

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

**APPLICATION OF GOODNIGHT
MIDSTREAM PERMIAN, LLC TO AMEND
ORDER NO. R-7765, AS AMENDED TO
EXCLUDE THE SAN ANDRES FORMATION
FROM THE UNITIZED INTERVAL OF THE
EUNICE MONUMENT SOUTH UNIT
LEA COUNTY, NEW MEXICO**

CASE NO. 24278

**APPLICATION OF GOODNIGHT
MIDSTREAM PERMIAN, LLC TO AMEND
ORDER NO. R-7767 TO EXCLUDE THE SAN
ANDRES FORMATION FROM THE EUNICE
MONUMENT OIL POOL WITHIN THE
EUNICE MONUMENT SOUTH UNIT AREA,
LEA COUNTY, NEW MEXICO**

CASE NO. 24277

**OIL CONSERVATION DIVISION'S RESPONSE TO
EMPIRE'S MOTION TO DISMISS APPLICATIONS TO AMEND ORDERS R-7765
AND R-7767**

The New Mexico Oil Conservation Division ("OCD") submits this Response to Empire New Mexico's ("Empire") Motion to Dismiss, served upon OCD on or about April 26, 2024. In response to the Motion, the OCD states as follows:

I. Introduction.

Empire's Motion to Dismiss Goodnight's applications to amend certain OCD orders focuses on the issue of Goodnight's standing to challenge the orders at issue. *See* Empire's Motion to Dismiss at pp. 3, 5. OCD maintains no position on Empire's allegations or Goodnight's defenses thereto. Rather, OCD views Empire's Motion in a different light in that the subject matter of OCC Case Nos. 24277 & 24278 fall squarely under the jurisdiction of the OCD and, as such, OCD desires to see these cases fully litigated so OCD may not only comply with obligations placed upon

it by the Oil and Gas Act (“OGA”), but so that OCD may better understand what each Party seeks to accomplish and how that fits within OCD’s statutory and regulatory framework.

II. Relevant law.

The OGA governs oil and gas production in the State of New Mexico and is the primary law under which OCD operates. § 70-2-1, *et. seq.* NMSA. In particular, the OGA outlines the scope of OCD’s authority to regulate the oil and gas industry. §§ 70-2-6, 70-2-7, and 70-2-12 NMSA. As part of OCD’s authority, the OGA also defines key terms such as “waste,” “pool,” and provides OCD with the power to craft and implement regulations governing oil and gas production in the State of New Mexico. § 70-2-2, 70-2-3, 70-2-33, 70-2-6, and 70-2-12 NMSA. Above all else, OCD is obligated to prevent prohibited waste and to protect correlative rights. § 70-2-11 NMSA. For purposes relevant to this Response and attendant pleadings, to advance its interests in preventing prohibited waste and protecting correlative rights, OCD has authority to regulate:

- (a) Oil or water, among other things, from escaping its local strata into other strata;
- (b) Prevention of drowning of oil or gas producing strata, encroachment by water of productive strata, or any other kind of water encroachment upon productive strata to ensure production from those productive strata;
- (c) that wells be drilled, operated, and produced in a way that avoids injury to neighboring leases or property;
- (d) whether a given well or pool is an oil or gas pool, as well as the power to reclassify wells and pools as necessary;
- (e) injection into oil or gas pools;
- (f) the management of produced water in relation to production, among other things, of oil and gas; and

(g) to set spacing or proration units.

§ 70-2-12 (B)(2), (4), (7), (11), (14), and (15) NMSA; *see also* § 70-2-18 NMSA.

III. OCC Case Nos. 24278 and 24277 should be heard in their entirety based on the subject matter of each case being under the jurisdiction of OCD.

- a. The subject matter of Goodnight’s Applications in OCC Case Nos. 24277 & 24278 implicates areas over which OCD has jurisdiction.**

In Goodnight’s Application in OCC Case No. 24277, Goodnight seeks to have the OCC amend Order No. R-7765 to “vertically contract the Eunice Monument Oil Pool” to exclude the San Andres formation but also to modify the definition of the unitized interval. *See* Goodnight’s Application at p. 1. OCD possesses authority to regulate the establishment of spacing units should conflict arise between mineral owners or when a non-standard spacing unit is sought. § 70-2-18 NMSA. *See also* §§ 70-2-12(B) In this instance, Goodnight’s requested relief falls directly under OCD jurisdiction as a matter of law and fact.

- b. The subject matter of Empire’s Motion to Dismiss implicates areas over which OCD has jurisdiction.**

Empire’s legal basis for filing its Motion to Dismiss concerns the legal doctrine of standing, the doctrine that sets forth the requirements for a party to make a legal claim or to seek enforcement of a duty or right. STANDING, Black’s Law Dictionary (11th ed. 2019). However, OCD is not concerned with Empire’s legal basis for its Motion, but rather is focused on the facts underlying Empire’s asserted legal basis. In the instance before the OCC, Empire was clear that the substantive factual basis for its Motion is a potential change in the vertical limits of the subject unit or pool. *See* Empire’s Motion to Dismiss at pp. 5, § III(A). Thus, Empire’s Motion to Dismiss is built around a controversy about spacing units. § 70-2-12 (B)(2), (4), (7), (11), (14), and (15) NMSA; *see also* § 70-2-18 NMSA. OCD thus possesses statutory authority over the subject matter of Empire’s Motion to Dismiss.

- c. The subject matter of Goodnight’s Response implicates areas over which OCD has jurisdiction.

In Goodnight’s Response to Empire’s Motion to Dismiss, as one might expect given the contents of Goodnight’s Application, Goodnight lays out that it is Goodnight’s position that the OCC erred in including the San Andres in the Eunice Monument South Unit. *See* Goodnight’s Response at p. 1. Additionally, Goodnight refers to the topic of produced water disposal wells and injection of disposed water into a unitized interval. *Id.* at p. 2. As already noted in this Response, OCD maintains jurisdiction over unitization issues as well as injection issues. § 70-2-12 (B)(2), (4), (7), (11), (14), and (15) NMSA; *see also* § 70-2-18 NMSA.

- d. OCD’s interest in this case centers on its statutory duty to prevent prohibited waste and to protect correlative rights, which encompasses the subject matter of Goodnight and Empire’s respective cases, thereby justifying the OCC allowing OCC Case Nos. 24277 & 24278 to proceed through an evidentiary hearing.

OCD maintains that, at this point, OCD has undoubted jurisdiction over the issue of unitization, injection, and other oil and gas issues in play in the cases before the OCC. The reasons why OCD seeks to have both cases before the OCC heard on the merits, which is distinct from jurisdiction questions, requires more than just simple statutory analysis.

As a practical matter, the two cases are substantially related by the same nucleus of operative facts to the other pending cases before the OCC¹²³, which the OCC has called before it repeatedly over prior OCC meetings and yet no Party has complained about issues of standing in those cases. OCD sees no reason why the subject cases are any different and deserve less than a full evidentiary hearing.

¹ [March-14-2024-Commission-Agenda-FINAL-003.pdf \(nm.gov\)](#)

² [April-11-2024-OCC-Final-Agenda.pdf \(nm.gov\)](#)

³ [May-9-2024-OCC-Final-Agenda.pdf \(nm.gov\)](#)

While OCD possesses a great deal of information about the oil and gas industry in New Mexico, including a body of professionals knowledgeable on oil and gas production and related topics, OCD is not itself omniscient, nor is any individual employed by OCD. OCD depends on registered operators supplying a variety of reports and data to OCD, which is analyzed by OCD staff for compliance with both the OGA and OCD regulations. *See* Title 19, Chapter 15 NMAC. Likewise, OCD depends on a hearings process for clarifying situations faced by Operators, which may include data not otherwise submitted to OCD as a matter of course. *See* 19.15.4 NMAC; *see also* 19.15.5, 19.15.13 NMAC. Hearings may also require the use of subpoenas to compel production of information that a particular party may not wish to provide otherwise, a situation of which the OCC is aware exists in the cases before it. § 70-2-8 NMSA.

In the cases before the Commission, OCD is aware of or possesses some of the information relied upon by the Parties but has not yet seen all such information for these cases. The outcome of both cases before the OCC will impact the vicinity of the subject wells as well as impact other operators in the area, thus a hearing will provide guidance to the industry as a whole and this specific region. Nor has OCD had the opportunity to cross-examine witnesses under oath. Both opportunities lie within the OCD hearing framework. Further, OCD seeks to understand each Party's theory of opposing evidence, which also includes Party cross-examination of opposition witnesses. Since OCD is *the* oil and gas regulatory agency, OCD maintains that its interests, namely those of preventing prohibited waste and protecting correlative rights, are best served by allowing OCC Case Nos. 24277 and 24278 to proceed to a hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 13, 2024, this pleading was served by electronic mail on:

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