

**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 REPLY IN SUPPORT OF ITS MOTION TO
REQUIRE MODIFICATION OF THE OIL CONSERVATION DIVISION'S
IMPLEMENTATION DECISION**

Empire New Mexico, LLC ("Empire") submits this reply in support of its Motion to Require Modification ("Motion") requesting that the Oil Conservation Commission ("OCC" or "Commission") require the Oil Conservation Division ("OCD" or "Division") to modify the Division's Implementation of OCC Orders 24004 and 24004-A ("Implementation Decision") in accordance with the requirements of OCC Order Nos. 24004 and 24004-A (collectively "Orders"). As demonstrated in Empire's Motion and further discussed below, OCD's Implementation Decision fails to protect Empire's correlative rights or prevent waste within the Eunice Monument South Unit ("EMSU") and consequently does not comport with the Commission's Orders. For these reasons, Empire respectfully requests that the Commission direct OCD to revise its

Implementation Decision to (1) require Goodnight Midstream Permian, LLC (“Goodnight”) to cease injection now; and (2) allow Empire flexibility to determine the most appropriate type of pilot project to demonstrate recoverability of the ROZ.

I. ARGUMENT

In their respective responses, Goodnight and the Division raise a number of deficient arguments against the relief sought by Empire in its Motion. Empire will address each in turn below.

a. The Commission has jurisdiction to decide Empire’s Motion.

In its Response, Goodnight asserts that the Commission lacks jurisdiction to hear Empire’s Motion because the Commission’s final order has been appealed and is presently before the district court.¹ Contrary to Goodnight’s assertions, the Commission and Division still have jurisdiction to oversee the implementation of the pilot project.

Under Rule 1-074(Q) NMRA, the agency retains jurisdiction to enforce its orders or decisions, even if under review by the district court, unless a party requests and is granted a stay of enforcement. *See, e.g., High Mesa Gen. P’ship v. Patterson*, 2010-NMCA-072, ¶ 17, 148 N.M. 863, 242 P.3d 430 (stating that under Rule 1-074, the defendants “were given the right to decide whether they wanted to ask the court to issue a stay and *stop the administrative process while the appeal was pending*”) (emphasis added). Here, no stay has been requested.

Although not an appeal under NMSA 1978, § 39-3-1.1, the Court of Appeals’ decision in *Zuni Indian Tribe v. McKinley County Board of County Commissioners*, 2013-NMCA-041, ¶¶ 3-4, 300 P.3d 133 is instructive here. In that case, the McKinley County Board of County Commissioners approved a preliminary plat application submitted by a developer for a proposed

¹ Goodnight Response at 4-6.

490–home phased subdivision development. *Id.*, ¶ 3. The Zuni Tribe appealed the approval of the preliminary plat application to the district court. *Id.* Thereafter, the Tribe filed a motion to stay enforcement of the County’s decision approving the preliminary plat. *Id.*, ¶ 4. The district court denied the motion to stay, and the County proceeded to subsequently approve Tampico’s final plat application *while the Tribe’s appeal to the district court was still pending. Id.*

In this case, no party to the district court appeal has requested a stay under Rule 1-074(Q) NMRA. As in the *Zuni Indian Tribe* case, the Commission and Division retain jurisdiction to implement and enforce the suspension of Goodnight’s wells as well as Empire’s pilot project while the appeal to the district court is pending. Goodnight’s arguments to the contrary lack merit and should be rejected by the Commission.

b. The doctrine of law of the case similarly does not bar Commission review of Empire’s Motion.

Goodnight also improperly asserts that the Commission cannot consider Empire’s Motion based on the doctrine of law of the case.² The doctrine of law of the case “relates to litigation of the same issue recurring within the same suit.” *Cordova v. Larsen*, 2004-NMCA-087, ¶ 10, 136 N.M. 87, 94 P.3d 830. “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.” *Id.* (internal quotation marks and citation omitted). Law of the case is “discretionary and flexible” and does not preclude a court from correcting a prior decision. *State of N.M. ex rel. King v. UU Bar Ranch Ltd. P’ship*, 2009-NMSC-010, ¶ 21, 145 N.M. 769, 205 P.3d 816; *Trujillo v. City of Albuquerque*, 1998-NMSC-031, ¶ 41, 125 N.M. 721, 965 P.2d 305.

The doctrine of law of the case is simply not applicable here because Empire is not asking the Commission to reconsider or alter its prior orders; rather, it is seeking the Commission’s

² Goodnight Response at 6-8.

assistance in ensuring that its prior orders are properly implemented and enforced by the Division. Again, Goodnight's attempts to prevent Commission consideration of Empire's Motion on technical grounds are misplaced and not supported by New Mexico law.

c. The Division's Implementation Decision does not align with the language or spirit of the Commission's Orders.

As outlined in Empire's Motion, the Division's Implementation Decision renders meaningless the Commission's findings regarding Empire's correlative rights within the EMSU. First, the Commission's Orders allow Empire to plan and execute an EOR pilot project to determine recoverability of the ROZ.³ The Orders do not contemplate a full-scale EOR operation, which is what the Implementation Plan entails and unsurprisingly, is also advocated for by Goodnight. Indeed, Goodnight boldly asserts that "at an absolute minimum, both delineation and viability of a *full-scale project* must be established before Goodnight's injection authority can be suspended."⁴ OCD's position that Empire's Motion is somehow outside the scope of the OCC's Orders is nonsensical where both OCD and Goodnight seek to impose requirements beyond the OCC's Orders⁵ that have the effect of impeding Empire's operations and delaying or preventing the suspension of Goodnight's wells.

Second, the Commission's Orders further require that Goodnight's permits be suspended "in order to provide Empire with the opportunity to establish the CO2 EOR pilot project."⁶ The Division's Implementation Decision unnecessarily delays suspension of Goodnight's wells, which

³ December Order, heading for Rehearing Issue II.

⁴ Goodnight Response at 13 (emphasis added).

⁵ For example, Goodnight maintains that Empire must file an application to amend both Order Nos. R-7765 and R-7766—this is even beyond the implementation plan contemplated by OCD, which only requires amending Order No. R-7766 (Empire's position is that neither order needs to be amended).

⁶ *Id.* at ¶ 1 (citing NMSA 1978, Section 70-2-11 and September Order, ¶ 38).

is incongruous with the Commission's findings regarding Empire's correlative rights and exclusive right to operate within the EMSU.

Given the short time frame allowed for the pilot project, any implementation plan should necessarily include streamlined processes to ensure that Empire is afforded a full and fair opportunity to demonstrate that the ROZ is recoverable. Moreover, as Empire works through how best to demonstrate the recoverability of the ROZ within the timeframe set by the Commission's Orders, flexibility and efficiency are paramount—to hold Empire to rigid standards and processes not contemplated by the Commission's Orders or governing law is inconsistent with the Commission's findings regarding waste and correlative rights in the EMSU and Empire's exclusive rights within the Unit. Empire should not be foreclosed from utilizing Huff and Puff to demonstrate recoverability if it is deemed the preferable option. Goodnight and the Division's attempts to restrict or limit Empire's ability to demonstrate recoverability should be rejected by the Commission.

d. Empire's failure to serve the Division was inadvertent and otherwise not prejudicial to the Division.

In its Response, the Division accuses Empire of deliberately failing to serve its Motion on the Division.⁷ Had counsel for the Division simply contacted counsel for Empire to raise the error, counsel would have explained that the omission was inadvertent and based on the use of an older certificate of service from the time period when the Division had withdrawn from the case. Instead, the Division failed to raise the issue and then filed a brief arguing that the omission was deliberate. The Division does not assert that it lacked a copy of the Motion or that it was otherwise unable to respond to the Motion. In fact, the Division identifies no prejudice at all. Moreover, Empire vigorously disputes OCD's assertion that Empire has acted in any manner other than with good

⁷ Division Response at 8-9.

faith in these proceedings. Empire's pattern and practices before the Commission have been of candor and good faith. The Commission should decline to entertain the Division's specious arguments regarding service.

II. CONCLUSION

The Division's Implementation Decision fails to protect correlative rights or prevent waste within the EMSU and therefore contravenes the Commission's findings, determinations, and orders in OCC Order Nos. 24004 and 24004-A. Accordingly, Empire respectfully requests that the Commission direct OCD to modify its Implementation Decision to: (1) require Goodnight to cease injection now – rather than once Empire commences CO₂ injection; and (2) allow Empire the flexibility to demonstrate ROZ recoverability through either a Huff and Puff project or a CO₂ multi-pattern flood.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon the following counsel of record by electronic mail on April 27, 2026.

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