

**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**

**RICE OPERATING COMPANY AND PERMIAN LINE
SERVICE, LLC'S RESPONSE TO ORDER TO SHOW CAUSE**

Rice Operating Company ("Rice") and Permian Line Service, LLC ("Permian," and together with Rice, "Respondents") respectfully submit that the Division should do exactly what its October 13, 2026 Order to Show Cause ("OSC") contemplates: "defer final adjudication of these matters until the district court rules on the issues presented in the Appeals." OSC ¶ 9(a). The Hearing Examiner has express statutory authority "to regulate all proceedings before him and to perform all acts and take all measures necessary or proper for the efficient and orderly conduct of such hearing." NMSA 1978, § 70-2-13. Empire New Mexico LLC's ("Empire") nine applications against Respondents' wells rest on the same legal theories now fully briefed in the First Judicial District Court in Case No. D-101-CV-2026-00177, consolidated with No. D-101-CV-2026-00269 (the "Appeals"). Going forward now would waste resources, not save them.

First, while none of the wells at issue in Empire's applications to revoke Respondents' permits have been heard by the Division or the Oil Conservation Commission ("Commission"), each of Respondents' cases presents to the Division the exact questions pending in the district court in the Appeals. Second, none can fairly be decided before the district court decides whether the legal framework of Amended Order No. R-24004-A survives review. Third, deferral is the established course under New Mexico and federal law, and the Commission has already used it in

this very dispute. Fourth, deferral prejudices no one, least of all Empire, which cannot presently take up the pilot-project “opportunity” on which the Commission’s order depends. Finally, no deadline compels a hearing now.

BACKGROUND

On September 12, 2025, the Commission entered Order No. R-24004, and on December 17, 2025, after limited rehearing, Amended Order No. R-24004-A (together, the “Commission Order”). OSC ¶ 1. The Commission found that Empire “DID adduce substantial evidence of the possibility of FUTURE impairment of correlative rights or waste in the EMSU,” but that Empire did not prove current impairment and that “there was insufficient evidence presented at hearing to prove whether the ROZ is recoverable.” It therefore declined to revoke Goodnight Midstream Permian, LLC’s (“Goodnight”) four EMSU wells and instead suspended them “in order to provide Empire with the opportunity to establish the CO2 EOR pilot project” within three years. Order No. R-24004 ¶¶ 61–63 & decretal ¶ 3; Order No. R-24004-A ¶¶ 11–13, 23–25. Respondents participated in rehearing, and the Commission rejected their position that suspension without a finding of waste is void. Order No. R-24004-A ¶¶ 3, 9, 14.

Empire and Goodnight appealed in January 2026, and the appeals are consolidated. Order on Empire’s Motion to Require Modification (July 17, 2026) ¶ 5. Briefing under Rule 1-074 NMRA is complete through Goodnight’s and Empire’s October 5, 2026 replies. In June 2026, while the Appeals were pending, Empire filed thirteen new applications to revoke San Andres disposal wells. Nine target Rice or Permian wells: Case Nos. 26273 (EME SWD #021) and 26274 (N 11 #001), both inside the EMSU; 26275 (Blincy Drinkard SWD #018), inside the Arrowhead Grayburg Unit (“AGU”); and 26277, 26278, 26279, 26280, 26281, and 26284, outside both units. OSC ¶ 4. While Empire will need to meet its burden to prove that revocation is appropriate, which it is not, each pleads the same template theory: that the San Andres “contains hydrocarbons in

residual oil zones,” that “Empire has the right to recover hydrocarbons therein,” that the disposed water is incompatible and more saline, and that disposal “impairs the ability of Empire to recover hydrocarbons within the EMSU Unitized Interval . . . resulting in waste.” *See, e.g.,* Application, Case No. 26273, ¶¶ 3–10.

LAW REGARDING DEFERRAL

The Division’s power to defer is not in doubt. Section 70-2-13 empowers an examiner to “regulate all proceedings before him” and to “take all measures necessary or proper for the efficient and orderly conduct” of the hearing. That grant mirrors the inherent power New Mexico courts recognize: “the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *see Belser v. O’Cleireachain*, 2005-NMCA-073, ¶ 3, 137 N.M. 623 (adopting *Landis*); *Segal v. Goodman*, 1993-NMSC-018, ¶ 29, 115 N.M. 349 (endorsing “a more flexible balancing of the parties’ respective interests” under “the circumstances of each individual case” (citing *Landis*)). *Landis* rejected any requirement that “the parties to the two causes must be shown to be the same and the issues identical.” 299 U.S. at 254. The overlap here is far closer than *Landis* requires. Wise administration likewise favors “conservation of judicial resources and comprehensive disposition of litigation,” guided by the “general principle . . . to avoid duplicative litigation.” *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976) (quotation marks and citation omitted).

ARGUMENT

I. EACH OF RESPONDENTS' CASES PRESENTS ISSUES NOW BEFORE THE DISTRICT COURT.

The OSC identifies seven appellate questions. OSC ¶ 3(a)–(g). Empire's own pleadings put every one of them at issue here.

A. The Two EMSU Wells (Case Nos. 26273 and 26274) are Indistinguishable from the Wells on Appeal.

The EME SWD #021 and the N 11 #001 inject into the San Andres inside the EMSU, just like Goodnight's Dawson, Banks, Sosa, and Ryno wells. Empire contends its unit-operator status confers exclusive rights that "mandate[] revocation" of third-party disposal within the Unit. Empire's Reply to OCC Resp. to Stmt. of App. Issues at 2–4. That is OSC Issue (e). Goodnight contends the San Andres is an aquifer that cannot lawfully be unitized at all. OSC Issue (a); Goodnight Stmt. of App. Issues at 3. If the court agrees with Goodnight, Empire's "EMSU Unitized Interval" theory for these wells collapses; if it agrees with Empire, the Division will learn whether revocation rather than suspension is mandatory. Either way, if the Division were to decide these cases first it invites a result that the court may overturn within months.

B. The AGU and Off-Unit Wells Depend Even More Heavily on the Commission Order's Contested Premises.

Seven Rice wells lie outside the EMSU, yet Empire alleges that disposal in each impairs "the EMSU Unitized Interval." *E.g.*, Application, Case No. 26273, ¶ 9 (template language in each application). Empire can make that claim only by importing the Commission Order's findings on ROZ existence, communication across the Grayburg/San Andres boundary, and "possible FUTURE" waste. These are OSC Issues (c), (d), and (g), each of which currently is under direct attack on appeal. *See* Goodnight Stmt. of App. Issues at 3, 19–35. OSC Issue (f) pertains to Empire's incompatibility and residual-oil allegations, which likewise restate the misrepresentation

theory it is pressing on appeal. *See* Empire’s Reply to Goodnight Resp. at 7. And in 2024, the Commission stayed every off-EMSU revocation case pending resolution of the EMSU cases. *See* OSC ¶ 6. Respondents’ off-unit wells are thus “like the cases the Commission stayed in 2024.” OSC ¶ 7. The only change is that the “resolution” the Commission awaited is now on appeal.

C. The Same Burden-of-Proof and Remedy Questions Govern Every Case.

Whatever a well’s facts, the Division must decide who bears the burden; whether an applicant must prove an actual “failure to confine injected fluids” under 19.15.26.10(E) NMAC or the operator must disprove a “continuous barrier”; and whether merely *possible* future waste supports revocation, suspension, or neither. Those are OSC Issues (c), (d), and (g), and they are fully briefed for the district court to decide them in the Appeal. *See* Goodnight Stmt. of App. Issues at 20–26; Goodnight Resp. to Empire’s SOAI at 17–25; Empire Resp. to Goodnight SOAI at 16–17. The newly filed application put the Division in a position in which it cannot select a standard of proof for Respondents’ hearings without risking the very same reversal the parties are litigating now.

II. THE CASES CANNOT BE FAIRLY DECIDED ON THEIR OWN FACTS.

The OSC asks whether a party contends its cases “can be fairly decided by the Division on its own facts without resolution of those appellate issues.” OSC ¶ 10(b). They cannot. “Its own facts” presupposes that there exists a settled legal framework on which to analyze the facts that will be established to support or refute revocation of each of Respondents’ wells. Given the Appeals, the legal framework is not settled. Empire’s applications allege no casing failure, mechanical integrity failure, or documented escape of fluid from any Rice or Permian wellbore. They rely instead on the Commission Order’s regional findings and ask the Division to apply them to wells the Commission never heard. So even assuming that Empire can prove its alleged facts,

or prove facts similar to those it proved in the Commission cases against Goodnight – a point which Respondents refute – Empire’s theories nevertheless rise or fall with the Appeal.

The practical consequences are just as serious. Respondents and their co-respondents have jointly retained geology, petrophysics, reservoir engineering, geochemistry, UIC regulatory, and permitting experts to address ROZ existence, confining layers, and communication across all nineteen wells at issue. Every one of those experts’ scope and assumptions depends on the governing standard: whether the applicant must prove actual escape or the operator must disprove a barrier, whether “possible” future waste in an unproven ROZ is cognizable, and whether the San Andres is part of a unitized interval at all. Proceeding under the Commission’s theory means months of discovery and testimony that may be discarded as soon as the court rules. This is precisely the waste of “time and effort” the stay power exists to prevent. *Landis*, 299 U.S. at 254. Empire itself sought relief from the Division earlier this year in its Motion to require modification of the Division’s implementation order “[a]s a matter of efficiency, economy, and resources.” Empire Mot. to Require Modification at 7. Those considerations apply with far greater force here.

III. DEFERRAL IS THE ESTABLISHED COURSE IN THIS VERY DISPUTE.

Both the Division and the Commission have consistently and properly deferred when an overlapping, controlling decision was pending. The Commission stayed Case Nos. 24021–24024, 24026, 24027, 24277, and 24278 pending resolution of the EMSU cases and has never lifted that stay. OSC ¶ 6. The Division stayed Case No. 24491 “pending the Commission’s limited rehearing.” OSC ¶ 5. The Commission stayed its own order pending rehearing. Order No. R-24004-A ¶ 26. And it declined to review the Division’s implementation directions until a reviewable order existed. Order on Empire’s Motion to Require Modification ¶ 22. “[A]n agency is not free to arbitrarily disregard its own rules and prior decisions.” *Bass Enters. Prod. Co. v. Mosaic Potash Carlsbad Inc.*, 2010-NMCA-065, ¶ 20, 148 N.M. 516. Proceeding with thirteen

new cases while six materially identical cases remain stayed before the Commission would create two tracks of one dispute and invite inconsistent results. Deferral also avoids any question to the Division, already raised before the Commission, whether the agencies may revisit issues on appeal. *See* Goodnight Resp. in Opp. to Mot. to Require Modification at 4–5 (citing NMSA 1978, § 70-2-25(B)).

IV. NO PARTY WILL BE PREJUDICED BY DEFERRAL, AND EMPIRE CANNOT PRESENTLY USE THE PILOT-PROJECT OPPORTUNITY.

Respondents' wells are existing, permitted, and operating; deferral preserves the status quo. Proceeding would force all parties and the Division to expend resources and time to undergo discovery and litigation under a framework that may not survive, and risks the danger of having to litigate the same questions twice.

Empire suffers no cognizable prejudice from waiting for a ruling on its own appeal. The Commission found *no current impairment* of Empire's correlative rights even inside the EMSU. Order No. R-24004 ¶ III.C. And the Commission Order's remedy is a suspension tied to Empire's "opportunity to establish the CO2 EOR pilot project," which requires Empire to "follow all relevant and applicable regulations and permitting processes." Order No. R-24004-A ¶¶ 23–25.

Empire, however, cannot presently take advantage of that opportunity. The Division may not grant injection authority to an operator out of compliance with 19.15.5.9(A) NMAC, and with roughly 670 wells Empire may have no more than seven wells inactive beyond the regulatory period. 19.15.5.9(A)(4)(c) NMAC. Empire had 18 non-compliant inactive wells in December 2025, 19 in February 2026, and 21 in April 2026, and, currently, has 39. Goodnight Ltr. to OCD (Dec. 30, 2025) at 1, 3; Goodnight Ltr. to Dep. Dir. Powell (Feb. 23, 2026) at 4; Goodnight Resp. in Opp. to Mot. to Require Modification at 13 & Ex. 8. Ten months after the Commission Order, Empire still has no approved pilot authorization. *See* Order on Empire's Motion to Require

Modification ¶¶ 10, 19–21. Empire thus asks the Division to extend the Commission’s theory to thirteen more wells while it cannot lawfully perform the one act that theory exists to enable. Deferral, therefore, costs Empire nothing it can presently take advantage of. The public interest points the same way: premature revocation proceedings would create debilitating uncertainty for Respondents’ Lea County customers; the same uncertainty the Commission record documents for Goodnight’s. *See* Goodnight Stmt. of App. Issues at 11.

V. NO DEADLINE REQUIRES IMMEDIATE ADJUDICATION, AND A DEFERRAL TIED TO THE DISTRICT COURT’S RULING IS MODERATE.

Respondents are aware of no statute or rule requiring the Division to decide an application to revoke existing injection authority within any fixed period, and the Commission Order imposes no deadline on the Division as to wells other than Goodnight’s four EMSU wells. The OSC has already vacated the deadlines in these cases. OSC ¶¶ 12–13. The requested deferral is also moderate: it is tied to a single defined event: the district court’s decision in fully briefed Appeal. After that decision, the Division can promptly reset these matters. *See Landis*, 299 U.S. 248 (limiting a stay to the first decision in the related suit).

CONCLUSION

Every one of Respondents’ nine cases presents the questions pending before the district court, none can fairly be decided before those questions are resolved, deferral is the course the agencies have already followed, and it prejudices no one – particularly an applicant that cannot presently pursue the pilot project the Commission Order contemplates. Rice and Permian, therefore, respectfully request that the Hearing Examiner (A) defer final adjudication of Case Nos. 26273, 26274, 26275, 26277, 26278, 26279, 26280, 26281, and 26284, and of the remaining captioned cases, until the First Judicial District Court rules in the Appeals; (B) keep all discovery,

prehearing, and hearing deadlines vacated during the deferral; and (C) set a status conference after the district court's decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on counsel of record by electronic mail this 26th day of October, 2026.

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