

**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 REPLY IN SUPPORT OF ITS MOTION
CONCERNING THE SCOPE OF THE EVIDENTIARY HEARING SET FOR
SEPTEMBER 23-27, 2024**

The New Mexico Oil Conservation Division (“OCD”) hereby submits its Reply in Support of Its Motion Concerning the Scope of the Evidentiary Hearing Set for September 23-27, 2024. Empire’s Response, which jointly address both OCD’s Motion Concerning the Scope of the Evidentiary Hearing Set for September 23-27, 2024 (“OCD’s Motion”) as well as that of Goodnight, failed to address several of OCD’s contentions as well as failed to present key facts and law sufficient to overcome OCD’s Motion and, as such, OCD’s Motion should be granted.

I. Relevant law.

By way of reiteration, the OCC issued two orders relevant to the cases before the OCC, R-7765 (OCC Case No. 8397) and R-7765 (OCC Case No. 8399), which 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.

II. Empire misconstrues OCD’s Motion in that OCD seeks to consolidate all EMSU cases, which by operation of logic would exclude non-EMSU] cases.

Empire’s initial argument in its Response avers that OCD seeks to exclude, rather than consolidate, some of the cases before the OCC. *See* Empire’s Reply at pp. 6-8. This is either a

misinterpretation of OCD's arguments at best, or at worst is a mischaracterization of OCD's positions. Consolidation of a thing, by nature, implies the exclusion of other things, thus Empire's argument is specious and should be disregarded.

- a. Rule 1-042 NMRA provides the OCC with a useful criterion for assessing consolidation of cases before the OCC.

Empire then questioned OCD's reference to Rule 1-042 of the New Mexico Rules of Civil procedure, commenting that it is "unclear whether this rule applies to Commission proceedings." See Empire's Reply at pp. 6. This is not a serious claim as it is obvious and well-known that the New Mexico Rules of Civil Procedure do not apply to administrative hearings, something OCD stated frankly in its Motion. See OCD Motion at p. 3, Section II. However, Rule 1-042 certainly provides the OCC guidance when the OCC's rules do not address directly the issue of consolidation, as is the case here. Thus, the OCC may well consider Rule 1-042 in assessing whether and how to address case consolidation.

- b. Empire's understanding of the concept of party joinder is fatally flawed.

Empire asserts that OCD lacks the "prerogative" to forcibly join parties not already before the OCC in cases subject to the current pleadings. See Empire's Reply at pp. 2,4, and 6. Empire relies upon Rule 1-019(B) NMRA as authority for why the OCC *should not* join Rice, Owl, and Permian (other operators currently working within the EMSU boundary) through consolidation of EMSU-centric cases before the OCC. Empire correctly cited the *Kaywal* and *Little* cases for the judicial interpretation of Rule 1-019(B) NMRA. See Empire's Reply at p. 9, fn. 7.

First, Empire's reliance on Rule 1-019 NMRA flies in the face of Empire's dismissal of OCD's reference to Rule 1-042 NMSA in OCD's Motion. See Section II(a) above. Empire either

agrees that the New Mexico Rules of Civil Procedure are informative for the OCC or they are not – Empire cannot have it both ways.

Secondly, as Empire acknowledged that Rice, Owl, and Permian “operate wells inside the EMSU,” with the EMSU being the axle upon which the present cases turn, it stands to reason that an adjudication in the absence of those operators “might be prejudicial” to any or all of them. *See* Empire’s Reply at p.4; *see also Kaywall, Inc. v. Avangrid Renewables, LLC*, 2021-NMCA-037, ¶ 48. Empire provides no analysis as to how the OCC might lessen or avoid prejudice to Rice, Owl, or Permian by shaping relief to that end and that is simply because Empire *cannot* make such a case here as the facts would not support such action by the OCC. *Id.* Looking to the *Little* factors, Empire has not and cannot show that Rice, Owl, or Permian’s rights are adequately protected by Empire, Goodnight, or OCD, making all three necessary for adjudication to proceed. *Little v. Gill*, 2003-NMCA-103, ¶ 4. There is no reason why Rice, Owl, or Permian cannot be joined in this action – OCD has regulatory authority over those operators, all of which are aware of the subject cases. *Id.* While the pending adjudication *could* proceed absent Rice, Owl, or Permian, doing so would put them at risk of damage to their respective rights, a flavor of prejudice that is prohibited by *Kaywall*.

Any outcome of the pending adjudication would likely not be adequate absent the three non-party operators as Rice, Owl, and/or Permian may simply elect to file its own administrative cases and essentially re-litigate these matters all over again. Subsequent litigation by Rice, Owl, or Permian would prejudice OCD from the standpoint that any of the three operators would have detailed knowledge about OCD’s position, evidence, and tactics that would not otherwise exist had those operators been joined in the current cases, all of which would be fundamentally unfair

to OCD. Furthermore, allowing OCD to be dragged into separate, additional cases concerning the EMSU, injection authority, and possible modification of the underlying OCC orders forming the EMSU, would likely violate the doctrine of collateral estoppel.

III. Empire failed to demonstrate common issues of law and fact between EMSU and non-EMSU cases.

Empire claimed, unambiguously, that “there are some differences between SWDs located within the EMSU and those located outside the EMSU. . .” *See* Empire’s Reply at p.4. Empire did not subsequently identify any of these differences, seemingly ignoring the relevance of such distinctions to the pending Motions. *Id.* Empire then asserted that “the core issues in this proceeding are consistent across all of the cases that involve Goodnight.” *Id.* at p. 7. In support of this assertion, Empire confessed that it was unclear as to how Goodnight queries concerning wastewater migration between SWDs in and outside the EMSU and “geologic and engineering factors” are pertinent to the cases before the OCC. Ultimately, Empire found itself unable to determine what facts are common or not between the EMSU and non-EMSU cases, but was confident enough to have issued conclusory statements such as “the Commission can determine whether wastewater from Goodnight’s SWDs is impairing Empire’s correlative rights. . .” *Id.* at p. 7. OCD reiterates its recitation of common issues of fact from its Motion, which remain functionally unchallenged by Empire, as justifying consolidation of the EMSU cases.

Turning to common issues of law, OCD laid out an entire body of law common to the EMSU cases in its Motion, including the foundational orders for the EMSU that created the EMSU. Empire did not address *why* these orders are not relevant law for purposes of the present cases, focusing instead on the issue of the residual oil zone Empire seeks to exploit. Therefore, Empire acquiesced to OCD arguments concerning the law common to the EMSU cases.

IV. Empire failed to address OCD's administrative and regulatory efficiency arguments.

Empire devoted one paragraph to the issues of efficiency in consolidation the EMSU cases, asserting that the benefits of hearing all of Empire's cases are obvious enough to require no additional argument. *See* Empire's Response at p. 8. OCD has nothing to which to respond in this Reply. Thus, OCD views Empire as having acquiesced a second time to OCD's arguments outlined in its original Motion.

V. Summary

Based on the above, OCD reiterates its request that the OCC consolidated Case Nos.: 23614-23617, 23775, 24018-24020, and 24025, along with 24277, 24278, and 24123, 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 June 13, 2024, this pleading was served by electronic mail on:

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