

**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 EMERGENCY MOTION TO VACATE AND  
CONTINUE THE SEPTEMBER 23-27, 2024 SETTING AND TO VACATE THE  
SCHEDULING IN THE ABOVE-CAPTIONED MATTERS**

COMES NOW the New Mexico Oil Conservation Commission (“OCD”) and hereby requests that the New Mexico Oil Conservation Commission (“OCC”) vacate and continue the September 23-27, 2024 setting in this matter pursuant to 19.15.4.13(C) NMAC; additionally, the OCD requests that the OCC vacate the current scheduling order in favor of a status conference to discuss discovery matters. As grounds in support thereof, OCD states the following:

**I. Introduction**

As an initial matter, it pains the OCD to seek an Order vacating and continuing the September 23-27, 2024 in this matter based on Goodnight Midstream Permian, LLC’s (“Goodnight”) and Empire New Mexico’s (“Empire”) vociferous demands for the current setting. OCD’s position concerning this setting focused initially on the likelihood of aggressive discovery, which would include cross-motion practice and motions to exclude or limit testimony. *See* OCC 4/24/24 Transcript at 15:16-17:25. Unfortunately, what OCD feared would happen has, in fact, happened and now the Parties are stuck in a morass of unobserved deadlines, orders granting discovery beyond the scheduled deadlines, and OCD, speaking only for itself, now sees itself as prejudiced by the discovery issues about which it was originally concerned.

Turning to the procedural history that led to the present mess, the OCC issued a Scheduling Order on June 4, 2024. Key deadlines found in the Scheduling Order include a witness disclosure deadline of July 8, 2024, subpoena issuance deadline of July 19, 2024, a Motion to Compel deadline August 12, 2024, and written direct testimony and exhibit identification deadline of August 26, 2024. Additionally, the Scheduling Order sets the above-captioned matters for hearing on September 23-27, 2024.

The Operators in this case (Goodnight and Empire) began their subpoenaing process back on September 22, 2023 with the initial subpoena from Goodnight to Empire, which began the process of subpoena issuance followed by Motions to Quash. This back-and-forth among the Operators led the OCC to issue an Order partially quashing Goodnight’s subpoena. *See* June 4, 2024 Order Partially Granting Empire’s Motion to Quash. Amazingly, this Order itself generated *more* motion practice. *See* Goodnight’s June 12, 2024 Motion to Reconsider and a renewed subpoena issued by

OCC on behalf of Goodnight. Empire then issued its own subpoena to Goodnight, which of course resulted in yet another Motion to Quash.

Then the subpoenas for depositions began to fly between the Operators. *See* Goodnight's June 16, 2024 Motion to Issue Deposition Subpoena. Empire took a similar approach for depositions. OCD notes here that the depositions subpoenas were issued within days of the close of discovery per the OCC June 4, 2024 Scheduling Order, which set July 18, 2024 as the last day to issue subpoenas. OCD also notes these deposition motions and subpoenas focused on the expert witnesses for each Operator. OCD expressed interest in these depositions to assist it in preparing for the upcoming hearing, since the OCC consented to allowing such depositions to proceed. And, of course, the Parties exchanged subpoenas, with OCC permission, to each other on or about July 19, 2024.

As OCD expected, the Operators filed cross-motions to quash respective opposition's deposition subpoenas on or around July 26, 2024 and August 2, 2024, accompanied by Notices of Non-Appearance, thereby stymying any permitted depositions in this matter. Next, the Operators and OCD quibbled about confidentiality agreements for disclosure which ultimately amounted to no such agreement and wasted limited time in discussions over something that proved ultimately irrelevant. These particular motions were ruled upon by Hearing Officer Harwood, resulting in an August 19, 2024 Order denying the Operator's Motions to Quash the deposition subpoenas, a week before exhibit lists and direct witness testimony is due to the OCC. Empire and Goodnight supplemented its discovery responses on August 21, 2024, just five days prior to the deadline for exhibit and direct testimony disclosure. And lastly, Hearing Officer Harwood issued two orders on August 22<sup>nd</sup>, four days before the exhibit and testimonial deadline, with one granting Goodnight's Expedited Motion to issue expert deposition subpoenas and the other ordering the Operators to comply with discovery requirements. OCD now quotes, with emphasis added, the Hearing Officer's Order that reveal the dross that discovery has become in this matter:

“This matter is before me on Goodnight Permian Midstream, LLC's (Goodnight's), expedited motion to compel production of Empire documents. By now it should be clear to the parties that I favor discovery in all forms and I disfavor gamesmanship. I do not accuse anyone of gamesmanship with respect to this or any of the other recently filed discovery motions, but **I also remind everyone of my**

**admonition that I expect the utmost good faith from all parties with respect to discovery especially given the short time frame remaining before the merits hearing in these matters. I also remind everyone that this is not a federal case but an administrative proceeding before an OCC-appointed hearing officer. As such, I expect free and even voluntary exchanges of information at the discovery stage. Authority permitting, I will not hesitate to sanction parties who I deem to be violating this precept.** Lastly, but consonant with all of the foregoing, **I do not appreciate the plethora of tedious and lengthy discovery motions. They are in derogation of the discovery principles I expect in these administrative cases and are unworthy of the high professionalism and generally exceptional caliber of the counsel involved in this specialized and rarified practice.** They waste time and money. I find and order as follows:

1. Empire is to immediately produce all documents identified in Goodnight's motion in time for use at any forthcoming depositions.
2. Goodnight is to produce all documents Empire has requested, if any, that are currently a subject of any unresolved discovery dispute whether the subject of a motion or not, in time for use at any forthcoming depositions.
3. **No additional discovery motions will be filed or entertained.**"

In further support of this Motion, Goodnight filed its expert deposition subpoenas with the OCC at 11:01 AM on August 22, 2024, indicating intent to proceed with such depositions and demonstrating that discovery is far from complete.

In sum, discovery became the boogiemane OCD originally feared it would be and now the case is a procedural morass, to the point that the Hearing Officer sees the problem with clarity. Given the emergent nature of this Motion which was motivated by the Hearing Officer's early morning Orders on August 22, 2024, OCD did not confer with counsel in regards to this Motion.

## **II. Discovery has yet to be completed**

As outlined above, *discovery is still ongoing* despite the passing of the July 19<sup>th</sup> subpoena deadline and the looming August 26<sup>th</sup> exhibit and witness deadline. From OCD's perspective, that in and of itself should give pause to the OCC hearing the above-captioned matters. Goodnight now has renewed permission to seek depositions of Empire's expert witnesses, which OCD supported, and OCD would have likewise supported a similar motion from Empire for the sake of completeness and full revelation of relevant and admissible materials. While the Hearing

Officer has prohibited future discovery motions, OCD does not necessarily expect that order to stand should additional discovery issues arise, namely from disputes over deposition timing, location, and similar issues. Given the outstanding August 22, 2024 Order from the Hearing Officer, OCD is comfortable arguing that discovery in these matters is far from complete, especially in light of the OCC's original discovery order permitting discovery beyond OCC rules. *See* June 4, 2024 Order Partially Granting Empire's Motion to Quash. Therefore, OCD respectfully suggests that additional time is needed to complete discovery such that a new exhibit and testimony disclosure deadline is in order, along with a vacating and continuing of the merits hearing in these matters.

**III. OCD is prejudiced by the lack of timeliness in discovery production and the gamesmanship between Operators in scheduling and completing depositions to which the Parties are entitled.**

OCD participated in discovery in this matter through the issuance of subpoenas and in anticipation of attending Operator depositions. OCD recognizes that the Operators have significantly more technical information available to them than OCD. OCD reasonably relied upon prompt responses and supplements to its subpoenas from Operators yet continues to receive supplemental responses five days prior to the exhibit and testimony disclosure deadline. Operator experts are compensated for their work by Operators; OCD experts are full-time OCD employees whose standard duties involve regulatory work, including hearings, order drafting, grant and audit work, among other things. OCD states this not as a sympathy ploy, but rather to illustrate that OCD experts are simply not able to review and analyze discovery supplements mere days prior to a major disclosure deadline. To force OCD to proceed with filed pleadings that will lack substance as to not only late-issued supplements, but depositions that have yet to be taken, is prejudicial to OCD.

To get more granular, since the bulk of production in response to OCD discovery demands occurred a few weeks ago, OCD has focused on those documents for review and analysis. The dribble of new documents coming in adds complexity to such a review and analysis by virtue of requiring OCD experts to (1) conduct a new review and analysis of the newly tendered documents, followed by (2) synthesis of both reviews and analyses into a cohesive opinion. All of which needs to be done in five days. OCD contends that this alone is highly prejudicial to

OCD on its face and is a method of denying OCD the ability to proffer a full and complete case, much less to provide a suitable witness testimony pleading (which comes with its own risks at hearing, such as attack on cross-examination for failure to review thoroughly the recently tendered documents). Turning to the depositions, which again OCC permitted to occur, OCD reasonably assumed the Operators would proceed with depositions early in August such that OCD might glean more admissible evidence from such depositions. Instead, the Operators continued squabble over those permitted depositions, leaving them undone by the August 26<sup>th</sup> deadline. If such depositions somehow do occur, that will almost certainly alter what the Parties submit on August 26<sup>th</sup>. OCD will likely need to reserve the right to supplement the exhibit and witness testimony filing because of the failed-to-occur depositions.

In summary, based on the above, OCD is prejudiced on the eve of the August 26<sup>th</sup> filing deadline and will remain such until and unless the OCC vacates both the scheduling order and the September 2024 merits hearing setting. OCD provides herewith a draft order for entry noted as Exhibit A.

**IV. It is naïve and unrealistic to expect that the Parties, specifically OCD, will be ready for hearing in September 2024.**

OCD has little doubt that one or both Operators will claim, in response to this Motion, it is or they are ready to proceed to hearing on September 23, 2024. If such a claim is true, it stands in direct opposition to the “plethora of tedious and lengthy discovery motions” noted by the Hearing Officer in his August 22<sup>nd</sup> Order. In other words, such a claim would be disingenuous at best. Speaking directly of Goodnight, Goodnight believed the approved depositions were clearly essential to its cases sufficiently to file its Expedited Motion for expert deposition subpoenas. It likewise appears that the Hearing Officer sees a need for complete discovery, likewise noted in the same Order. To round out this section of the Motion, Goodnight tendered its expert witness subpoenas, pursuant to the Hearing Officer’s Order from the morning of August 22, 2024, to the OCC as of 11:01 AM on August 22, 2024, indicating Goodnight’s intent to depose four of Empire’s expert witnesses, depositions in which OCD fully intends to participate.

Obviously there is more work yet to be done in discovery and OCD is of the mind that the above-captioned cases are not the usual OCC case, but represent massive investments of money and time by the Operator, but also an investment of public resources by the oil and gas regulator

of New Mexico – cases of such gravity require proper and thorough discovery, which has failed to occur to date. No Party should suffer for lack of discovery, much less OCD, who did not file these cases, but whose interest in these cases is significant, as outlined in OCD’s Motion concerning the scope of the pending merits hearing.

**V. It is right, proper, and just for the OCC to vacate both the Scheduling Order in this matter, as well as the September 23-27, 2024 merits hearing in these matters.**

OCD recognizes that the Operators have money on the line in the above-captioned matters. That is not in dispute. However, given the behavior of the Operators *vis-à-vis* discovery, the Operators are perhaps not as concerned about fiscal matters as initially presented – the substantial delays, bickering, cross-motion practice, and efforts to delay production due to alleged confidentiality concerns argue heavily against a dire need for an immediate hearing, all the more so when expert depositions remain uncompleted.

Again, OCD avers that the right way to deal with the current debacle, as district courts often do, is to vacate the scheduling order currently in place so that the OCC or Hearing Officer may ensure that discovery is properly completed and no Party is left lacking crucial information. Similarly, it is clear that the Parties will be crushed, at best, to finalize depositions in the four weeks left before the merits hearing and to ensure that the Parties have fully complied with subpoenas served upon them.

The above approach is what creates the evidentiary path to the truth, which is what the OCC both needs and deserves. The OCD also notes here that, given the emergent nature of this Motion, the OCC Chair or Hearing Officer has the authority to grant this Motion

**VI. OCD proposes that these matters be reset for either January or February 2025.**

OCD proposes that these matters be set for hearing in January or February 2025. OCD witnesses are not available for hearing in October or November 2024 due to the pending PFAS Rulemaking in OCC Case No. 23580, which OCD anticipates will have a tail into December 2024 given the gravity of the rulemaking and potential for the hearing to run over the allotted time. Similarly, OCD counsel will be involved in the preparation and presentation of OCD’s position in the PFAS rulemaking and is likewise unavailable. The OCC is also currently considering another rulemaking, OCC Case No. 24683, for April 2025. OCD makes these proposals in a showing of

good faith and willingness to get these cases heard as soon as practicable, but after the true close of discovery and without further or additional delays.

Respectfully submitted,

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Christopher L. Moander  
Assistant General Counsel  
New Mexico Energy, Minerals and  
Natural Resources Department  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505  
Tel (505) 709-5687  
[chris.moander@emnrd.nm.gov](mailto:chris.moander@emnrd.nm.gov)



**CERTIFICATE OF SERVICE**

I certify that on August 22, 2024, this pleading was served by electronic mail on:

<p>Ernest L. Padilla Padilla Law Firm, P.A. Post Office Box 2523 Santa Fe, New Mexico 87504 (505) 988-7577 <a href="mailto:padillalawnm@outlook.com">padillalawnm@outlook.com</a></p> <p>Dana S. Hardy Jaclyn M. McLean HINKLE SHANOR LLP P.O. Box 2068 Santa Fe, NM 87504-2068 (505) 982-4554 <a href="mailto:dhardy@hinklelawfirm.com">dhardy@hinklelawfirm.com</a> <a href="mailto:jmclean@hinklelawfirm.com">jmclean@hinklelawfirm.com</a></p> <p>Sharon T. Shaheen Samantha H. Catalano Montgomery &amp; Andrews, P.A. Post Office Box 2307 Santa Fe, NM 87504-2307 (505) 986-2678 <a href="mailto:sshaheen@montand.com">sshaheen@montand.com</a> <a href="mailto:scatalano@montand.com">scatalano@montand.com</a> cc: <a href="mailto:wmcginnis@montand.com">wmcginnis@montand.com</a></p> <p><i>Attorneys for Empire New Mexico, LLC</i></p>	<p>Michael H. Feldewert Adam G. Rankin Paula M. Vance HOLLAND &amp; HART LLP 110 N. Guadalupe Street #1 Santa Fe, NM 87501 (505) 988-4421 <a href="mailto:mfeldewert@hollandhart.com">mfeldewert@hollandhart.com</a> <a href="mailto:agrankin@hollandhart.com">agrankin@hollandhart.com</a> <a href="mailto:pmvance@hollandhart.com">pmvance@hollandhart.com</a> <a href="mailto:NRJurgensen@hollandhart.com">NRJurgensen@hollandhart.com</a></p> <p><i>Attorneys for Goodnight Midstream Permian, LLC</i></p> <p>Miguel A. Suazo Sophia A. Graham Kaitlyn A. Luck 500 Don Gaspar Ave. Santa Fe, NM 87505 (505) 946-2090 <a href="mailto:msuazo@bwenergylaw.com">msuazo@bwenergylaw.com</a> <a href="mailto:sgraham@bwenergylaw.com">sgraham@bwenergylaw.com</a> <a href="mailto:kluck@bwenergylaw.com">kluck@bwenergylaw.com</a> <i>Attorneys for Pilot Water Solutions SWD, LLC</i></p> <p>Matthew Beck Peifer Hanson Mullins &amp; Baker, P.A. P.O. Box 25245 Albuquerque, NM 87125-5245 (505) 247-4800 <a href="mailto:mbeck@peiferlaw.com">mbeck@peiferlaw.com</a> <i>Attorneys for Rice Operating Company and Permian Line Service, LLC</i></p>
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Christopher L. Moander

**EXHIBIT A**

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

**APPLICATION OF GOODNIGHT  
MIDSTREAM PERMIAN, LLC TO AMEND  
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**CASE NO. 23775**

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NEW MEXICO**

**CASE NOS. 23614-23617**

**APPLICATION OF EMPIRE NEW MEXICO TO  
REVOKE THE INJECTION AUTHORITY  
+GRANTED UNDER ORDER NO. R22026 FOR**

**EMERGENCY MOTION TO VACATE  
FOR CASE NOS. 23614-23617, 23775,  
24018-24020, 24025, 24277, 24278,  
and 24123**

**ORDER ON OCD'S EMERGENCY MOTION TO VACATE MERITS HEARING AND  
SCHEDULING ORDER**

The Oil Conservation Commission, having reviewed the relevant pleadings and having considered the situation presented, hereby **GRANTS** OCD's Motion to Vacate Merits Hearing and Scheduling Order. The Oil Conservation Commission likewise finds and orders as follows:

- (1) That the June 4, 2024 Scheduling Order is vacated;
- (2) That the merits hearing scheduled for September 23-27, 2024 is hereby vacated;
- (3) The Parties shall present themselves for a status conference before the Commission at the September 19, 2024 Regularly Scheduling Meeting and shall be prepared to do the following:
  - a. Provide a status of remaining discovery issues or concerns, but the Commission will not entertain motions at this meeting;
  - b. Provide dates for a rescheduled merits hearing;
  - c. Provide dates for a new scheduling order that will accommodate any lingering discovery need while also finalizing deadlines for witness testimony, exhibit disclosure, pre-hearing statements, and evidentiary and dispositive motions.

IT IS SO ORDERED.

DONE at Santa Fe, New Mexico on this \_\_\_\_\_ day of August 2024.

\_\_\_\_\_  
Gerasimos Razatos, Acting Chair