

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

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

CASE NO. 24491

**EMPIRE NEW MEXICO LLC'S RESPONSE TO GOODNIGHT MIDSTREAM
PERMIAN, LLC'S MOTION TO LIFT STAY**

Empire New Mexico LLC (“Empire”) submits this Response to Goodnight Midstream Permian, LLC’s (“Goodnight”) Motion to Lift Stay, in which Goodnight asks the Division to lift the stay so that it can pursue an extension of the deadline to commence injection operations for the Rocket SWD #1 well (“Rocket SWD”). The Division should deny that request. The same Rocket SWD permit is the subject of Empire’s pending application before the Commission in Case No. 24021 to revoke Goodnight’s injection authority. The Division should not decide whether to extend a permit while the Commission is considering whether to revoke it. For the reasons outlined below, Goodnight’s motion should be denied.

I. ARGUMENT

Goodnight’s motion should be denied for four reasons. First, Empire’s application to revoke the Rocket SWD permit remains pending before the Commission, and the Commission’s decision may moot Goodnight’s extension request. Second, Goodnight should not be allowed to delay Commission review of Empire’s revocation application while at the same time asking the Division to extend the same permit. Third, the Commission’s Order No. R-24004 in Case Nos. 24123, 23614-23617, 23775, 24018-24020, and 24025 (“EMSU cases”) does not support a separate Division hearing to extend a nearby permit that Empire has asked the Commission to

revoke. Fourth, lifting the stay would prejudice Empire by allowing Goodnight to drill the Rocket SWD before the Commission decides whether the permit should be revoked. At a minimum, if the Division lifts the stay, it should refer this matter to the Commission for consideration with Case No. 24021.

A. The Division should deny Goodnight's motion because the Commission's decision in Case No. 24021 may moot Goodnight's extension request.

Goodnight asks the Division to proceed with hearing an extension case for a permit that Empire has asked the Commission to revoke. If the Commission revokes Goodnight's Rocket SWD permit in Case No. 24021, there will be no permit to extend. The Division should not require the parties to litigate, or the Division to decide, an extension request that may become moot.

Goodnight's motion is premised on a misreading of the Commission's orders in the EMSU cases. Goodnight asserts that the Commission's orders in the EMSU cases are final and "fully dispos[e] of the issues," so the Division can now hear Goodnight's Rocket SWD extension application. Mot at ¶¶ 5-6. But the EMSU orders do not allow Goodnight to keep the Rocket SWD permit. That issue is before the Commission in Case No. 24021, where Empire seeks to revoke the permit. The Division should not decide whether to extend the Rocket SWD permit while the Commission decides whether to revoke it.

Because the Rocket SWD is outside, but near, the EMSU, the Commission stayed Empire's revocation application pending a decision in the EMSU cases. After the Commission issued the EMSU orders, Empire moved to lift the stay in Case No. 24021 on or around April 29, 2026. That motion remains pending before the Commission.

Administrative efficiency therefore favors maintaining the stay in the case before the Division. The Commission should first decide whether Goodnight may retain the Rocket SWD permit. If the Commission revokes the permit, Goodnight's extension request will become moot.

If the Commission denies revocation, the Division can then decide whether Goodnight has shown good cause for an extension. That sequence avoids unnecessary litigation, conserves resources of the Division, and preserves the Commission's review of the same permit.

B. Goodnight cannot rely on Order R-24004 to lift this stay while arguing the same order precludes Case No. 24021 from proceeding.

Goodnight's position before the Commission in Case No. 24021 confirms why the stay should remain in place here. In Case No. 24021, Empire has asked the Commission to lift the stay and determine whether to revoke Goodnight's Rocket SWD permit. Goodnight opposed that request, arguing that the EMSU dispute remains *unresolved* because the Commission's orders are on appeal. Specifically, Goodnight argued that "the Commission has heard and fully disposed of all the issues between the parties as to the competing claims within the EMSU at the administrative level but [Empire] fails to address the fact that the dispute remains unresolved and on appeal at the district court." Goodnight's Motion to Dismiss without Prejudice, filed in Case Nos. 24021-24024 and 24026-24027.

Goodnight takes the opposite position here. It asks the Division to lift this stay based on Order R-24004 even though it has argued to the Commission in Case No. 24021 that the same order precludes lifting the stay there. Goodnight cannot have it both ways. There is no basis to allow Goodnight's extension application to move forward while Empire's revocation application for the same permit remains stayed, particularly when the extension application is contingent on the Commission's decision in Case No. 24021.

C. Order No. R-24004 does not support a separate Division hearing to extend the Rocket SWD permit.

Goodnight's motion also mischaracterizes the Commission's decision in the EMSU cases as favorable to Goodnight. It was not. On September 12, 2025, the Commission entered Order No.

R-24004, which denied Goodnight's applications to drill new disposal wells in Case No. 24123 (Piazza), Case No. 23614 (Gooden), Case No. 23615 (Hernandez), Case No. 23616 (Hodges), and Case No. 23617 (Seaver). Order No. R-24004 also denied Goodnight's application to increase injection into the existing Dawson well in Case No. 23775. Finally, Order No. R-24004 suspended the 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 "EMSU Wells").

In reaching its decision, the Commission found, *inter alia*, that a ROZ exists in the Grayburg and San Andres formations,¹ that wastewater is moving from the San Andres into the Grayburg,² that Goodnight's injection of hundreds of thousands of barrels a day conflicts with Empire's exclusive rights to extract oil in the EMSU,³ and that Empire presented substantial evidence of the possibility of future impairment of correlative rights or waste in the EMSU as a result of Goodnight's operations.⁴ In a subsequent order after rehearing briefing, the Commission upheld those determinations and held that it can order the suspension of water injection into a ROZ.⁵

In the EMSU cases, the Commission specifically found that "Goodnight did not adduce substantial evidence of the existence of a continuous barrier between the Grayburg and the San Andres"⁶ and that "no barrier was mappable across the wells identified in Goodnight's exhibits."⁷

¹ Order R-24004, II. B.

² *Id.* at ¶ 47.

³ *Id.* at ¶¶ 40-41.

⁴ *Id.* at III. A.

⁵ See generally OCC Order R-24004-A.

⁶ Order R-24004, at III.B (emphasis omitted).

⁷ *Id.* at ¶ 52(f).

The record in the EMSU cases also showed that wastewater migration can cause significant, long-term harm to ROZ recoverability. Goodnight's current operations add economic barriers that may block a future tertiary recovery project and threaten to close off the ROZ entirely if wastewater operations continue.⁸

Those findings and record evidence do not support lifting the stay or extending Goodnight's Rocket SWD permit. They support, at a minimum, Commission review first.

D. Lifting the stay would prejudice Empire by allowing Goodnight to drill before the Commission decides whether to revoke the Rocket SWD permit.

Goodnight characterizes its extension request as a "limited" procedural matter, but lifting the stay could have immediate practical consequences. The Rocket SWD is located approximately 1.15 miles south of the EMSU boundary, and the Division has already recognized that "Goodnight's [Rocket] Well is close to the Eunice Monument South Unit." If the Division ultimately grants an extension, Goodnight may claim authority to drill the Rocket SWD before the Commission decides Empire's application to revoke the same permit.

That risk is not speculative, as Goodnight has already demonstrated a willingness to proceed with drilling under a permit that is the subject of a pending revocation proceeding before the Commission. At the July 25, 2024 status conference before the Division, Goodnight represented that extending the Rocket SWD permit did not mean Goodnight would "go out and drill this well and start injecting" while Empire's revocation application remained pending. Tr. 07/25/24 at 27:8-13. But in January 2025, Goodnight drilled the Verlander SWD Well No. 1, even though Empire's application to revoke that well's injection authority remained pending. Goodnight did not notify the Commission or Empire before drilling that well. *See* EMSU cases, 05/19/25 Tr.

⁸ EMSU Cases, 02/24/25 Tr. 38:13-39:15; 04/09/25 Tr. 160:7-17, 180:20-188:18, 190:15-191:17; 04/11/25 Tr. 43:7-25.

at 173:13-175:5 (Goodnight's witness, admitting that Goodnight did not inform Empire and that the well was close enough to the EMSU for Empire to see "the rig standing up out there"); *see generally id.* at 170:23-177:11.

Goodnight's position at the September 25, 2025 status conference further underscores the risk of premature drilling. There, Goodnight stated that it needs the injection capacity provided by the Rocket SWD because the Commission suspended Goodnight's injection permits within the EMSU. But Goodnight did not represent that it would wait for the Commission to decide Empire's Rocket SWD revocation application before drilling the Rocket SWD well. Instead, Goodnight suggested that, if it obtained an extension order, Empire would bear the burden to seek a stay of any drilling activity. *See* AI Transcript 09/25/25 at 3:114-125, 10:409-421. Goodnight's counsel made the point directly: "We would have then an order in place, an effective valid order for injection. It would then be incumbent on Empire to file a motion to stay that pending review by the Commission, in which case they would need to establish the bases to stay a validly issued division order." *Id.* at 10:409-414.

Goodnight's position would create the same problem the stay was meant to avoid: Goodnight could act first under disputed injection authority and force Empire to seek emergency relief later. The motion to lift the stay should be denied.

E. If the Division lifts the stay, it should refer this matter to the Commission or dismiss Goodnight's application.

Finally, if the Division lifts the stay, it should refer this matter to the Commission for consideration with Case No. 24021. Goodnight's extension request and Empire's revocation application concern the same permit, the same well, and the same injection authority. The Commission should decide those issues together, rather than allowing parallel proceedings to move forward in different forums. Goodnight has also asked the Division to refer this case to the

Commission because “authority to inject into the Rocket SWD #1 is already pending before the Commission in Case No. 24021” and because this application “relates to Goodnight Midstream Division Case Nos. 23614-23617, 23775, 24277 and 24278; and Commission Case No. 24123 (de novo); and Empire New Mexico LLC’s Division Case Nos. 24018-24020 and 24025.”⁹

Alternatively, the Division should dismiss Goodnight’s extension application. The Commission’s findings and decision in the EMSU cases demonstrate that Goodnight cannot show good cause to extend the deadline to commence injection operations. The order denied Goodnight’s new EMSU disposal applications, denied Goodnight’s request to increase injection into the Dawson well, and suspended Goodnight’s existing EMSU injection permits based on the existence of a ROZ within the San Andres formation. Based on that decision, Goodnight’s request to extend its authorization to inject into that formation approximately 1.15 miles from the EMSU should be dismissed.

II. CONCLUSION

Empire respectfully requests that the Division deny Goodnight’s Motion to Lift Stay. If the Division lifts the stay, Empire respectfully requests that the Division refer this matter to the Commission for consideration with Case No. 24021. Alternatively, Empire respectfully requests that the Division dismiss Goodnight’s extension application.

⁹ Motion to Refer Case to Commission at 2, ¶ 7 (filed May 20, 2024); Application at 2, ¶ 9.

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 June 30, 2026.

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