**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**

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

**EMPIRE NEW MEXICO LLC'S RESPONSE IN OPPOSITION TO JOINT MOTION TO REMAND CASES TO NEW MEXICO OIL CONSERVATION DIVISION**

Empire New Mexico LLC ("Empire") submits this Response in Opposition to Joint Motion[1] to Remand ("Motion") Cases to New Mexico Oil Conservation Division ("Division" or "OCD"). As demonstrated below, Joint Movants' arguments are without merit and lack any supporting legal authority.

## I. INTRODUCTION

Joint Movants' Motion is the latest in a series of procedural maneuvers designed to delay, rather than resolve, Empire's claims. On February 7, 2024, the Division referred several cases to the Oil Conservation Commission ("Commission" or "OCC"), including the EMSU cases and non-EMSU cases (defined below). *See* Order No. R-23048. On May 23, 2024, Goodnight filed its Motion to Limit the Scope of the Commission Hearing to Cases within the Eunice Monument South Unit. The Commission agreed and limited the scope of its hearing to applications and wells within the EMSU, staying the non-EMSU cases pending before the Commission.

Case Nos. 24123, 23614-23617, 23775, 24018-24020, and 24025 were previously adjudicated by the Commission and are referred to as the "EMSU cases" because they involve

[1] The Motion is jointly submitted by Goodnight Midstream Permian, LLC ("Goodnight"), Rice Operating Company ("Rice"), and Permian Line Service, LLC ("Permian"). Subsequently, Pilot Water Solutions SWD LLC ("Pilot") filed a Notice of Joinder in the Motion. Collectively, the movants are referred to as the "Joint Movants."

disposal wells within the Eunice Monument South Unit ("EMSU"). 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").

The Joint Movants' Motion concerns Empire's applications in the following matters, which were stayed by the Commission pending resolution of the EMSU cases:

a. **Case No. 24021.** Application of Empire to Revoke the Injection Authority granted under Order No. R-22027 for the Rocket SWD No. 1 Well Operated by Goodnight Midstream Permian LLC, Lea County, New Mexico.

b. **Case No. 24022.** Application of Empire to Revoke the Injection Authority Granted Under Administrative Order No. SWD-2391 for the Pedro SWD #001 Well Operated by Goodnight Midstream Permian LLC, Lea County, New Mexico.

c. **Case No. 24023.** Application of Empire to Revoke the Injection Authority Granted Under Order No. R-22030 for the Verlander SWD #001 Well Operated by Goodnight Midstream Permian LLC, Lea County, New Mexico.

d. **Case No. 24024.** Application of Empire to Revoke the Injection Authority Granted Under Order No. R-20855 for the Nolan Ryan SWD #001 Operated by Goodnight Midstream Permian LLC, Lea County, New Mexico.

e. **Case No. 24026.** Application of Empire to Revoke the Injection Authority Granted Under Administrative Order No. SWD-2075 for the Ted 28 SWD Well No. 1 Well Operated by Goodnight Midstream Permian LLC, Lea County, New Mexico.

f. **Case No. 24027.** Application of Empire to Revoke the Injection Authority Granted Under Order No. R-20865 for the Yaz 28 SWD Well No. 1 Operated by Goodnight Midstream Permian LLC, Lea County, New Mexico.

The above cases are referred to as the "non-EMSU cases" because the wells are located outside of, but in proximity to, the EMSU. On April 29, 2026, Empire moved to lift the Commission's stay on these cases and set them for status conference. That motion remains pending. Joint Movants now improperly seek to remand the non-EMSU cases to the Division.

Relatedly, Empire asserted various civil claims against Joint Movants in the Fifth Judicial District Court arising from their SWD operations in and around the EMSU and Arrowhead Grayburg Unit ("AGU"). *See generally Empire New Mexico, LLC v. Rice Operating Company, et al.*, D-506-CV-2024-00377 (Fifth Judicial District Court, County of Lea, New Mexico); *Empire New Mexico, LLC v. Goodnight Midstream Permian, LLC*, D-506-CV-2023-01180 (Fifth Judicial District Court, County of Lea, New Mexico). Recently, the district court entered summary judgment in favor of Goodnight on Empire's claims involving the EMSU wells but denied summary judgment on the non-EMSU wells. A true and correct copy of the district court's order is attached as Exhibit A. Joint Movants rely on this decision in support of their remand arguments.

As demonstrated below, however, those arguments are not well taken and the Commission should deny Joint Movants' Motion.

## II. ARGUMENT

### a. Joint Movants fail to provide any legal basis for their remand request.

It is well settled that the Commission "is a creature of statute, expressly defined, limited and empowered by the laws creating it." *Continental Oil Co. v. Oil Conservation Comm'n*, 1996-NMSC-062, ¶ 11, 70 N.M. 310, 373 P.2d 809. While appropriately identifying the statutory and regulatory bases for referral to the Commission, Joint Movants then opine on the legal basis for remand, without a single citation to support their view that remand is not only authorized, but wholly discretionary. To the contrary, neither Section 70-2-6 nor 19.15.4.20 NMAC speak to remand procedures. Rather, both Section 70-2-6(B) and 19.15.4.20 NMAC *require* the Commission to adjudicate a matter that has been referred by the Director: "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," Section 70-2-6(B) (emphasis added); and "the hearing on a matter *shall* be held before the commission if . . . the director directs the commission to hear the matter." 19.15.4.20(B) NMAC (emphasis added). Tellingly, 19.15.4.20 NMAC is even titled "**ADJUDICATORY HEARINGS THAT SHALL BE HELD BEFORE THE COMMISSION**" (emphasis in original).

"In construing a statute, we must ascertain and give effect to the intent of the Legislature. To accomplish this, we apply the plain meaning of the statute unless the language is doubtful, ambiguous, or an adherence to the literal use of the words would lead to injustice, absurdity or

contradiction."[2] *Nguyen v. Bui*, 2023-NMSC-020, ¶ 15, 536 P.3d 482 (internal quotation marks and citation omitted). Such an analysis typically begins "with a straightforward application of the [regulation's] unambiguous terms." *Autovest, L.L.C. v. Agosto*, 2025-NMSC-001, ¶ 12, 563 P.3d 811 (citation omitted). Here, "[t]he word shall is ordinarily the language of command. And when a law uses shall, the normal inference is that it is used in its usual sense—that being mandatory." *Yedidag v. Roswell Clinic Corp.*, 2015-NMSC-012, ¶ 53, 346 P.3d 1136 (citation omitted). "As the Supreme Court has noted, this obligation is 'normally . . . impervious to judicial discretion.'" *Autovest, L.L.C.*, 2025-NMSC-001, ¶ 21 (quoting *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 27 (1998)).

In assessing whether remand is appropriate, the Commission must give effect to both Section 70-2-6(B) and 19.15.4.20 NMAC's use of the word "shall," which mandates that the Commission adjudicate a matter that has been referred to it by the Director. Neither the statute nor the regulation allow for discretionary remand and the rules of statutory interpretation preclude the Commission from adding language to a statute that the "legislature has seen fit to omit." *Duran v. Xerox Corp.*, 1986-NMCA-124, ¶ 17, 105 N.M. 277, 731 P.2d 973. Neither the New Mexico Oil and Gas Act nor the administrative regulations governing adjudicatory proceedings expressly authorize the Commission to remand a case back to the Division after being referred to the Commission by the Division director. The language of the relevant provisions clearly establishes a unidirectional referral mechanism from the Division Director to the Commission, not a bilateral procedural exercise between the two bodies as Joint Movants suggest. For these reasons, the Commission should reject Joint Movants' invitation to carve out exceptions to the clear, mandatory

[2] It is well recognized that these "canons of statutory construction apply to regulatory and rule interpretation as well." *Johnson v. N.M. Oil Conservation Comm'n*, 1999-NMSC-021, ¶ 27, 127 N.M. 120, 978 P.2d 327; *N.M. Mining Ass'n v. N.M. Water Quality Control Comm'n*, 2007-NMCA-010, ¶ 12, 141 N.M. 41, 150 P.3d 991.

language in both Section 70-2-6(B) and 19.15.4.20 NMAC and decline to remand the matter to the Division.

**b. Collateral Estoppel is not applicable.**

Joint Movants' reliance on the doctrine of collateral estoppel is also misplaced. Joint Movants' circuitous collateral estoppel argument appears to be that the district court's interpretation of the Commission's orders in the EMSU cases somehow bars the Commission from hearing the instant applications regarding wells outside the EMSU and also requires that the matters be remanded. Setting aside Joint Movants' continued misrepresentations regarding the Commission's orders in the EMSU cases and their unsupported belief that a district court's interpretation of a Commission order could somehow bar the Commission from reconsidering or interpreting its own decision, collateral estoppel simply does not apply here or otherwise support Joint Movants' request for remand.

"Collateral estoppel bars relitigation, as between parties or their privies, of ultimate facts or issues actually and necessarily decided in a prior suit." *Adams v. United Steelworkers of Am.*, 1982-NMSC-014, ¶ 16, 97 N.M. 369, 640 P.2d 475. For collateral estoppel to apply, four elements must be met: "(1) the parties in the current action were the same or in privity with the parties in the prior action, (2) the subject matter of the two actions is different, (3) the ultimate fact or issue was actually litigated, and (4) the issue was necessarily determined." *Ullrich v. Blanchard*, 2007-NMCA-145, ¶ 19, 142 N.M. 835, 171 P.3d 774 (quoting *City of Sunland Park v. Macias*, 2003-NMCA-098, ¶ 10, 134 N.M. 216, 75 P.3d 816). Joint Movants' collateral estoppel argument is easily dispensed of here because the district court specifically denied summary judgment on the claims involving the wells at issue in this proceeding. *See* Order, attached as Exhibit A. Collateral

estoppel cannot be invoked where the issues were not determined in the prior litigation.[3] *Ullrich*, 2007-NMCA-145, ¶ 20 ("We conclude that collateral estoppel is inapplicable because the ultimate issues in the present case were not litigated or decided in the first lawsuit.").

Beyond Joint Movants' failure to establish the elements of collateral estoppel, Joint Movants cite no authority for their apparent position that application of collateral estoppel would somehow require remand of a case to another adjudicatory body. Thus, even if the doctrine could be applied here (it cannot), it provides no basis to remand the cases to the Division. For these reasons, the Commission should reject Joint Movants' collateral estoppel arguments.

**c. There is no legitimate basis for remand, and the Commission is in the best position to adjudicate the non-EMSU cases.**

As outlined above, because the non-EMSU cases have been referred to the Commission by the Division Director, the Commission is required by statute and regulation to adjudicate those cases. NMSA 1978, § 70-2-6(B); 19.15.4.20 NMAC. And the Commission is best positioned to hear these cases—it has already presided over 18 days of testimony in the EMSU cases and is unquestionably well versed on the geology and engineering issues that will be litigated by the parties in this related proceeding. The Commission's direct familiarity with the matter favors keeping the non-EMSU cases before it, not requiring the Division to reconstruct that context. Although Joint Movants may wish to have multiple bites at the apple should they lose, that is not a proper basis for remand. Neither is their desire for delay, which unquestionably benefits the Joint Movants by allowing them to continue unfettered injection into Empire's San Andres Residual Oil

[3] To the extent that Joint Movants now believe that the issues involving the EMSU and non-EMSU cases are identical, Empire reminds the Commission that Goodnight has previously maintained 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).

Zone. Empire has presented evidence that time is of the essence regarding the invasive SWD operations in and around the EMSU. The Commission should decline to remand the non-EMSU cases and set the matters for hearing at its earliest convenience.

## III. CONCLUSION

For these reasons, Joint Movants' Motion to Remand is not well taken and should be denied.

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 August 25, 2026.

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FILED
5th JUDICIAL DISTRICT COURT
Lea County
8/17/2026 4:12 PM
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STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT

EMPIRE NEW MEXICO, LLC,

Plaintiff,

v. No. D-506-CV-2023-01180

GOODNIGHT MIDSTREAM
PERMIAN, LLC

Defendant.

**~~[PROPOSED]~~ ORDER GRANTING IN PART AND DENYING IN PART GOODNIGHT'S AMENDED MOTION FOR SUMMARY JUDGMENT**

**THIS MATTER** comes before the Court on Defendant Goodnight Midstream Permian, LLC's ("Goodnight") Amended Motion for Summary Judgment (the "Motion"). The Court, having considered the Motion, the Response of Plaintiff Empire New Mexico, LLC ("Empire"), Goodnight's Reply, the exhibits, authorities and briefing submitted by the parties, and having heard oral arguments presented by counsel at a hearing held on July 29, 2026, and being otherwise fully advised of the premises, finds that the Motion is well-taken and should be granted in part, and denied in part, as specifically set forth below. Additionally, on June 1, 2026, the Court ordered a stay of all discovery and other deadlines in this matter until thirty days after the Court issued its ruling on the Motion ("Stay Order"). The stay is hereby lifted, as specifically set forth below.

**IT IS HEREBY ORDERED** that Goodnight's Amended Motion for Summary Judgment is **GRANTED IN PART** and **DENIED IN PART**, as follows:

The Motion is **GRANTED** as to all claims brought by Empire arising from Goodnight's development and operations related to the salt water disposal wells ("SWDs") located in the

**EXHIBIT A**

Eunice Mountain South Unit field ("EMSU"). All of Empire's causes of action brought herein arising out of Goodnight's operations and development of SWDs in the EMSU are hereby **DISMISSED WITH PREJUDICE**, including Empire's causes of action for (1) negligence, (2) gross negligence per se, (3) common law trespass and continuing trespass, (4) trespass to chattels, (5) common law nuisance and continuing nuisance, (6) conversion, (7) tortious interference with contract and prospective contract, and Empire's claims for (8) damages and injunctive relief. For the avoidance of doubt, this summary judgment is specifically **GRANTED** in connection with Empire's claims arising from Goodnight's development and operations of the following SWDs: Andre Dawson SWD #001 (API # 30-025-50634); Ernie Banks SWD No. 1 Well (API # 30-025-50633); Ryno SWD #001 f/k/a Snyder SWD (API # 30-025-43901); Sosa SA 17 SWD #002 (API # 30-025-47947); Piazza SWD #001 (NMOCD Case No. 22626); Doc Gooden SWD #1 (NMOCD Case No. 26314); Hernandez SWD #1 (NMOCD Case No. 23615); Hodges SWD #1 (NMOCD Case No. 23616); and Seaver SWD #001 (NMOCD Case No. 23617).

The Motion is **DENIED** as to all claims by Empire arising from Goodnight's SWD and operations outside the EMSU, including the Arrowhead Grayburg Unit ("AGU"). For the avoidance of doubt, the Motion is **DENIED** as to the following SWDs: Verlander SWD No. 1 (API # 30-025-50632); Nolan Ryan SWD #001 (API # 30-025-45349); Pedro SWD #001 (API # 30-025-50079); Penroc State E TR 27 #002 (API # 30-025-26491); Robinson State SWD #001 (API # 30-025-46397); Scully SWD Well No. 1 (API # 30-025-46398); Ted 28 SWD #001 (API # 30-025-44386); and Yaz 28 SWD #001 (API # 30-025-46382). Empire's claims as to these wells and the impact of Goodnight's operations on the AGU shall remain pending before this Court.

Nothing in this Order shall be construed to preclude any party from seeking or contesting reconsideration or other relief under applicable rules with respect to the claims addressed by this Order should the Oil Conservation Commission or the Oil Conservation Division issue subsequent orders or findings that may serve as the basis for such requested reconsideration or relief.

**IT IS HEREBY ORDERED** that the Court's Stay Order is lifted, and all discovery may resume, effective as of the issuance of this Order. The parties shall confer and submit a proposed scheduling order for the Court's approval within 14 days of this Order.

HONORABLE MARK SANCHEZ
District Court Judge

Submitted by:

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