

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

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

**CASE NOS. 24021-24024
and 24026-24027**

**EMPIRE NEW MEXICO LLC'S REPLY IN SUPPORT OF MOTION TO LIFT STAY
AND SET STATUS CONFERENCE AND RESPONSE TO GOODNIGHT MIDSTREAM
PERMIAN, LLC'S MOTION TO DISMISS**

Empire New Mexico LLC ("Empire") submits this Reply in Support of its Motion to Lift Stay and Response in Opposition to Goodnight Midstream Permian, LLC's ("Goodnight") Motion to Dismiss. As demonstrated below, Goodnight's arguments lack merit and have previously been rejected by the Oil Conservation Commission ("Commission" or "OCC"). Goodnight provides no basis to deny Empire's request to lift the stay in Case Nos. 24021-24024 and 24026-24027 or to otherwise dismiss those pending cases. In support of its Reply and Response, Empire states the following.

I. ARGUMENT

Goodnight's opposition to Empire's motion is premised on a mischaracterization of the Commission's orders in Case Nos. 24123, 23614-23617, 23775, 24018-24020, and 24025 ("EMSU cases") as well as an attempt to resurrect prior arguments regarding standing that have already been rejected.

Moreover, Goodnight's opposition to Empire's motion amounts to improper gamesmanship. Goodnight successfully sought to sever the EMSU and non-EMSU cases on the grounds that "the legal framework governing the EMSU pool and unitized interval is significantly different compared to the pool and formations outside the EMSU, requiring a different legal

analysis for the EMSU cases that is inapplicable to the non-EMSU cases.” Goodnight’s Motion to Limit the Scope of the Commission Hearing to Cases within the Eunice Monument South Unit, at 4 (May 23, 2024). Having prevailed on that argument, Goodnight cannot now claim that the non-EMSU cases are somehow dependent on the pending appeal of the EMSU cases. This is yet another attempt by Goodnight to continue its improper wastewater injection in and around the EMSU.

As discussed below, Goodnight’s arguments are not well founded and should be rejected. The stay should be lifted and the matter set for a status conference.

a. The Commission suspended Goodnight’s operations within the EMSU, and its findings and conclusions support lifting the stay in the instant cases.

Goodnight argues that it is premature for the Commission to lift the stay “before Empire is able to make a showing of impairment within the EMSU.” Goodnight Response at 3. However, Empire has already demonstrated in the EMSU cases that Goodnight’s operations within the EMSU are causing waste and impairing correlative rights. The Commission agreed and ordered that Goodnight’s well permits within the EMSU be suspended. *See* Order Nos. R-24004 and R-24004-A.

On September 12, 2025, the OCC entered its Order Denying Goodnight’s Applications & Partially Granting/Partially Denying Empire’s Applications in the EMSU cases (OCC Order R-24004), (“September Order”). The September Order denied Goodnight’s Applications to drill new disposal wells in Case No. 24123 (Piazza), Case No. 23614 (Gooden), Case No. 23615 (Hernandez), Case No. 23616 (Hodges), and Case No. 23617 (Seaver). Additionally, the September Order denied Goodnight’s application to increase injection into the existing Dawson well in Case No. 23775. Finally, the September Order suspended permits associated with Goodnight’s injection wells in Case No. 24018 (Dawson), Case No. 24019 (Banks), Case No.

24020 (Sosa), and Case No. 24025 (Ryno) (collectively, Dawson, Banks, Sosa and Ryno are the “Suspended Wells”).

In reaching its decision to deny Goodnight’s applications and order the suspension of injection into the Suspended Wells, OCC made, among others, the following findings:

- **The Commission finds that there was substantial evidence presented at the hearing to establish the existence of a ROZ in the Grayburg and San Andres, especially the core analysis evidence.**¹
- **Based on the 1984 Commission Order, Empire has the exclusive rights to produce the ROZ in the EMSU.**²
- The Unit Agreement gives Empire the “**exclusive right**, privilege and duty of exercising any and all rights of the parties hereto including surface rights which are necessary or convenient for prospecting for, producing, storing, allocating and distributing the Unitized Substances are hereby delegated to and shall be exercised by the Unit Operator.”³
- Empire purchased the EMSU to continue the current extraction of oil from the Grayburg formation **but also to start a new project to extract oil from the San Andres formation via a CO₂ flood as part of an Enhanced Oil Recovery (EOR) project.**⁴
- Based on the 1984 Commission Order, **Empire has the exclusive rights to decide how to best extract oil in the EMSU.**⁵
- **The injection of hundreds of thousands of barrels a day conflicts with Empire’s exclusive rights to extract oil in the EMSU[.]**⁶

¹ September Order, II. B. (emphasis in original).

² *Id.* at II.A. (emphasis in original)

³ *Id.* at ¶ 18 (emphasis added).

⁴ *Id.* at ¶ 26 (emphasis added).

⁵ *Id.* at ¶ 27 (emphasis added).

⁶ *Id.* at ¶¶ 40-41 (emphasis added)

- **Empire DID adduce substantial evidence of the possibility of FUTURE impairment of correlative rights or waste in the EMSU.**⁷
- Empire's witness, Dr. Buchwalter, built a model and the model shows to a reasonable degree that **water is moving from the San Andres into the Grayburg.**⁸

In a subsequent order following rehearing briefing, the OCC upheld its determinations and findings in its September Order and ultimately determined the Commission can order the suspension of water injection into a ROZ.⁹ This includes suspension to allow Empire to plan and execute an EOR pilot project to determine recoverability of the ROZ.¹⁰ Additionally, the OCC confirmed that OCD can and should manage suspension of Goodnight's injection "in order to" facilitate the EOR pilot project granted by the Commission.¹¹

Thus, far from Goodnight's assertion that these issues are undecided (or were somehow decided in Goodnight's favor), the Commission has determined that Goodnight's operations within the EMSU must be suspended. Moreover, the fact that the parties have appealed the Commission's order in the EMSU cases does not foreclose or otherwise bar the instant cases from proceeding. Rather, Empire should be permitted to present its evidence regarding Goodnight's operations outside the EMSU and the impact on Empire's ability to extract hydrocarbons within the unitized interval. As demonstrated in the EMSU cases, wastewater migration has significant, irreversible, long-term impacts to ROZ recoverability in the EMSU. Goodnight's current operations are adding

⁷ *Id.* at III. A. (emphasis in original).

⁸ *Id.* at ¶ 47 (emphasis added).

⁹ See generally OCC Order R-24004-A ("December Order").

¹⁰ December Order, heading for Rehearing Issue II.

¹¹ *Id.* at ¶ 1 (citing NMSA 1978, Section 70-2-11 and September Order, ¶ 38).

economic barriers that may be prohibitive to a future tertiary recovery project, and beyond that, threaten to close off the ROZ entirely if wastewater operations are allowed to continue.¹²

The time has come to evaluate Goodnight's operations outside the EMSU. Further delay of these issues threatens the ROZ. Goodnight's four active wells (*i.e.*, Nolan Ryan, Pedro, Ted, and Yaz) outside the EMSU have injected 114,542,108 barrels of wastewater since 2019 and have averaged 49,663 barrels per day during the first three months of 2026. *See* Self-Affirmed Statement of William West at ¶ 8, attached as **Exhibit A**. This is causing irreparable harm to the San Andres ROZ and is pushing water into the Grayburg through natural fractures. *Id.* Goodnight should not be permitted to sever the EMSU and non-EMSU cases on the grounds that the matters are legally and factually distinct and then assert that the stay should remain in place because the matters are legally and factually similar. These contradictory arguments are clearly nothing more than delay tactics designed using improper gamesmanship. There is simply no reason for the stay to remain in effect. The Commission should reject Goodnight's attempt to further delay these matters, lift the stay, and set the pending cases for a status conference.

b. The Commission has previously heard and rejected Goodnight's dismissal and standing arguments.

This is Goodnight's second attempt at dismissal on standing grounds in these cases. Goodnight has already raised and lost these arguments, yet nonetheless largely repeats them. As before, Goodnight's arguments should be rejected.

On May 23, 2024, Goodnight filed a motion requesting that the Commission dismiss Empire's Applications in these cases on the grounds that Empire lacked standing to challenge the wells at issue. Empire responded to Goodnight's Motion to Dismiss on June 6, 2024, and its

¹² EMSU Cases, 02/24 Tr. 38:13-39:15; 04/09 Tr. 160:7-17, 180:20-188:18, 190:15-191:17; 04/11 Tr. 43:7-25.

response is incorporated here by reference. On June 20, 2024, the Commission denied Goodnight's Motion to Dismiss. 06/20/24 Tr. 94:25 – 95:12.

Goodnight does not adduce any additional or new arguments (other than mischaracterizing the Commission's ultimate findings in the EMSU cases) that would now support dismissal of Empire's cases. As a matter of law, establishing standing at the pleading stage requires only "generalized allegations" showing concrete and particularized injury. *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 561 (1992). Empire has accomplished that through its Applications. Empire is not required to detail and provide conclusive evidentiary support explaining every aspect of causation at this stage of the proceeding.¹³ In its Applications, Empire alleges that saltwater injected into Goodnight's SWDs—in some cases in excess of Goodnight's daily injection limit—migrates into the unitized interval within the EMSU, thereby impairing Empire's ability to extract hydrocarbons from areas that Goodnight previously misrepresented as non-productive. See **Exhibit A** at ¶ 9. These allegations give rise to standing. Empire need not demonstrate in its objection the exact mechanics of how this migration occurs. That question must be resolved based on evidence presented at hearing. Goodnight's reliance on the EMSU cases to support dismissal here is unfounded—as outlined above, the Commission's suspension of Goodnight's wells within the EMSU supports Empire's standing position, it does not negate it. Thus, as discussed above, the

¹³ Commission Rule 19.15.4.8(A) requires "standing" to bring an application for an adjudicatory proceeding before the Commission. See 19.15.4.8 NMAC ("...[A]n operator or producer or other person *with standing* may file an application with the division for an adjudicatory hearing.") (emphasis added). Although the Rule does not define "standing," the Commission has previously embraced the standing analysis applicable in civil court cases. See, e.g., Commission Order No. R-10987-A(2), ¶¶ 13. Thus, to plead standing in an application for an adjudication, applicants need only allege facts that, if true, give rise to an inference that: "(1) they are directly injured as a result of the action they seek to challenge; (2) there is a causal relationship between the injury and the challenged conduct; and (3) the injury is likely to be redressed by a favorable decision." *ACLU of N.M. v. City of Albuquerque*, 2008-NMSC-045, ¶ 1, 188 P.3d 1222 (reciting traditional three-part test for standing).

standing question has already been resolved by the Commission in Empire's favor and the governing law on standing supports that determination.

II. CONCLUSION

For these reasons, Empire respectfully requests that the Commission lift the stay in Case Nos. 24021-24024 and 24026-24027 and set the pending cases for a status conference. Goodnight's motion to dismiss lacks merit and must be denied.

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 May 29, 2026.

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SELF-AFFIRMED STATEMENT OF WILLIAM WEST

1. I am over the age of 18. I am a Petroleum Engineer employed as Senior Vice President of Operations for Empire Petroleum Corporation (“Empire”) and have personal knowledge of the matters stated herein. I have previously testified before the New Mexico Oil Conservation Commission (“Commission”), and my credentials as an expert in petroleum engineering were accepted as a matter of record. In short, I graduated from Marietta College with a Bachelor of Science Degree in Petroleum Engineering in May 1999. I began my career with Marathon Oil Company and have been employed in the oil and gas industry since graduation. I have been the Senior Vice President of Operations for Empire Petroleum Corporation since May 2023. I am a Certified Professional Engineer in the State of Wyoming - WY ID # 12599. I have over 25 years of oil and gas experience and have worked in most of the major oil and gas producing basins and States, including New Mexico, during my career.

2. My area of responsibility for Empire includes Lea County, New Mexico. I am responsible for secondary waterflood operations in the Eunice Monument South Unit (“EMSU” or “Unit”) and am working on developing Empire’s tertiary recovery CO₂ Project there. I submit the following information in support of Empire’s Reply in Support of its Motion to Lift Stay and Response in Opposition to Goodnight Midstream Permian, LLC’s (“Goodnight”) Motion to

EXHIBIT A

Dismiss and Reply in Opposition to the Oil Conservation Division's ("OCD") Response to the Motion to Lift Stay.

3. The EMSU waterflood currently produces approximately 720 BOPD; 70,000 BWPD; 500 MCFPD and injects approximately 70,000 BWPD into the unitized Grayburg / San Andres Reservoir. The EMSU 14,189.84-acre Unit was formed December 27, 1984 and water injection began in November 1986. Empire acquired the EMSU in March 2021 from XTO due to its significant CO₂-EOR potential in the San Andres ROZ and Grayburg Main Pay Zone intervals.

4. The unitized interval of the Unit extends from the top of the Grayburg formation to the bottom of the San Andres formation ("Unitized Interval"). The vertical limits of the Unitized Interval are the same as the vertical limits of the Eunice Monument Grayburg-San Andres Pool covering the Grayburg and San Andres formations.

5. After discovering that Goodnight is disposing of enormous volumes of water into the San Andres and has plans to expand disposal operations into the unitized interval, Empire's focus has been to seek support from the Commission to revoke Goodnight's existing SWD permits and to deny Goodnight's new applications.

6. For Goodnight's active and proposed wells within the boundaries of the EMSU (Case Nos. 24123, 23614-23617, 23775, 24018-24020, and 24025), the Commission has denied Goodnight's Applications to drill new disposal wells in Case No. 24123 (Piazza), Case No. 23614 (Gooden), Case No. 23615 (Hernandez), Case No. 23616 (Hodges), and Case No. 23617 (Seaver). Additionally, the September Order denied Goodnight's application to increase injection into the existing Dawson well in Case No. 23775. Finally, the Commission suspended permits associated with Goodnight's injection wells in Case No. 24018 (Dawson), Case No. 24019 (Banks), Case No. 24020 (Sosa), and Case No. 24025 (Ryno). See OCC Order R-24004, R-24004-A.

7. Additionally, Goodnight operates four disposal wells within two miles of the EMSU: Ted 28 SWD No. 1, Yaz 28 SWD No. 1, Nolan Ryan SWD #001, and Pedro SWD #001. Wellhead pressures for these wells are increasing and are pressuring up the San Andres, impacting Grayburg and San Andres oil recovery potential in this area. Empire's plume analysis shows that Goodnight's injection into these wells is already reaching the EMSU. Goodnight has two additional wells, the Verlander SWD #001,¹ drilled in December 2024, and the Rocket SWD No. 1, which is permitted, that are not currently active but once operating will further exacerbate this problem and result in waste.

8. Goodnight's four active wells (*i.e.*, Nolan Ryan, Pedro, Ted, and Yaz) outside the EMSU have disposed of 114,542,108 barrels of water since 2019 and have averaged 49,663 barrels of water per day disposal during the first three months of 2026. This is causing irreparable harm to the San Andres Residual Oil Zone ("ROZ") and is pushing water into the Grayburg through natural fractures.

9. At the time of its initial application for authorization to inject into these wells, Goodnight represented that the San Andres is a non-productive zone known to be compatible with formation water from the Bone Spring, Delaware, and Wolfcamp formations. This is incorrect. Empire recently performed a water compatibility study with Delaware Basin produced water and Eunice Monument produced water and the formation of Calcite (CaCO₃) showed to be very high risk at mixing levels as low as 30% Delaware and 70% EMSU. This is impacting the flow capacity of the reservoir and increasing the operating cost for Empire's wells and facilities.

10. Residual oil zones are found within the San Andres, and Empire has the right to recover hydrocarbons within the EMSU. It was demonstrated during the hearing that more than

¹ Goodnight drilled its Verlander SWD despite Empire's pending application at the Commission to revoke the permit for that well.

900 million barrels of oil exists in the San Andres ROZ and that a ROZ is also present in the Grayburg.

11. Further, there is communication between the Grayburg and San Andres intervals through natural fractures and breaches in this area, which allows San Andres water to enter the Grayburg interval. This influx of San Andres water has been documented by water production maps of wells prior to unitization, increased sulfate ion content of the EMSU produced water, and the pressure drop in the San Andres interval, which occurred before water supply well production. Wells in the central portion of the field produced abnormal volumes of water prior to the waterflood, water which could not have originated from edge water drive and could therefore be only San Andres bottom water. The San Andres water contained sulfate ions not present in the Grayburg water at discovery of the field; the Grayburg water contained barium ions. When these two waters mixed barium sulfate was formed in the wells and facilities prior to the use of San Andres water supply wells for the waterflood. The natural fractures have been demonstrated by oriented fracture studies on core in the Grayburg and San Andres.

12. There is no effective barrier between the Grayburg and San Andres within the EMSU or the surrounding area, including the area that includes the proposed Rocket SWD, as demonstrated by the sulfate ion increase, water production increase in portions of the field, and drop in San Andres reservoir pressure. The high salinity disposal water will move over large distances and find a natural fracture or breach in the barrier and begin interfering with EMSU production.

13. The corrosive disposal water injected into the San Andres will travel long distances over a 1, 5, 10, and 20-year period, thus allowing corrosive disposal saltwater to enter the Grayburg interval through natural fractures and breaches between the two intervals. This corrosive water

will then be produced by Empire's oil wells and San Andres water supply wells located at EMSU and AGU (Arrowhead Grayburg Unit). This disposal will not only increase failure rates in wells and facilities but will also prematurely water out Empire's wells.

14. Disposal in these wells is impairing Empire's ability to recover hydrocarbons within the Unitized Interval and thereby adversely affect the correlative rights of Empire and other interest owners in the Unit and result in waste.

15. I understand this Self-Affirmed Statement will be used as written testimony in this case. I affirm that my testimony above is true and correct and is made under penalty of perjury under the laws of the State of New Mexico. My testimony is made as of the date next to my electronic signature below.

/s/ William West
WILLIAM WEST

May 29, 2025
DATE