

**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

**APPLICATION OF GOODNIGHT PERMIAN
MIDSTREAM, LLC FOR APPROVAL OF A
SALTWATER DISPOSAL WELL, LEA COUNTY,
NEW MEXICO AND, AS A PARTY ADVERSELY
AFFECTED BY ORDER R-22869-A, FOR A
HEARING DE NOVO BEFORE THE FULL
COMMISSION, PURSUANT TO NMSA 1978,
SECTION 70-2-13.**

CASE NO. 24123

**APPLICATION OF GOODNIGHT MIDSTREAM
PERMIAN, LLC TO AMEND ORDER
NO. R-22026/SWD-2403 TO INCREASE THE
APPROVED INJECTION RATE IN ITS ANDRE
DAWSON SWD #1, LEA COUNTY, NEW MEXICO**

CASE NO. 23775

**APPLICATIONS OF GOODNIGHT MIDSTREAM
PERMIAN, LLC FOR APPROVAL OF A
SALTWATER DISPOSAL WELL, LEA COUNTY,
NEW MEXICO**

CASE NOS. 23614-23617

**APPLICATION OF EMPIRE NEW MEXICO TO
REVOKE THE INJECTION AUTHORITY
+GRANTED UNDER ORDER NO. R22026 FOR
THE ANDRE DAWSON SWD #001, LEA COUNTY,
NEW MEXICO**

CASE NOS. 24018-24027

**OIL CONSERVATION DIVISION’S MOTION CONCERNING THE SCOPE OF THE
EVIDENTIARY HEARING SET FOR SEPTEMBER 23-27, 2024**

The New Mexico Oil Conservation Division (“OCD”) hereby submits its Motion Concerning the Scope of the Evidentiary Hearing Set for September 23-27, 2024. OCD’s position, in sum, is that all cases concerning the Eunice Monument South Unit (“EMSU”) should be consolidated for purposes of the evidentiary hearing set for September 2024 and that the remaining cases concerning both Goodnight Midstream Permian, LLC (“Goodnight”) and Empire New Mexico LLC (“Empire”) should be excluded from such consolidation. In support thereof, OCD states as follows:

I. Introduction.

At its May 9, 2024 meeting, at which time the above-captioned cases were heard as to status and procedural issues only, the OCC directed the Parties to submit motions concerning the scope of the hearing currently set for the above-captioned cases in September 2024. After reviewing the voluminous pleadings, meeting transcripts, and other documentation relevant to the cases, OCD avers that it is proper for the OCC to consolidate into one hearing only those cases that pertain specifically to the EMSU.

First, in what OCD will refer to as the “EMSU Cases,” said cases concern common questions of both law and fact. Second, principles of administrative efficiency/judicial economy are best served by consolidating the above-captioned cases. And third, from the perspective of OCD, consolidating the above-captioned cases makes sense from a regulatory perspective.

Specifically, OCD moves to consolidate Case Nos.: 23614-23617, 23775, 24018-24020, and 24025, along with 24277, 24278, and 24123 because each of those cases contains allegations

concerning produced water and injection into the EMSU. *See* Applications in 23614-23617, 23775, 24018-24020, and 24025; *see also* Empire’s Motion to Continue and Goodnight’s Response in Case No. 23614.

II. Relevant law.

While the New Mexico Rules of Civil Procedure are not directly applicable to proceedings before the OCC, OCD believes that, in the instant cases, those rules provide guidance when OCC faces a mass of cases concerning the same parties and issues. NMRA, Rule 1-042 provides for consolidation of cases when a particular matter involves “common questions of law or fact,” with the objective of avoiding “unnecessary costs or delay.” NMRA, Rule 1-042 aligns with 19.15.4.19 NMAC, which permits a hearing officer (one will be appointed for the September 2024 evidentiary hearing) to “perform all acts take all measures necessary and proper for the hearing’s *efficient and orderly conduct*. . .” *Emphasis added.*

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.

Goodnight references two orders that it seeks to amend: R-7765 (OCC Case No. 8397) and R-7765 (OCC Case No. 8399). Both Orders were generated from the same hearing and at the request of Empire's predecessor-in-interest, Gulf Oil Corporation ("Gulf Oil"). R-7765 appears to have created the EMSU to the benefit of Gulf Oil, stating: "The Eunice Monument South Unit Area, comprising 14, 189.84 acres, more or less, in the Eunice Monument Oil Pool, as amended by Order R-7767, Lea County, New Mexico, is hereby approved effective December 1, 1984, for statutory unitization pursuant to the Statutory Unitization Act, Sections 70-7-1 through 70-7-21 NMSA 1978." Order R-7767 modified Order R-7765 as to vertical limits of the subject oil pool.

III. The EMSU-centered cases before the Commission are rightly consolidated due to common issues of both law and fact.

- a. The common issues of fact center on the EMSU and its boundary.

In OCC Case Nos. 23614-23617 and 23755, Goodnight's Applications seek injection authority for produced saltwater. The Applications in those cases came with exhibits that specifically identify the EMSU as the "well" or "unit" into which Goodnight intends to inject. In OCC Case Nos. 24018-24020, Empire's Applications seek revocation of Goodnight's authority to inject produced saltwater into the EMSU with said wells being within the EMSU boundary. In OCC Case Nos. 24277-244278, Goodnight's Application seeks modification of OCC Order Nos. R-7765 and 7767, both of which concern the formation of the EMSU, as detailed above in Section II of this Motion. In OCC Case No. 24123, Goodnight's Application seeks *de novo* relief from Division Order No. R-22869-A, which denied Goodnight's Application for authorization to inject into the EMSU.

In contrast to the above cases, in which the Parties provided supporting documentation, Case Nos. 24021-24024 and 24026-24027 implicate the EMSU in Empire's Applications. However, based on information and belief, it appears that all wells at issue in Case Nos. 24021-24024 and 24026-24027 fall *outside* the EMSU boundaries. Additionally, the OCD orders that underlie Empire's Applications do not reference the EMSU in any way. Thus, Empire has not demonstrated that said wells fall within the EMSU, nor has Empire shown that the wells at issue would be impacted by any outcome stemming from the EMSU cases.

OCD's position is that, unless Empire demonstrates that the wells at issue in Case Nos. 24021-24024 and 24026-24027 fall within the EMSU boundary or are otherwise would be impacted by the outcome of the EMSU cases, the non-EMSU cases should not be consolidated with the EMSU cases because they do not demonstrate a common issue of fact.

b. The common issues of law center on OCC Order Nos. R-7765 and R-7767.

As stated above, OCC Order Nos. R-7765 and R-7767 are the foundational documents for the EMSU. OCD sees no evidence that said Orders were ever modified or amended since entry, which means that the boundaries, units, and vertical limits stand as governing law for the EMSU. From a logical perspective, any cases between Empire and Goodnight that do not directly and demonstrably implicate the EMSU are not governed by OCC Order Nos. R-7765 and R-7767 and stand apart from the EMSU-centric cases. Additionally, OCC Order No. 7765 sets forth the legal basis for the EMSU, namely §§ 70-7-1 to 70-7-21 NMSA, with the non-EMSU cases lacking any such explicit authority governing them. Finally, neither Goodnight nor Empire have shown that other orders or governing law apply equally to both EMSU and non-EMSU cases. Thus, the EMSU cases come with their own particularized body of law unique to them, a common issue of law for the OCC to consider, justifying the consolidation of the EMSU cases.

IV. For purposes of administrative and regulatory efficiency, it is proper to consolidate the EMSU cases.

- a. It is simply more efficient for the OCC to split the Empire/Goodnight cases into two categories.**

That the EMSU cases embody common issue of law and fact also allow for a narrowing of the scope of the September 2024 hearing. A narrowed scope of hearing permits the OCC to make a fully informed decision as to the dispute between the Parties by limiting evidence to the exact wells, units, and such at issue in the case, without the distraction of wells falling outside the EMSU. Further, it is possible that an OCC decision in the EMSU cases will inform the non-EMSU cases, furthering administrative efficiency.

- b. From a regulatory perspective, based on the authority of both the OCC and OCD, it is logical to consolidate the EMSU cases.**

At the risk of beating the proverbial dead horse, both OCC and OCD have jurisdiction over the subject matter of both the EMSU and non-EMSU cases. § 70-2-12 (B)(2), (4), (7), (11), (14), and (15) NMSA; *see also* § 70-2-18 NMSA. In fact, it was the OCC that issued OCC Order Nos. R-7765 and 7767. OCD maintains the authority to set the contours of both pools and units for oil and gas production in New Mexico, including regulation to prevent drowning-out of stratum capable of producing oil or gas in paying quantities. § 70-2-12(B)(4), (11), (12), and (14); *see also* § 70-2-18. By formalizing oil and gas production, both the OCC and OCD allow for tracking of production, releases, injection, and other related metrics. Such formalization also allows for discrete issue resolution between operators to foster efficiency across the board.

In this instance, commingling the EMSU and non-EMSU cases runs contrary to that objective by allowing for an overbroad hearing encompassing units and pools not governed by the two applicable OCC orders. This is a recipe for a never-ending hearing that will invariably lead to a convoluted outcome inconsistent with OCC and OCD objectives and, arguably, running contrary to the intent of the OGA. Therefore, it makes sense for the OCC to consider the EMSU cases as a discrete body of cases, separate from the non-EMSU cases, based on the location of wells split between Empire and Goodnight.

V. Summary

Based on the above argument, OCD avers that Case Nos.: 23614-23617, 23775, 24018-24020, and 24025, along with 24277, 24278, and 24123, should be consolidated based on common issue of law and fact, but also administrative efficiency and regulatory authority of both OCD and OCC.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 23, 2024, this pleading was served by electronic mail on:

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