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STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

EMPIRE NEW MEXICO, LLC,

Appellant,

Case assigned to Wilson, Matthew Justin

v.

No. D-101-CV-2026-00177

NEW MEXICO OIL CONSERVATION COMMISSION,

Appellee.

NOTICE OF APPEAL

Pursuant to NMSA 1978, § 70-2-25(B) (1999), NMSA 1978, § 39-3-1.1(C) (1999), and Rule 1-074 NMRA, Empire New Mexico, LLC ("Empire") hereby gives notice of appeal of the New Mexico Oil Conservation Commission's December 17, 2025 Amended Order Denying Goodnight's Applications & Partially Granting/Partially Denying Empire's Applications. A true and correct copy of the order is attached as Exhibit 1.

Respectfully submitted,

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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 January 16, 2026.

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

APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN, LLC FOR APPROVAL OF A SALTWATER DISPOSAL WELL, LEA COUNTY, NEW MEXICO	**DE NOVO APPEAL OF DENIAL OF PROPOSED NEW WELL CASE NO. 24123 (PIAZZA)**
APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN, LLC FOR APPROVAL OF A SALTWATER DISPOSAL WELL, LEA COUNTY, NEW MEXICO	**PROPOSED NEW WELLS CASE NO. 23614 (GOODEN) CASE NO. 23615 (HERNANDEZ) CASE NO. 23616 (HODGES) CASE NO. 23617 (SEAVER)**
APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN, LLC TO AMEND ORDER NO. R-2206/SWD-2403 TO INCREASE THE APPROVED INJECTION RATE IN ITS ANDRE DAWSON SWD #1 LEA COUNTY, NEW MEXICO	**INCREASE EXISTING WELL CASE NO. 23775 (DAWSON)**
APPLICATIONS OF EMPIRE NEW MEXICO, LLC, TO REVOKE INJECTION AUTHORITY, LEA COUNTY, NEW MEXICO	**REVOKE EXISTING WELLS CASE NO. 24018 (DAWSON) CASE NO. 24019 (BANKS) CASE NO. 24020 (SOSA) CASE NO. 24025 (RYNO)**

OCC Order R-24004-A

AMENDED ORDER DENYING GOODNIGHT'S APPLICATIONS & PARTIALLY GRANTING/PARTIALLY DENYING EMPIRE'S APPLICATIONS

THIS MATTER came before the New Mexico Oil Conservation Commission ("Commission" or "OCC") upon Goodnight Midstream Permian LLC's ("Goodnight") and Empire NM LLC's ("Empire") respective applications pursuant to 19.15.4.25 NMAC for rehearing of the above captioned cases originally decided via OCC Order R-24004, issued on September 12, 2025 ("September Order"). The Commission denied both applications in so far as they seek to reopen the factual record for this matter, or to relitigate the Commission's findings of fact; however, the

Exhibit 1

Commission issued an order granting a limited rehearing in these matters on October 17, 2025. The Commission's October 17 order granted rehearing of only the following two questions of law:

I. 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 [Residual Oil Zone] is recoverable?

II. Does Commission Order R-24004 provide OCD [Oil Conservation Division] with discretion in managing the suspension of existing Goodnight injection wells and to provide Empire with the opportunity to establish a CO2 EOR pilot project?

Having considered post-hearing briefing from the parties, and having held a rehearing of the above captioned cases on November 13, 2025, the Commission issues this instant AMENDED ORDER. This AMENDED ORDER incorporates the September Order in full, and provides the following as clarifying addenda:

Rehearing Issue I: The Commission Can Order the Suspension of Water Injection into a ROZ to Facilitate an EOR Pilot Project to Determine Recoverability.

1. The Commission reiterates its conclusion that "New Mexico law authorizes the Commission to allow companies to have an opportunity to pursue oil discoveries so the oil is not left wasted or untapped underground. NMSA 1978, Section 70-2-11." September Order, ¶ 38.

2. In the parties' respective relevant pleadings, the parties generally cite to the same body of law. No party introduced any authorities that convincingly alter either existing statute or case law.

3. The parties do not dispute the general proposition that the "Commission has broad authority under the Oil and Gas Act, NMSA 1978, §§ 70-2-1 to -39." Rice Rehearing Brief-in-Chief at 2.

See also, Goodnight Rehearing Response Brief at 2, ("the Oil & Gas Act undoubtedly grants broad powers"); Empire Rehearing Brief-in-Chief at 3, ("The Commission…has broad authority to regulate injection."); OCD Rehearing Brief-in-Chief at 3 ("OCC's jurisdiction is broad").[1]

4. The parties also all cite *Cont'l Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062. *See e.g.*, Goodnight Rehearing Brief-in-Chief at 9; Empire Rehearing Brief-in-Chief Footnote 44; OCD Rehearing Brief-in-Chief at 3, Rice Rehearing Brief-in-Chief at 4-5.

5. *Cont'l Oil Co.* ruled that "The Oil Conservation Commission is a creature of statute, expressly defined, limited and empowered by the laws creating it. The . . . basis of its powers is founded on the duty to prevent waste and to protect correlative rights." *Id.* at ¶ 11.

6. All parties also cite the definition of 'waste' as found in NMSA Section 70-2-3. *See e.g.*, Goodnight Rehearing Brief-in-Chief at 10-11; Empire Rehearing Brief-in-Chief at 11, Footnote 46; OCD Rehearing Brief-in-Chief at 6, Rice Rehearing Brief-in-Chief at 5.

7. The parties disagree as to how NMSA Section 70-2-3 applies to the specific facts of this case, given the Commission's existing finding that "there was insufficient evidence presented at [the] hearing to prove whether the ROZ is recoverable." September Order, heading D.

8. Goodnight asserts that "The critical language here is 'reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered.' If no oil or natural gas can be 'ultimately recovered,' then no activity can be characterized as waste." Goodnight Rehearing Brief-in-Chief at 11, (emphasis omitted). Goodnight asserts that the Commission "must first find that the alleged ROZ is both physically and economically recoverable" before the Commission can

[1] Pilot did not timely submit a rehearing brief-in-chief, but did file a short statement by the rebuttal deadline noting that it "agrees with Rice's positions and analysis and [] incorporates them by reference." Pilot filing submitted November 6, 2025, at 3.

exercise its power to prevent waste and protect correlative rights. Goodnight Rehearing Brief-in-Chief at 2, (internal citations omitted).

9. Rice similarly asserts that since "the Commission found Empire failed to prove the ROZ is recoverable, there is nothing in evidence before the commission tending to support a finding of waste or the prevention of waste by suspending Goodnight's injection wells, then the Commission's suspension of Goodnight's injection wells is void, because the commission order contains no finding as to the existence of waste, or that suspension would prevent waste." Rice Rehearing Response Brief at 5, (internal citations omitted).

10. Empire, on the other hand, asserts that "Waste is integral to correlative rights, which afford the 'opportunity . . . to produce without waste the owner's just and equitable share of the oil or gas or both.' Deprivation of an owner's opportunity to recover its equitable share of oil and/or gas causes waste if it reduces or tends to reduce the total hydrocarbons ultimately recovered. Likewise, Section 70-2-12(B)(4) obligates the Commission '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.'" Empire Rehearing Response Brief at 8.

11. Goodnight and Rice's arguments hinge on a crucial misinterpretation of the Commission's September Order. The Commission found that "there was insufficient evidence presented at hearing to prove whether the ROZ is recoverable." September Order, heading D. Conversely, the Commission also did not find sufficient evidence presented at hearing to prove that the ROZ is **not** recoverable.

12. Empire did "point[] to other EOR recovery projects within the San Andres formation" that were able to recover hydrocarbons by injecting carbon dioxide [CO2]. The Commission found

that recovery "is site-specific and is based on the [specific] conditions at the EMSU," which may be unique due to the geologic history and the large volume of water injection that has happened at this site over decades. September Order at ¶ 57, 58.

13. The Commission recognized a realistic possibility that the ROZ could contain oil that could be both physically and economically recovered. Therefore, it granted Empire "the opportunity to establish a CO2 EOR [Carbon Dioxide Enhanced Oil Recovery] pilot project" for the purpose of ascertaining the recoverability of the ROZ. September Order, ¶ 61, heading E.

14. Goodnight and Rice argue that the Commission is powerless to act until waste is proven. But that position is inconsistent with Rice's own assertion that the "exercise of the Commission's power, including suspension of injection authority, must be predicated on the **prevention** of waste." Rice Rehearing Response Brief at 5, (internal citations omitted and emphasis added).

15. Prevention is defined as "the action of keeping from happening or making impossible an **anticipated** event or intended act."[2] The word 'prevent' is at the root of prevention, and the plain meaning of the word 'prevent' is "to keep [something] from happening by taking action **in advance**."[3] The etymology of both 'prevention' and 'prevent' traces back to the Latin term *praevenire*, which means to 'come before' or to 'anticipate.'[4]

16. The plain meaning of the word 'prevention' requires the Commission to proactively keep waste from happening. The Commission would be abdicating its responsibility to **prevent** waste if the Commission refused to take any action where the existence of a ROZ has been established, and there is no evidence presented to prove that it cannot be recovered. Waiting until waste is proven would at best be mitigating waste, not preventing waste.

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[2] *Prevention*, Oxford English Dictionary https://doi.org/10.1093/OED/2153726666 (emphasis added).
[3] *Prevent*, Merriam-Webster.com Thesaurus, www.merriam-webster.com/thesaurus/prevent (emphasis added).
[4] *Prevent*, Online Etymology Dictionary, https://www.etymonline.com/word/prevent.

17. In addition, the definition of 'waste' under NMSA 70-2-3(A) also includes the phrase: "tend to reduce the total quantity . . . ultimately recovered." This phrase supports the idea that waste doesn't need to be proven first – "tends to reduce" modifies the term "reduce" to be a possibility and "ultimately recovered" includes possible future recovery.

18. Furthermore, Goodnight and Rice's position would hinder the only way for the Commission to address its finding of insufficient evidence. The Commission has already determined that the only practical way to prove for certain, whether there might be recoverable hydrocarbons in this ROZ, is to conduct a CO2 enhanced oil recovery pilot project, because recovery "is site-specific and is based on the conditions at the EMSU." September Order, ¶ 58. And the Commission has also already found, as a technical matter, that a CO2 EOR pilot cannot be successfully performed while wastewater is being disposed into the same region. September Order, ¶ 40, 62.

19. Waiting for waste to have definitely and provably occurred before allowing the Commission to exercise its broad powers to prevent waste is inconsistent with both the spirit and text of New Mexico's Oil and Gas Act.

Rehearing Issue II -- OCD Can and Should Manage Suspension of Water Injection 'In Order To' Facilitate the EOR Pilot Project Granted by the Commission.

20. The Commission finds that the Oil Conservation Division "possesses broad authority over the oil and gas industry in New Mexico." OCD Brief-in-Chief at 7. "The division shall have, and is hereby given, jurisdiction and authority over all matters relating to the conservation of oil and gas [ ]. 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." 70-2-6(A) NMSA; *see also*, Rice Rehearing Response Brief at 12.

21. Nevertheless, the OCD sought additional "guidance on the [Commission]'s intentions regarding said suspension." OCD Rehearing Brief-in-Chief at 11.

22. The Commission reiterates its finding that "[t]o perform a successful CO2 flood, the injection of CO2 and water must be monitored closely and adjustments made based upon design. Goodnight's SWD [Salt-Water Disposal] wells cannot dispose of water when an active CO2 flood is being performed." September Order, ¶ 40, 62.

23. The Commission further reiterates and emphasizes its September Order suspending "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." September Order, #3 at page 13, (emphasis added).

24. The Commission hereby concludes that OCD has the authority, and may at its discretion, implement the "suspension" ordered on page 13 of the Commission's September Order "in order to provide Empire with the opportunity to establish the CO2 EOR pilot project." September Order, #3 at page 13. The commission also concludes that the OCD has the authority to impose the suspension ordered by September Order, #3 at page 13, on any schedule OCD deems necessary "in order to provide Empire with the opportunity to establish the CO2 EOR pilot project." *Id.*

Additional Clarifications.

25. The Commission further clarifies that none of the orders in this case preempt any relevant or applicable regulatory requirements for any party. Empire must follow all relevant and applicable regulations and permitting processes if it chooses to exercise the opportunity the Commission has provided for it to establish a CO2 EOR pilot project.

Disposition of Associated Motions

26. The stay issued on October 17, 2025 is lifted upon issuance of this amended order.

27. Empire's Emergency Motion to Enforce Order R-24004 or Order to Show Cause and Expedited Hearing filed on September 23, 2025 is hereby denied as moot.

IT IS SO ORDERED.

Albert Chang

Albert C.S. Chang, Chair
New Mexico Oil Conservation Commission

DATE: 12/17/2025