses broad authority over the oil and gas industry in New Mexico. 70-2-6 NMSA;
- (3) The OCC's primary duties concern prevention of waste and protection of correlative rights. 70-2-11 NMSA;
- (4) The OCC's enumerated powers, again *via* statute, include regulation of SWD injection and EOR projects. 70-2-12(B)(4), (14), and (15);
- (5) The OCC, in exercising its duty to prevent waste, maintains jurisdiction over the wasting of underground hydrocarbons. 70-2-2 through 3 NMSA; and
- (6) The OCC itself adopted specific regulations governing processes, procedures, and requirements for both SWD injection permits and EOR projects. 19.15.26.8 NMAC.
- (7) The OCC also adopted regulations providing for an adjudicative process for operators (19.15.4 NMAC) and for enforcement of and compliance with OCD regulations (19.15.5 NMAC).

OCD counsel generally avoids claiming a legal matter is "obvious," but in this instance, it is beyond clear, given the legal regime outlined above, that the OCC absolutely and without question

possesses the legal authority and, arguably, the *legal duty* to adjudicate both the suspension of Goodnight’s SWD injection permits *and* Empire’s proposed CO2 EOR project. No party to the above-captioned cases challenged either the enactment of the OGA, nor has any party to the above-captioned cases challenged the validity of the OCC’s adopted regulations. Thus, both bodies of law stand for a plain review which the OCD avers demonstrates the OCC’s authority over the above-captioned matters and the subject matter contained therein.

III. Commission Order No. R-24004 provides OCD with discretion in managing the suspension of Goodnight’s SWD permits and/or Empire’s CO2 EOR project, but with some issues remaining unresolved.

OCC Order No. R-24404 only ordered the OCD to act through a single sentence with no other context: “The Division will implement this Order.” Order R-24004, p. 13, final sentence. OCD construes this at face-value through the plain meaning of the words used by the OCC – the OCD must enforce Order R-24004 as written, which presumably means per OCD regulations, policies and procedures. However, OCD retains reservations about taking that course of action as there are factors in play, addressed below, that require more clarity from the OCC to ensure the OCD effectuate Order R-24004.

First, OCD needs clarification on the effective date for Goodnight’s SWD injection permit suspension. As explained in some detail in OCD’s October 10, 2025 *Response to Goodnight’s Application for Rehearing and Empire’s Motion for Rehearing*, OCD does not usually handle SWD permit suspensions through contested operator litigation before the OCC, nor does OCD usually handle CO2 EOR projects through the same process. OCD has OCC-approved regulations that govern both OCD activities, which will be explained below, demonstrating why the OCD seeks additional guidance from the OCC. Second, the OCD needs the OCC to instruct Empire that its CO2 EOR project must comply with relevant OCD regulations governing EOR projects and

that Order 24004 does not provide Empire with a *carte blanche* end-around OCD's regulatory regime.

a. OCD continues to maintain that it needs clarity on the date-certain or condition(s) precedent for suspension of Goodnight's SWD injection permits.

i. OCD's process for securing an SWD injection permit

19.15.26.8 NMAC governs OCD's permitting of SWD injection permits. Specifically, 19.15.26(A)(1)(a) requires a permit for injection of any produced water. As part of that permit requirement, OCD will not grant such an SWD injection permit if an operator is out of compliance with 19.15.5.9(A) NMAC. 19.15.26.8(A)(2). 19.15.5.9(A) requires an operator to be compliant with OCD's financial assurances requirements, not subject to an OCC or OCD order after notice and a hearing that finds the operator in violation of OCD regulations, does not have a penalty assessment arrearage with OCD, and is compliant with OCD's inactive well limitations.

19.15.26.8(B)(1) outlines the process for applying for an SWD injection permit, namely filing of a C-108 form with all necessary attached supporting documentation and including a notice requirement for "each owner of the land surface on which each injection or disposal well is to be located and to each leasehold operator and other affected persons, as defined in Subsection A of 19.15.2.7 NMAC, within any tract wholly or partially contained within one-half mile of the well." Once that is done, 19.15.26.8(C) activates, which provides a process for administrative approval of an SWD injection permit application, which includes notice requirements for application and plan publication, among others. OCD will not administratively approve an SWD injection permit application until "15 days following the division's receipt of form C-108 complete with all attachments including evidence of mailing as required under Paragraph (2) of Subsection B of 19.15.26.8 NMAC and proof of publication as required by Paragraph (1) of Subsection C of

19.15.26.8 NMAC.” 19.15.26.8(C)(2) NMAC. Should no person or entity file an objection within that 15-day window, OCD will administratively approve the application and C-108 without hearing; any objection filed within the 15-day window will result in a hearing per 19.15.26.8(D). Finally, 19.15.26.8(E) outlines the factual circumstances surrounding the chemistry of the water to be injected and the formation into which the produced water shall be injected, including limitations on when permits may be granted if technical issues arise.

ii. OCD’s conventional process for SWD permit suspension

Assuming OCD issues a permit per 19.15.26.8 NMAC and that OCD contends the permit-holder violated OCD regulations, OCD now turns to 19.15.5.9-10 NMAC, OCD’s compliance and enforcement regulations. Relevant to suspension of SWD injection permits, 19.15.5.9(A) states:

A. An operator is in compliance with Subsection A of 19.15.5.9 NMAC if the operator. . .

(2) is not subject to a division or commission order, issued after notice and hearing, finding the operator to be in violation of an order requiring corrective action;

19.15.5.10(A) permits the OCD, should it determine an operator violated any of OCD’s regulations, the right to seek:

(1) issuing a temporary cessation order if it determines that the alleged violation is causing or will cause an imminent danger to public health or safety or a significant imminent environmental harm. The temporary cessation order shall remain in place until the earlier of when the division determines that the alleged violation is abated or 30 days, unless a hearing is held before the division and a new order is issued;

(2) issuing a notice of violation; or

(3) commencing a civil action in district court.

19.15.5.10(B) sets forth the penalty options available to OCD should it prove that an operator violated an OCD regulation, of which only one is relevant here, namely 19.15.5.10(B)(2) -

modification, *suspension*, cancellation or termination *of a permit* or authorization. *Emphasis added.*

iii. Missing information needed by OCD.

As shown above, OCD does not conventionally handle SWD injection permit suspensions through vectors aside from OCD's enforcement powers. 19.15.26 and 19.15.5 provide the processes through which a permit is conventionally suspended. In the cases before the OCC, no such processes occurred; rather, the OCC made its own determination *via* its statute-based authority, to suspend Goodnight's SWD injection permits. Thus, OCD requires additional guidance on the OCC's intentions regarding said suspension. OCD previously addressed this concern in its *Response to Goodnight's Application for Rehearing and Empire's Motion for Rehearing* filed on October 10, 2025. OCD reiterates that, absent the conventional enforcement process, OCD needs and suggests the following for the OCC:

As outlined in Exhibit A to *Response to Goodnight's Application for Rehearing and Empire's Motion for Rehearing* filed on October 10, 2025 (herein denoted as **Exhibit A**), OCD sought clarification as to whether the OCC wishes for immediate suspension of Goodnight's relevant SWD injection permits or if the OCC intends for the wells to be suspended prior to Empire's commencement of its EOR project. **Exhibit A at ¶ 9.** OCD traditionally deals with SWD injection permit suspension through enforcement adjudication. ***Id.* at ¶ 5.** In so doing, OCD practice is to impose, as part of the permit suspension process, a schedule of required operator actions aimed at winding down the subject wells, a staged process that keeps in mind safety, among other factors. ***Id.*** OCD has required immediate shut-ins of SWD wells in the past, but in the case of Goodnight's wells, the volume of produced water injected daily leads the OCD to prefer such a staged approach rather than immediate shut-in. ***Id.*; see also ¶ 10.**

As clarified in **Exhibit A**, ¶ 10, in order for the OCD to comply with Order R-24004, OCD needs guidance from OCC as to the OCC intentions behind ¶ 3, page 13, which states “[s]uspends existing Goodnight’s injection wells Case No. 24018 (Dawson), Case No. 24019 (Banks), Case No. 24020 (Sosa), Case No. 24025 (Ryno) in order to provide Empire with the opportunity to establish the CO2 EOR pilot project.” To assist OCD, OCD needs clarification of a threshold issue, namely whether the OCC intended for immediate suspension of Goodnight’s SWD injection permits or whether the OCC intended for Goodnight’s permit suspension to occur at a later. *See Exhibit A*, ¶ 10. Once OCD understands which of the above the OCC intended or desires, OCD then respectfully requests the OCC consider setting performance deadlines for Goodnight that the OCD can enforce.

OCD adds to this the issue of how Empire is to plan, apply for, and ultimately execute the ordered EOR project, as noted in “Order” section of Order R-24004, second unnumbered Paragraph. OCD below presents proposed deadlines with which Empire should comply to ensure Empire’s EOR project is effectuated.

Should the OCC order immediate shut-in of Goodnight’s wells, the OCD suggest that, as a practical matter, suspension of an SWD injection permit is as much as process as an event. As described by OCD Deputy Director Powell in **Exhibit A**, OCD needs to ensure the wind-down of injection wells is done in an orderly and safe fashion. One of the ways a rapid suspension may occur is through tiered performance deadlines. Specifically, setting a timeframe of total compliance of ninety (90) days, with specific sub-compliance deadlines of thirty (30) and sixty (60) days. *Id.* at ¶ 10. OCD considers this framework reasonable and will best ensure no waste occurs as Goodnight winds-down its subject wells.

Should the OCC seek a suspension date that is not immediate, the OCD proposes that Goodnight's SWD injection permit suspension be tied, in some form, to Empire's EOR project. **Exhibit A, ¶ 10.** OCD's experience indicates that Empire's EOR project will take considerable time to plan, submit for OCD approval, and then ultimately execute. *Id.* One possible triggering event for Goodnight's suspension permit could be the estimated date of Empire's first injection for the EOR project, an approach with which OCD could work and ultimately enforce. *Id.*

b. OCD continues to maintain that Empire's ordered CO2 EOR project would benefit from deadlines for action to ensure Empire does not rest on its rights and therefore cause waste.

i. OCD's EOR permitting process.

OCD's EOR project regulations are found in 19.15.26.8 NMAC. First, an applicant must apply for a permit to inject "fluids for enhanced recovery of oil or natural gas" *via* a C-108 Form. 19.15.26.8(A)(1)(b). As with SWD injection permits, the proposing operator will only be granted a permit if the operator is "in compliance with Subsection A of 19.15.5.9 NMAC." 19.15.26.8(A)(2); *see also* § III(A)(i) above. An operator seeks a permit through an application for the EOR permit, which includes review of the EOR project plan.

Next, 19.15.26.8(F) governs the EOR project itself. Once an application for permit is received, the EOR project must proceed through a hearing before the OCD. 19.15.26.8(F)(1). Through that hearing, the OCD, should it grant the application, fixes "the project area and the allowable formula for an injection project on an individual basis after notice and hearing." *Id.* The Applicant then must demonstrate or provide evidence to the OCD concerning the following to acquire application approval:

- (2) The project area of an injection project shall comprise the spacing or proration units a given operator owns or operates upon

which injection wells are located plus spacing or proration units the same operator owns or operates that directly or diagonally offset the injection tracts and have producing wells completed on them in the same formation; provided however, that the division may include in the project area additional spacing or proration units not directly or diagonally offsetting an injection tract if, after notice and hearing, the operator establishes that the additional units have wells completed on the unit that have experienced a substantial response to water injection.

(3) The allowable the division assigns to wells in an injection project area shall equal the wells' ability to produce and is not subject to the depth bracket allowable for the pool or to the market demand percentage factor.

19.15.26.8(F). After hearing, the OCD may then render its approval of the EOR project application, allowing the Applicant to proceed under relevant permits.

Order 24004 does not provide for any of the above OCD requirements and it appears that Empire, based on Counsel's comments and disposition, believe Empire is not obligated to comply with 19.15.26 in any way as it sees Order 24004 as leaping over OCD's regulations, with the only obligation imposed upon it being the establishment "a CO2 EOR pilot project within a period of 3 years to ascertain the recoverability of the ROZ and return to the Commission with further data/analysis." Order 24004, § Order, second full paragraph and ¶ 3. OCD notes here that despite Empire's claims that it is ready now to proceed with its CO2 EOR project, Empire has filed *nothing* to date with the OCD concerning the proposed EOR project, evincing Empire's mistaken belief that it does not need to comply with 19.15.16 NMAC.

Establishment of an EOR project requires compliance with 19.15.26 because that specific regulation sets forth evidentiary and data requirements for an Applicant to demonstrate EOR performance capability, among other things. Thus, OCD strongly encourages the OCC to clarify for Empire the requirement that it comply with 19.15.26 in totality and to recognize that failure to

do so, including failure to prosecute its EOR project application to the satisfaction of the OCD, would result in failure of the project in totality.

ii. Proposed framework for Empire's performance in prosecuting its EOR.

Similar to the question concerning the SWD injection permit suspension date, OCD likewise needs guidance on how it envisions Empire's EOR project proceeding. OCD addressed this topic in its *Response to Goodnight's Application for Rehearing and Empire's Motion for Rehearing* filed on October 10, 2025. In that pleading, the OCD proposed the following framework to ensure Empire does not simply sit on its rights for three years, thereby causing prohibited waste:

Order R-24004 permits Empire to proceed with an EOR project "within a period of 3 years to ascertain the recoverability of the ROZ and return to the Commission with further data/analysis." Order R-24004, § Order, second unnumbered Paragraph, p. 13. To ensure that Empire acts with proper diligence and thoroughness, OCD proposes the following performance deadlines for Empire in complying with Order R-24004:

- i. Submittal of the EOR project to the OCD for preliminary review and, if proper, OCD approval (example: submittal of the EOR project application within 6 months of the Order date);
- ii. Assuming approval of the EOR project by OCD, submittal of
- iii. associated APDs within 90 days of approval;
- iv. Spud of associated well/s within 90 days of approval;
- v. EOR injection/production within 180 days of completion of drilling operations;
- vi. Should any of the deadlines be missed, whether such a failure is to be construed as terminating the EOR project. OCD considers this determination as important because, should Empire fail to avail itself of proceeding with the EOR, OCD assumes Goodnight's suspended permits would be subject to re-activation

and would signal a failure of the EOR project to both the OCC and the OCD.

OCD bases the above on its experience with EOR projects and the need to keep such projects moving forward. OCD also notes that proposal “vi” is particularly critical in ensuring Empire does not waffle or otherwise fail to prosecute its EOR project, thereby causing prohibited waste.

IV. Summary

Based on the above arguments, OCD reiterates its position that (1) as a matter of law, the OCC possesses legal authority to both suspend Goodnight’s SWD injection permits and allow Empire to proceed with its CO2 EOR project and (2) that OCC Order No. R-24004 provides OCD with discretion in managing both Goodnight’s permit suspension and Empire’s CO2 EOR project, but the OCD would benefit from clarity as to performance deadlines for each.

Respectfully submitted,

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I certify that on October 31, 2025, this pleading was served by electronic mail on:

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