

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

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

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

**JOINT MOTION TO REMAND CASES
TO NEW MEXICO OIL CONSERVATION DIVISION**

Goodnight Midstream Permian, LLC (“Goodnight”), Rice Operating Company (“Rice”), and Permian Line Service, LLC (“Permian”) respectfully move the Oil Conservation Commission (“OCC” or “Commission”) to remand the above-captioned cases to the Oil Conservation Division (“OCD” or “Division”) for hearing and adjudication in the first instance.¹ These six cases have been stayed for two years, have never been heard on the merits, and involve factual issues that the Division—which the Commission has already entrusted with oversight of remaining issues in the related EMSU dispute—is best positioned to resolve.

INTRODUCTION

Empire’s six applications to revoke Goodnight’s injection authority are stayed before the Commission. These applications were referred to the Commission in 2024 along with other applications Empire filed to revoke Goodnight’s injection authority. Of the ten cases initially referred to the Commission, four dealt with Goodnight’s wells *within* the EMSU (“EMSU Cases”) and six dealt with wells *outside* the EMSU (“Non-EMSU Cases”). The Non-EMSU Cases have been stayed for the past two years while the Commission presided over a lengthy evidentiary hearing in the EMSU Cases. Following the hearing, the Commission issued an initial

¹ Pilot Water Solutions LLC/Owl SWD Operating LLC does not oppose this Motion. At the time of filing, movants did not receive a response from the Division. We presume Empire opposes the Motion based on Empire’s Motion to Refer Cases to the OCC (July 22, 2026).

order and an amended order (respectively, “Order R-24004” and “Order R-24004-A”, and together, the “Orders”). The Commission found, *inter alia*, that (1) Empire did not adduce substantial evidence that its correlative rights in the Grayburg are currently impaired by Goodnight’s injection into the San Andres; (2) Empire has not identified production data from any particular well within the EMSU that shows evidence of impacts from Goodnight’s disposal operations in its production or operation; and (3) there was insufficient evidence to prove whether the ROZ is recoverable. Order R-24004 at ¶¶ C, 55, D. The Commission granted Empire the opportunity to establish a CO2 enhanced oil recovery pilot project, remanded the EMSU cases to the Division to implement the Orders consistent with its guidance, and delegated authority to the Division to oversee the pilot project opportunity. *See generally* Orders. The Commission left the Non-EMSU Cases stayed.

The Commission’s factual findings have now been judicially validated. In parallel civil litigation, Empire asserted tort claims against Goodnight in the Fifth Judicial District Court. *See* Empire’s Complaint (Dec. 11, 2023). The State Court initially stayed the litigation under the doctrine of primary jurisdiction, recognizing the Division and Commission’s “unique expertise regarding the issues presented.” Order Staying Litigation Pursuant to Primary Jurisdiction Doctrine (Aug. 29, 2024). After the Commission issued its Orders and the State Court lifted the stay, Goodnight filed an Amended Motion for Summary Judgment based on collateral estoppel, because the Commission’s factual findings negate essential elements of each of Empire’s tort claims. Goodnight’s Am. Mot. for Summary Judgment (4/7/2026). Two weeks ago, the State Court granted summary judgment, ruling from the bench that Empire’s claims arising out of the EMSU are barred by collateral estoppel. The State Court’s ruling is significant because it constitutes a judicial determination that the Commission’s factual findings are dispositive. The

Commission determined that Empire failed to prove current impairment of its correlative rights, failed to identify production data showing harm from any particular well within the EMSU, and failed to establish that the ROZ is recoverable—and the State Court affirmed that these findings are dispositive of Empire’s civil claims. *See generally* Orders. In addition, the ruling confirms that Empire’s tort theories, *which rely on the same factual predicates underlying its revocation applications*, have already been weighed and found wanting. The ruling also demonstrates that the factual record as to Goodnight’s wells within the EMSU is closed. The Commission heard extensive testimony and evidence and found Empire’s showing insufficient, and a state court has now held those findings preclusive. Empire cannot relitigate these issues.

Despite the Commission’s findings and a preclusive state court ruling, Empire asked the Commission to lift the stay on the Non-EMSU Cases and filed thirteen new cases with the Division. *See* Empire’s Motion to Lift Stay and Set For Status Conference (April 29, 2026); Empire’s Applications to Revoke Injection Authority, Case Nos. 26255, 26264, 26267, 26269, 26273-26275, 26277-26281, 26824 (June 9, 2026). Empire has also asked the Division to refer those thirteen new cases to the Commission circumventing any standard hearing process at the Division. *See* Empire’s Motion to Refer (July 22, 2026). Empire’s Motion to Refer is in the process of being briefed. The Motion to Lift Stay is fully briefed and set to be heard on the Commission’s September docket. Notably, Empire filed its Motion to Lift Stay without disclosing its intent to file thirteen new applications with the Division. In doing so, Empire obscured the full scope of its plans and deprived the Commission and Goodnight of relevant information when evaluating the request. Goodnight would have asked the Commission to remand the cases in that briefing had it known the full scope of Empire’s intentions.

In light of these developments, if Goodnight's Motion to Dismiss is denied, Goodnight alternatively requests, through this Motion, that the Commission remand the Non-EMSU Cases to the Division so that all *nineteen* pending cases may be heard together by the Division in the first instance.² The State Court's ruling reinforces that the Commission's factual determinations regarding Goodnight's wells within the EMSU are established and preclusive, leaving only genuinely new factual issues for adjudication. The Division, which has received express delegation and guidance from the Commission, is the appropriate forum to develop the record on these remaining issues. *See* Goodnight's Resp. in Opposition to Mot. to Refer, attached as **Exhibit A** incorporated as if full set forth herein.

LEGAL STANDARD FOR REMAND

Under NMSA 1978, Section 70-2-6(B), the Division and the Commission exercise concurrent jurisdiction over oil and gas conservation matters. The allocation of cases between the two bodies, and where a case should be heard in the first instance, is a matter of administrative discretion. Division Rule 19.15.4.20(B) NMAC provides that a hearing may be held before the Commission on any matter if the Director determines the Commission shall hear it. This discretionary allocation operates in both directions. While the Director may refer cases to the Commission, the Commission retains inherent authority to remand cases to the Division when circumstances warrant initial Division-level proceedings.

² Goodnight primarily seeks dismissal of the stayed applications without prejudice as set forth in its Motion to Dismiss and Joint Response and Brief in support. *See* Mot. to Dismiss Without Prejudice (May 14, 2026). If the Commission does not dismiss or remand the Non-EMSU Cases, they should remain stayed until Empire conducts a pilot project.

ARGUMENT

1. Remand is Appropriate Because the Proceedings that Justified Referral to the Commission Have Concluded.

Given that the Non-EMSU Cases have been stayed for two years, were never heard on the merits, and are now separated from the consolidated proceedings that justified their referral, remand to the Division is appropriate.

The Non-EMSU Cases were initially referred to the Commission to be consolidated with related cases that were pending before the Commission. The Director reasoned that such consolidation was “an efficient use of resources.” Order No. R-23048. Now, the Commission proceedings that justified consolidation have concluded. The Commission issued its Orders, those Orders are now on appeal, and no active matters remain before the Commission with which the six Non-EMSU Cases could be consolidated. Without active proceedings before the Commission amenable to consolidation, the Division is the appropriate forum, and the efficiency rationale that justified prior referral now affirmatively supports remand to the Division.

2. No Basis Exists to Proceed at the Commission with Claims Regarding Wells Outside the EMSU.

The State Court’s recent summary judgment ruling based on collateral estoppel confirms the Commission’s factual findings as dispositive with respect to wells within the EMSU. Because the Commission found insufficient evidence of current impairment or harm with respect to any particular well within the EMSU, there is no basis—through sheer force of logic—to proceed at the Commission level with a hearing on claims regarding wells outside the EMSU. This is especially true given that Empire has not yet undertaken the CO2 enhanced oil recovery pilot project the Commission required as a prerequisite to establishing its claims. Without results from such a project, Empire cannot prevail in its new applications.

Empire is not eligible to apply for a pilot project at this time because it has failed to comply with multiple Division rules. Indeed, the Division already rejected Empire's C-101 submission because Empire remains out of compliance with 19.15.5.9 NMAC and 19.15.16.9 NMAC. *See* OCD Response to Submission ID 581181 (July 17, 2026) (citing 25 wells out of compliance). Empire cannot apply for the pilot project until it cures these deficiencies.³ Its rush to reactivate stayed cases and file thirteen new applications *while unable to satisfy basic regulatory prerequisites* underscores that Commission-level adjudication is premature. Given this posture, the Commission should remand these cases to the Division.

3. The Division Is Equipped to Handle Contested Matters of This Nature.

The Division is better equipped to adjudicate applications to revoke injection authority under its existing regulatory framework, making remand the most efficient path. It consistently handles contested hearings, has a dedicated hearing examiner, and is better positioned to manage multi-party cases involving complex technical evidence over multiple hearing days. The Division has broad authority to hear and decide such applications. *See generally* 19.15.4.8 NMAC; 19.15.26 NMAC; *see generally* NMSA § 70-2-12. The Non-EMSU Cases involve determinations about whether existing permits should remain in force, which are permitting questions within the Division's core expertise and ordinary jurisdiction. *See generally* 19.15.26 NMAC; *see generally* NMSA § 70-2-12. No legal question or factual determination presented by these cases exceeds the Division's authority or normal function. The Division routinely adjudicates contested applications to revoke injection authority, adjudicated the initial permitting

³ *See, e.g.,* 19.15.14.10.A NMAC; *see also* 19.15.26.8.A(1)(c) ("The division shall grant a permit for injection under 19.15.26.8 NMAC only to an operator who is in compliance with Subsection A of 19.15.5.9 NMAC").

decisions for the wells at issue, and nothing here warrants Commission review in the first instance.

In addition, the Commission established a framework the Division can follow to analyze the claims in these cases, including whether an ROZ is recoverable and economic. The Commission's prior findings provide a comprehensive roadmap, and the State Court's preclusion ruling further narrows the factual issues that remain in genuine dispute. *See infra* Section 4. The Non-EMSU Cases present the question of what impact, if any, Goodnight's disposal wells outside the EMSU have on Empire's operations—a question the Division is fully competent to address on its own, especially with the Commission's Orders for guidance. Finally, allowing the parties to be heard first by the Division enables it to fully develop the disputed issues and facts, thereby limiting the burden on the Commission if these matters are eventually elevated for review.

4. The Commission's Factual Findings Are Preclusive.

The State Court's July 29, 2026 summary judgment ruling based on collateral estoppel constitutes a judicial determination that the Commission's factual findings are dispositive as to Goodnight's wells within the EMSU. This ruling narrows the remaining factual issues to the impact, if any, of disposal wells located outside the EMSU and AGU⁴ boundaries—issues the Division is fully equipped to resolve. The factual record as to Goodnight's wells within the EMSU is closed. The Commission heard eighteen days of testimony and evidence and found Empire's showing insufficient. The State Court then held those findings preclusive. Empire has acknowledged that it intends to “present similar geological and engineering evidence” in these cases. Motion to Refer ¶ 15. Because the Commission has already weighed and rejected that

⁴ In addition, Empire still needs to establish the AGU has an economically recoverable ROZ.

evidence, and a court has held those findings preclusive, there is no basis for the Commission to receive it again. The Division should adjudicate the remaining issues with the benefit of the Commission's existing guidance. The Commission, having found Empire's evidence insufficient, offered Empire the opportunity to establish a pilot project and remanded the matter to the Division for oversight. The Division has sufficient guidance to hear these cases as part of this delegation, and no basis exists to retain them at the Commission level for reconsideration of findings a court has held preclusive.

5. The Division Should Develop the Factual Records for the Other Operators.

The disposal wells of Rice, Permian, Owl, and Parker were not at issue in the Commission cases, nor were Rice, Permian, Owl, and Parker afforded the opportunity to present evidence on their wells in the prior cases. Due process and fundamental fairness require that these operators be afforded the opportunity to present evidence and develop the factual record concerning their wells. Remand to the Division ensures they are heard in the forum best equipped to manage contested hearings and conserves Commission resources.

6. The Importance of These Cases Supports Thorough Division Proceedings Before Commission Review.

These cases are of substantial public importance. New Mexico has a significant interest in the thorough and deliberate adjudication of these matters. The only way to ensure that occurs is by having the Division hear the cases in the first instance.

Empire seeks to revoke Goodnight, Rice, Permian, Owl, and Parker's injection authority even though disposal capacity in New Mexico is limited and any further contraction will negatively impact production in the state. As documented in a recent study by the New Mexico Environment Department, as much as 41 percent of the total volume of produced water in New Mexico was transported for disposal into Texas in 2023, up from 27 percent in 2021 and 37

percent in 2022. *See* New Mexico Environment Department and Eastern Research Group, Inc., *New Mexico Strategic Water Supply Feasibility Study, Final*, November 22, 2024, at 15 & 24. This trend concerned Commissioner Dr. William Ampomah during the Commission's 2023 Chevron shallow disposal pilot project proceedings, where Commissioner Ampomah remarked that the expanding gap in disposal capacity and trend of sending water to Texas for disposal is "alarming" and asked what the Division is doing about it. Oil Conservation Commission, *Applications of Chevron USA Inc. to Approve Salt Water Disposal Wells in Lea and Eddy Counties, New Mexico*, Case Nos. 23686-23687, Tr. 11/9/23, 117:4-11 (Dr. Ampomah). The Division's Underground Injection Control Program Manager, Philip Goetze, acknowledged the problem and testified that New Mexico "is going to have to look at this as a whole basin issue" and that operators will have to "cooperate and work together to have multiple sources of disposal." *Id.* Tr. 118:14-18 (testimony of Philip Goetze). As long as nearly 50 percent of New Mexico's produced water is exported to Texas for disposal, New Mexico does not fully control its own destiny with respect to this critical function. Texas has been considering legislation that could impose fees on produced water imported from New Mexico, further underscoring the fragility of New Mexico's reliance on out-of-state disposal capacity. *See* 2025 Bill Text TX S.B. 2800; 2025 Bill Text TX H.B. 3091 (proposing 20-cent-per-barrel fee on every barrel of produced water brought into Texas from other states for disposal). The State's interest in responsible stewardship of its natural resources, including the produced water disposal infrastructure that supports billions of dollars in oil production, underscores the importance of a thorough Division review and crystallization of the factual issues before these cases proceed to the Commission. The significance of these matters supports a deliberate process before the

Division, enabling all parties to be heard and all facts to be developed. This importance supports more process, not less.

Finally, “substantial public importance” is not a recognized basis for referral under 19.15.4.20 NMAC. And the premise that saltwater disposal is causing significant impairment contradicts the Commission’s binding determinations that Empire “did not adduce substantial evidence that [its] correlative rights in the Grayburg are CURRENTLY impaired” and “has not identified production data from any particular well within [the] EMSU that shows evidence of impacts from Goodnight’s disposal operations.” Order R-24004 at ¶ 55. The State Court’s collateral estoppel ruling confirms these findings as preclusive. Claims of massive recoverable reserves are equally speculative. The Commission found “insufficient evidence presented at the hearing to prove whether the ROZ is recoverable.” Order R-24004 at ¶ C. Speculative assertions of future harm do not justify Commission review in the first instance.

CONCLUSION

For the foregoing reasons, the Commission should remand the above-captioned cases to the Division for hearing and adjudication in the first instance. The Division is better suited to hear these contested cases, particularly where the Commission has made factual findings as to the EMSU, delegated authority over the pilot project to the Division, and remanded related cases to the Division for implementation. Remanding these cases will allow the Division to develop the factual record on any genuinely new issues in the *nineteen pending cases* before the Commission may be called on to devote its limited resources for further review. Initial development of the record at the Division level will conserve the Commission’s time for its proper appellate and regulatory oversight functions.

Goodnight, Rice, and Permian respectfully request that the Commission enter an order remanding Division Case Nos. 24021–24024 and 24026–24027 to the Division.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2026, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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EXHIBIT A

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

APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ADMINISTRATIVE ORDER SWD-1263 FOR THE
PENROC STATE E TR 27 SWD #2 WELL OPERATED BY
GOODNIGHT MIDSTREAM PERMIAN, LLC,
LEA COUNTY, NEW MEXICO

CASE NO. 26255

APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ORDER NO. R-20864 FOR THE SCULLY STATE
SWD NO. 1 WELL OPERATED BY GOODNIGHT
MIDSTREAM PERMIAN, LLC,
LEA COUNTY, NEW MEXICO

CASE NO. 26264

APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ADMINISTRATIVE ORDER SWD-1750 FOR THE
P 15 #001 WELL OPERATED BY OWL SWD OPERATING, LLC,
LEA COUNTY, NEW MEXICO

CASE NO. 26267

APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ADMINISTRATIVE ORDER SWD-1500 FOR THE
PARKER ENERGY SWD #5 WELL OPERATED BY
PARKER ENERGY SUPPORT SERVICES INC.,
LEA COUNTY, NEW MEXICO

CASE NO. 26269

APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ORDER NO. R-3102 FOR THE EME SWD #021
WELL OPERATED BY RICE OPERATING COMPANY,
LEA COUNTY, NEW MEXICO

CASE NO. 26273

APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED UNDER
ADMINISTRATIVE ORDER SWD-1754 FOR THE N 11 #001
WELL OPERATED BY PERMIAN LINE SERVICE, LLC,
LEA COUNTY, NEW MEXICO

CASE NO. 26274

**APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ADMINISTRATIVE ORDER SWD-184 FOR
THE BLINEBRY DRINKARD SWD #018 WELL
OPERATED BY RICE OPERATING COMPANY,
LEA COUNTY, NEW MEXICO**

CASE NO. 26275

**APPLICATION OF EMPIRE NEW MEXICO LLC
TO REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ADMINISTRATIVE ORDER SWD-1052 FOR
THE BLINEBRY DRINKARD SWD #32 WELL OPERATED
BY RICE OPERATING COMPANY,
LEA COUNTY, NEW MEXICO**

CASE NO. 26277

**APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ORDER NO. R-1647 FOR THE EME SWD #033M
WELL OPERATED BY RICE OPERATING COMPANY,
LEA COUNTY, NEW MEXICO**

CASE NO. 26278

**APPLICATION OF EMPIRE NEW MEXICO LLC
TO REVOKE THE INJECTION AUTHORITY
GRANTED UNDER ORDER NO. R-1348 FOR THE
EME SWD #20 WELL OPERATED BY RICE
OPERATING COMPANY,
LEA COUNTY, NEW MEXICO**

CASE NO. 26279

**APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED UNDER
ADMINISTRATIVE ORDER SWD-1751 FOR THE N 7 #001
WELL OPERATED BY RICE OPERATING COMPANY,
LEA COUNTY, NEW MEXICO**

CASE NO. 26280

**APPLICATION OF EMPIRE NEW MEXICO LLC
TO REVOKE THE INJECTION AUTHORITY
GRANTED UNDER ADMINISTRATIVE ORDER
SWD-985-A FOR THE STATE E TRACT 27 #001 WELL
OPERATED BY RICE OPERATING COMPANY,
LEA COUNTY, NEW MEXICO**

CASE NO. 26281

**APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ADMINISTRATIVE ORDER SWD-965 FOR
THE BLINEBRY DRINKARD SWD #020 WELL
OPERATED BY RICE OPERATING COMPANY,
LEA COUNTY, NEW MEXICO**

CASE NO. 26284

**JOINT RESPONSE TO EMPIRE NEW MEXICO LLC'S MOTION TO REFER CASES
TO NEW MEXICO OIL CONSERVATION COMMISSION**

Goodnight Midstream Permian, LLC ("Goodnight"), Rice Operating Company ("Rice"), and Permian Line Service, LLC ("Permian") hereby submit this response in opposition to Empire's Motion to Refer Cases to New Mexico Oil Conservation Commission ("Motion") filed by Empire New Mexico, LLC ("Empire").

INTRODUCTION

Empire asks the Oil Conservation Division ("OCD" or "Division") to refer thirteen revocation applications to the Oil Conservation Commission ("OCC" or "Commission") pursuant to 19.15.4.20(B) NMAC. The Motion should be denied because the Division, not the Commission, should resolve the applications. The Division possesses authority to adjudicate these applications independently and should establish the factual record in the first instance. Relevant here, the Commission effectively delegated authority over the EMSU to the Division by directing the Division to oversee Empire's pilot project and granting the Division authority to implement and manage any suspension of Goodnight's injection wells. In doing so, the Commission also provided clear guidance to the Division applicable to the resolution of these cases. Allowing the Division to hear these cases in the first instance will enable the parties to fully develop the disputed issues and facts in the forum better suited for such proceedings, thereby conserving the Commission and the parties' time and resources.¹

¹ Six similarly situated cases are pending with the Commission that have been stayed pending resolution of Case Nos. 23614-23617, 23775, 24018-24020, 24025, 24123. Commission Order Nos. R-24004 and R-24004-A disposed of those cases, delegating the remaining issues for the Division to implement and oversee. Empire has filed a motion with the Commission to lift the stay in those cases. Simultaneous with this response, Goodnight, Rice, and Permian are filing a motion to remand those stayed cases to the Division as an alternative to dismissing them without prejudice. See Mot. to Remand, attached as **Exhibit A**.

BACKGROUND

The Division is well-aware of the procedural history of this dispute, which arises from produced water disposal operations within and surrounding the Eunice Monument South Unit (“EMSU”) and the Arrowhead Grayburg Unit (“AGU”) in Lea County, New Mexico. Empire operates the EMSU and AGU. Goodnight, Rice Operating Company (“Rice”), Permian Line Service LLC (“Permian”), Owl SWD Operating LLC (“Owl”), and Parker Energy Support Services Inc. (“Parker”) provide produced water management services to oil and gas operators, and their disposal wells dispose of produced water within and around the EMSU and/or AGU. Empire contends that these disposal operations interfere with its plans to target a potential residual oil zone (“ROZ”) in the San Andres formation.

Last year, the Commission conducted an 18-day consolidated hearing involving over a dozen expert witnesses and more than 100 exhibits addressing cases involving existing and proposed disposal operations inside the EMSU. Following the hearing, the Commission issued two orders, an initial order (Order R-24004) and an amended order (Order R-24004-A), making several material factual findings relevant to these proceedings:

1. Empire did not adduce substantial evidence that its correlative rights in the Grayburg are currently impaired by Goodnight’s injection into the San Andres;
2. Empire has not identified production data from any particular well within the EMSU that shows evidence of impacts from Goodnight’s disposal operations in its production or operation; and
3. There was insufficient evidence to prove whether the ROZ is recoverable.

Order R-24004 at ¶¶ C, 55, D. After issuing Order Nos. R-24004 and R-24004-A (collectively, the “Orders”), the Commission remanded the cases to the Division to implement the Orders consistent with its guidance, delegating authority to oversee Empire’s opportunity to establish a

CO2 enhanced oil recovery pilot project and, to the extent necessary, to suspend Goodnight's disposal operations within the EMSU. Amended Order (R-24004-A) expressly concluded that "OCD has the authority, and may at its discretion, implement the suspension" of Goodnight's injection operations and "has the authority to impose the suspension . . . on any schedule OCD deems necessary in order to provide Empire the opportunity to establish the CO2 EOR pilot project." Order R-24004-A at ¶ 24 (quot. om.). The Division provided the parties detailed implementation directions requiring Empire to follow a multi-step process before any suspension of Goodnight's operations would be triggered. Implementation of OCC Orders (1/15/2026). The Commission's delegation to the Division confirms that the Division is the appropriate forum for these matters and reflects the Commission's intent for the Division to manage these matters in the first instance.

Empire also filed a civil action in the Fifth Judicial District Court asserting tort claims against Goodnight, including negligence, gross negligence per se, trespass, trespass to chattels, nuisance, conversion, tortious interference, and injunctive relief. The State Court stayed the litigation pursuant to the doctrine of primary jurisdiction, recognizing that the Division and/or Commission "has unique expertise regarding the issues presented in this case," and concluding that the agencies "may be able to give some resolution on the issue of permits granted to Goodnight that Empire seeks to revoke." Stay Order (Aug. 29, 2024). After the State Court lifted the stay, Goodnight filed an Amended Motion for Summary Judgment based on collateral estoppel, arguing that the Commission's factual findings in the Orders negate essential elements of each of Empire's tort claims. The State Court recently ruled from the bench, granting summary judgment as to Empire's claims regarding the EMSU. Hearing Minutes (Aug. 27, 2026). A written order is forthcoming. The ruling constitutes a judicial determination that

Empire's tort claims are barred by collateral estoppel. *See, e.g., State v. Ratchford*, 1993-NMSC-024, ¶ 24, 115 N.M. 567 (affirming an oral ruling as effective).

Empire now seeks to bypass standard Division procedures by seeking to refer more than a dozen contested cases to the Commission. The request is premature and misplaced because Empire has not yet undertaken the one substantive requirement imposed by the Commission Orders to prove its claims—establishing a CO2 enhanced oil recovery pilot project—and the Commission has already determined that the Division is in the best position to determine the threshold question of whether the San Andres contains commercially recoverable hydrocarbons. Worse still, Empire has not demonstrated it can meet the threshold regulatory requirements necessary to apply for such a project, namely complying with OCD's inactive wells regulations, among other compliance issues, that must be addressed and resolved before any application can be filed and reviewed.

ARGUMENT

1. Referral Would Be an Inefficient Use of Resources.

Under Division Rule 19.15.4.20(B) NMAC and NMSA Section 70-2-6(B), a hearing may be held before the Commission if the Director, at his discretion, determines the Commission shall hear the matter. This is a discretionary determination, not a right Empire may compel. Under the present procedural posture of these cases and the related matters under the Commission Orders, referral is not appropriate here for at least the following reasons.

First, Empire's prior referral order (Order No. R-23048) was granted because the cases were "related to" Commission Case No. 24123, which was a de novo challenge to a Division order already pending before the Commission. Referral was, therefore, determined to be to be "an efficient use of resources." Order No. R-23048. Those circumstances do not exist here because, as Empire concedes, the Commission proceedings related to the applications at issue are

not pending before the Commission. *See* Mot. at ¶ 10(a)-(c) (explaining that the related cases are either “on appeal before the district court” or “stayed before the Commission”). Without actively pending proceedings before the Commission, the cases cannot be consolidated for hearing efficiency. Moreover, Goodnight, Rice and Permian have filed a contemporaneous motion with this response asking the Commission to remand the remaining cases currently stayed and pending with the Commission in the event the Commission declines to dismiss them without prejudice. *See* **Exhibit A**. A claim for efficiency does not apply here.

Second, the prior cases involved only Goodnight’s wells within the EMSU. The thirteen new cases involve four additional operators whose disposal operations were not at issue in the prior proceeding. Referring cases targeting their wells and operations to the Commission on a wholly undeveloped record involving multiple new parties with unique facts will not conserve resources; it will burden the Commission with the task of having to develop a record that should be created at the Division level first.

Additionally, the State Court’s summary judgment ruling based on collateral estoppel confirms the Commission’s factual findings as dispositive with respect to Goodnight’s wells within the EMSU. *See infra*, Section 5. Because the Commission found no sufficient evidence of current impairment or showing of harm with respect to any particular well within the EMSU, there is no basis to proceed at the Commission level with claims regarding wells outside the EMSU. Applying the dispositive factual predicate to Empire’s new applications yields—through pure logic—the same result. This is especially true when Empire has not yet undertaken a CO2 enhanced oil recovery pilot project, which the Commission has required to establish the very claims Empire is alleging in these new applications. Without positive economic results from such a project, Empire cannot prevail in its new applications.

More troubling, Empire remains out of compliance with numerous Division regulations and requirements, putting it in a position where it cannot even apply for such a pilot project.² Given this posture, the Division, not the Commission, should adjudicate any genuinely new factual issues presented by these wells and operators.

Third, the disposal wells of the other operators—Rice, Permian, Owl, and Parker—were not at issue in the Commission cases, and those operators were not afforded the opportunity to present evidence on their wells in the prior cases. It would be procedurally improper and prejudicial to allow Empire to convert the prior hearing, *limited to Goodnight's wells inside the EMSU*, into a vehicle for adjudicating wells outside the EMSU's boundaries or operated by parties not involved in the initial applications without the benefit of an initial hearing before the Division. The Division should allow Rice, Permian, Owl, and Parker to be heard and to develop the factual record as it pertains to their wells in or around the AGU and EMSU at the Division level first.

2. Declining Referral is More Efficient Because the Division is Better Equipped to Handle Contested Matters of this Nature.

Keeping the cases before the Division is the most efficient path. The Division is better equipped to adjudicate SWD permit revocation applications under its existing regulatory framework. It consistently handles contested hearings and is better positioned to manage multi-party cases involving complex technical evidence over multiple hearing days. It has a dedicated hearing officer and multiple potential contested hearing dates set each month. In contrast, the

² The Division rejected Empire's C-101 submission on July 17, 2026, due to non-compliance with 19.15.5.9 NMAC and 19.15.16.9 NMAC. See OCD Response to Submission ID 581181. The Division noted that "Empire may also be out of compliance with their EOR order requirements." *Id.*; see also 19.15.26.8.A(1)(c) NMAC ("The division shall grant a permit for injection under 19.15.26.8 NMAC only to an operator who is in compliance with Subsection A of 19.15.5.9 NMAC.").

Commission meets once a month, its members have other primary responsibilities, and it does not have a dedicated hearing officer. The Division specifically has broad authority and the day-to-day familiarity and subject-matter expertise to hear and decide applications for revocation of injection authority. *See generally*, 19.15.26 NMAC; *see generally*, NMSA § 70-2-12. The instant cases involve determinations about whether existing permits should remain in force, which are permitting questions within the Division's core expertise and ordinary jurisdiction. *See generally*, 19.15.26 NMAC; *see generally*, NMSA § 70-2-12. Nothing in Empire's Motion identifies any legal question or factual determination that exceeds the Division's authority and normal function that suggests the Commission is uniquely positioned to address them. *See generally*, Mot. The Division has handled countless cases of this sort, including the initial permitting decisions for the wells at issue. There is simply no compelling factual or legal reason to skip over an initial hearing at the Division; rather, the opposite is true.

The Division is best positioned to handle these cases. In the Amended Order, the Commission expressly concluded that "OCD has the authority, and may at its discretion, implement the 'suspension'" of injection operations within the EMSU and may do so "on any schedule OCD deems necessary." Order R-24004-A at ¶ 24. The Commission further directed the Division to provide parameters and requirements for the pilot project and left it to the Division to oversee Empire's compliance at each phase. *Id.* at ¶¶ 20, 24. The Division subsequently issued detailed implementation directions establishing a comprehensive framework for managing injection suspension, if necessary, and a pilot project. Implementation of OCC Orders (1/15/2026). By delegating this authority, which the Division already has, the Commission effectively referred management of EMSU-related matters arising from this

ongoing dispute to the Division. The instant cases should be heard by the Division pursuant to this delegation.

Furthermore, the Commission established a framework for the Division to determine whether an ROZ is recoverable and economic. The Commission's prior findings provide a comprehensive roadmap, and the State Court's preclusion ruling further narrows the factual issues that remain in genuine dispute. *See infra*, Section 5. What remains to be heard is the impact, if any, of the disposal wells located outside the EMSU and AGU³ boundaries, a question the Division is fully competent to address with the Commission's Orders for guidance. Finally, allowing the parties to be heard first by the Division enables it to fully develop the disputed issues and facts, thereby limiting the burden on the Commission if these matters are eventually elevated for review.

3. Public Importance Counsels in Favor of Deliberate Consideration, Not Contracted Proceedings.

Goodnight, Rice, and Permian agree the cases "are of substantial public importance," but not for the reasons Empire states, and they disagree that such gravitas necessarily suggests the Commission should hear the matter in the first instance.

Empire argues the cases are of substantial public importance because they involve the injection of millions of barrels of produced water that will supposedly significantly impair hydrocarbon production. Mot. at ¶ 14. First, whether a case gives rise to matters of "substantial public importance" is not a basis for referral under 19.15.4.20 NMAC. Second, this assertion assumes great harm is occurring but ignores the Commission's binding determinations that Empire "did not adduce substantial evidence that their correlative rights in the Grayburg are

³ Empire will also need to establish that there is an economically recoverable ROZ in the AGU.

CURRENTLY impaired” and “has not identified production data from any particular well within EMSU that shows evidence of impacts from Goodnight’s disposal operations.” Order R-24004 at ¶ 55. As discussed further below, the State Court’s recent preclusion ruling lays rest to that baseless claim.

Empire also claims that “more than 900 million barrels of oil exists in the San Andres ROZ.” Mot. at ¶ 9. To the contrary, the Commission found “insufficient evidence presented at the hearing to prove whether the ROZ is recoverable.” Order R-24004 at ¶ C. Speculative assertions of future potential harm, *which the Commission found Empire failed to prove*, do not rise to the level of establishing imminent harm and cannot establish the kind of concrete public importance that might justify bypassing the Division’s ordinary hearing process.

Notwithstanding Empire’s flawed argument regarding the public import of these cases, Goodnight, Rice, and Permian agree they are of substantial public importance. Empire seeks to revoke injection authority from nearly every saltwater disposal operator within two miles of any unit operated by Empire even though disposal capacity in New Mexico is limited and any further contraction will negatively impact production in the state. Additionally, the State of New Mexico has a significant interest in the thorough and deliberate adjudication of these matters. As documented in a recent study by the New Mexico Environment Department, as much as 41 percent of the total volume of produced water in New Mexico was transported for disposal into Texas in 2023, up from 27 percent in 2021 and 37 percent in 2022. *See New Mexico Environment Department and Eastern Research Group, Inc., New Mexico Strategic Water Supply Feasibility Study, Final*, November 22, 2024, at 15 & 24. This trend concerned Commissioner Dr. William Ampomah during the Commission’s 2023 Chevron shallow disposal pilot project proceedings, where Commissioner Ampomah remarked that the expanding gap in disposal

capacity and the trend of sending water to Texas for disposal is “alarming” and asked what the Division is doing about it. Oil Conservation Commission, Applications of Chevron USA Inc. to Approve Salt Water Disposal Wells in Lea and Eddy Counties, New Mexico, Case Nos. 23686-23687, Tr. 11/9/23, 117:4-11 (Dr. Ampomah). The Division’s Underground Injection Control Program Manager, Philip Goetze, acknowledged the problem and testified that New Mexico “is going to have to look at this as a whole basin issue” and that operators will have to “cooperate and work together to have multiple sources of disposal.” *Id.* Tr. 118:14-18 (testimony of Philip Goetze). Now, proposed Texas legislation threatens to impose fees on produced water imported from New Mexico that could limit this option’s viability in the near future. *See* 2025 Bill Text TX S.B. 2800; 2025 Bill Text TX H.B. 3091 (proposing 20 cent per barrel fee on every barrel of produced water brought into Texas from other states for disposal). The State’s interest in responsible stewardship of its natural resources, including the produced water disposal infrastructure that supports billions of dollars in oil production, underscores the importance of a thorough Division review and crystallization of the factual issues before these cases proceed to the Commission.

Rather than bypass the Division’s hearing process, the significance of these matters supports a deliberate process before the Division that enables all parties to be heard and all facts to be developed in the forum designed for such adjudication.

4. The Prospect of an Administrative De Novo Challenge Does Not Justify Referral.

Empire contends the Division should refer the cases to the Commission because any party “that does not prevail will certainly seek a de novo hearing before the Commission.” Mot. at ¶ 13. Empire’s argument is speculative, improperly assumes the outcome, and relies on circular logic: referral is efficient because the losing party will inevitably appeal. Given that

parties have a statutory right to review before the Commission, NMSA § 70-2-13, such reasoning is universally true, would justify referral in every case, and would render the Division's hearing function meaningless. Accordingly, Empire's flawed logic cannot serve as justification to refer these matters to the Commission.

5. The OCC Should Not Re-Tread Old Ground by Reconsidering Its Factual Findings.

The State Court's July 29, 2026 summary judgment ruling based on collateral estoppel constitutes a judicial determination that the Commission's factual findings are dispositive against Empire's EMSU claims. The ruling shifts the posture of these proceedings because Empire relies on the same flawed assertions that were rejected by the Commission. The ruling confirms that the factual record as to Goodnight's wells within the EMSU is closed. The Commission heard extensive testimony and evidence in the 18-day hearing and found Empire's evidence insufficient. The State Court then found those findings preclusive. Now, Empire concedes it will "present similar geological and engineering evidence," Mot. ¶ 15, meaning it has nothing new to offer the Commission. The Commission, having found "insufficient evidence" of current impairment of correlative rights, "no production data" from any particular well within the EMSU showing evidence of impacts, and "insufficient evidence" that the alleged ROZ is recoverable, created the opportunity for a pilot project and remanded the matter to the Division to oversee and implement.

What's more, the Division has sufficient guidance from the Commission to hear these cases. As discussed earlier, what remains to be heard is the impact, if any, of the disposal wells located outside the EMSU and AGU boundaries. The Division can address such claims within its existing expertise and regulatory framework. There is no basis to refer these cases to the Commission for reconsideration of findings that a court of law has held to be preclusive.

6. The Division Should Not Consider the Statement of William West.

Lastly, Empire attached to the Motion a voluminous self-serving Self-Affirmed Statement (“Statement”) from its Senior Vice President of Operations, William West. *See* Mot., Ex. A. Mr. West’s Statement contradicts the Commission’s factual findings. For example, Mr. West asserts that disposal operations are “impairing Empire’s ability to recover hydrocarbons within the Unitized Interval and thereby adversely affect the correlative rights of Empire.” *Id.* at ¶ 14. Setting aside the unreliable, flawed and conclusory nature of West’s opinion, the Division should not consider Empire’s bare assertions of harm that have already been specifically rejected by the Commission and now held preclusive by the State Court. In addition, Mr. West’s assertions about injection volumes and production volumes provide no analysis or basis of harm, much less proof of injury. *Id.* at ¶¶ 5 & 7. Mr. West’s Statement adds no new evidence unavailable during the hearing and recycles the same baseless impairment allegations the Commission already considered and rejected. In the context of this Motion, the Division should not reconsider such self-serving allegations that contradict what the Commission found.

CONCLUSION

The Division should hear the cases in the first instance, not the Commission. The Division is better suited to hear contested cases, especially here, where the Commission already made findings as to the EMSU, delegated authority over the pilot project to the Division, and remanded similar cases to the Division to oversee and implement. Allowing the Division to develop the record on the new issues presented will enable those issues to crystallize before the Commission devotes its resources to reviewing them. Referral serves no benefit and has serious drawbacks. Accordingly, the Division should decline to refer the cases to the Commission and instead hold a full hearing pursuant to its delegation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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