

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

**APPLICATION OF GOODNIGHT
MIDSTREAM PERMIAN, LLC TO AMEND
ORDER NO. R-22506 (SWD-2392) FOR A
ONE YEAR EXTENSION TO COMMENCE
INJECTION OPERATIONS, LEA COUNTY,
NEW MEXICO**

Case No. 24491

**MOTION TO RECONSIDER DECISION TO LIFT STAY, TO VACATE
PRE-HEARING ORDER, AND TO REFER TO THE COMMISSION
OR, IN THE ALTERNATIVE, MOTION TO DISMISS**

Empire New Mexico, LLC (“Empire”) hereby moves the Division to: (1) reconsider its decision to lift the stay in this matter, (2) vacate the pre-hearing order, and (3) refer this case to the Commission. Proceeding to a contested hearing on an extension to commence injection operations under these circumstances would waste administrative resources and is contrary to the rulings made by the Oil Conservation Commission (“Commission”) in related cases. Moreover, granting the extension will allow Applicant Goodnight Midstream Permian, LLC (“Goodnight”), to wrongfully drill its Rocket SWD #1 notwithstanding Empire’s application to revoke the existing permit for this well in Case No. 24021, which is currently pending before the Commission.

In the alternative, Empire requests that the application be dismissed. The application is moot and cannot be approved as requested because it seeks to extend the time to commence injection until March 2, 2025, which is six months in the past. Moreover, the findings made by the Commission in OCC Order No. R-24004—that a residual oil zone (“ROZ”) exists in the EMSU and that Goodnight’s injection into the EMSU—are dispositive as to good cause in the instant matter. For these reasons, the application should be dismissed.

In support of this Motion, Empire states as follows:

1. In this matter, Goodnight seeks to extend the time to commence injection operations for the Rocket SWD #1 under SWD-2392 to March 2, 2025. Application at 1.

2. The proposed injection disposal interval will be within the San Andres formation. *Id.* at 2, ¶ 5.

3. In Case No. 24021, Empire filed an application to revoke the injection authority under SWD-2392 for the Rocket SWD #1, which is currently pending before the Commission along with several other applications to revoke permits for saltwater disposal wells located near the Eunice Monument South Unit (“EMSU”). At Goodnight’s request, the Commission stayed these applications to revoke pending resolution of the applications regarding wells within the EMSU.

4. Once the Commission has resolved any motions for rehearing, Empire will file a motion requesting that the Commission lift the stay and hear the remaining applications to revoke permits for wells located outside, but near, the EMSU, including the Rocket SWD #1.

5. In the instant application and again in its Motion to Refer Case to Commission in this case, Goodnight asked the Division to refer this case to the Commission because “authority to inject into the Rocket SWD #1 is already pending before the Commission in Case No. 24021” and because this application “relates to Goodnight Midstream Division Case Nos. 23614-23617, 23775, 24277 and 24278; and Commission Case No. 24123 (de novo); and Empire New Mexico LLC’s Division Case Nos. 24018-24020 and 24025.” Motion to Refer Case to Commission at 2, ¶ 7 (filed May 20, 2024) (“Motion to Refer”); Application at 2, ¶ 9.

6. As further stated by Goodnight in its Motion to Refer Case to Commission, referring this case to the Commission under 19.15.4.20 NMAC “will promote administrative

economy by avoiding the need for multiple hearings on similar issues between the Division and Commission.” Motion to Refer at 2, ¶ 9.

7. On July 26, 2024, the Division stayed this matter because “Goodnight’s Well is close to the Eunice Monument South Unit, which is the subject of intense litigation before the” Commission. Order to Stay Proceedings (July 26, 2024) (“Order to Stay”). The Order to Stay further recognized that the Commission would “decide factual and legal issues that will be dispositive in” this case and that “the stay will conserve administrative resources.” *Id.*

8. At the status conference in this matter on July 25, 2024, the hearing examiner stated, “It’s my understanding that this case should also be stayed pending the outcome of the Commission’s decision on whether there is an ROZ in the EMSU and whether Goodnight’s injection into the EMSU would affect that ROZ.” TR 07/25/24 at 22:4-8.

9. On September 12, 2025, the Commission issued OCC Order No. R-24004, answering those two questions in the affirmative, that is, (1) a ROZ exists in the EMSU, and (2) Goodnight’s injection into the EMSU would affect that ROZ. *See* Case Nos. 23614 et al., Order Denying Goodnight’s Applications & Partially Granting/Partially Denying Empire’s Applications (Sept. 12, 2025) (“Commission Order”), attached as Exh. A.

10. In pertinent part, the Commission found as follows:

- [T]here was substantial evidence presented at the hearing to establish the existence of a ROZ in the Grayburg and San Andres, especially the core analysis evidence.” *Id.* at 6, ¶ II.B.
- Goodnight’s six applications must be denied because the injection of hundreds of thousands of barrels a day conflicts with Empire’s exclusive rights to extract oil in the EMSU because in order to perform a successful CO2 flood EOR project, the injection of CO2 and water must be monitored closely and adjustments made based upon design. *Id.* at 7, ¶ 40.
- Goodnight’s SWD wells cannot dispose of water when Empire’s active CO2 flood is being performed without adversely affecting economics. *Id.*

- Goodnight's six applications must be denied because the injection of hundreds of thousands of barrels a day conflicts with Empire's exclusive rights to extract oil in the EMSU because approval of the proposed new wells would contradict the responsibility of the Commission and Division to prevent the drowning by water of any stratum or part thereof capable of producing oil. *Id.* ¶ 41.
- [V]ertical fractures could lead to communication between the Grayburg and San Andres. *Id.* at 8, ¶ 46.
- Empire's witness, Dr. Buchwalter, built a model and the model shows to a reasonable degree that water is moving from the San Andres into the Grayburg. . . . This could lead to communication between the Grayburg and San Andres. *Id.* ¶ 47.
- Goodnight DID NOT adduce substantial evidence of the existence of a continuous barrier between the Grayburg and the San Andres and therefore DID NOT refute the potential for FUTURE impairment or waste in the EMSU. *Id.* ¶ III.B (emphasis in original).
- [T]he Commission will suspend the injection authority to provide Empire with the opportunity to establish a pilot project. *Id.* at 10, ¶ III.E.

11. Based on these findings, among others, the Commission unanimously denied Goodnight's application to drill four new wells, denied Goodnight's application to request existing increase in an existing well, and suspended the permits for four existing wells "in order to provide Empire with the opportunity to establish the CO2 EOR pilot project." *Id.* at 12-13.

12. The proposed well in the instant matter is located approximately 1.15 miles south of the EMSU boundary. As recognized by the Division in the Order to Stay Proceedings, issued July 26, 2024 in this matter, "Goodnight's [Rocket] Well is close to the Eunice Monument South Unit."

13. At the hearing on July 25, 2024, Mr. Rankin represented that "extending the injection authority doesn't mean that Goodnight's going to go out and drill this well and start injecting. It needs to get this other issue resolved. It's not going to go out and drill this well when there's an application to revoke its injection authority pending." TR 07/25/24 at 27:8-13.

14. Subsequently, however, in January 2025, Goodnight drilled another well subject to a pending application to revoke injection authority, the Verlander SWD Well No. 1 (API#30-025-50632). The Verlander well is located approximately one half-mile outside of the EMSU.

15. Goodnight did not notify the Commission or Empire that Goodnight was drilling the Verlander well. *See* Case Nos. 23614 *et al.*, H’g Tr. at 173:13-175:5 (Goodnight’s witness, admitting that Goodnight did not inform Empire and that the well was close enough to the EMSU for Empire to see “the rig standing up out there”). *See generally id.* at 170:23-177:11.

16. At the September 25, 2025 status conference in this matter, Goodnight’s counsel stated that Goodnight needs the injection capacity provided by the Rocket SWD #1 given the Commission’s decision to suspend Goodnight’s injection permits within the EMSU. Thus, Goodnight intends to ignore Empire’s application to revoke the permit for this well that is pending before the Commission.

17. Although Order No. R-24004 expressly states that the Commission “[s]uspends existing Goodnight’s injection wells Case No. 24018 (Dawson), Case No.24019 (Banks), Case No. 24020 (Sosa), Case No. 24025 (Ryno) in order to provide Empire with the opportunity to establish the CO2 EOR pilot project, Goodnight has continued its unabated injection, forcing Empire to file a motion to enforce the order with the Commission. *See* Case Nos. 23614 *et al.*, Empire’s Emergency Motion to Enforce Order No. R-24004, for Order to Show Cause, and for Expedited Hearing (September 23, 2025).

ARGUMENT

As noted above, the Commission has determined that a ROZ exists in the San Andres formation and that Goodnight’s injection into the EMSU will affect the ROZ. Moreover, the Commission expressly determined there is no continuous impermeable barrier within the San

Andres formation that would prevent injection fluid from migrating into the zones Empire intends to produce with tertiary recovery.

Any decision as to whether good cause exists to extend Goodnight's deadline to commence injection into the Rocket SWD #1 is impacted by the Commission's anticipated decision on Empire's application to revoke the permit. The issues are intertwined and cannot reasonably be severed, especially given that Goodnight intends to drill the well despite the pending application to revoke its permit. Proceeding with a Division hearing on extension of a permit while a request to revoke the permit is pending before the Commission creates a procedural conundrum, similar to having similar litigation between two parties in two different venues. It is also akin to allowing a district court to exercise jurisdiction when a case is pending in an appellate court. For the reasons present here, this case should not be addressed by the Division while the application to revoke the permit is pending before the Commission. Allowing an extension at this time will allow, even encourage, Goodnight to drill the well before the Commission reaches a final decision on revocation.

Notably, Goodnight's counsel did not represent to the Division at the September 25, 2025 status conference that Goodnight would wait until the application to revoke was decided before drilling the well, as he did back in 2024. *See generally* AI Transcript 092525 at pages 1-15. Rather, Goodnight's counsel suggested that Goodnight will drill the Rocket SWD #1 unless the Division or Commission issues a stay of an order extending the time to commence injection operations, which would have to be requested by Empire, or until the Commission issues a stay on a *de novo* appeal regarding the extension. *Id.* at 3:114-125, 10:409-421.¹ Goodnight is simply playing

¹ Goodnight counsel misrepresented to the Division that the Commission "found that the proposed Roz is not recoverable." AI Transcript 092525 at 9:389-390. Rather, the Commission determined "there was insufficient evidence presented at hearing to prove whether the ROZ is recoverable"

procedural games in an effort to drill a well with an expired permit that is subject to a pending application to revoke, just as it did with the Verlander well and just as it is doing now by continuing injection into its wells that lack valid permits. *See id.* at 10:409-414 (Mr. Rankin, “We would have then an order in place, an effective valid order for injection. It would then be incumbent on Empire to file a motion to stay that pending review by the Commission, in which case they would need to establish the bases to stay a validly issued division order.”). This gamesmanship should not be condoned. The stay should remain in place, or this matter should be referred to the Commission to be considered in conjunction with the application to revoke.

At the status conference, Goodnight’s counsel suggested that Empire must establish that a continued stay of proceedings is appropriate under the factors discussed in *Tenneco Oil Co. v. N.M. Water Quality Control Comm’n*, 1986-NMCA-033, 105 N.M. 708. However, that case is inapposite here. In *Tenneco*, the appellant sought to stay enforcement of amendments to regulations pending appeal. *Id.* ¶ 1. In contrast, here we have an affirmative application in an adjudicatory proceeding seeking to extend an order that has already expired.

Assuming *Tenneco* applies, *arguendo*, Empire satisfies the requirements stated therein. First, as demonstrated by the Commission’s Order, Empire will likely prevail on the merits in the pending application to revoke the subject permit. Second, it is highly likely that Goodnight will drill the well if the extension is granted and begin injection, which will cause Empire irreparable harm. Third, no substantial harm will result to other interested persons. Finally, there will be no harm to the public interest. In fact, continuing the stay of the application will ensure that the

and therefore suspended Goodnight’s “injection authority to provide Empire with the opportunity to establish a pilot project.” Commission Order at 10, ¶¶ III.D-E.

correlative rights of the majority of mineral interests affected here, which belong to the state and federal government, are not harmed. *See id.* ¶ 10.

Guidance can also be found in principles relating to priority jurisdiction and to the exercise of a district court's jurisdiction when a matter is pending before an appellate court. Priority jurisdiction applies when a second lawsuit is based on the same cause of action as a lawsuit already pending. *Freedom Mtg. Corp. v. Stevens*, 2023-NMCA-034, ¶ 23, 528 P.3d 745. The elements of priority jurisdiction are as follows:

- (1) the two suits must involve the same subject matter or the same cause of action,
- (2) the two suits must involve the same parties, (3) the first suit must have been filed in a court of competent jurisdiction in the same state, and (4) the rights of the parties must be capable of adjudication in the first-filed action.

Id. (quoting *Cruz v. FTS Construction, Inc.*, 2006-NMCA-109, ¶ 15, 140 N.M. 284). The elements of priority jurisdiction exist here: (1) both applications relate to the same permit; (2) both applications involve the same parties; (3) the first application is pending before an administrative body of competent jurisdiction (the commission), and (4) the rights of the parties are capable of adjudication in the proceeding before the Commission. Under these circumstances, it is most appropriate to refer the application in the instant case to the Commission pursuant to 19.15.4.20(B) NMAC.

The circumstances here can also be analogized to the limited jurisdiction of a district court when a case is on appeal. A district court is limited to carrying out or enforcing a judgment when a case is on appeal. *Murken v. Solv-Ex Corp.*, 2006-NMCA-064, ¶ 9, 139 N.M. 625. Notably, the policy behind this rule “is judicial economy—as a practical matter, it would be inefficient to have two courts working on the same substantive matter at the same time.” *Id.* ¶ 11 (“To avoid such waste, when substantive issues have been properly put before the appellate court, the district court may no longer take any action that could change the issues pending in the appellate court.”). As

explained by our Supreme Court in *Kelly Inn No. 102, Inc. v. Kapnison*, 1992-NMSC-005, 113 N.M. 231, it is a judicial doctrine “designed to avoid the confusion and waste of time that might flow from putting the same issues before two courts at the same time.” *Id.* ¶ 37 (internal quotation marks and citation omitted).

This same rationale applies here—holding a contested hearing on this application to extend a permit that is subject to an application to revoke pending before the Commission will invite confusion and waste time. Extending the time for Goodnight commence operations for the Rocket well will also more than likely result in Goodnight rushing to drill the well, which would change the issues pending in the appellate court; *i.e.*, the Commission.

The Division rule on stays provides further guidance. “The director may grant a stay . . . if the stay is necessary to prevent waste, protect correlative rights, protect public health or the environment or prevent gross negative consequences to an affected party.” 19.15.4.23(B) NMAC (providing for a stay of a division or commission order by filing a motion with the commission clerk). Under these circumstances, this regulation supports a continued stay and referral to the Commission because extending the permit will allow Goodnight to drill a well, which Empire is asking the Commission to prohibit. In light of the Commission’s Order, it is clear that a continued stay is necessary to prevent waste, protect correlative rights, and prevent gross negative consequences to Empire.

In conclusion, the stay should remain in place, the pre-hearing order should be vacated, and this case should be referred to the Commission while the propriety of the permit at issue, which is now expired, is pending before the Commission. To hold a hearing on good cause to extend an expired permit under the circumstances would waste administrative resources and provide Goodnight with an unfair advantage in these hotly contested matters when the Commission, to

date, has ruled in Empire's favor. In the alternative, the application should be dismissed because, as a matter of law, good cause for an extension cannot exist in the face of the Commission's findings detailed herein and because the application is moot.

WHEREFORE, Empire requests that the Division reconsider its decision to set this matter for hearing and, instead, refer this matter to the Commission to be addressed when Empire's pending application to revoke the permit is heard. In the alternative, Empire requests that this application be dismissed for all the reasons stated herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon the following counsel of record by electronic mail on October 1, 2025.

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