

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

**APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ORDER NO. R-22026 FOR THE ANDRE DAWSON
SWD #001 OPERATED BY GOODNIGHT MIDSTREAM
PERMIAN LLC, LEA COUNTY, NEW MEXICO**

CASE NO. 24018

**APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ORDER NO. R-22027 FOR THE ERNIE BANKS
SWD NO. 1 WELL OPERATED BY GOODNIGHT
MIDSTREAM PERMIAN LLC,
LEA COUNTY, NEW MEXICO
CASE NO. 24019**

**APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ORDER NO. R-20855 FOR THE NOLAN RYAN
SWD #001 OPERATED BY GOODNIGHT MIDSTREAM
PERMIAN LLC, LEA COUNTY, NEW MEXICO**

CASE NO. 24024

**APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ORDER NO. R-21190 FOR THE SOSA SA 17 NO. 2
WELL OPERATED BY GOODNIGHT MIDSTREAM
PERMIAN LLC, LEA COUNTY, NEW MEXICO**

CASE NO. 24025

**APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ADMINISTRATIVE ORDER NO. SWD-2075 FOR
THE TED 28 SWD WELL NO. 1 OPERATED BY
GOODNIGHT MIDSTREAM PERMIAN LLC,
LEA COUNTY, NEW MEXICO**

CASE NO. 24026

**APPLICATION OF EMPIRE NEW MEXICO LLC TO
REVOKE THE INJECTION AUTHORITY GRANTED
UNDER ORDER NO. R-20865 FOR THE YAZ 28 SWD
WELL NO. 1 OPERATED BY GOODNIGHT MIDSTREAM
PERMIAN LLC, LEA COUNTY, NEW MEXICO**

CASE NO. 24027

**OIL CONSERVATION DIVISION'S RESPONSE TO EMPIRE'S MOTION TO STAY
OR SUSPEND GOODNIGHT MIDSTREAM PERMIAN, LLC'S AUTHORIZATION TO
INJECT AND FOR SANCTIONS FOR VIOLATIONS OF SWD ORDERS**

The New Mexico Oil Conservation Division (“OCD”) hereby submits its Response to Empire’s Motion to Stay or Suspend Goodnight Midstream Permian, LLC’s Authorization to Inject and for Sanctions for Violations of SWD Orders. OCD opposes Empire’s Motion because the Motion is a blatant attempt to circumvent the Oil Conservation Commission’s (“OCC”) scheduling order, as well as deny OCD its right to participate in the adjudication of this matter. As such, Empire’s Motion should be denied.

I. Empire’s Motion either merely recites its applications in particular cases, or attempts to modify its causes of action to one it believes is more amenable to a decision on the pleadings.

Empire’s Motion details how Empire believes that Goodnight has or is violating prior OCC orders such that the OCC should simply stay or suspended by order of the OCC without a hearing and without OCC involvement or participation. As detailed below, Empire’s factual basis is either replication of its allegations found in Empire’s applications for the above-captioned cases or is otherwise a swap from injection volume violations to salinity concerns or *vice-a-versa*, with both being the two primary allegations in any particular case. Put another way, Empire offers the OCC nothing novel to address that has not been considered in scheduling the evidentiary hearing in this matter for the end of September 2024.

a. Andre Dawson SWD Well No. 1, OCC Case No. 24018

Empire’s Application in OCC Case No. 24018 alleges that Goodnight regularly exceeds the maximum daily disposal rate since January 2023. App. at p. 2, ¶ 8. In its Motion, Empire modifies its complaint from its Application slightly by alleging that Goodnight violated OCD regulations. Mot. at p. 3, ¶ 5. Empire makes the same complaints in its Motion as it did in its Application, which is subject to a procedural order from the OCC for a setting to resolve this

dispute. Thus, Empire's Motion asks the OCC to effectively decide or otherwise take overt action, solely on the pleadings, in OCC Case No. 24018 without a hearing and without OCD involvement. OCD avers this is unjust and ultimately deprives the OCD of the ability to litigate this as OCD regulations permit.

b. Ernie Banks SWD No. 1., OCC Case No. 24019

Empire's Application in OCC Case No. 24019 alleges that Goodnight failed to report to OCD its disposal volumes for the above-referenced well, including allegations that the salinity of Goodnight's produced water is too high. App. at p. 2, ¶¶ 7-9. In its Motion, Empire makes the same complaint, rewritten slightly to remove the salinity complaint. Mot. at p. 4, ¶ 10. Empire makes the same complaints in its Motion as it did in its Application, which is subject to a procedural order from the OCC for a setting to resolve this dispute. Thus, Empire's Motion asks the OCC to effectively decide or otherwise take overt action, solely on the pleadings, in OCC Case No. 24019 without a hearing and without OCD involvement. OCD avers this is unjust and ultimately deprives the OCD of the ability to litigate this as OCD regulations permit.

c. Sosa SA SWD Well No. 2, OCC Case No. 24025

Empire's Application in OCC Case No. 24018 alleges that Goodnight regularly exceeds the maximum daily disposal rate for this well. App. at p. 2, ¶ 8. In its Motion, Empire makes the same complaint, rewritten slightly. Mot. at p. 4, ¶ 15. Empire makes the same complaints in its Motion as it did in its Application, which is subject to a procedural order from the OCC for a setting to resolve this dispute. Thus, Empire's Motion asks the OCC to effectively decide or otherwise take overt action, solely on the pleadings, in OCC Case No. 24019 without a hearing and without OCD involvement. OCD avers this is unjust and ultimately deprives the OCD of the ability to litigate this as OCD regulations permit.

d. Ted 28 SWD No. 1, OCC Case No. 24026

Empire's Application in OCC Case No. 24026 alleges that Goodnight regularly exceeds the maximum daily disposal rate for this well. App. at p. 2, ¶ 8. In its Motion, Empire makes the same complaint, rewritten slightly. Mot. at p. 5, ¶ 21. Empire makes the same complaints in its Motion as it did in its Application, which is subject to a procedural order from the OCC for a setting to resolve this dispute. Thus, Empire's Motion asks the OCC to effectively decide or otherwise take overt action, solely on the pleadings, in OCC Case No. 24026 without a hearing and without OCD involvement. OCD avers this is unjust and ultimately deprives the OCD of the ability to litigate this as OCD regulations permit.

e. Yaz 28 SWD Well No. 1, OCC Case No. 24027

Empire's Application in OCC Case No. 24027 alleges that Goodnight regularly exceeds the maximum daily disposal rate for this well. App. at p. 2, ¶ 9. In its Motion, Empire makes the same complaint, rewritten slightly. Mot. at p. 6, ¶ 18. Empire makes the same complaints in its Motion as it did in its Application, which is subject to a procedural order from the OCC for a setting to resolve this dispute. Thus, Empire's Motion asks the OCC to effectively decide or otherwise take overt action, solely on the pleadings, in OCC Case No. 24027 without a hearing and without OCD involvement. OCD avers this is unjust and ultimately deprives the OCD of the ability to litigate this as OCD regulations permit.

f. Nolan Ryan SWD Well No. 1 , OCC Case No. 24024

Empire's Application in OCC Case No. 24024 alleges that Goodnight failed to report to OCD its disposal volumes for the above-referenced well, including allegations that the salinity of Goodnight's produced water is too high. App. at p. 2, ¶¶ 8-9. In its Motion, Empire makes the same complaint, rewritten slightly to remove the salinity complaint. Mot. at p. 7, ¶ 8. Empire

makes the same complaints in its Motion as it did in its Application, which is subject to a procedural order from the OCC for a setting to resolve this dispute. Thus, Empire's Motion asks the OCC to effectively decide or otherwise take overt action, solely on the pleadings, in OCC Case No. 24024 without a hearing and without OCD involvement. OCD avers this is unjust and ultimately deprives the OCD of the ability to litigate this as OCD regulations permit.

g. Empire's sought relief would, in essence, gut this case and leave OCD with no remedies or ability to provide guidance to the OCC as to the substantive issues in play.

Empire seeks a variety of remedies through its Motion, including relief that is slightly less aggressive than the relief sought in its applications, to wit: revocation of injection authority for Goodnight. Empire seeks to have Goodnight's authority to inject stayed or suspended. Mot. at p. 9, ¶¶ 44(A)-(D). From OCD's perspective, Empire is trying to short-circuit the scheduled hearing in this matter by (1) not serving OCD with this Motion, perhaps to avoid an OCD response (see Section II below) and (2) having the OCC decide the merits of Empire's cases *sans* an evidentiary hearing, which would result in findings that Empire would then use at the scheduled evidentiary hearing under the theory of *res judicata*. While clever, Empire's effort undermines OCD's right to due process and would prejudice OCD in terms of its regulatory authority. Therefore, Empire's Motion should be denied in totality.

II. Empire failed to serve OCD counsel with this Motion, the second time Empire has done so in these cases, despite OCD having properly entered its appearance in the above-captioned cases and having requested Empire serve OCD counsel.

For the second time in a matter of a few months, Empire failed to serve a filed Motion upon OCD counsel, with the first being Empire's failure to properly serve OCD with Empire's Motion to Dismiss in OCC Case Nos. 24276-24276. OCD counsel certainly understands that service errors

can and do happen as OCD counsel has made such mistakes himself. There is potentially a growing habit brewing with Empire to fail to serve OCD with critical motions in cases in which OCD has a regulatory and policy interest, as is the case here. Apparently, Empire believes that if one of its Motions targets only Goodnight, Empire is entitled to simply not serve OCD, which could easily result in harm to OCD's interests due to a failure to respond to a particular Motion. Therefore, OCD requests that the OCC instruct Empire *via* an Order that it shall serve OCD with *all* pleadings it files in the above-captioned cases, as wells the OCC Case Nos. 24277-78, 24123, 23775, and 23614-617.

III. Conclusion

Empire seeks a shortcut to the relief it seeks by attempting to induce the OCC to decide on the merits of each case prior to the scheduled evidentiary hearing, likely under a *res judicata* theory. If the OCC grants Empire's Motion (which, again, Empire did not serve on the OCD), OCD would be deprived of the ability to examine party witnesses, put on its own case, and otherwise provide the OCC with needed expertise on the matters at hand.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 8, 2024, this pleading was served by electronic mail on:

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