

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

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

CASE NOS. 23614-23617

**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 EMPIRE NEW MEXICO
LLC TO REVOKE INJECTION AUTHORITY,
LEA COUNTY, NEW MEXICO.**

CASE NOS. 24018-24020, 24025

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

**DIVISION CASE NO. 24123
ORDER NO. R-22869-A**

**GOODNIGHT MIDSTREAM PERMIAN, LLC’S RESPONSE TO MOTION TO
REQUIRE MODIFICATION OF THE OIL CONSERVATION DIVISION’S
IMPLEMENTATION DIRECTIONS**

Goodnight Midstream Permian, LLC (“Goodnight”) respectfully submits this Response in Opposition to Empire New Mexico LLC’s (“Empire”) Motion to Require Modification of the Oil Conservation Division’s Implementation Decision (“Motion”). For the reasons set forth below, Goodnight respectfully requests that the Oil Conservation Commission (“Commission”) deny the Motion in its entirety and affirm the Oil Conservation Division’s (“OCD”) Implementation of the Commission Orders, dated January 15, 2026 (“Implementation Directions”).

INTRODUCTION

Making its sixth request to shut-in Goodnight's injection in this proceeding, Empire's Motion is an attempt to circumvent the regulatory requirements that the Commission unequivocally mandated Empire follow and that govern all enhanced oil recovery operations in New Mexico. The Implementation Directions faithfully execute the Commission's Orders by establishing a lawful pathway for Empire to pursue the CO2 EOR pilot project opportunity the Commission provided, while ensuring compliance with all applicable rules, regulations, and permitting processes.

The OCD considered and properly rejected Empire's request to modify the Implementation Directions. In its February 27, 2026 response letter, OCD affirmed that it "possesses the authority to address Goodnight's injection and Empire's proposed EOR pilot project as OCD sees fit under the circumstances" and confirmed that even a pilot project requires the same regulatory steps OCD has outlined. *See* OCD Letter to Empire (2/27/2026), at 1. And contrary to Empire's mischaracterization of OCD's response, OCD is not requiring Empire to conduct a full-scale EOR. In fact, OCD expressly stated that "[t]he scope of the amendment to the current EOR order R-7766 is Empire's to propose . . . OCD did not determine the scope of Empire's proposed EOR pilot project nor the scale of the proposed project." *Id.* at 2.

Rather than simply working on the required steps to implement its proposed EOR project, Empire asks the Commission to overrule OCD's considered judgment and grant Empire special regulatory shortcuts unavailable to any other operator in New Mexico. The Commission must reject Empire's request. The Amended Order explicitly states that "Empire must follow all relevant and applicable regulations and permitting processes if it chooses to exercise the opportunity the Commission has provided for it to establish a CO2 EOR pilot project." *See*

Amended Order (12/17/2025), at ¶ 25. Empire seeks to evade this mandate entirely. Its Motion must be denied.

With regard to whether Goodnight's injection should be suspended, Empire's Motion is an attempt to relitigate old arguments raised multiple times throughout the litigation, that the Commission and OCD have repeatedly rejected. The Commission should again reject Empire's invitation to retread old ground.¹

Importantly, when Empire filed its Notice of Appeal, the jurisdiction to decide issues raised on rehearing, including OCD's authority to shut-in Goodnight's injection wells, transferred to the District Court and divested the Commission of jurisdiction to reconsider the issue. In the event the Commission finds it retained jurisdiction to decide the issue, however, the law of the case doctrine counsels that the issue has been considered and decided already several times before and should remain settled.

With regard to whether Empire should be exempted from OCD procedures and allowed to conduct a single well huff-n-puff rather than a pilot project CO2 flood, Empire's Motion is a complete about-face. Empire once assured the Commission that it was "ready to spend a billion dollars" and that its Chairman "goes big" and "does not want to do a huff and puff." Empire Closing, 5/21/25, Tr. 19:6-9; W. West, Tr. 4/11/25 35:23 and 36:5-6. Now it wants "flexibility" to pursue a "true pilot project, rather than a full-fledged EOR project," potentially through a single well huff-n-puff without going through the hearings or submitting the forms and implementation plans required of all other operators. The Commission should reject Empire's request for exemptions from Commission Orders and OCD regulations.

¹ Empire's arguments are largely the same arguments Empire asserted in its February 18, 2026 Letter to OCD Deputy Director Powell. Goodnight incorporates its February 23, 2026 Response Letter as if fully set forth herein, attached as Exhibit 1.

ARGUMENT & AUTHORITIES

I. Absent New Claims and Evidence, the Commission Lacks Jurisdiction to Shut-in Goodnight's Injection Wells Because That Issue is on Appeal.

Without raising any new claims or new evidence, Empire again asks the Commission to require Goodnight “to cease injection now—rather than once Empire commences CO₂ injection.” Mot. at 12. But the Commission’s decision does not require immediate suspension; that issue—together with the underlying claims and evidence—has been appealed by Empire to the District Court, which means the Commission is divested of jurisdiction over that issue while the appeal is pending. The Commission should deny Empire’s Motion on this basis alone.

Under the Oil and Gas Act, “[a] party of record to the rehearing proceeding dissatisfied with the disposition of the application for rehearing may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.” NMSA 1978, § 70-2-25(B). An appeal is limited to issues that were raised in the appellants’ application for rehearing. *Cont’l Oil Co. v. Oil Conservation Comm’n*, 1962-NMSC-062, ¶ 15, 70 N.M. 310, 373 P.2d 809. Once a party appeals a final order following rehearing, the Commission is divested of jurisdiction over the matter in favor of the district court. The New Mexico Supreme Court has held that the filing of a notice of appeal divests the lower court of jurisdiction over the case, except for purposes related to perfecting the appeal or addressing motions directed at the judgment pending at the time of appeal. *See Kelly Inn No. 102, Inc. v. Kapnison*, 1992-NMSC-005, ¶ 32, 113 N.M. 231, 824 P.2d 1033 (“[T]he trial court loses jurisdiction of the case upon the filing of the notice of appeal, except for the purposes of perfecting such appeal, or of passing upon a motion directed to the judgment pending at the time.”) (cit. om.). This rule applies to administrative appeals as well, under the statutory framework under Section 39-3-1.1, which transfers authority over challenged matters from the administrative agency to the judicial branch upon the filing of an appeal. *See*

Hope Cmty. Ditch Ass'n v. N.M. State Eng'r, 2005-NMCA-002, ¶ 6, 136 N.M. 761, 105 P.3d 314 (describing the requirements for perfecting an appeal from an administrative agency as “jurisdictional”).

Here, the Commission cannot order Goodnight to shut-in its injection wells based on the facts and determinations underlying the Commission’s Order because Empire has appealed that issue—based on its underlying claims and evidence—to the District Court. Empire filed a Motion for Rehearing, in which it argued that the Commission should modify its Order “to put an immediate and permanent stop” to Goodnight’s injection operations. Empire’s Motion for Rehearing at 9, attached as Exhibit 2. The Commission issued Order R-24004-A on December 17, 2025 (“Amended Order”) wherein the Commission concluded that “the OCD has authority to impose suspension ordered by [Order R-24004] on any schedule OCD deems necessary.” Amended Order at ¶ 24 (emphasis added). Dissatisfied with the disposition of its application for rehearing on that issue, Empire filed a Notice of Appeal to challenge the Amended Order. *See* NMSA 1978, § 39-3-1.1(C); *see also* Notice of Appeal (“Pursuant to NMSA 1978, § 70-2-25(B) (1999), NMSA 1978, § 39-3-1.1(C) (1999), and Rule 1-074 NMRA, [Empire] hereby gives notice of appeal of the New Mexico Oil Conservation Commission’s December 17, 2025 Amended Order Denying Goodnight’s Applications & Partially Granting/Partially Denying Empire’s Applications.”). A copy of Empire’s Notice of Appeal is attached as Exhibit 3.

When Empire filed its Notice of Appeal, jurisdiction to decide issues raised in the rehearing transferred to the District Court and divested the Commission of jurisdiction to reconsider its decision not to immediately shut-in Goodnight’s injection wells and its decision to delegate implementation of the Amended Order to OCD. The Commission should deny

Empire's Motion because the Commission lacks jurisdiction to order such relief absent new evidence supporting new claims.

II. To the Extent the Commission Retains Jurisdiction, the Commission's Prior Decision Refusing to Immediately Shut-In Goodnight's Wells is the Law of the Case.

To the extent the Commission retains jurisdiction to revisit its decision whether to shut-in Goodnight's injection wells, the Commission's prior decisions refusing to order an immediate shut-in should control because those decisions are the law of the case.

The law of the case doctrine "posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case. This rule of practice promotes the finality and efficiency of the judicial process by protecting against the agitation of settled issues." *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 815-16 (1988) (quot. om.). "Once a particular issue in a case is settled it should remain settled." *Alba v. Hayden*, 2010-NMCA-037, ¶ 8, 148 N.M. 465, 237 P.3d 767 (quot. om.).

Empire's request to suspend Goodnight's injection is at least the **sixth time** Empire has asked for such relief from the Commission or the Division—each time Empire has failed to present new facts that would give rise to new claims. The law of the case doctrine counsels that the Commission should decline to revisit that decision yet again. Below is a non-exhaustive list of previous instances where Empire requested immediate shut-in and the Commission or Division refused to grant the request:

1. In July 2024, Empire first asked the Commission to "stay or suspend Goodnight[']s authorization to inject" nearly two years ago when these cases were first pending before the Commission. See Empire's Expedited Motion to Stay or Suspend Goodnight's Authorization to Inject and for Sanctions for Violation of SWD Orders (7/1/2024) at 2, attached as Exhibit 4. The Commission refused to suspend Goodnight's injections, choosing instead to defer a decision until after a hearing on the merits. See Order on Empire New Mexico LLC's Expedited Motion to Stay or Suspend Goodnight's Authorization to Inject and for Sanctions (8/20/2024) at ¶¶ 1 & 3, attached as Exhibit 5.

2. During the hearing, Empire asked the Commission to shut-in Goodnight's injection wells again. In its closing brief, Empire argued Goodnight's injection operations "must cease." Empire's Closing Brief (7/3/2025), at 8. The Commission again refused to immediately shut-in Goodnight's injections, delegating such authority to the OCD, instead. *See* Commission Order R-24004 (9/12/2025), at 10.

3. Dissatisfied with that outcome, Empire argued in its Motion for Rehearing that the "Commission should modify its Order to put an immediate and permanent stop to Goodnight's [injection operations]." Ex. 2, Empire's Motion for Rehearing (10/2/2025), at 9. The Commission again refused to immediately shut-in Goodnight's injections and delegated authority to impose suspension to the OCD "on any schedule OCD deems necessary." *See* Amended Order (12/17/2025), at ¶ 24.

4. Displeased that the Amended Order did not require Goodnight to immediately shut-in its wells, Empire wrote OCD Director Chang urging him to implement an immediate shut-in and arguing that "the time to enforce the suspension ordered by the OCC is now." Empire Letter to OCD Director Chang (12/22/2025) at 5, attached as Exhibit 6. The OCD thereafter issued its Implementation Directions, requiring that Goodnight shut-in its wells only after Empire is ready to begin CO2 injection. *See* OCD Implementation Directions (1/15/2026), at 3.

5. In response, Empire sent a letter to OCD Deputy Director Powell asking him to amend the Implementation Directions because it did not require Goodnight to immediately shut-in injection. *See* Empire's Letter to Deputy Director Powell (2/18/2026) at 3. The OCD responded to Empire by reiterating the Commission's determination: "OCD has the authority to impose the suspension ordered . . . on any schedule OCD deems necessary." OCD Letter to Empire (2/27/2026), at 1. The OCD again declined to order an immediate suspension of Goodnight's injection. *Id.* at 2 ("OCD's implementation letter is not vague and provides a clear roadmap for Empire. . . . While Goodnight will have 60 days to shut in its Suspended Wells, that 60-day period does not begin to run until Empire completes the steps identified above.").

Empire's instant Motion is at least its sixth request for the immediate shut-in of Goodnight's injection. But the Commission has already rejected immediate suspension and determined OCD has authority to order suspension on any schedule OCD deems necessary.² And OCD, in turn, has exercised its authority and ordered that Goodnight may continue to

² Empire argued in the Brief in Response to Order on Limited Rehearing that Order No. R-24004 does not "give the Division discretion to determine whether or when to implement the suspension." *See* Empire's Brief on Rehearing (10/31/2025), at 19.

operate its injection wells until after Empire completes the steps set out in the Implementation Directions.

Under the law of the case doctrine, those decisions should continue to govern. *See Alba v. Hayden*, 2010-NMCA-037, ¶ 7 (“Under the law of the case doctrine, a decision on an issue of law made at one stage of a case becomes a binding precedent in successive stages of the same litigation.”) (quot. om.). Goodnight should not be required to suspend its injections until Empire is ready and able to begin a pilot project CO2 flood. Following the law of the case doctrine under these circumstances will promote the finality and efficiency of the administrative process by protecting against the repeated review of settled issues. **Five times was enough.**

III. OCD Regulations and the OCC’s Governing Orders Restrict the “Flexibility” Empire Requests to Implement a Pilot Project.

Empire is unwilling or unable to follow the OCD’s Implementation Directions, so it seeks several modifications. The Commission should deny the modifications Empire seeks because they would require the Commission and/or OCD to violate Commission Orders and OCD regulations.

Neither Empire nor its proposed CO2 EOR project is exempt from regulatory requirements that govern such proposed injection projects, as the Commission has already expressly held: “Empire must follow all relevant and applicable regulations and permitting processes if it chooses to exercise the opportunity the Commission has provided for it to establish a CO2 EOR pilot project.” *See* Amended Order (12/17/2025), at ¶ 25. Despite the Commission’s directive, Empire now asks the Commission for special treatment to exempt it from: (1) filing C-108 applications for injection wells; (2) holding a hearing on its EOR application; (3) amending Order No. R-7766; and (4) submitting infrastructure implementation

plans. Each of these requested exemptions would directly violate the Commission's directive. Empire's demands must be rejected.

A. OCD Regulations Mandate C-108 Applications for All EOR Injection

The OCD's Class II Underground Injection Control regulations require a permit "for any injection wells that inject . . . fluids for enhanced recovery of oil or natural gas."

19.15.26.8.A(1)(b) NMAC. Operators seeking to construct and operate injection wells are required to file a "form C-108 complete with all attachments." 19.15.26.8.B(1) NMAC. The regulatory language permits no exception: "Any injection wells" means any injection wells, whether part of a proposed pilot project or a full-scale EOR project.

Empire's attempt to carve out a special exemption for itself finds no support in law or regulation. OCD regulations do not distinguish between injection operations to determine viability through a "pilot project" and injection operations expected to be persistent. **All injections** are subject to OCD regulations requiring submission and approval of a C-108. The OCD has consistently applied this requirement to pilot projects, including Order No. R-13302 (approving a "pilot waterflood project for secondary recovery" pursuant to 19.15.26 NMAC) and Order No. R-20321 (approving a "pilot pressure maintenance project" pursuant to the same regulation). *See* Order No. R-13302, ¶¶ 2, 5; Order No. R-20321.

Empire's claim that a C-103 form can suffice for authorization for a CO₂ huff-n-puff project is baseless. Empire cites a single C-103 sundry for a production well in the Central Vacuum Unit for the proposition that it properly authorized a huff-n-puff pilot project. Not only would that violate the express provisions of 19.15.26.8.A(1)(b) and 19.15.26.8.B(1) NMAC, but Empire also fails to inform the Commission that after injecting only 50 MMCF of CO₂ within a two-month period—with no response—the operator was required less than a year later to file a full C-108 for authorization to inject CO₂ and an application for hearing to amend its underlying

waterflood order to include approval for CO2 injection. *See* Case No. 11650, Order No. R-5530-D. This was required even though the unit operator intended only to evaluate the potential for a CO2 flood in a portion of the Central Vacuum Unit area. *See* Case No. 11650, 12/19/96 Tr. 12-18 (testifying that the CO2 project will target about 50% of the unit area and if commercially successful it will be expanded), attached as Exhibit 7. Finally, as a subsequent order addressing injection in the Central Vacuum Unit makes clear, the Division has no authority to “waive requirements set forth in administrative orders issued by the Director unless specifically authorized in the order or by the rule.” *See* Order No. R-5530-F at ¶ 5.

Accordingly, neither the Division nor the Commission has authority to avoid the requirements governing injection under 19.15.26.8 NMAC or the limitations governing unit operations and injection under Order Nos. R-7765 and R-7766. Rather than support Empire’s effort to short-circuit the regulatory process and avoid the limitations of the existing EMSU orders, the example of the Central Vacuum Unit confirms that the requirements OCD set out in its Implementation Directions are correct and proper.

B. OCD Regulations Require a Hearing for Enhanced Oil Recovery Applications

In the specific case of enhanced oil recovery injection, OCD regulations mandate that all such applications be set for hearing. *See* 19.15.26.8.F(1) NMAC; *see also* Order Nos. R-13302 & R-20321. The Commission’s Amended Order does not authorize OCD to waive this requirement; rather, the Commission expressly directed OCD to require Empire to follow all “regulations and permitting processes.” It is black letter law that OCD must abide by its own regulations. *See Hobbs Gas Co. v. N.M. PSC*, 1993-NMSC-032, ¶¶ 7-8, 858 P.2d 54; *see also Bass Enters. Prod. Co. v. Mosaic Potash Carlsbad Inc.*, 2010 NMCA 65, ¶ 20, 148 N.M. 516 (“[A]n agency is not free to arbitrarily disregard its own rules and prior decisions.”). Under

OCD's own regulations and Commission directive, Empire must file an application to amend Order Nos. R-7765 and R-7766, along with a complete C-108 to be set for a hearing.

C. No Shortcuts to Avoid Amending the EMSU Unit Order and EMSU Waterflood Order

The EMSU Unit Agreement and Unit Order (Order No. R-7765 or "EMSU Unit Order") and EMSU Waterflood Order (Order No. R-7766 or "Waterflood Order") authorize only waterflood operations; they do not authorize CO₂ injection or EOR recovery operations. *See* Order No. R-7765, decretal ¶ 4; Order No. R-7766, decretal ¶ 1. Empire seeks an exception from OCD rules and controlling Commission orders that would allow Empire to produce unitized substances from the unitized interval without first amending Order Nos. R-7765 and R-7766. Having wielded the authority of these orders as a sword against Goodnight throughout these proceedings, Empire cannot now hide behind them as a shield to evade the very mandates—and limitations—that authority imposes.

The Statutory Unitization Act requires unit operators to propose, and OCD to approve, the type of enhanced oil recovery operations to be authorized. *See* NMSA 1978, § 70-7-5(C) (requiring applicants to specify "the type of operations contemplated for the unit area"); § 70-7-6(A)(2) (requiring the OCD to find that the proposed unitized methods of operation are "feasible, will prevent waste and will result with reasonable probability in the increased recovery of substantially more oil and gas from the pool or unitized portion thereof than would otherwise be recovered").

Order No. R-7765 authorizes statutory unitization only for the purpose of conducting secondary waterflood operations, which was separately approved under Order No. R-7766. Empire's predecessor-in-interest, Gulf Oil Corporation, did not request authority to conduct CO₂ operations, and the Commission has never authorized any kind of CO₂ operation within the

EMSU. To conduct CO2 operations within the EMSU's unitized interval, the Commission or OCD must first find, among other things, that "the estimated additional costs, if any, of conducting such [proposed] operations will not exceed the estimated value of the additional oil and gas so recovered plus a reasonable profit." *See* NMSA 1978, § 70-7-6(A)(3). That factual finding has never been made with respect to CO2 operations in the EMSU.

Empire previously acknowledged that it will be required to "appl[y] to the Division to amend the Unit" and "to prove . . . that the estimated additional costs of conducting the proposed CO2 flood operations will not exceed the estimated value of the additional oil and gas so recovered plus a reasonable profit." *See* Empire Reply in Support of Mot. for Clarification (9/19/2024), at 3. That time has now come, and Empire cannot simply walk away from its prior concessions. It must seek to amend **both** Order No. R-7765 to authorize CO2 EOR as an approved method of unit operation and Order No. R-7766 to approve CO2 injection.

D. As an Operator Who is Not in Compliance with 19.15.5.9.A NMAC, Empire is Ineligible to Obtain an Injection Permit

The Division's regulations prohibit granting injection permits to operators not in compliance with 19.15.5.9.A NMAC. With 670 wells, Empire is permitted no more than seven wells to be "inactive" for more than 15 months. 19.15.5.9.A(4)(c) NMAC. Empire has 21 wells that fall into that category, making it ineligible even to apply for injection until it brings those wells into compliance. *See* Empire Inactive Well List as of 4/6/2026, attached as Exhibit 8. As the Commission ordered, Empire cannot get a pass on this regulatory requirement, either.

IV. The OCD Has Discretion to Ensure Empire's Pilot Project Adequately Delineates the Purported ROZ

The Commission determined that the OCD has the authority and "may at its discretion, implement the suspension ordered" in Order No. R-24004. *See* Order No. R-24004-A, ¶ 24 (emphasis added). This discretion includes the authority to evaluate whatever pilot project

Empire proposes to ensure it sufficiently delineates the purported San Andres ROZ, as Empire represented to the Commission it would do, and adequately establishes the viability of a full-scale San Andres CO2 flood project.

Empire's own engineering expert testified that "you can never use one data point to make a decision." West 4/11/2025, Tr. 12:6-10 (addressing fracture study that was limited to a single well, the EMSU-679). A one-well huff-n-puff would be a single data point across more than 14,000 acres in the EMSU. That is insufficient to delineate the San Andres ROZ and falls far short of what is necessary to determine if a full-scale EOR project in the EMSU is viable. Empire's proposal is not a serious pilot project; it is a pretext.

Moreover, a huff-n-puff is not what the Commission contemplated when it ordered Goodnight's injection to be suspended. The Commission contemplated suspension if Empire started a "CO2 flood" not a "CO2 huff" in a single well. *See* Order No. R-24004-A, ¶ 25 ("Goodnight's SWD wells cannot dispose of water when an active CO2 flood is being performed.") (emphasis added). At an absolute minimum, both delineation and viability of a full-scale project must be established before Goodnight's injection authority can be suspended. Empire seeks to shut down Goodnight's operations without meeting even this basic threshold. The OCD's Implementation Directions appropriately preserve this discretion by requiring Empire to demonstrate its commitment to a meaningful pilot project before Goodnight must cease operations.

CONCLUSION

For the foregoing reasons, Goodnight Midstream Permian, LLC respectfully requests the Commission deny Empire's Motion. The OCD's Implementation Directions properly implements the Commission's Amended Order while ensuring compliance with all applicable regulatory requirements. Empire is not entitled to exemptions from the regulations that govern

all enhanced oil recovery operations in New Mexico. To grant such exemptions would be arbitrary, contrary to law, and profoundly unfair to every other operator who must follow the rules.

The Commission should affirm the Division's Implementation Directions in all respects and unequivocally confirm that Empire must comply with all regulatory requirements without exception, including: (1) filing C-108 applications for all proposed injection wells; (2) amending Order Nos. R-7765 and R-7766 through appropriate hearing processes; (3) satisfying all requirements of the Statutory Unitization Act, NMSA 1978, § 70-7-1 *et seq.*; and (4) bringing its inactive wells into compliance with 19.15.5.9.A NMAC before seeking injection authority.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2026, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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EXHIBIT 1



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February 23, 2026

VIA ELECTRONIC MAIL

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**Re: Empire New Mexico, LLC's Request to Modify the Division's
Implementation of OCC Order Nos. R-24004 and 24004-A**

Dear Deputy Director Powell:

I am writing in response to Empire's recent correspondence of February 18, 2026, ("Empire Letter") asking the Division to modify its directions for implementation of Commission Order Nos. R-24004 and R-24004-A (collectively, "Commission Orders"). For the reasons outlined below—and addressed in the Commission Orders—Goodnight Midstream Permian, LLC ("Goodnight") vigorously opposes modification of the Division's directions.

During the course of this continuing dispute, Empire has sought to use the EMSU Unit Agreement and Unitization Order (Order No. R-7765 or "EMSU Unit Order") as a sword against Goodnight. It has argued that the EMSU Unit Order and Unit Agreement grant Empire, as operator of the EMSU, the exclusive right to produce "Unitized Substances" from the EMSU and that "Empire has the exclusive rights to decide how to best extract" those substances from the EMSU's unitized interval, as the Commission found. *See* Empire Closing Brief. at 1; *see also* Order No. R-24004, ¶¶ A14-27. The Commission also found, citing Empire's legal argument, that the EMSU's "Unitization is [a] 'federally and state-approved contract that binds multiple entities and stakeholders, including Empire, the Bureau of Land Management and New Mexico State Land Office.'" *Id.* ¶ 72 (emphasis added).

Having once stood behind the legal authority that created the EMSU, Empire now seeks to shield itself from the mandates of that same authority that continues to govern all unit operations and production of unitized substances under Order Nos. R-7765, R-7766, and the Statutory Unitization Act, 1978 NMSA, Section 70-7-1 *et. seq.* It also seeks to dodge the regulatory requirements applicable to every enhanced oil recovery ("EOR") project in the state—including all pilot projects—that the Commission made clear remain applicable to Empire "if it chooses to exercise the opportunity the Commission has provided for it to establish a CO2 EOR pilot project." *See* Order No. R-24004-A, ¶ 25. Alarming, Empire also discloses that its representation to the Commission at the hearing that it would "go big" to delineate the purported

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San Andres ROZ across the EMSU once Goodnight's injection is shut in appears to have been little more than a classic bait and switch. It is now proposing nothing more than a single-well huff-n-puff. *Compare* W. West, Tr. 4/11/25 35:23-36:6 (explaining that Empire's chairman "goes big" and "doesn't want to do a huff and puff") *with* Empire Letter at 4 ("By way of example, an existing well within the EMSU could be utilized for a huff-n-puff recovery method"). Among the many problems arising from Empire's correspondence, these are the three most concerning.

First, recognizing it is bound by the authority that created the EMSU and currently governs unit operations and production, Empire is necessarily constrained by the limitations and requirements imposed by Order Nos. R-7765, R-7766, and the Statutory Unitization Act (the "Act"). Under the auspices of the Act, Order No. R-7765 authorized creation of the EMSU and involuntarily committed the interests of certain mineral owners, unitizing the San Andres and Grayburg formations only for purposes of secondary recovery through waterflood operations. *See* Order No. R-7765, decretal ¶ 4. The Act requires unit operators to propose, and the Division to approve, the type of enhanced oil recovery operations to be authorized. *See* § 70-7-5(C) (requiring applicants to specify "the type of operations contemplated for the unit area"); § 70-7-6(A)(2) (requiring the Division to find "that one or more of the said unitized methods of operations . . . is feasible, will prevent waste and will result with reasonable probability in the increased recovery of substantially more oil and gas from the pool or unitized portion thereof than would otherwise be recovered[.]"). Order No. R-7765 authorizes statutory unitization only for the purpose of conducting secondary waterflood operations, which was separately approved under Order No. R-7766.

Empire's predecessor-in-interest, Gulf Oil Corporation, did not request authority to conduct CO2 operations and the Commission has never authorized any kind of CO2 operation. To do so within the EMSU's unitized interval, as Empire now proposes, the Commission or Division would need to find, among other things, that "the estimated additional costs, if any, of conducting such [proposed] operations will not exceed the estimate value of the additional oil and gas so recovered plus a reasonable profit[.]" § 70-7-6(A)(3). That factual finding has never been made with respect to CO2 operations in the EMSU unitized interval. Empire consistently argued throughout the hearing that it was premature to require an economic showing on a CO2 project because Empire was not yet proposing CO2 operations in the EMSU. Empire previously already admitted, however, that it will need to provide such proof at the time it seeks to amend Order No. R-7765. *See* Empire Reply in Support of Mot. for Clarification, filed 9/19/24 at 3 (acknowledging 17 months ago that Empire will be required to "appl[y] to the Division to amend the Unit" and "to prove . . . that the estimated additional costs of conducting the proposed CO2 flood operations will not exceed the estimated value of the additional oil and gas so recovered plus a reasonable profit."). That time has come.

In its implementation directions, the Division recognizes Empire will be required to amend Order No. R-7766 to expand the authorized injection to include a CO2 operation. *See* Division Implementation Directions at 2. But because Empire is targeting production of unitized



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substances from the unitized interval, Empire must also amend Order No. R-7765¹ to expand approved unit operations to include CO2 injection. To do that, it must file an application with the Division that meets all requirements of Section 70-7-5 and the Division must enter an order that satisfies Section 70-7-7 and finds all required elements under Section 70-7-6. *See* § 70-7-9 (contemplating unit order amendments). Empire has already conceded this is necessary.

This step is inescapable for the reasons outlined above but also because Order No. R-7765 includes a participation formula applicable only to secondary oil recovery through waterflood operations, not CO2 operations where there are no primary reserves.² Order No. R-7765 ¶¶ 27-35. Order No. R-7765 must be updated, therefore, to incorporate a new provision for how separate costs, credits, and production from CO2 operations are to be allocated among EMSU owners—including those forced to join the EMSU under Order No. R-7765. There is simply no getting around the need to amend Order No. R-7765 if Empire chooses to establish a CO2 EOR pilot project to produce unitized substances within the EMSU’s unitized interval.

The Commission Orders did not authorize Empire to undertake CO2 operations pursuant to the Statutory Unitization Act; it merely provides Empire the “opportunity to establish a CO2 EOR pilot project[.]” Order No. R-24004-A, ¶ 25. To do that, Empire must go through all mandatory steps. The Commission Order provides Empire no short cuts: “Empire must follow all relevant and applicable regulations and permitting processes if it chooses to exercise the opportunity the Commission has provided for it[.]” *Id.*

Second, after the Division reviewed the seriousness of its obligations under the Class II Underground Injection Control (“UIC”) Program in its testimony and arguments before the Commission, Empire nevertheless urges the Division to disregard the very regulations on which the Division’s UIC primacy is based. The Division obtained jurisdiction and authority to oversee and implement a Class II UIC permitting program in the early 1980s pursuant to the injection regulations Empire used to challenge Goodnight’s injection authority at hearing. Empire now wants the Division to give it a pass to avoid having to meet those same regulations. That is astonishing.

The Commission Orders make clear Empire is required to follow all “regulations and permitting processes” to establish a CO2 EOR pilot project. Order No. R-24004-A, ¶ 25. The

¹ Section 70-7-9 clearly contemplates amendments to statutory unitization orders and requires applications to amend to be evaluated “in the same manner and subject to the same conditions as an original order providing for unit operations[.]”

² Goodnight had argued that Statutory Unitization Act applies only to enhanced oil recovery operations following primary production; not to CO2 operations in a natural ROZ, where there has been no primary production and the San Andres ROZ has not been reasonably defined by development. The Commission Orders, however, rejected Goodnight’s argument and held that “Based on the 1984 Commission Order, Empire has the exclusive rights to produce the ROZ in the EMSU.” Order No. R-24004, ¶¶ A14-27.



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Division's Class II UIC regulations require a permit "for any injection wells that inject . . . fluids for enhanced recovery of oil or natural gas." 19.15.26.8.A(1)(b) NMAC. Operators seeking authority to construct and operate injection wells are required to file a "form C-108 complete with all attachments[.]" 19.15.26.8.B(1) NMAC ("The operator shall apply . . ."). There are no provisions and no precedent for an operator to file a C-103 sundry in place of a C-108, as Empire requests—especially not when the proposed project contemplates technically challenging and highly corrosive CO₂ injection.

"Any injection wells" means "any injection wells," whether part of a proposed pilot project or a full-scale EOR project. Division regulations do not distinguish between injection operations to determine viability through a so-called "pilot project" and injection operations that are expected to be persistent. All injection is subject to Division regulations requiring submission of C-108s. *See, e.g.*, Order No. R-13302, ¶¶ 2, 5 (approving after hearing a "pilot waterflood project for secondary recovery" pursuant to Division regulation 19.15.26 NMAC); Order No. R-20321 (approving after hearing a "pilot pressure maintenance project" pursuant to 19.15.26 NMAC). Counsel for Goodnight is unaware of any precedent where the Division has accepted a C-103 sundry in place of a C-108 and Empire has referenced none in support of its request.

In the specific case of enhanced oil recovery injection, Division regulations mandate that all such applications are to be set for hearing. 19.15.26.8.F(1) NMAC; *see also* Order Nos. R-13302 and R-20321. Not only do the Commission Orders not authorize the Division to allow Empire to skip this requirement—the Commission expressly directs the Division to require Empire to follow all "regulations and permitting processes"—but it is also black letter law that the Division must abide by its own regulations. *See Hobbs Gas Co. v. N.M. PSC*, 1993-NMSC-032, ¶¶ 7-8, 858 P.2d 54; *see also Bass Enters. Prod. Co. v. Mosaic Potash Carlsbad Inc.*, 2010 NMCA 65, ¶ 20, 148 N.M. 516 ("[A]n agency is not free to arbitrarily disregard its own rules and prior decisions."). Under the Division's own regulations and the Commission directive, Empire must file an application to amend Order Nos. R-7765, R-7766, and a complete C-108 to be set for a hearing.

In addition, the Division's regulations prohibit granting injection permits to operators not in compliance with 19.15.5.9.A NMAC. With 670 wells, Empire is permitted no more than seven wells to be "inactive" for more than 15 months. 19.15.5.9.A(4)(c) NMAC. Empire has 19 wells that fall into that category, making it ineligible even to apply for injection until it brings those wells into compliance. *See* Empire Inactive Well List as of 2/23/26, attached as Exhibit A. As the Commission ordered, Empire cannot get a pass on this regulatory requirement either.

Third, after representing to the Commission at hearing that Empire plans to delineate the ROZ in the EMSU to confirm the claims it made in testimony³—"to give you the determination

³ J. Wheeler, April 9, 2025, Tr. 55:19-25 (confirming to Commissioner Lamkin plans to delineate and confirm ROZ claims).



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if it's limited to one area or if we can prove up throughout the entire EMSU unit"⁴— and that it would likely require core data from at least 6-7 wells to give the Commission the proof needed to be comfortable approving a CO2 project,⁵ Empire is now offering the Division a completely different proposal. It is proposing to convert a single existing well in the EMSU for a huff-n-puff project in the San Andres. *See* Empire Letter at 4.

In contrast, when convincing the Commission to suspend Goodnight's injection, Empire asserted at hearing it was "ready to spend a billion dollars" if Goodnight's injection is stopped. Empire Closing, 5/21/25, Tr. 19:6-9. Empire also argued it had already done enough work to prove the existence of recoverable ROZ in the San Andres. Empire Closing, 5/21/25, Tr. 23:20-23 ("Every experienced and educated science and engineering expert that testified in this case agrees, there's a ROZ in the San Andres; we are done."). In testimony, Empire's engineering expert asserted that Empire's chairman "goes big"—his plans are to lay a pipeline and conduct the CO2 injection. W. West, Tr. 4/11/25 35:23. "He does not want to do a huff and puff. He does not want to do different things. He wants to produce the minerals out there." *Id.* 36:5-6.

After telling the Commission one thing, however, Empire is preparing to do something different that will not delineate even a modest portion of the San Andres ROZ. Having asserted that a EMSU CO2 project would be "a great New Mexico success story[,]" Empire has backed off its bravado and grandiose plans to instead propose a single-well pilot project "to run a small, short-term trial to determine if a full-scale project is viable." Empire Letter at 4. But as Empire's engineering expert testified, "you can never use one data point to make a decision." West 4/11/25, Tr. 12:6-10 (addressing fracture study that was limited to a single well, the EMSU-679). A one-well huff-n-puff would be a single data point across more than 14,000 acres in the EMSU. That is insufficient to delineate the San Andres ROZ and short of what would be necessary determine if a full-scale EOR project in the EMSU is viable.

Nor is a huff-n-puff what the Commission contemplated when it ordered Goodnight's injection to be suspended. It contemplated suspension if Empire started a "CO2 flood" not a "CO2 huff" in a single well. *See* Order No. R-24004-A, ¶ 25 ("Goodnight's SWD wells cannot dispose of water when an active CO2 flood is being performed." (emphasis added)). It is unclear how, depending on location and depth, a one-well huff-n-puff, as opposed to a broader CO2 flood, would be adversely impacted by Goodnight's continued produced water injection.

The Commission determined that the Division has the authority and "may at its discretion, implement the suspension ordered" in Order No. R-24004. *See* Order No. R-24004-A, ¶ 24 (emphasis added). Goodnight asks that the Division employ this discretion to evaluate whatever pilot project Empire proposes to ensure it sufficiently delineates the purported San Andres ROZ, as Empire represented to the Commission it would do, and adequately establishes

⁴ J. Wheeler, April 9, 2025, Tr. 54:1-4.

⁵ J. Wheeler, April 9, 2025, Tr. 54:15-55:25.



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the viability of a full-scale San Andres CO2 flood project. At a minimum, both delineation and viability need to be established before Goodnight's injection authority can be suspended.

We appreciate the Division's consideration of these concerns and look forward to continued engagement and feedback in this important process. If it would be helpful to schedule a stakeholder meeting to review these issues in consideration of implementing the Division's directions, Goodnight is available at the Division's convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read 'A. Rankin'.

Adam G. Rankin
Partner
of Holland & Hart LLP

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EXHIBIT A

Inactive Well List

Total Well Count: 670 Inactive Well Count: 19

Printed On: Monday, February 23 2026

District	API	Well	ULSTR	OCD Unit	Ogrid	Operator	Lease Type	Surface Owner	Well Type	Last Production	Formation/Notes	Status	TA Exp Date
1	30-025-23949	ARROWHEAD GRAYBURG UNIT #108	I-25-21S-36E	I	330679	Empire New Mexico LLC	P	P	O	09/2023			
1	30-025-04928	ARROWHEAD GRAYBURG UNIT #142	N-36-21S-36E	N	330679	Empire New Mexico LLC	S	S	O	09/2024	TA EXPIRES 08/14/2014		
1	30-025-37284	ARROWHEAD GRAYBURG UNIT #391	4-07-22S-37E	M	330679	Empire New Mexico LLC	P	P	O	10/2024	GRAYBURG		
1	30-025-30320	DAURON #004	7-01-21S-37E	G	330679	Empire New Mexico LLC	P	P	O	07/2024	ABO 04/08/2010 PLUGBACK DHC 430		
1	30-025-09511	EUGENE COATES #007	L-03-24S-36E	L	330679	Empire New Mexico LLC	P	P	O	10/2004		T	12/13/2024
1	30-025-33024	EUMONT 16 STATE COM #001	M-16-19S-37E	M	330679	Empire New Mexico LLC	S	S	G	07/2024	YATES-SEVEN RIVERS-QUEEN		
1	30-025-30277	EUNICE MONUMENT SOUTH UNIT #122	M-25-20S-36E	M	330679	Empire New Mexico LLC	F	P	O	09/2024			
1	30-025-29957	EUNICE MONUMENT SOUTH UNIT #123	N-25-20S-36E	N	330679	Empire New Mexico LLC	F	P	O	04/2023	03/24/2008 RETURN TO PROD	T	11/1/2025
1	30-025-04428	EUNICE MONUMENT SOUTH UNIT #142	E-36-20S-36E	E	330679	Empire New Mexico LLC	S	S	O	09/2023	GRAYBURG SAN ANDRES		
1	30-025-04427	EUNICE MONUMENT SOUTH UNIT #165	L-36-20S-36E	L	330679	Empire New Mexico LLC	S	S	O	04/2009		T	9/26/2025
1	30-025-04558	EUNICE MONUMENT SOUTH UNIT #335	M-08-21S-36E	M	330679	Empire New Mexico LLC	F	P	O	04/2022	05/16/08 RET WELL TO PROD	T	6/26/2025
1	30-025-04678	EUNICE MONUMENT SOUTH UNIT #409	I-18-21S-36E	I	330679	Empire New Mexico LLC	F	F	O	04/2023	GRAYBURG SAN ANDRES	T	10/23/2025
1	30-025-35461	EUNICE MONUMENT SOUTH UNIT #560	O-36-20S-36E	O	330679	Empire New Mexico LLC	S	S	O	06/2024	GRAYBURG-SAN ANDRES		
1	30-025-04206	EUNICE MONUMENT SOUTH UNIT B #863	P-10-20S-36E	P	330679	Empire New Mexico LLC	F	F	O	02/2019		T	3/21/2025
1	30-025-04308	EUNICE MONUMENT SOUTH UNIT B #895	A-24-20S-36E	A	330679	Empire New Mexico LLC	F	P	O	04/2024	GRAYBURG SAN ANDRES		
1	30-025-04292	EUNICE MONUMENT SOUTH UNIT B #902	D-23-20S-36E	D	330679	Empire New Mexico LLC	F	P	O	10/2023			
1	30-025-04314	EUNICE MONUMENT SOUTH UNIT B #909	G-24-20S-36E	G	330679	Empire New Mexico LLC	F	P	O	05/2018			
1	30-025-27523	J F JANDA NCT D #002	14-02-21S-36E	F	330679	Empire New Mexico LLC	S	S	O	02/2024	TUBB-DRINKARD		
1	30-025-34560	MONUMENT 36 STATE #001	P-36-18S-36E	P	330679	Empire New Mexico LLC	S	P	O	11/2015	ABO - 12/11/2009 PLGBCK DRINKARD	T	12/18/2025

WHERE Operator:330679, County:All, District:All, Township:All, Range:All, Section:All, Production(months):15, Excludes Wells Under ACOI, Excludes Wells in Approved TA Period

EXHIBIT 2

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

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

CASE NO. 24123

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

CASE NOS. 23614-23617

**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 EMPIRE NEW MEXICO LLC
TO REVOKE INJECTION AUTHORITY,
LEA COUNTY, NEW MEXICO**

CASE NOS. 24018-24020, 24025

EMPIRE NEW MEXICO LLC'S MOTION FOR REHEARING

INTRODUCTION

Pursuant to NMSA 1978, § 70-2-25(A) and 19.15.4.25 NMAC, Empire New Mexico LLC (“Empire”) timely moves for rehearing on certain, limited aspects of the New Mexico Conservation Commission’s (“Commission”) Order Denying Goodnight’s Applications and Partially Granting/Partially Denying Empire’s Applications entered on September 12, 2025 (OCC Order No. R-24004).

Empire greatly appreciates the Commission’s thorough evaluation of the issues involved in this proceeding. At the hearing, the Commission was charged with determining whether Goodnight’s produced water injection activities are interfering with Empire’s recovery of residual hydrocarbons within the Eunice Monument South Unit (“EMSU” or “Unit”). In its Order, the Commission denied Goodnight’s applications for additional salt water disposal (“SWD”) wells because, among other reasons, “the injection of hundreds of thousands of barrels a day conflicts with Empire’s exclusive rights to extract oil in the EMSU.”¹ This decision was correct, supported by the evidence, and consistent with the Division’s prior order denying Goodnight’s application for authorization to inject into its proposed Piazza SWD.²

Empire only seeks rehearing regarding the Commission’s decision to deny Empire’s request to permanently revoke Goodnight’s authorization to inject into Goodnight’s four existing SWD wells – the Dawson, Banks, Sosa, and Ryno – on the grounds that Empire did not adduce evidence of present impairment of correlative rights or waste in the EMSU or that the residual oil zone (“ROZ”) is recoverable.³ Empire respectfully disagrees with the Commission’s assessment of the evidence on this limited issue. Through this motion, Empire will identify the evidence

¹ Order at ¶ 41.

² Order at ¶ 42; Goodnight Ex. A-3.

³ Order at ¶¶ 43-60.

adduced at hearing demonstrating present impairment of correlative rights and waste, as well as recoverability of the ROZ. As demonstrated below, Empire's Motion for Rehearing should be granted and the Commission's Order amended accordingly.

ARGUMENT

The New Mexico Oil and Gas Act requires the Commission to prevent "waste" of hydrocarbons and protect "correlative rights."⁴ The Act broadly defines both "underground waste" and "correlative rights" to preclude any injection operations that "*tend to reduce* the total quantity of oil ultimately recovered from any pool," or to prevent an interest owner from producing without waste his just and equitable share of oil in the pool.⁵ Because this matter involves a unitized interval, the EMSU, the Commission must also apply the Statutory Unitization Act,⁶ which provides "for the unitized management, operation and further development of . . . oil and gas properties . . . to the end that greater ultimate recovery may be had therefrom, waste prevented, and correlative rights protected of all owners and mineral interests in each unitized area."⁷ Accordingly, the oil reserves underlying the EMSU must be protected under New Mexico law.

At hearing, Empire demonstrated, by a preponderance of the evidence, that Goodnight's current and proposed injection of wastewater into the EMSU is causing waste and impairing Empire's correlative rights. While the Commission barred Goodnight's efforts to expand its SWD operations within the EMSU, Goodnight appears to argue that the Commission nonetheless left the door open for it to continue operating existing wells on the grounds that Empire did not demonstrate "current" waste or impairment of correlative rights or demonstrate that the residual

⁴ NMSA 1978, §§ 70-2-6 and 70-2-11; *see also Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, ¶ 27, 373 P.2d 809 ("Our legislature has explicitly defined both 'waste' and 'correlative rights' and placed upon the commission the duty of preventing one and protecting the other.")

⁵ §§ 70-2-3(A), -33(H).

⁶ NMSA 1978, §§ 70-7-1 to -21 (1975, as amended through 2024).

⁷ § 70-7-1.

oil zone (“ROZ”) is recoverable. As demonstrated below, Empire presented overwhelming evidence of both, and the Commission’s Order should be modified to permanently revoke Goodnight’s existing SWD permits.

I. Empire demonstrated that Goodnight’s injection into the San Andres formation is causing, and will continue to cause, waste in the EMSU.

“Underground waste” is defined in Section 70-2-3(A) as follows:

“underground waste” as those words are generally understood in the oil and gas business, and in any event to embrace the inefficient, excessive or improper, use or dissipation of the reservoir energy, including gas energy and water drive, of any pool, and the locating, spacing, drilling, equipping, operating or producing, of any well or wells in a manner *to reduce or tend to reduce* the total quantity of crude petroleum oil or natural gas ultimately recovered from any pool, and the use of inefficient underground storage of natural gas.

(emphasis added). In order to demonstrate waste, Empire was not required to demonstrate a “current,” quantifiable reduction in the total quantity of oil, but met its evidentiary burden by showing that the wastewater injection operations will *tend*⁸ to reduce the total quantity of oil in the unitized interval.

By denying Goodnight’s applications for new SWD wells within the EMSU, the Commission has already recognized that Goodnight’s intended operations in the EMSU will cause waste. The evidence presented at hearing further confirms that Goodnight’s current SWD operations are causing wastewater to migrate, which is reducing, and will tend to reduce, the total recoverable hydrocarbons. At hearing, Empire demonstrated that a ROZ exists within the San

⁸ Cf. *State v. James*, 1990-NMCA-135, ¶ 15, 111 N.M. 473, 806 P.2d 1063 (finding that the word “tend” means that the conduct at issue need not result in an actual harm, but merely the potential to cause harm); *State v. Hogie*, 454 N.W.2d 501, 503 (N.D. 1990) (“‘[T]ends’ indicates tendency, not certainty.”); *Chandler v. State*, 232 S.W. 318, 318 (Tex. 1921), *aff’d sub nom. Chandler v. State of Texas*, 260 U.S. 708, 43 S. Ct. 247, 67 L. Ed. 474 (1923) (“When we look to the dictionary for a definition of the word ‘tend,’ we find it means: ‘To move in a certain direction;’ ‘to have a leaning;’ ‘to contribute to.’”).

Andres—a fact recognized by the Commission and not disputed by Goodnight.⁹ Goodnight’s own evidence adduced at hearing confirmed that oil saturation exists throughout the San Andres.¹⁰ Empire has also shown that the wastewater Goodnight is injecting into the Lower San Andres is migrating into the Upper San Andres and Grayburg.¹¹

As part of its obligation to prevent waste, the Commission has authority “to prevent the drowning by water of any stratum or part thereof capable of producing oil or gas or both oil and gas in paying quantities *and to prevent the premature and irregular encroachment of water or any other kind of water encroachment that reduces or tends to reduce the total ultimate recovery of crude petroleum oil or gas or both oil and gas from any pool.*”¹² New Mexico law is clear that precise proof of a specific volume or hydrocarbons is not required to establish waste,¹³ and evidence demonstrating that wastewater operations will *tend to reduce* recovery meets the definition of waste.¹⁴

Empire’s evidence at hearing demonstrated that Goodnight’s injection to date and proposed injection into the future adversely impacts Empire’s ability to recover hydrocarbons by:

- Washing out and reducing secondary recovery of oil in the Grayburg Formation;¹⁵
- Washing out and reducing future tertiary development of oil in the Grayburg Formation;¹⁶ and
- Washing out and reducing future tertiary recovery of oil in the San Andres Formation.¹⁷

⁹ See, e.g., 04/25 Tr. 104:22-25 (Commissioner Ampomah recognizing that “Empire’s experts and also even Goodnight’s experts, they’ve all – they’ve all presented to the Commission, at least based on the evidence, there is a ROZ.”).

¹⁰ 04/21 Tr. 242:17-243:14.

¹¹ Empire FOF #85(a)-(r), 86, 88(a)-(d).

¹² § 70-2-12(B)(4) (emphasis added).

¹³ § 70-2-17(A); *Grace v. Oil Conservation Comm’n*, 1975-NMSC-001, ¶ 27, 87 N.M. 205, 531 P.2d 939.

¹⁴ § 70-2-3(A).

¹⁵ Empire Ex. B at 8-9, 13; Empire Ex. C at 6; *id.* at 8, ¶ 15; Empire Ex. G at 5, ¶ 15; Empire Ex. I at 15.

¹⁶ Empire Ex. B at 8-9, 13; Empire Ex. I at 12-13.

¹⁷ Empire Ex. B at 12; Empire Ex. C at 6; *id.* at 8, ¶ 15; Empire Ex. I at 12-13, 15; Empire Ex. I-2.

The evidence adduced at hearing shows that these negative impacts within the Grayburg and San Andres Formations are occurring, and will continue to occur, because Goodnight's injection of commercial volumes pressurizes the San Andres and forces wastewater to migrate upwards through vertical plumes into the Upper San Andres and Grayburg formations.¹⁸ The evidence established that Goodnight's wastewater is communicating out of the permitted formation and into the Grayburg through fractures,¹⁹ and via the waterflood that is currently being conducted by Empire to produce the Grayburg.²⁰ Grayburg producers have extracted more water than expected, and the additional unanticipated volumes are unquestionably coming from the San Andres as evidenced by Chevron's water chemistry work and modeling and studies done by Empire witnesses.²¹ The wastewater disposal rates create higher pressures in the ROZ and increase the potential for hydraulic fracturing and vertical communication, which have a negative impact on current field operations in the traditional Grayburg producing zone as well as future ROZ operations.²²

Moreover, there are significant water chemistry differences between the Delaware Basin water that Goodnight is injecting and water within the San Andres and Grayburg formations.²³ As a result, the injection is causing scale and damaging the formations.²⁴ The off-lease produced water has high saline content that creates scale when it reacts with the sulfates in the unitized formations, which will irreparably "block off" and "cement up" the ROZ and Grayburg and reduce both

¹⁸ Empire Ex. N-23; 04/10 Tr. 156:21-158:5; 04/11 Tr. 62:25-64:25.

¹⁹ Empire Exs. N-23; N-24; *see* 02/24 Tr. 29:22-30:3, 34:18-21, 154:11-13; 04/09 Tr. 163:5- 167:4; 04/11 Tr. 79:2-82:25.

²⁰ 04/09 Tr. 161:8 – 162:22, 196:24-198:20.

²¹ 02/24 Tr. 28:16-30:13, 34:12-21; 02/27 Tr. 766:6-11; 04/09 Tr. 163:14-16; 04/24 Tr. 160:7-23.

²² Empire FOF #60

²³ 04/09 Tr. 160:7-17, 180:20-188:18.

²⁴ *Id.*; *see also* 02/24 Tr. 38:13-39:15.

reservoirs' potential.²⁵ Additionally, scale and corrosion (caused by iron in the injected wastewater) has damaged Goodnight's own wells and will damage Empire's wells and equipment.²⁶

Goodnight's operations not only threaten the very existence of the ROZ but also increase the costs to operate a field by causing equipment wear and tear, requiring Empire to operate its CO₂ tertiary recovery at a higher pressure than necessary, and requiring Empire to inject the produced water into another zone to make room for the CO₂ to avoid fracturing the formation.²⁷

As summarized above, the evidence is overwhelming that Goodnight's continued injection of wastewater hinders, and *tends to* hinder, Empire's ability to recover hydrocarbons from the Grayburg and the ROZ within the EMSU, which is precisely the type of "underground waste" the Commission is tasked with preventing. Rice and Goodnight's attempts to impose artificial constraints on the Commission's analysis of waste, *i.e.*, that Empire prove actual recoverability rather than impairment to recoverability, misstates the statutory definition of waste and should not be adopted by the Commission. Rather, the question is whether Goodnight's operation of its SWD wells will "reduce or tend to reduce" the total quantity of oil ultimately recovered.²⁸ Empire's showing of a present and future threat to the recoverability of the Grayburg and ROZ demonstrates the existence of "underground waste" by a preponderance of the evidence.

For these reasons, the Commission should modify its Order and permanently revoke Goodnight's existing SWD permits.

²⁵ 02/24 Tr. 38:13-39:15; 04/09 Tr. 160:7-17, 180:20-188:18; 04/09 Tr. 184:8-185:12.

²⁶ 4/09 Tr. 186:17-23, 190:15-191:17.

²⁷ Empire FOF #89(d), 90(f), (l).

²⁸ § 70-2-3(A).

II. Empire demonstrated that Goodnight's injection operations are presently impairing Empire's correlative rights.

Section 70-2-33(H) defines correlative rights as:

[T]he opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste the owner's just and equitable share of the oil or gas or both in the pool, being an amount, so far as can be practicably determined and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas or both under the property bears to the total recoverable oil or gas or both in the pool and, for such purpose, to use the owner's just and equitable share of the reservoir energy.

The Commission has “recognized that the protection of the correlative rights . . . weighs equally with the obligation to prevent waste.”²⁹

Goodnight's wastewater, which is indisputably being pumped into the Grayburg as part of Empire's current waterflood operations, is also migrating into the Upper San Andres and Grayburg formations, is infringing on Empire's correlative rights throughout the San Andres and the Grayburg formations within the EMSU. Indeed, Goodnight's commercial disposal has already increased the expense of, and lowered production from, Empire's Grayburg producers.³⁰ Because Empire is the Unit Operator of the EMSU, it must be afforded the opportunity to produce its unitized interval without waste.

“The damage has already been done.”³¹ As established at hearing, and outlined in the prior section, Goodnight's SWD operations are increasing costs and threatening recoverability. Indeed, its continued operations will eventually close off the ROZ—making it inaccessible to any producer and leaving more than a billion dollars in royalties and taxes to the State of New Mexico,

²⁹ *Jalapeno Corp. v. N.M. Conservation Comm'n*, No. A-1-CA-37449, 2020 WL 5743659, at *6 (N.M. Ct. App. Sept. 23, 2020).

³⁰ 04/11 Tr. 43:7-25.

³¹ *Id.*

effectively sealed underground.³² For these reasons, the Commission should modify its Order to put an immediate and permanent stop to Goodnight's destructive and improper wastewater operations in the EMSU.

III. Empire does not need to prove production in paying quantities to meet its evidentiary burden in this matter.

In its Order, the Commission declined to permanently revoke Goodnight's existing SWD permits on the grounds that there was insufficient evidence presented at hearing to prove whether the ROZ is recoverable.³³ Empire respectfully submits that this is not a proper basis to deny its application, where, as here, both waste and impact to correlative rights have been demonstrated by a preponderance of the evidence.

The Commission has already recognized that unitized operations in the EMSU will lead to the recovery of oil and gas at a profitable level in its prior decision approving the unitization of the EMSU, and the Division recognized the same in its order denying Goodnight's application for the proposed Piazza Well.³⁴ By denying Goodnight's applications for additional wells (plus expansion of an existing SWD well) in this matter, the Commission has reaffirmed those prior findings. Despite this, the Commission seems persuaded by arguments from Rice and Goodnight that Empire's tertiary recovery project must be recoverable in paying quantities to revoke Goodnight's existing permits. Such arguments are not supported or required by New Mexico law.

As previously discussed, the Commission has jurisdiction to issue orders "to prevent the drowning by water of any stratum or part thereof capable of producing oil or gas or both oil and gas in paying quantities and to prevent the premature and irregular encroachment of water or any

³² 02/24 Tr. 38:13-39:15; 04/09 Tr. 160:7-17, 180:20-188:18; 04/09 Tr. 154:3-7, 184:8-185:12.

³³ Order at ¶¶ 28-38, 57-60.

³⁴ See Order No. R-7765; Order No. R-22869-A at 8, ¶ 11.

other kind of water encroachment that reduces or tends to reduce the total ultimate recovery of crude petroleum oil...from any pool.”³⁵ The Commission also has jurisdiction “to require wells to be drilled, operated and produced in such a manner as to prevent injury to neighboring leases or properties.”³⁶ The Commission may appropriately deny injection on the grounds that the SWD operations are causing waste by “reduc[ing] or tend[ing] to reduce the total ultimate recovery” of hydrocarbons and is not required to also find that the injection reduces production in paying quantities.³⁷

The Division has defined “production in paying quantities” as “the production of a quantity of oil and gas that yields revenue in excess of operating expenses.”³⁸ It is well established that whether a well has produced in paying quantities is determined in hindsight, by considering whether the well “pays a profit, even small, over operating expenses . . . though it may never repay its costs, and the enterprise as a whole may be unprofitable.”³⁹ Assuming for the sake of argument that Goodnight and Rice correctly argue that Empire must prove the economics of its tertiary recovery to prevail on its application (a dubious proposition as demonstrated above), Empire has nonetheless presented evidence that the ROZ is sufficiently oil saturated to be recoverable through CO₂ flooding, and that a CO₂ flooding project in the EMSU should yield 18% and may be closer to 30% recovery of the ROZ.⁴⁰ Empire’s witnesses further established that revenue of \$5.5 billion

³⁵ § 70-2-12(B)(4)

³⁶ § 70-2-12(B)(7)

³⁷ § 70-2-3(A); *see also* § 70-2-2 (prohibiting the products of oil or gas from being handled “in such manner or under such conditions or in such amounts as to constitute or result in waste”).

³⁸ 19.15.27.7(Q) NMAC.

³⁹ *Clifton v. Koontz*, 325 S.W.2d 684, 691 (Tex. 1959); *see Maralex Res., Inc. v. Gilbreath*, 2003-NMSC-023, ¶ 9, 134 N.M. 308, 76 P.3d 626.

⁴⁰ *See* 02/27 Tr. 862:20-864:6; 02/28 Tr. 1164:2-19; 04/09 Tr. 154:17-156:18; Empire Exs. I at ¶¶ 30-33, I-26 through I-29.

dollars can be expected from the San Andres ROZ, with \$1.6 billion in royalties and taxes going to the State of New Mexico.⁴¹

The Commission's factual findings on this issue rely on a questionable "dimensionless curve" critique by Goodnight's witness, Dr. Lake,⁴² Rice's desire for oil-in-place comparator calculations,⁴³ and the Commission's rejection of comparator EOR recovery project evidence presented by Empire on grounds unsupported by an evidentiary citation.⁴⁴ These findings fail to dispute the evidentiary showing made by Empire at hearing and are internally inconsistent. To on one hand find that the Seminole and Tall Cotton fields are not useful comparators but on the other hand fault Empire for not presenting additional oil in place data regarding such comparators does not support a determination that Empire failed to demonstrate that the ROZ is recoverable.

While Empire appreciates the Commission's willingness to afford it an opportunity to commence a pilot project to obtain additional data regarding ROZ recoverability, Empire respectfully submits that the suspension of Goodnight's permits should not be contingent on such a project. Because Empire has demonstrated waste and impairment of correlative rights, the Commission may appropriately revoke Goodnight's existing permits without an additional showing of "production in paying quantities." Further, even if the Commission determines that such a showing is also required, Empire met that standard by a preponderance of the evidence. Accordingly, the Commission should modify its Order to permanently revoke the permits for Goodnight's existing SWD wells.

⁴¹ 04/09 Tr. 154:3-7.

⁴² Order at ¶ 60; *see* 04/24 Tr. 202:25 – 207:4 (cross examination of Dr. Lake).

⁴³ Order at ¶ 59.

⁴⁴ Order at ¶ 58.

IV. The Order should be revised to identify the applicable burden of proof.

Throughout the Order, the Commission references “substantial evidence.” While Empire agrees that it has presented “substantial evidence” in support of the Commission’s findings, Empire would request that the Order be modified to make clear that the substantial evidence presented was sufficient to meet the applicable burden of proof, being a preponderance of the evidence.⁴⁵ Empire does not believe or argue that the Commission applied an incorrect burden of proof but recommends that the Order be amended to clarify that the proper burden of proof was applied by either changing all references to “substantial evidence” to “sufficient evidence” or a “preponderance of the evidence” or otherwise making a clear statement that the “substantial evidence” adduced by Empire was sufficient to (1) meet the preponderance of evidence burden applicable to Empire as the moving party and (2) establish that Goodnight failed to prove its case by a preponderance of evidence for the applications where it was the moving party.

CONCLUSION

As established at hearing and further demonstrated through its Closing Brief, Findings of Fact and Conclusions of Law, and this Motion for Rehearing, Empire has met its evidentiary burden to show that Goodnight’s current and proposed injection into the EMSU unitized interval is resulting in waste and impairment of correlative rights and therefore must not be allowed. Empire therefore respectfully requests that the Commission modify its Order to permanently revoke Goodnight’s existing SWD permits.

⁴⁵ § 70-2-11(A).

Respectfully submitted,

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EXHIBIT 3

FILED 1st JUDICIAL DISTRICT COURT
Santa Fe County
1/16/2026 4:06 PM
KATHLEEN VIGIL CLERK OF THE COURT
Shana Stewart

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT**

EMPIRE NEW MEXICO, LLC,

Appellant,

Case assigned to Wilson, Matthew Justin

v.

No.D-101-CV-2026-00177

**NEW MEXICO OIL CONSERVATION
COMMISSION,**

Appellee.

NOTICE OF APPEAL

Pursuant to NMSA 1978, § 70-2-25(B) (1999), NMSA 1978, § 39-3-1.1(C) (1999), and Rule 1-074 NMRA, Empire New Mexico, LLC (“Empire”) hereby gives notice of appeal of the New Mexico Oil Conservation Commission’s December 17, 2025 Amended Order Denying Goodnight’s Applications & Partially Granting/Partially Denying Empire’s Applications. A true and correct copy of the order is attached as Exhibit 1.

Respectfully submitted,

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

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

**DE NOVO APPEAL OF DENIAL
OF PROPOSED NEW WELL
CASE NO. 24123 (PIAZZA)**

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

**PROPOSED NEW WELLS
CASE NO. 23614 (GOODEN)
CASE NO. 23615 (HERNANDEZ)
CASE NO. 23616 (HODGES)
CASE NO. 23617 (SEAVER)**

**APPLICATION OF GOODNIGHT
MIDSTREAM PERMIAN, LLC TO
AMEND ORDER NO. R-2206/SWD-2403
TO INCREASE THE APPROVED INJECTION
RATE IN ITS ANDRE DAWSON SWD #1
LEA COUNTY, NEW MEXICO**

**INCREASE EXISTING WELL
CASE NO. 23775 (DAWSON)**

**APPLICATIONS OF EMPIRE NEW MEXICO,
LLC, TO REVOKE INJECTION AUTHORITY,
LEA COUNTY, NEW MEXICO**

**REVOKE EXISTING WELLS
CASE NO. 24018 (DAWSON)
CASE NO. 24019 (BANKS)
CASE NO. 24020 (SOSA)
CASE NO. 24025 (RYNO)**

OCC Order R-24004-A

**AMENDED ORDER DENYING GOODNIGHT'S APPLICATIONS & PARTIALLY
GRANTING/PARTIALLY DENYING EMPIRE'S APPLICATIONS**

THIS MATTER came before the New Mexico Oil Conservation Commission ("Commission" or "OCC") upon Goodnight Midstream Permian LLC's ("Goodnight") and Empire NM LLC's ("Empire") respective applications pursuant to 19.15.4.25 NMAC for rehearing of the above captioned cases originally decided via OCC Order R-24004, issued on September 12, 2025 ("September Order"). The Commission denied both applications in so far as they seek to reopen the factual record for this matter, or to relitigate the Commission's findings of fact; however, the

Exhibit 1

Commission issued an order granting a limited rehearing in these matters on October 17, 2025. The Commission's October 17 order granted rehearing of only the following two questions of law:

- I. Does the Commission have the legal authority to suspend existing Goodnight's injection wells in order to provide Empire with the opportunity to establish the CO2 EOR pilot project, given that there was insufficient evidence presented at hearing to prove whether the ROZ [Residual Oil Zone] is recoverable?
- II. Does Commission Order R-24004 provide OCD [Oil Conservation Division] with discretion in managing the suspension of existing Goodnight injection wells and to provide Empire with the opportunity to establish a CO2 EOR pilot project?

Having considered post-hearing briefing from the parties, and having held a rehearing of the above captioned cases on November 13, 2025, the Commission issues this instant AMENDED ORDER. This AMENDED ORDER incorporates the September Order in full, and provides the following as clarifying addenda:

Rehearing Issue I: The Commission Can Order the Suspension of Water Injection into a ROZ to Facilitate an EOR Pilot Project to Determine Recoverability.

1. The Commission reiterates its conclusion that "New Mexico law authorizes the Commission to allow companies to have an opportunity to pursue oil discoveries so the oil is not left wasted or untapped underground. NMSA 1978, Section 70-2-11." September Order, ¶ 38.
2. In the parties' respective relevant pleadings, the parties generally cite to the same body of law. No party introduced any authorities that convincingly alter either existing statute or case law.
3. The parties do not dispute the general proposition that the "Commission has broad authority under the Oil and Gas Act, NMSA 1978, §§ 70-2-1 to -39." Rice Rehearing Brief-in-Chief at 2.

See also, Goodnight Rehearing Response Brief at 2, (“the Oil & Gas Act undoubtedly grants broad powers”); Empire Rehearing Brief-in-Chief at 3, (“The Commission...has broad authority to regulate injection.”); OCD Rehearing Brief-in-Chief at 3 (“OCC’s jurisdiction is broad”).¹

4. The parties also all cite *Cont’l Oil Co. v. Oil Conservation Comm’n*, 1962-NMSC-062. *See e.g.*, Goodnight Rehearing Brief-in-Chief at 9; Empire Rehearing Brief-in-Chief Footnote 44; OCD Rehearing Brief-in-Chief at 3, Rice Rehearing Brief-in-Chief at 4-5.

5. *Cont’l Oil Co.* ruled that “The Oil Conservation Commission is a creature of statute, expressly defined, limited and empowered by the laws creating it. The . . . basis of its powers is founded on the duty to prevent waste and to protect correlative rights.” *Id.* at ¶ 11.

6. All parties also cite the definition of ‘waste’ as found in NMSA Section 70-2-3. *See e.g.*, Goodnight Rehearing Brief-in-Chief at 10-11; Empire Rehearing Brief-in-Chief at 11, Footnote 46; OCD Rehearing Brief-in-Chief at 6, Rice Rehearing Brief-in-Chief at 5.

7. The parties disagree as to how NMSA Section 70-2-3 applies to the specific facts of this case, given the Commission’s existing finding that “there was insufficient evidence presented at [the] hearing to prove whether the ROZ is recoverable.” September Order, heading D.

8. Goodnight asserts that “The critical language here is ‘reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered.’ If no oil or natural gas can be ‘ultimately recovered,’ then no activity can be characterized as waste.” Goodnight Rehearing Brief-in-Chief at 11, (emphasis omitted). Goodnight asserts that the Commission “must first find that the alleged ROZ is both physically and economically recoverable” before the Commission can

¹ Pilot did not timely submit a rehearing brief-in-chief, but did file a short statement by the rebuttal deadline noting that it “agrees with Rice’s positions and analysis and [] incorporates them by reference.” Pilot filing submitted November 6, 2025, at 3.

exercise its power to prevent waste and protect correlative rights. Goodnight Rehearing Brief-in-Chief at 2, (internal citations omitted).

9. Rice similarly asserts that since “the Commission found Empire failed to prove the ROZ is recoverable, there is nothing in evidence before the commission tending to support a finding of waste or the prevention of waste by suspending Goodnight’s injection wells, then the Commission’s suspension of Goodnight’s injection wells is void, because the commission order contains no finding as to the existence of waste, or that suspension would prevent waste.” Rice Rehearing Response Brief at 5, (internal citations omitted).

10. Empire, on the other hand, asserts that “Waste is integral to correlative rights, which afford the ‘opportunity . . . to produce without waste the owner’s just and equitable share of the oil or gas or both.’ Deprivation of an owner’s opportunity to recover its equitable share of oil and/or gas causes waste if it reduces or tends to reduce the total hydrocarbons ultimately recovered. Likewise, Section 70-2-12(B)(4) obligates the Commission ‘to prevent the premature and irregular encroachment of water or any other kind of water encroachment that reduces or tends to reduce the total ultimate recovery of crude petroleum oil or gas or both oil and gas from any pool.’” Empire Rehearing Response Brief at 8.

11. Goodnight and Rice’s arguments hinge on a crucial misinterpretation of the Commission’s September Order. The Commission found that “there was insufficient evidence presented at hearing to prove whether the ROZ is recoverable.” September Order, heading D. Conversely, the Commission also did not find sufficient evidence presented at hearing to prove that the ROZ is **not** recoverable.

12. Empire did “point[] to other EOR recovery projects within the San Andres formation” that were able to recover hydrocarbons by injecting carbon dioxide [CO₂]. The Commission found

that recovery “is site-specific and is based on the [specific] conditions at the EMSU,” which may be unique due to the geologic history and the large volume of water injection that has happened at this site over decades. September Order at ¶ 57, 58.

13. The Commission recognized a realistic possibility that the ROZ could contain oil that could be both physically and economically recovered. Therefore, it granted Empire “the opportunity to establish a CO2 EOR [Carbon Dioxide Enhanced Oil Recovery] pilot project” for the purpose of ascertaining the recoverability of the ROZ. September Order, ¶ 61, heading E.

14. Goodnight and Rice argue that the Commission is powerless to act until waste is proven. But that position is inconsistent with Rice’s own assertion that the “exercise of the Commission’s power, including suspension of injection authority, must be predicated on the **prevention** of waste.” Rice Rehearing Response Brief at 5, (internal citations omitted and emphasis added).

15. Prevention is defined as “the action of keeping from happening or making impossible an **anticipated** event or intended act.”² The word ‘prevent’ is at the root of prevention, and the plain meaning of the word ‘prevent’ is “to keep [something] from happening by taking action **in advance**.”³ The etymology of both ‘prevention’ and ‘prevent’ traces back to the Latin term *praevenire*, which means to ‘come before’ or to ‘anticipate.’⁴

16. The plain meaning of the word ‘prevention’ requires the Commission to proactively keep waste from happening. The Commission would be abdicating its responsibility to **prevent** waste if the Commission refused to take any action where the existence of a ROZ has been established, and there is no evidence presented to prove that it cannot be recovered. Waiting until waste is proven would at best be mitigating waste, not preventing waste.

² *Prevention*, Oxford English Dictionary <https://doi.org/10.1093/OED/2153726666> (emphasis added).

³ *Prevent*, Merriam-Webster.com Thesaurus, www.merriam-webster.com/thesaurus/prevent (emphasis added).

⁴ *Prevent*, Online Etymology Dictionary, <https://www.etymonline.com/word/prevent>.

17. In addition, the definition of 'waste' under NMSA 70-2-3(A) also includes the phrase: "tend to reduce the total quantity . . . ultimately recovered." This phrase supports the idea that waste doesn't need to be proven first – "tends to reduce" modifies the term "reduce" to be a possibility and "ultimately recovered" includes possible future recovery.

18. Furthermore, Goodnight and Rice's position would hinder the only way for the Commission to address its finding of insufficient evidence. The Commission has already determined that the only practical way to prove for certain, whether there might be recoverable hydrocarbons in this ROZ, is to conduct a CO2 enhanced oil recovery pilot project, because recovery "is site-specific and is based on the conditions at the EMSU." September Order, ¶ 58. And the Commission has also already found, as a technical matter, that a CO2 EOR pilot cannot be successfully performed while wastewater is being disposed into the same region. September Order, ¶ 40, 62.

19. Waiting for waste to have definitely and provably occurred before allowing the Commission to exercise its broad powers to prevent waste is inconsistent with both the spirit and text of New Mexico's Oil and Gas Act.

Rehearing Issue II -- OCD Can and Should Manage Suspension of Water Injection 'In Order To' Facilitate the EOR Pilot Project Granted by the Commission.

20. The Commission finds that the Oil Conservation Division "possesses broad authority over the oil and gas industry in New Mexico." OCD Brief-in-Chief at 7. "The division shall have, and is hereby given, jurisdiction and authority over all matters relating to the conservation of oil and gas []. It shall have jurisdiction, authority and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of this act or any other law of this state relating to the conservation of oil or gas and the prevention of waste of potash as a result of oil or gas operations." 70-2-6(A) NMSA; *see also*, Rice Rehearing Response Brief at 12.

21. Nevertheless, the OCD sought additional “guidance on the [Commission]’s intentions regarding said suspension.” OCD Rehearing Brief-in-Chief at 11.

22. The Commission reiterates its finding that “[t]o perform a successful CO2 flood, the injection of CO2 and water must be monitored closely and adjustments made based upon design. Goodnight’s SWD [Salt-Water Disposal] wells cannot dispose of water when an active CO2 flood is being performed.” September Order, ¶ 40, 62.

23. The Commission further reiterates and emphasizes its September Order suspending “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.” September Order, #3 at page 13, (emphasis added).

24. The Commission hereby concludes that OCD has the authority, and may at its discretion, implement the “suspension” ordered on page 13 of the Commission’s September Order “in order to provide Empire with the opportunity to establish the CO2 EOR pilot project.” September Order, #3 at page 13. The commission also concludes that the OCD has the authority to impose the suspension ordered by September Order, #3 at page 13, on any schedule OCD deems necessary “in order to provide Empire with the opportunity to establish the CO2 EOR pilot project.” *Id.*

Additional Clarifications.

25. The Commission further clarifies that none of the orders in this case preempt any relevant or applicable regulatory requirements for any party. Empire must follow all relevant and applicable regulations and permitting processes if it chooses to exercise the opportunity the Commission has provided for it to establish a CO2 EOR pilot project.

Disposition of Associated Motions

26. The stay issued on October 17, 2025 is lifted upon issuance of this amended order.

27. Empire's Emergency Motion to Enforce Order R-24004 or Order to Show Cause and Expedited Hearing filed on September 23, 2025 is hereby denied as moot.

IT IS SO ORDERED.



Albert C.S. Chang, Chair
New Mexico Oil Conservation Commission

DATE: 12/17/2025

EXHIBIT 4

**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

**EMPIRE NEW MEXICO, LLC'S EXPEDITED MOTION TO STAY OR SUSPEND
GOODNIGHT MIDSTREAM PERMIAN LLC'S AUTHORIZATION TO INJECT AND
FOR SANCTIONS FOR VIOLATION OF SWD ORDERS**

Empire New Mexico LLC ("Empire") requests that the Oil Conservation Commission ("Commission") expeditiously stay or suspend Goodnight Midstream Permian LLC's ("Goodnight") authorization to inject under certain Oil Conservation Division ("Division") orders because Goodnight is flagrantly exceeding its injection authority under the various orders, to the detriment of Empire. Goodnight is also violating the Division's orders and regulations by failing to report injection volumes for two of its salt water disposal ("SWD") wells. As shown on the captions of this motion, Empire has filed applications to revoke Goodnight's Division orders authorizing salt water disposal within and near the exterior boundaries of the Eunice Monument South Unit ("EMSU" or "Unit") in Lea County, New Mexico. In support of this motion, Empire states the following.

BACKGROUND INFORMATION

Andre Dawson SWD Well No.1

1. Goodnight is the operator of record for the Andre Dawson SWD #1 well, API# 30-025-50634 ("Andre Dawson Well"), a produced water disposal well located 1105' FSL and 244' FEL (Unit P) of Section 17, Township 21 South, Range 36 East, NMPM, Lea County, NM.
2. The Andre Dawson Well is disposing of water within the unitized interval of the Eunice Monument South Unit ("Unit"), which is operated by Empire, and authorized under Division Order R-22026.
3. The unitized interval of the Unit extends from the top of the Grayburg formation to the bottom of the San Andres formation.

4. The Andre Dawson Well disposes into the San Andres formation between 4,287 feet and 5,590 feet.

5. Goodnight has failed to report volumes of produced water injected into the Andre Dawson Well for the entire 527 days since Goodnight began injecting into the well. Goodnight is also exceeding the disposal volumes and rates authorized by the applicable order. Through discovery, Empire has learned that during the first 166 days of disposal, Goodnight exceeded the permitted daily disposal rate on 60 days. During those 60 days of over injection, Goodnight injected a total of 460,350 barrels of produced water in excess of the permitted daily amount under the Order. In complete disregard of the Division's order, Goodnight exceeded the daily allowable injection rate by disposing as high as 40,000 BWPD on four (4) days of the 166 days of disposal and injected volumes as high as 41,937 BWPD, which is almost double the authorized injection rate.

Ernie Banks SWD No. 1

6. Goodnight is the operator of record for the Ernie Banks SWD No. 1 well, API# 30-025-50633 ("Ernie Banks Well"), a produced water disposal well located 395 feet from the North line and 1,203 feet from the West line (Unit D) of Section 17, Township 21 South, Range 36 East, NMPM, Lea County, New Mexico.

7. The Ernie Banks Well is disposing of water within the unitized interval of the Unit, which is operated by Empire, and authorized by Division Order R-22027.

8. The unitized interval of the Unit extends from the top of the Grayburg formation to the bottom of the San Andres formation ("Unitized Interval").

9. The Ernie Banks Well disposes into the San Andres formation through a perforated interval from 4,312 feet to 5,615 feet below surface.

10. Goodnight has violated Division regulations by failing to report volumes of produced water injected into this SWD well for the entire 409 days since injection commenced. Based on Goodnight exceeding the authorized injection volume for the Andre Dawson well, upon information and belief, it is exceeding authorized volumes as permitted by the order authorizing disposal volumes and rates.

Sosa SA SWD Well No. 2

11. Goodnight is the operator of record for the Sosa SA 17 SWD Well No. 2 well, API# 30-025-47947 (“Sosa SA Well”), a produced water disposal well located 470 feet from the South line and 1,815 feet from the West line (Unit N) of Section 17, Township 21 South, Range 36 East, NMPPM, Lea County, New Mexico.

12. The Sosa SA Well is disposing of water within the unitized interval of the Eunice Monument South Unit (“Unit”), which is operated by Empire, and authorized by Division Order R-21190.

13. The unitized interval of the Unit extends from the top of the Grayburg formation to the bottom of the San Andres formation.

14. The Well disposes into the San Andres formation through a perforated interval from 4,500 feet to 5,350 feet below surface.

15. Based on Empire’s review of Goodnight’s injection reports for the Sosa SA Well, Goodnight is exceeding the allowable daily injection rate of 25,000 BWPD by an excess of approximately 4,500 BWPD.

Ted 28 SWD No. 1

16. Goodnight is the operator of record for the Ted 28 SWD Well No. 1, API# 30-025-44386 (“Ted 28 Well”), formerly known as the Snyder SWD 28 No. 1, a produced water disposal

well located 2,402 feet from the North line and 1,911 feet from the West line (Unit F) of Section 28, Township 21 South, Range 36 East, NMPM, in Lea County, NM.

17. The Ted 28 SWD Well No. 1 is disposing of water into the San Andres formation, at a distance of approximately 2,402' from the Unit and authorized by Division Administrative Order No. SWD-2075.

18. Upon information and belief, produced water disposed in the Ted 28 Well is migrating into the unitized interval of the Unit.

19. The unitized interval of the Unit extends from the top of the Grayburg formation to the bottom of the San Andres formation.

20. The Well disposes into the San Andres - Glorietta formations through a perforated interval from 4,630 feet to 6,245 feet below surface.

21. Based on Empire's review of Goodnight's injection reports for the Ted 28 SWD Well No. 1, Goodnight's injection into the Well is exceeding the allowable daily injection rate of 25,000 BWPD by an excess of approximately 2,000 BWPD.

Yaz 28 SWD Well No. 1

22. Goodnight is the operator of record for the Yaz 28 SWD Well No. 1 well, API# 30-025-46382 ("Yaz 28 Well"), a produced water disposal well located 230 feet from the North line and 236 feet from the East line (Unit A) of Section 28, Township 21 South, Range 36 East, NMPM, in Lea County, NM.

23. The Yaz 28 Well is disposing of water into the San Andres formation, at a distance of approximately 230' from the Unit. The Yaz 28 Well No. 1 is authorized by Division Order R-20865.

24. Upon information and belief, water disposed of in the Yas 28 Well is migrating into the unitized interval of the Unit.

25. The unitized interval of the Unit extends from the top of the Grayburg formation to the bottom of the San Andres formation.

26. The Yaz 28 SWD Well disposes into the San Andres - Glorietta formations through a perforated interval from 4,630 feet to 6,100 feet below surface.

27. Based on Empire's review of Goodnight's injection reports for the Yaz 28 Well, Goodnight's injection into the Well is exceeding the allowable daily injection rate of 25,000 BWPD by an excess of approximately 3,125 BWPD

Nolan Ryan SWD Well No. 1

28. Goodnight is the operator of record for the Nolan Ryan SWD Well No. 1, API# 30-025-45349 ("Nolan Ryan Well"), a produced water disposal well located 779 feet from the South line and 1,995 feet from the East line (Unit O) of Section 13, Township 21 South, Range 36 East, NMPM, Lea County, New Mexico.

29. The Nolan Ryan Well is disposing of water into the San Andres formation, at a distance of approximately 3,285' from the Unit. The Nolan Ryan SWD Well No. 1 is authorized by Division Order R-20855.

30. Upon information and belief, water disposed of in the Nolan Ryan SWD Well is migrating into the unitized interval of the Unit.

31. The unitized interval of the Unit extends from the top of the Grayburg formation to the bottom of the San Andres formation.

32. The Nolan Ryan Well disposes into the San Andres formation through a perforated interval from 4,100 feet to 4,700 feet below surface.

33. Based on Empire's review of Goodnight's injection reports for the Nolan Ryan SWD Well, Goodnight's injection into the well is exceeding the allowable daily injection rate of 15,000 BWPD by an excess of approximately 1,635 BWPD.

EFFECT OF VIOLATIONS

34. Goodnight's failure to report disposal volumes and its exceeding authorized injection rates shows a pattern and practice of intentional violation of the Division's orders and regulations. In this regard, Goodnight exhibits an indifference toward compliance with the orders and the regulations of the Division and the Commission.

35. The effect of exceeding daily disposal rates is that higher injection rates and pressures adversely affect fracture gradients such that the interval separating the Grayburg formation and the San Andres formation is being fractured, which allows increased migration of produced water from the San Andres formation to the Grayburg formation, the current producing formation of the Unit.

36. Goodnight's failure to comply with the requirements of the Division's disposal orders has resulted in, and will continue to result in, unlawful and significant injection of produced water into the San Andres formation within the unitized interval of the Unit.

37. Migration of produced water into the Grayburg formation has increased Empire's producing costs, ultimately leading to watering out the Grayburg formation and causing waste.

38. Residual oil zones ("ROZ") exist within the San Andres formation, and Empire has the right to recover hydrocarbons therein which will be drowned out by over-injection.

39. Moreover, the salinity levels of produced water are substantially greater than the salinity levels of water in the Unitized Interval, including the San Andres formation. The existing salinity level in the San Andres formation is approximately 15,000 mg/l. Upon information and

belief, Goodnight is injecting produced water from sources in Lea County with salinity levels of approximately 245,000 mg/l in addition to other toxic materials.

40. Goodnight's operations are in violation of the orders in that Goodnight is effectively injecting into the Grayburg formation. NMAC 19.15.26.10 (B) states:

The operator of an injection project shall operate and maintain at all times the injection project, including injection wells, producing wells and related surface facilities, in such a manner as will confine the injected fluids to the interval or intervals approved and prevent surface damage or pollution resulting from leaks, breaks or spills. (emphasis added).

The Grayburg and San Andres formations behave as a single zone and have nature fractures that allow migration of water from the San Andres to the Grayburg formation.

41. Empire is and will continue experiencing migration of produced water from the injection interval under the orders into the Grayburg formation.

SANCTIONS AND PENALTIES

42. NMAC 19.15.5.10 sets forth the Oil Conservation Division's enforcement authority. Section A of the rule states that whenever the Division determines a violation of the Oil and Gas Act, rule, order, permit the Division may seek a sanction, including:

- a. issue a temporary cessation of the Order;
- b. a civil penalty;
- c. modification, suspension, cancellation or termination of a permit or authorization;

43. Unless the Commission or Division invokes sanctions pursuant to NMAC 19.15.5.10, Goodnight's disposal in the wells impairs and destroys the future ability of Empire to recover hydrocarbons from the San Andres formation, pollutes both the Grayburg and San Andres formations, and thereby adversely affects the correlative rights of Empire and other interest owners in the Unit and results in waste and increases production costs of the Unit.

44. Based on the foregoing, Goodnight's injection into the wells discussed above should be stayed and suspended to prevent further prejudice to Empire and so the status quo can be maintained until the Commission enters a ruling on Empire's application to revoke Goodnight's injection authority under the orders.

WHEREFORE, Empire respectfully requests that the Commission:

- A. Immediately require Goodnight to account for the volumes of produced water it has injected into the wells identified above since the inception of injection.
- B. Immediately require Goodnight to report injection volumes for the Andre Dawson and Ernie Bank Wells and to the extent of any over-injection, immediately suspend further disposal into the wells until over-injection is balanced with the amount of authorized injection.
- C. For the four other SWD wells for which over-injection has occurred, immediately suspend injection until over-injection is balanced with the amount of water that was allowed under the SWD orders.
- D. Issue sanctions, including but not limited to:
 1. Monetary penalties pursuant to NMAC 19.15.5.10 for Goodnight's violation of the orders.
 2. Cessation of the orders until a hearing to revoke the orders is held by the Commission.
 3. For such other and proper relief as the Commission finds appropriate.

Respectfully submitted,

/s/Ernest L. Padilla
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing was served to counsel of record by electronic mail this 1st day of July 2024, as follows:

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EXHIBIT 5

**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 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**


**ORDER ON EMPIRE NEW MEXICO LLC'S
EXPEDITED MOTION TO STAY OR SUSPEND GOODNIGHT MIDSTREAM
PERMIAN'S AUTHORIZATION TO INJECT AND FOR SANCTIONS**

This matter, having come before the Oil Conservation Commission ("Commission") on the motion by Empire

New Mexico L.L.C. to stay or suspend Goodnight Midstream Permian L.L.C.'s authorization to inject ("the Motion") and the Commission, being fully advised and having heard arguments of the parties' counsel at a public meeting on August 15, 2024, hereby finds as follows:

1. Goodnight Midstream Permian L.L.C. shall immediately cease all injections of produced water in its salt water disposal wells in the Eunice Monument South Unit (EMSU) as further identified in the Motion, that exceed the amounts allowable by its permits.
2. At or before the hearing scheduled in the above-captioned matters for September 23-27, 2024, and further subject to any deadlines ordered by the hearing officer, Goodnight Midstream Permian L.L.C. shall provide to the parties and to the hearing officer an accounting of all injections of produced water for the preceding 12 months into its salt water disposal wells in the Eunice Monument South Unit (EMSU) as further identified in the Motion, and the corresponding available data relating to injection pressure, that will allow the hearing officer to recommend to the Commission as to whether such injections violate the applicable permits.
3. The Commission shall otherwise hold in abeyance any determination as to the merits of the Motion until it receives a report from the hearing officer regarding the above.

SO ORDERED.



Gerasimos Razatos, Acting Chairman
New Mexico Oil Conservation Commission

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order was served on August ~~16~~²⁰, 2024, via electronic mail, upon the following counsel of record:

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Gerasimos Razatos, Acting Chairman
New Mexico Oil Conservation Commission

EXHIBIT 6



December 22, 2025

Via Electronic Mail

Albert.Chang@emnrd.nm.gov

Albert Chang
Director, New Mexico Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87505

Dear Director Chang:

Empire New Mexico LLC ("Empire") writes this letter to the New Mexico Oil Conservation Division ("OCD" or "Division") to address the urgent matter of the Division's implementation of the suspension ordered by the New Mexico Oil Conservation Commission ("OCC" or "Commission").

To briefly recap: Goodnight Midstream Permian, LLC ("Goodnight") and Empire filed various applications regarding Goodnight's current and proposed injection into Empire's Eunice Monument South Unit ("EMSU"). OCC received eighteen (18) days of testimony and argument before entering its Order Denying Goodnight's Applications & Partially Granting/Partially Denying Empire's Applications, OCC Order No. R-24004, on September 12, 2025 ("September Order").

The September Order denied, *in toto*, Goodnight's Applications to drill new disposal wells in Case No. 241234 (Piazza), Case No. 23614 (Gooden), Case No. 23615 (Hernandez), Case No. 23616 (Hodges), and Case No. 23617 (Seaver). The September Order further denied, *in toto*, Goodnight's application to increase injection in the existing Dawson well in Case No. 23775. Finally, the September Order suspends permits associated with Goodnight's injection wells in Case No. 24018 (Dawson), Case No. 24019 (Banks), Case No. 24020 (Sosa), and Case No. 24025 (Ryno) (collectively, Dawson, Banks, Sosa and Ryno are the "Suspended Wells").

In reaching its decision to deny Goodnight's applications and order the suspension of injection into the Suspended Wells, OCC made, among others, the following findings:

- **The Commission finds that there 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.** September Order, II. B. (emphasis in original).

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- **Based on the 1984 Commission Order, Empire has the exclusive rights to produce the ROZ in the EMSU.** September Order, II.A. (emphasis in original).
- The Unit Agreement gives Empire the “**exclusive right**, privilege and duty of exercising any and all rights of the parties hereto including surface rights which are necessary or convenient for prospecting for, producing, storing, allocating and distributing the Unitized Substances are hereby delegated to and shall be exercised by the Unit Operator.” September Order, ¶18 (emphasis added).
- Empire purchased the EMSU to continue the current extraction of oil from the Grayburg formation **but also to start a new project to extract oil from the San Andres formation via a CO2 flood as part of an Enhanced Oil Recovery (EOR) project.** September Order, ¶26 (emphasis added).
- Based on the 1984 Commission Order, **Empire has the exclusive rights to decide how to best extract oil in the EMSU.** September Order, ¶27 (emphasis added).
- **The injection of hundreds of thousands of barrels a day conflicts with Empire’s exclusive rights to extract oil in the EMSU.** . . . September Order ¶¶40-41 (emphasis added).
- **Empire DID adduce substantial evidence of the possibility of FUTURE impairment of correlative rights or waste in the EMSU.** September Order III. A. (emphasis in original).
- Water is moving from the San Andres into the Grayburg. September Order ¶47.

Based on these findings, supported by extensive and conclusive evidence, Empire began coordinating with OCD regarding implementation of the suspension of injection ordered by the OCC.

Following entry of the September Order, Goodnight and Empire each filed motions for re-hearing. The OCC issued an order granting a limited rehearing in the above matters on October 17, 2025, to consider two questions of law:

- I. Does the Commission have the legal authority to suspend existing Goodnight’s injection wells in order to provide Empire with the opportunity to establish the CO2 EOR pilot project, given that there was insufficient evidence presented at hearing to prove whether the ROZ [Residual Oil Zone] is recoverable?
- II. Does Commission Order R-24004 provide OCD [Oil Conservation Division] with discretion in managing the suspension of existing Goodnight injection wells and to provide Empire the opportunity to establish a CO2 EOR pilot project?

After considering the briefing of the parties, and having held oral arguments on November 13, 2025, the Commission issued an Amended Order Denying Goodnight’s Applications & Partially

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Granting/Partially Denying Empire's Applications, OCC Order R-24004-A, on December 17, 2025 ("December Order"). The December Order upheld the September Order, *in toto*.

In entering the December Order, the OCC affirmed the findings and rulings included in its September Order and ultimately determined the Commission can order the suspension of water injection into a ROZ. This includes suspension to allow Empire to plan and execute an EOR pilot project to determine recoverability. *See* December Order, Rehearing Issue I. Additionally, the OCC confirmed that OCD can and should manage suspension of Goodnight's injection "in order to" facilitate the EOR pilot project granted by the Commission. *See* December Order, Rehearing Issue II. Empire intends to report back to the OCC with the results of its evaluation on or before the three-year deadline allowed to Empire by the OCC.

In the December Order, the Commission reiterated its conclusion that "New Mexico law authorizes the Commission to allow companies to have an opportunity to pursue oil discoveries so the oil is not left wasted or untapped underground." December Order, ¶1 (citing NMSA 1978, Section 70-2-11 and September Order, ¶38). The Commission also acknowledged that Goodnight and Rice's arguments at rehearing surrounding the Commission's authority to prevent waste hinged on a "crucial misinterpretation of the Commission's September Order" as "the Commission did not find sufficient evidence presented at hearing to prove that the ROZ is **not** recoverable." December Order, ¶11 (emphasis in original).

In the December Order, the Commission confirmed it "recognized a realistic possibility that the ROZ could contain oil that could be both physically and economically recovered" and therefore, by way of entry of the September Order, granted Empire the opportunity to establish a CO2 EOR pilot project "for the purpose of ascertaining the recoverability of the ROZ." December Order, ¶13 (citing September Order ¶61, Heading E). Further, the Commission reminded the parties:

The Commission has already determined that the only practical way to prove for certain, whether there might be recoverable hydrocarbons in this ROZ, is to conduct a CO2 enhanced oil recovery pilot project, because recovery "is site-specific and is based on the conditions at the EMSU." And the Commission has also already found, as a technical matter, that a CO2 EOR pilot cannot be successfully performed while wastewater is being disposed into the same region. December Order, ¶18 (internal citations omitted).

Accordingly, the Commission appropriately exercised its authority, which "must be predicated on the **prevention** of waste." December Order, ¶14 (emphasis in original). **The Commission held that it "would be abdicating its responsibility to prevent waste if the Commission refused to take any action where the existence of a ROZ has been established, and there is no evidence presented to prove that it cannot be recovered."** December Order, ¶16 (emphasis added).

Here, waiting until waste is proven would be, at best, mitigating waste and not preventing it. Such action would be inconsistent with both the spirit and text of New Mexico's Oil and Gas Act. December Order, ¶19. Empire hopes that OCD shares OCC's concerns with continued injection by Goodnight into the EMSU and shares OCC's desires to act in accordance with New Mexico's Oil and Gas Act in preventing waste. Accordingly, the OCD can, should, and must manage the suspension of

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Goodnight's water injection in order to facilitate the EOR pilot project the Commission granted Empire. *See* December Order, Rehearing Issue II. In making this determination, the Commission again reiterated and emphasized its September Order that suspends "existing Goodnight's injection wells . . . **in order to** provide Empire with the opportunity to establish a CO2 EOR pilot project. December Order ¶23 (citing September Order, #3 at page 13) (emphasis in original).

Specifically, the December Order provides:

The Commission hereby concludes that OCD has the authority, and may at its discretion, implement the "suspension" ordered on page 13 of the Commission's September Order "in order to provide Empire with the opportunity to establish the CO2 EOR pilot project." The Commission also concludes that the OCD has the authority to impose the suspension ordered by September Order, #3 at page 13, on any schedule OCD deems necessary "in order to provide Empire with the opportunity to establish the CO2 EOR pilot project." December Order, ¶24 (internal citations omitted).

Based on OCD's prior briefing provided to the OCC in this matter, Empire understands the timeline imposed on Goodnight to be a 90-day period to safely wind down injection into the Suspended Wells and that at the end of the 90-day period, injection into the Suspended Wells would cease in order to provide Empire with the opportunity to establish the CO2 EOR pilot project in accordance with the OCC's orders.

OCD acknowledges that in the September Order, "OCC made its own determination via its statute-based authority, to suspend Goodnight's SWD injection permits." OCD's Brief per the OCC's October 17, 2025 Order, pg. 11. OCD further acknowledges the September Order provides: "The Division will implement this Order." *Id.* at pg. 8. Further, OCD stated it construed such language "at face value through the plain meaning of the words used by the OCC – the OCD must enforce [the September Order] as written" and now as clarified by the December Order. *Id.* Further, OCD provided that its "practice is to impose, as part of the permit suspension process, a schedule of required operator actions aimed at winding down the subject wells, a staged process that keeps in mind safety, among other factors. OCD's Brief per the OCC's October 17, 2025 Order, pg. 11. While the OCD has, on occasion, required immediate shut-ins of SWD wells, OCD stressed its preference for a "staged approach rather than immediate shut-in" in this case due to the volume of produced water injected daily into Goodnight's wells. *Id.*

OCD considered a framework providing for tiered performance deadlines setting a timeframe of total compliance (suspension of injection) of ninety (90) days "reasonable and will best ensure no waste occurs as Goodnight winds-down its subject wells." OCD's Response to Goodnight's Application for Rehearing and Empire's Motion for Rehearing, pg. 6. OCD's proposal provided for thirty (30) day and sixty (60) day sub-compliance deadlines to effectuate a tiered performance of safely winding down injection in the Suspended Wells. Empire requests that OCD implement the suspension ordered by the OCC for the Suspended Wells in a timeframe that follows OCD's prior recommendation to the OCC—a period "not to exceed 90 days from clarification" of the September Order. The September Order was clarified by the OCC on December 17, 2025 when it issued the December Order.

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Until Goodnight's injection ceases (on day 90 following December 17, 2025), no EOR tertiary project in the San Andres can be commenced and executed by Empire. It is crucial for injection to cease within the 90-day, staged period outlined by OCD in order to provide Empire with the opportunity to establish a CO2 EOR pilot project and to allow Empire to meet its three-year deadline. Stopping injection by the OCD's 90-day deadline will also avoid and prevent waste, as charged by the OCC's September Order and December Order.

No question exists, and the OCC found by substantial evidence, that Goodnight's injection into the San Andres in Empire's EMSU threatens both the San Andres and the producing Grayburg. And water is moving from the San Andres to the Grayburg, with fluids escaping the injection interval. September Order ¶47. As shown in Empire's briefs to OCC in this matter, and as shown above, the time to implement the September Order is now; the time to enforce the suspension ordered by the OCC is now (pursuant to the OCD's 90-day staged approach to ensure the wind-down of the wells is done in an orderly and safe fashion) in order to provide Empire with the opportunity to establish the CO2 EOR pilot project granted by the Commission.

Consistent with Empire's exclusive rights in the EMSU and the OCC's mission to prevent waste before it occurs, Empire is grateful for the OCC's thorough evaluation and decisions (first in the September Order and reaffirmed in the December Order). Empire also appreciates OCD's role in implementing the September Order and December Order. Empire looks forward to OCD taking appropriate enforcement actions to impose the suspension ordered by OCC's September Order (#3 at pg. 13), and upheld by the December Order, under the 90-day staged approach the OCD proposed and set forth in its briefing to the OCC as appropriate and supported by past protocol. If OCD deems appropriate, Empire proposes and welcomes a conference as soon as possible to discuss the matters set out herein. In any circumstance, the Goodnight injection into the Suspended Wells must cease by March 17, 2026 (90-days from the date of the December Order).

Very truly yours,

/s/ Dana S. Hardy
Dana S. Hardy

cc: (via electronic mail)
Chris Moander
Adam Rankin
Matthew Beck
Miguel Suazo

EXHIBIT 7

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

IN THE MATTER OF THE HEARING CALLED BY)
 THE OIL CONSERVATION DIVISION FOR THE)
 PURPOSE OF CONSIDERING:) CASE NO. 11,650
)
 APPLICATION OF TEXACO EXPLORATION AND) ORIGINAL
 PRODUCTION, INC., FOR AMENDMENT OF)
 DIVISION ORDER NUMBER R-5530, AS)
 AMENDED, TO INCREASE INJECTION PRESSURES)
 IN ITS CENTRAL VACUUM UNIT PRESSURE)
 MAINTENANCE PROJECT AREA, AUTHORIZE A)
 TERTIARY RECOVERY PROJECT BY THE)
 INJECTION OF CARBON DIOXIDE AND TO)
 QUALIFY THIS PROJECT FOR THE RECOVERED)
 OIL TAX RATE PURSUANT TO THE ENHANCED)
 OIL RECOVERY ACT, LEA COUNTY, NEW MEXICO)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
EXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

December 19th, 1996
 Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, December 19th, 1996, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

STEVEN T. BRENNER, CCR
 (505) 989-9317

I N D E X

December 19th, 1996
 Examiner Hearing
 CASE NO. 11,650

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<u>RONALD W. LANNING</u> (Landman)	
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<u>SCOTT C. WEHNER</u> (Project Engineer)	
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* * *

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* * *

A P P E A R A N C E S

FOR THE DIVISION:

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 Legal Counsel to the Division
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 Santa Fe, New Mexico 87505

FOR THE APPLICANT:

CAMPBELL, CARR, BERGE and SHERIDAN, P.A.
 Suite 1 - 110 N. Guadalupe
 P.O. Box 2208
 Santa Fe, New Mexico 87504-2208
 By: WILLIAM F. CARR

* * *

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1 A. Total project cost, inclusive of the injectant
2 costs, is \$346 million.

3 Q. And how much additional production does Texaco
4 expect to obtain from this CO₂ project?

5 A. We are looking for recovery of approximately 20
6 million stock tank barrels of oil and an additional 23
7 billion standard cubic foot of hydrocarbon gas.

8 Q. And what is the total value of this additional
9 production?

10 A. Based on a \$19.62-per-barrel for the oil and an
11 equivalent barrel basis of 6 MCF per stock tank barrel of
12 the oil, that adds up to about \$474 million.

13 Q. If this project, in fact, is commercially
14 successful, does Texaco plan to expand the project?

15 A. Most certainly. Within the unit, as I mentioned
16 earlier, we're only targeting approximately 50 percent of
17 the unit acreage. We can expand accordingly as warranted
18 and also into the offset Vacuum-Grayburg-San Andres unit.

19 Q. Mr. Wehner, does Texaco Exhibit 1, attachment D,
20 set out the production history and production forecast for
21 oil, gas and water from the project area which are required
22 by Division Rules in an application for certification for
23 the incentive tax break?

24 A. It does, and real briefly, that exhibit is a
25 rate-time plot, and the data from 1978 through current date

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EXHIBIT 8

Inactive Well List

Total Well Count: 670 Inactive Well Count: 21
Printed On: Monday, April 06 2026

District	API	Well	ULSTR	OCD Unit	Ogrid	Operator	Lease Type	Surface Owner	Well Type	Last Production	Formation/Notes	Status	TA Exp Date
1	30-025-23949	ARROWHEAD GRAYBURG UNIT #108	I-25-21S-36E	I	330679	Empire New Mexico LLC	P	P	O	09/2023			
1	30-025-04928	ARROWHEAD GRAYBURG UNIT #142	N-36-21S-36E	N	330679	Empire New Mexico LLC	S	S	O	09/2024	TA EXPIRES 08/14/2014		
1	30-025-37284	ARROWHEAD GRAYBURG UNIT #391	4-07-22S-37E	M	330679	Empire New Mexico LLC	P	P	O	10/2024	GRAYBURG		
1	30-025-30320	DAURON #004	7-01-21S-37E	G	330679	Empire New Mexico LLC	P	P	O	07/2024	ABO 04/08/2010 PLUGBACK DHC 430		
1	30-025-09511	EUGENE COATES #007	L-03-24S-36E	L	330679	Empire New Mexico LLC	P	P	O	10/2004		T	12/13/2024
1	30-025-33024	EUMONT 16 STATE COM #001	M-16-19S-37E	M	330679	Empire New Mexico LLC	S	S	G	07/2024	YATES-SEVEN RIVERS-QUEEN		
1	30-025-30277	EUNICE MONUMENT SOUTH UNIT #122	M-25-20S-36E	M	330679	Empire New Mexico LLC	F	P	O	09/2024			
1	30-025-29957	EUNICE MONUMENT SOUTH UNIT #123	N-25-20S-36E	N	330679	Empire New Mexico LLC	F	P	O	04/2023	03/24/2008 RETURN TO PROD	T	11/1/2025
1	30-025-04428	EUNICE MONUMENT SOUTH UNIT #142	E-36-20S-36E	E	330679	Empire New Mexico LLC	S	S	O	09/2023	GRAYBURG SAN ANDRES		
1	30-025-04427	EUNICE MONUMENT SOUTH UNIT #165	L-36-20S-36E	L	330679	Empire New Mexico LLC	S	S	O	04/2009		T	9/26/2025
1	30-025-04558	EUNICE MONUMENT SOUTH UNIT #335	M-08-21S-36E	M	330679	Empire New Mexico LLC	F	P	O	04/2022	05/16/08 RET WELL TO PROD	T	6/26/2025
1	30-025-04678	EUNICE MONUMENT SOUTH UNIT #409	I-18-21S-36E	I	330679	Empire New Mexico LLC	F	F	O	04/2023	GRAYBURG SAN ANDRES	T	10/23/2025
1	30-025-35461	EUNICE MONUMENT SOUTH UNIT #560	O-36-20S-36E	O	330679	Empire New Mexico LLC	S	S	O	06/2024	GRAYBURG-SAN ANDRES		
1	30-025-04206	EUNICE MONUMENT SOUTH UNIT B #863	P-10-20S-36E	P	330679	Empire New Mexico LLC	F	F	O	02/2019		T	3/21/2025
1	30-025-04308	EUNICE MONUMENT SOUTH UNIT B #895	A-24-20S-36E	A	330679	Empire New Mexico LLC	F	P	O	04/2024	GRAYBURG SAN ANDRES		
1	30-025-04292	EUNICE MONUMENT SOUTH UNIT B #902	D-23-20S-36E	D	330679	Empire New Mexico LLC	F	P	O	10/2023			
1	30-025-04314	EUNICE MONUMENT SOUTH UNIT B #909	G-24-20S-36E	G	330679	Empire New Mexico LLC	F	P	O	05/2018			
1	30-025-04303	EUNICE MONUMENT SOUTH UNIT B #919	N-23-20S-36E	N	330679	Empire New Mexico LLC	F	F	O	12/2024	EUNICE MONT INT TO PLUGBACK/QN 11/1/08		
1	30-025-27523	J F JANDA NCT D #002	14-02-21S-36E	F	330679	Empire New Mexico LLC	S	S	O	02/2024	TUBB-DRINKARD		
1	30-025-34560	MONUMENT 36 STATE #001	P-36-18S-36E	P	330679	Empire New Mexico LLC	S	P	O	11/2015	ABO - 12/11/2009 PLGBCK DRINKARD	T	12/18/2025
1	30-025-34561	MONUMENT 36 STATE #002	I-36-18S-36E	I	330679	Empire New Mexico LLC	S	P	O	12/2024	ABO INT REPAIR PUMP 10/5/2011		

WHERE Operator:330679, County:All, District:All, Township:All, Range:All, Section:All, Production(months):15, Excludes Wells Under ACOI, Excludes Wells in Approved TA Period