

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

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

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

GOODNIGHT'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS

Goodnight Midstream Permian, LLC (“Goodnight”) respectfully submits this Reply in support of its Motion to Dismiss (“Goodnight’s Motion”). For the reasons set forth below, Goodnight respectfully requests that the Oil Conservation Commission (“Commission”) grant Goodnight’s Motion and dismiss without prejudice Empire’s applications seeking to revoke Goodnight’s non-EMSU disposal injection or, in the alternative, to continue the existing stay pending Empire’s CO2 Flood EOR Pilot Project.

ARGUMENT & AUTHORITIES

Empire’s Response to Goodnight’s Motion is riddled with misleading statements. Goodnight addresses the most egregious below.

First, Empire mischaracterizes Goodnight’s position on whether the non-EMSU cases depend on the outcome of the EMSU cases. Contrary to Empire’s assertion, Goodnight has argued from the beginning that “[o]nly if there is merit to Empire’s claims, would it be potentially necessary to evaluate impacts from SWDs outside the EMSU.” *See* Goodnight Mot. to Limit Scope at pg. 4, filed May 23, 2026. Because the Commission found no current impairment to Empire’s operations within the EMSU, there is no current risk of impairment from Goodnight’s injection outside the EMSU. This is especially true for Goodnight’s injection more than a half mile outside the EMSU boundary, which is beyond the half-mile area of review provided under Commission

regulations. 19.15.26.8.B(2) NMAC. Empire's non-EMSU cases should be dismissed without prejudice or stayed pending the outcome of its pending CO2 Flood EOR Pilot Project.

Moreover, that the non-EMSU cases are dependent on the pending outcome of the EMSU cases is not an argument crafted by Goodnight—it is the directive from the order staying the non-EMSU cases issued by the Commission. *See* Joint Order Limiting Scope of Hearing on Cases Within the Eunice Monument South Unit, filed July 2, 2024, ¶ 4. (“[The non-EMSU cases], previously part of this case, have been stayed by other Order of the Commission *pending resolution of the cases above...*” (emphasis added)). Empire's request is, and always has been, premised on the theory that Goodnight's activities outside of the EMSU are impairing its rights within the EMSU. *See* Empire's Response, pg. 6. In fact, in its Motion to Limit the Scope on the Commission Hearing, Goodnight acknowledges that Empire's core claims will ultimately be addressed by limiting the scope of the initial analysis to only those cases involving disposal wells within the EMSU. *See* Goodnight's Mot. to Limit Scope, § IV at 12-14, filed May 23, 2026. “The claims Empire raises are all at issue in the cases involving SWDs Empire targets within the EMSU.” *Id.* at 13. Goodnight maintains its position that the full and final resolution of Empire's initial question (whether Goodnight's activities within the EMSU are causing waste or impairing Empire's correlative rights) will determine whether the Commission needs to evaluate disposal activity outside of the EMSU. Because Empire has not yet established that there is waste or impairment of correlative rights from Goodnight's disposal within the EMSU, it is still premature to evaluate the same claims regarding Goodnight's disposal outside of the EMSU, at least until after Empire reports on its CO2 EOR Flood Pilot Project.

Second, Empire argues that it “has already demonstrated in the EMSU cases that Goodnight's operations within the EMSU are causing waste and impairing correlative rights.” Empire's

Response, pg. 2. But again, the Orders from the Commission make it quite clear that Empire *has not* demonstrated that Goodnight's operations are causing waste or impairing correlative rights. *See* Order No. R-24004. Despite Empire's citation to many of the Order's findings, it crucially ignores the Commission's most relevant finding:

However, the Commission concluded it is premature at present to grant Empire's applications to permanently revoke the injection authority of the existing wells because the Commission found Empire DID NOT adduce substantial evidence that their correlative rights in the Grayburg are CURRENTLY impaired by Goodnight's injection into the San Andres.

Id. at C (emphasis retained).

This finding underscores Goodnight's argument: there has been no change in facts or circumstances that warrant lifting the stay and allowing Empire to pursue its applications in these cases. And suspension of non-EMSU disposal injection is a distinct request requiring a factually distinct showing than its claims that Goodnight's injection inside the EMSU is causing waste and impairing Empire's purported ROZ. Until Empire has additional evidence showing that the purported EMSU ROZ is recoverable and that Goodnight's activities are impairing its correlative rights, these non-EMSU cases are not ripe for review.

Third, Empire also argues that "the Commission has determined that Goodnight's operations within the EMSU must be suspended." Empire's Response, pg. 4. Again, this misrepresents the Commission's findings and Orders. The Commission determined that has the authority to suspend injections, and that the Division has the authority to manage suspension of injection if and when Empire chooses to exercise the opportunity provided by the Commission to establish a proposed CO2 EOR Flood Pilot Project. *See* Order No. R-24004-A, ¶¶ 20-25. This directive that the Division exercise its authority and discretion over suspension in the event Empire obtains regulatory approval and undertakes a pilot project in no way equates to the Commission determining that

Goodnight's operations *must* be suspended. As Goodnight previously stated, not until a pilot project is completed can Empire present any evidence as to how Goodnight's activities might impact its correlative rights within the EMSU.

Fourth, Empire's argument that it need only plead "generalized allegations" showing injury to establish standing is an oversimplification of the actual applicable law. As Goodnight has previously stated, standing requires an applicant establish that there is (1) an injury in fact, (2) a causal relationship between the injury and the challenged conduct, and (3) a likelihood that the injury will be redressed by a favorable decision. *ACLU of N.M. v. City of Albuquerque*, 2008-NMSC-45, ¶ 1, 188 P.3d 1222. As confirmed by the Commission's Orders, Empire cannot establish the first two elements of standing where the Commission found that there is no current impairment to Empire's operations from Goodnight's disposal injection inside the EMSU and Empire has not proved the purported ROZ is recoverable or that there is communication between Goodnight's disposal zone and production in the Grayburg.

As counsel for Empire explained in a recent saltwater disposal case before the Division, "[i]n relation to injection permits, Affected Parties are those who hold an interest 'within any tract wholly or partially contained within one-half mile of the well.'" *See* 19.15.26.8.B(2) NMAC; *see also* Order No. R-12811, In re Application of Gandy Corp., Case No. 13962 (N.M. Oil Conservation Div. Sept. 24, 2007)." *See* Select Water Solutions, LLC's Motion to Strike, at pg. 4, Case No. 25547. As with the Select Water case, in all but one of these non-EMSU cases, there is no invasion of any legally protected interest because Goodnight's injection wells are not located with the "half mile cutoff requirement[.]" *Id.* at pg. 5; *see also* Order Granting Select Water Solutions Motion to Strike, ¶ 2 ("Under 19.15.26.7 and 19.15.26.8 NMAC, affected persons entitled to notice and participation in saltwater disposal proceedings are limited to operators,

lessees, or mineral interest owners on tracts located within one-half mile of the proposed well.”). As Empire counsel argued in the Select Water case, “unsubstantiated allegations that injection wells” outside the area of review will impact oil and gas operations “do not provide grounds for standing and cannot serve as a good-faith basis for [an] objection.” Select Water Solutions, LLC’s Motion to Strike, at pgs. 3-4, Case No. 25547. Empire Case Nos. 24021-24024 and 24026 that target Goodnight’s disposal injection more than a half mile outside the EMSU should be dismissed without prejudice on this basis alone. The remaining case—Case No. 24027—should be dismissed without prejudice because Empire has no basis to establish Goodnight’s injection is causing impairment to Empire’s EMSU operation until at least after it completes a CO2 Flood EOR Pilot Project.

CONCLUSION

For the foregoing reasons, Goodnight Midstream Permian, LLC respectfully requests the Commission grant Goodnight’s Motion to Dismiss without Prejudice to allow Empire to refile at any time after making the requisite findings or, in the alternative, that the cases remain stayed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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