

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

**IN THE MATTER OF PENDING
APPLICATIONS CONCERNING
INJECTION INTO THE SAN ANDRES
FORMATION IN AND NEAR THE
EUNICE MONUMENT SOUTH UNIT,
LEA COUNTY, NEW MEXICO**

**Case Nos. 24491, 26255, 26264, 26267,
26269, 26273, 26274, 26275,
26277, 26278, 26279, 26280,
26281, 26284**

**PILOT WATER SOLUTIONS SWD, LLC RESPONSE TO
ORDER TO SHOW CAUSE**

INTRODUCTION

Pilot Water Solutions SWD, LLC and OWL SWD Operating, LLC (collectively, “Pilot”) respond to the Hearing Examiner’s Order to Show Cause (“OSC”).¹ Pilot appears in all thirteen revocation proceedings identified in the OSC.² Case No. 26267 is the only one directed at a well that Pilot operates. In that case, Empire New Mexico LLC (“Empire”) filed an application (the “Revocation Application”) to revoke the injection authority granted under Administrative Order SWD-1750 for the P-15 #001 SWD well (API No. 30-025-46579) (the “P-15 Well”), a disposal well inside the Eunice Monument South Unit (“EMSU”).³

Pilot requests deferral of the EMSU-related matters, while taking no independent position on the Arrowhead Grayburg Unit (“AGU”) and other non-EMSU matters, and deferring to the

¹ Order to Show Cause, *In re Pending Applications Concerning Injection into the San Andres Formation in and near the Eunice Monument South Unit*, Case Nos. 24491 et al. (N.M. Oil Conservation Div. Oct. 13, 2026) (directing parties to show cause whether to defer final adjudication of fourteen San Andres injection matters pending the appeals from Amended Order No. R-24004-A).

² OSC ¶ 4; Pilot Water Solutions SWD, LLC’s Entries of Appearance & Notices of Opposition to Presentation by Affidavit, Case No. 26267 (N.M. Oil Conservation Div. June 25, 2026), and Case Nos. 26255, 26264, 26269, 26273–26275, 26277–26281, 26284 (N.M. Oil Conservation Div. July 21, 2026).

³ 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 ¶¶ 1–3, 7, 9–10, Case No. 26267 (N.M. Oil Conservation Div. filed June 9, 2026) (seeking revocation of OWL’s disposal authority on the theory that San Andres disposal impairs Empire’s recovery within the EMSU unitized interval); OSC ¶ 4.

operators whose wells are directly at issue.⁴ The Oil Conservation Division (“Division”) should defer proceedings in, and final adjudication of, Case No. 26267 until the First Judicial District Court resolves the appeals from Amended Order No. R-24004-A.⁵ The Revocation Application rests on premises now under review in those appeals: that the San Andres lies within the EMSU unitized interval, that Empire’s rights as unit operator support revocation of third-party disposal authority, and that disposal into an unproven residual oil zone causes waste.⁶ Empire itself has told the district court that the Oil Conservation Commission’s (“Commission”) findings are provisional and that the risk of reversal is real.⁷

Deferral prejudices no party. It preserves the status quo for an existing, permitted well, and the Commission’s remedy does not restrict injection even at Goodnight’s EMSU wells until Empire activates an approved pilot project. Proceeding now, by contrast, would require Pilot to litigate under a standard the district court may revise. Pilot is not aware of any statute or rule that requires prompt decision in this matter.

Additionally, deferral should not concede that the Commission’s findings about Goodnight’s wells govern the P-15 Well. If Case No. 26267 proceeds, Empire must prove its case with evidence specific to the P-15 Well. For the same reasons, Pilot supports deferral of Case Nos.

⁴ OSC ¶ 4 (identifying the wells, operators, and locations in the thirteen newly filed revocation matters); Rice Operating Co. & Permian Line Serv., LLC’s Resp. to Order to Show Cause (N.M. Oil Conservation Div. Oct. 26, 2026) (requesting deferral of Respondents’ nine matters and all remaining captioned matters until the First Judicial District Court rules in the Appeals) (Parker Energy supporting that position); Goodnight Midstream Permian, LLC’s Resp. to Show Cause Order (N.M. Oil Conservation Div. Oct. 26, 2026) (requesting dismissal without prejudice or a stay of all matters premised on alleged impacts within the EMSU, including matters involving wells located outside the EMSU, while requesting that matters premised on alleged AGU impacts proceed).

⁵ OSC ¶¶ 1–2 (describing Order No. R-24004, Amended Order No. R-24004-A, and the consolidated appeals); *see* NMSA 1978, § 70-2-13 (authorizing the examiner to regulate proceedings and take measures necessary for their efficient and orderly conduct).

⁶ Revocation Application ¶¶ 3–4, 7, 9–10; OSC ¶ 3(a), (d), (e), (g).

⁷ Empire New Mexico, LLC’s Resp. in Opp’n to Def. Goodnight Midstream Permian, LLC’s Am. Mot. for Summ. J. at 25, 31–32, *Empire N.M., LLC v. Goodnight Midstream Permian, LLC*, No. D-506-CV-2023-01180 (N.M. 5th Jud. Dist. Ct. Apr. 22, 2026) [hereinafter Empire MSJ Resp.] (opposing Goodnight’s collateral-estoppel motion).

26273 and 26274, the two other matters concerning wells inside the EMSU, and of any other matter that rests on alleged impairment within the EMSU unitized interval.⁸ Pilot does not independently seek relief in the remaining matters, including those concerning wells in the AGU, and supports or otherwise defers to the positions of the operators whose wells are at issue.⁹

RELEVANT BACKGROUND

A. The P-15 Well and the Revocation Application.

The P-15 Well is located in Section 15, Township 21 South, Range 36 East, Lea County, and disposes into the San Andres through perforations from approximately 4,202 to 5,050 feet.¹⁰ Rice Operating Company was the original applicant and operator, and the Division approved OWL as operator on January 31, 2022.¹¹ Empire filed the latest Revocation Application on June 9, 2026.¹² The Revocation Application alleges that residual oil zones are found within the San Andres, that Empire has the right to recover hydrocarbons there, that the injected water is incompatible with and more saline than formation water, and that disposal at the P-15 Well “impairs the ability of Empire to recover hydrocarbons within the EMSU Unitized Interval.”¹³ It pleads no P-15-specific production data, injection volumes, pressure response, or communication pathway supporting the alleged impairment, and it rests the incompatibility allegation on “information and belief.”¹⁴

B. The Commission in 2025 Adjudicated Goodnight’s EMSU Wells.

In February 2024, the Division referred the competing applications of Goodnight and

⁸ OSC ¶¶ 4, 7; *see* Revocation Application ¶ 9 (alleging impairment “within the EMSU Unitized Interval”).

⁹ *See supra* note 4 and accompanying text.

¹⁰ Revocation Application ¶¶ 1, 5.

¹¹ *Id.* ¶¶ 1–2.

¹² Revocation Application at 1 (Division receipt stamp).

¹³ *Id.* ¶¶ 6–9.

¹⁴ *Id.* ¶¶ 5–9; *id.* ¶ 6.

Empire concerning San Andres injection in and near the EMSU to the Commission.¹⁵ The Commission limited the hearing to the “possible interference with a residual oil zone [in] the Eunice Monument South Unit . . . by produced water injection activities undertaken by Goodnight,” and to “applications and wells by Goodnight or by Empire New Mexico LLC within the EMSU.”¹⁶ The Commission’s scope order also stayed Empire’s revocation applications for Goodnight wells outside the EMSU pending resolution of the EMSU cases.¹⁷ Pilot entered an appearance and notice of intervention on June 17, 2024, and the Commission has identified it as an interested party, and an operator of produced water injection wells within the EMSU.¹⁸

The Commission ultimately found that a residual oil zone (“ROZ”) exists in the Grayburg and San Andres, that Empire holds the exclusive right to produce it, that Empire showed the possibility of future impairment or waste, and that Goodnight did not establish a continuous barrier.¹⁹ The Commission also found that Empire did not show current impairment, identified no production data from any EMSU well showing impacts from Goodnight’s disposal, and offered insufficient evidence “to prove whether the ROZ is recoverable.”²⁰ The Commission therefore declined to revoke and instead suspended Goodnight’s four EMSU wells to give Empire the opportunity to establish a CO2 pilot project.²¹ On rehearing, the Commission confirmed that order, delegated implementation to the Division, and directed that Empire “must follow all relevant and

¹⁵ Order No. R-23048 ¶¶ 1–3 & ordering ¶ 1 (N.M. Oil Conservation Div. Feb. 7, 2024) (referring Goodnight’s disposal applications and Empire’s applications to revoke Goodnight’s permits to the Commission).

¹⁶ Joint Order on Goodnight Midstream Permian L.L.C.’s Motion to Limit Scope of Hearing ¶¶ 2–3 (N.M. Oil Conservation Comm’n July 2, 2024) [hereinafter Scope Order] (confining the consolidated hearing to Goodnight’s and Empire’s EMSU applications and wells).

¹⁷ *Id.* ¶ 4 (staying Case Nos. 24021–24024, 24026, 24027, 24277, and 24278); OSC ¶ 6 (noting that the stay of Case No. 24021 remains in place).

¹⁸ Order No. R-24004 ¶ 5 (N.M. Oil Conservation Comm’n Sept. 12, 2025) [hereinafter R-24004] (listing Pilot as an interested party that entered an appearance and notice of intervention on June 17, 2024).

¹⁹ R-24004 ¶¶ 27, 38 & §§ II.A–B, III.A–B (stating the grounds for denying Goodnight’s applications).

²⁰ *Id.* § III.C–D & ¶ 55 (explaining why permanent revocation was premature).

²¹ *Id.* at 12–13 (decretal ¶¶ 1–3).

applicable regulations and permitting processes” to pursue the pilot.²²

C. The Appeals and Parallel Civil Action.

Empire and Goodnight each appealed R-24004-A, and the consolidated appeals (the “Appeals”) present the seven questions listed in paragraph 3 of the OSC.²³

In Empire’s parallel tort action against Goodnight, the Fifth Judicial District Court stayed proceedings in 2024, citing its “concern that proceeding here may yield an inconsistent decision that may have an impact on other saltwater disposal wells.”²⁴ Goodnight later sought summary judgment on the ground that the Commission’s findings collaterally estopped Empire’s claims.²⁵ Empire opposed, telling the court that “[t]he risk of reversal is not abstract” and that the Commission’s findings on current impairment and recoverability were “expressly characterized as premature and unresolved.”²⁶ On August 17, 2026, the court dismissed with prejudice Empire’s claims arising from Goodnight’s EMSU wells and denied summary judgment on claims arising from Goodnight’s wells outside the EMSU, including the AGU; the P-15 Well is not among the wells addressed.²⁷

Empire has also separately sued Pilot and OWL in the Fifth Judicial District Court, alleging that their produced water injection into the San Andres caused property damage to Empire’s

²² Amended Order No. R-24004-A ¶¶ 23–25 (N.M. Oil Conservation Comm’n Dec. 17, 2025) [hereinafter R-24004-A] (incorporating R-24004 in full and clarifying the suspension). Pilot filed a rehearing statement adopting Rice Operating Company’s position. *Id.* at 3 n.1.

²³ OSC ¶¶ 2–3.

²⁴ Order Staying Litigation Pursuant to Primary Jurisdiction Doctrine ¶ 6, *Empire N.M.*, No. D-506-CV-2023-01180 (Aug. 29, 2024) (staying the tort action pending the Commission proceeding).

²⁵ Def. Goodnight Midstream Permian, LLC’s Am. Mot. for Summ. J. at 1, *Empire N.M.*, No. D-506-CV-2023-01180 (Apr. 7, 2026) (seeking dismissal of Empire’s tort claims based on the preclusive effect of R-24004 and R-24004-A).

²⁶ Empire MSJ Resp. at 32.

²⁷ Order Granting in Part and Denying in Part Goodnight’s Am. Mot. for Summ. J. at 1–2, *Empire N.M.*, No. D-506-CV-2023-01180 (Aug. 17, 2026) [hereinafter MSJ Order] (listing by name the Goodnight wells within and outside the EMSU covered by each ruling); *id.* at 3 (preserving reconsideration if the Commission or the Division issues subsequent orders or findings).

interests in the EMSU and AGU.²⁸ That action remains pending, with Pilot's Motion to Dismiss pending—to obtain the same dismissal already granted to Rice and Permian,²⁹ which dismissed with prejudice claims due to failure to prosecute.³⁰

ARGUMENT

I. Case No. 26267 and All Other Empire's EMSU Revocation Applications Directly Implicate Multiple Issues Now Before the District Court

Empire's Revocation Applications present several of the same legal and evidentiary questions identified in the OSC as pending in the consolidated appeals. In particular, the Revocation Applications implicate Issues (a), (d), (e), and (g), while Issue (c) may determine the evidentiary standard the Division would apply.³¹

*Issue (a).*³² The Revocation Application depends on the San Andres forming part of the EMSU unitized interval.³³ Goodnight contends on appeal that the San Andres is an aquifer not subject to statutory unitization.³⁴ The Commission did not resolve that question: it stayed Goodnight's exclusion applications, left them outside the scope of the proceeding, and found that any debate over exclusion "would require notice to, and likely participation from, multiple additional parties."³⁵ That issue is central to the Revocation Applications and must be decided at the district court level before Division/Commission can weigh in.

²⁸ See Compl. ¶¶ 8–16, *Empire N.M., LLC v. Rice Operating Co.*, No. D-506-CV-2024-00377 (N.M. 5th Jud. Dist. Ct. filed Apr. 24, 2024).

²⁹ Pilot/OWL Mot. for Joinder ¶ 1, *Empire N.M., LLC v. Rice Operating Co.*, No. D-506-CV-2024-00377, (Aug. 10, 2026).

³⁰ See Pilot/OWL Reply in Supp. of Mot. for Joinder at 1, 10, *Empire N.M.*, No. D-506-CV-2024-00377 (Sept. 10, 2026); Order Granting Mot. to Dismiss with Prejudice & Final J. of Dismissal at 1–2 (Aug. 17, 2026).

³¹ OSC ¶¶ 3, 10(a); Revocation Application ¶¶ 3–10.

³² OSC ¶ 3(a).

³³ Revocation Application ¶¶ 3–4 (defining the "EMSU Unitized Interval" to extend to the base of the San Andres).

³⁴ *Goodnight Midstream Permian, LLC's Statement of Appellate Issues* at 2–3, 12–16, *Goodnight Midstream Permian, LLC v. New Mexico Oil Conservation Commission*, No. D-101-CV-2026-00269, consolidated with No. D-101-CV-2026-00177 (N.M. 1st Jud. Dist. Ct. May 4, 2026).

³⁵ R-24004 ¶¶ 67, 71, 73.

*Issue (c).*³⁶ Resolution of Issue (c) at the district court level may govern the evidentiary standard in Case No. 26267. The Commission ruled against Goodnight on its failure to prove a continuous barrier.³⁷ Goodnight has placed before the district court whether the Commission improperly shifted the burden of proof and imposed a new “continuous barrier” standard.³⁸ A hearing on the P-15 Well would require the Division to address substantially the same burden and continuous-barrier questions while those issues remain on appeal.

*Issue (d).*³⁹ The Revocation Application alleges that disposal at the P-15 Well presently impairs Empire’s recovery from a residual oil zone.⁴⁰ The Commission found that Empire did not prove current impairment from Goodnight’s far larger injection and found only the possibility of future impairment.⁴¹ Whether substantial evidence supports the ROZ and future-impairment findings is now before the district court.⁴²

*Issue (e).*⁴³ Empire seeks to revoke a third-party disposal permit inside the EMSU on the strength of its status as unit operator.⁴⁴ Whether that status precludes third-party disposal within the EMSU, and whether revocation rather than suspension is required, are questions Empire itself has placed before the district court.⁴⁵ A ruling either way will define the remedy, if any, available against the P-15 Well.

³⁶ OSC ¶ 3(c).

³⁷ R-24004 § III.B.

³⁸ Goodnight Appellate Issues, *supra*, at 2, 19–24 (arguing that the Commission improperly shifted the burden of proof to Goodnight and imposed an unauthorized “continuous barrier” evidentiary standard).

³⁹ OSC ¶ 3(d).

⁴⁰ Revocation Application ¶¶ 7, 9.

⁴¹ R-24004 § III.A, III.C & ¶ 55; McGuire Statement ¶ 46.

⁴² Goodnight Statement of Appellate Issues, *supra*, at 2, 31–32.

⁴³ OSC ¶ 3(e).

⁴⁴ Revocation Application ¶¶ 3, 9–10.

⁴⁵ Empire New Mexico, LLC’s Statement of Appellate Issues at 1–2, 14–18, *Empire New Mexico, LLC v. New Mexico Oil Conservation Commission*, No. D-101-CV-2026-00177, consolidated with No. D-101-CV-2026-00269 (N.M. 1st Jud. Dist. Ct. May 4, 2026) (asserting that Empire possesses the exclusive right to operate wells within the EMSU and that the Commission erred by suspending, rather than permanently revoking, Goodnight’s existing permits).

*Issue (g).*⁴⁶ Empire seeks revocation to prevent “the waste of recoverable hydrocarbons.”⁴⁷ The Commission found the evidence insufficient to prove whether the ROZ is recoverable and fashioned a suspension tied to a pilot project.⁴⁸ Whether those findings support restrictions on San Andres disposal, and whether suspension rather than revocation is a lawful remedy, are now disputed in the consolidated appeals and will bear directly on the relief Empire seeks against the P-15 Well.⁴⁹

*Issue (f).*⁵⁰ Empire does not allege in the Revocation Application that the application for SWD-1750 contained an incorrect or misleading statement.⁵¹ In its appellate briefing, however, Empire relies on alleged omissions concerning the EMSU unitized interval and the Eunice Monument Oil Pool, as independent grounds for revocation of SWD permits.⁵² If Empire advances a misrepresentation theory in Case No. 26267 later, it will turn on the same facts concerning the San Andres, the pool and unitized interval, and water compatibility now at issue in the Appeals.

The P-15 Well presents its own facts, but the Division cannot weigh them until the governing legal framework is settled.⁵³ The P-15 Well is a different well, operated by a different entity, with a far smaller injection history than the Goodnight wells the Commission adjudicated. The Division, however, must first know which party bears the burden, what proof is required, whether possible future impairment of an unproven ROZ supports any remedy, and which remedy

⁴⁶ OSC ¶ 3(g).

⁴⁷ Revocation Application ¶ 10.

⁴⁸ R-24004 § III.D-E; R-24004-A ¶¶ 11-13, 24.

⁴⁹ See Empire Appellate Issues, *supra*, at 1-2, 14-15, 22-28 (arguing that the Commission was required to revoke Goodnight’s permits rather than suspend them); see also Goodnight Appellate Issues at 2-3, 25-32 (challenging the suspension as based on an unsupported theoretical risk of future waste and impairment).

⁵⁰ OSC ¶ 3(f).

⁵¹ Revocation Application ¶¶ 6, 8.

⁵² *Empire Statement of Appellate Issues*, *supra*, at 2, 26-29 (arguing that the Commission erred by failing to revoke Goodnight’s existing permits based on allegedly incorrect and misleading statements in Goodnight’s applications for authorization to inject).

⁵³ OSC ¶ 10(b).

applies. A decision now would apply a framework that may not survive review and would expose the parties to a second hearing.

Empire's own position in the civil action confirms the point.⁵⁴ Empire told the district court that the Commission's findings are provisional and that the risk of reversal is real. Empire cannot consistently ask the Division to extend that framework to another EMSU well while the Appeals remain pending. The district court stayed the civil action out of concern for inconsistent decisions affecting other disposal wells.⁵⁵ The Commission likewise stayed related revocation cases pending resolution of the controlling EMSU cases.⁵⁶ Deferral follows the same course.

II. Pilot Reserves Its Threshold Defenses, Including a Motion to Dismiss

If the Division declines to defer Case No. 26267, Pilot intends to move to dismiss and reserves all threshold and merits defenses, including any standing, preclusion, and pleading defenses supported by the governing law and record.⁵⁷ In particular, the Revocation Application pleads no P-15-specific production data, injection volumes, pressure response, or communication pathway supporting the alleged impairment.⁵⁸ Any preclusion defense turns on the scope and validity of R-24004-A, and resolving it now would require the Division to decide questions pending in the Appeals.

III. Pilot Defers to the Operators of the Remaining Wells

Pilot does not independently seek relief in Case No. 24491 or in the remaining revocation matters, in which Pilot appears but operates no well at issue. The Commission, the Division, and

⁵⁴ Empire MSJ Resp. at 25, 31–32.

⁵⁵ Order Staying Litigation ¶ 6.

⁵⁶ Scope Order ¶ 4; OSC ¶ 6.

⁵⁷ See R-24004 § III.C–D & ¶ 55; MSJ Order at 1–2 (dismissing with prejudice Empire's claims arising from Goodnight's EMSU wells on Goodnight's collateral-estoppel motion).

⁵⁸ Revocation Application ¶¶ 5–9.

the district court have each treated EMSU and non-EMSU matters separately.⁵⁹ Pilot supports or otherwise defers to the position of the operator whose well is at issue in each matter.

CONCLUSION

Pilot respectfully requests that the Hearing Examiner (A) dismiss, defer, or stay Case No. 26267, together with any other matter resting on alleged impairment within the EMSU unitized interval, until the First Judicial District Court rules in the Appeals; (B) keep all discovery, prehearing, and hearing deadlines in Case No. 26267 vacated during the deferral; (C) confirm that deferral is without prejudice to Pilot's defenses, including its anticipated motion to dismiss on standing, preclusion, and pleading grounds and the requirement of a well-specific evidentiary showing as to the P-15 Well.

Respectfully submitted,

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⁵⁹ Scope Order ¶¶ 3–4; OSC ¶ 7; MSJ Order at 2.

CERTIFICATE OF SERVICE

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