

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

FILED 1st JUDICIAL DISTRICT COURT  
Santa Fe County  
1/26/2026 4:50 PM  
KATHLEEN VIGIL CLERK OF THE COURT  
Jessica E Castaneda

**GOODNIGHT MIDSTREAM PERMIAN, LLC**

**Appellant,**

**No. D-101-CV-2026-00269  
(Related to No. D-101-CV-2026-00177)**

**v.**

**OCC Order No. R-24004-A**

**NEW MEXICO OIL CONSERVATION  
COMMISSION,**

**Appellee.**

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**NOTICE OF APPEAL**

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Pursuant to NMSA 1978, § 70-2-25(B) (1999), NMSA 1978, § 39-3-1.1(C) (1999), and Rule 1-074 NMRA, Goodnight Midstream Permian, LLC (“Goodnight”) 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, OCC Order No. R-24004-A (“Amended Order”). The Amended Order is attached as Exhibit 1. The Amended Order incorporates by reference the Commission’s September 12, 2025 Order Denying Goodnight’s Applications & Partially Granting/Partially Denying Empire’s Applications, OCC Order No. R-24004 (“Order”); therefore, the Order is also attached as Exhibit 2.

On January 16, 2026, Empire New Mexico, LLC (“Empire”) filed its Notice of Appeal of the same Amended Order. The Court docketed Empire’s appeal as Case No. D-101-CV-2026-00177. Under Rule 1-074(E) NMRA, “[i]f a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten (10) days after the date on which the first notice of appeal was served[.]” Goodnight timely files its Notice of Appeal within 10 days of Empire’s Notice of Appeal.

Dated: January 26, 2026.

Respectfully submitted,

**HOLLAND & HART LLP**

By: /s/ Adam G. Rankin

Michael H. Feldewert

Adam G. Rankin

Nathan R. Jurgensen

Paula M. Vance

Post Office Box 2208

Santa Fe, NM 87504

(505) 988-4421

(505) 983-6043 Facsimile

mfeldewert@hollandhart.com

agrarkin@hollandhart.com

nrjurgensen@hollandhart.com

pmvance@hollandhart.com

**ATTORNEYS FOR GOODNIGHT  
MIDSTREAM PERMIAN, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that on January 26, 2026, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

Ernest L. Padilla  
Padilla Law Firm, P.A.  
Post Office Box 2523  
Santa Fe, New Mexico 87504  
(505) 988-7577  
[padillalawnm@outlook.com](mailto:padillalawnm@outlook.com)

Dana S. Hardy  
Jaclyn M. McLean  
Jaime R. Fontaine  
Timothy B. Rode  
HARDY MCLEAN LLC  
125 Lincoln Ave., Suite 223  
Santa Fe, NM 87505  
(505) 230-4410  
[dhardy@hardymclean.com](mailto:dhardy@hardymclean.com)  
[jmclean@hardymclean.com](mailto:jmclean@hardymclean.com)  
[jfontaine@hardymclean.com](mailto:jfontaine@hardymclean.com)  
[trode@hardymclean.com](mailto:trode@hardymclean.com)

Sharon T. Shaheen  
Spencer Fane LLP  
Post Office Box 2307  
Santa Fe, New Mexico 87504-2307  
(505) 986-2678  
[sshaheen@spencerfane.com](mailto:sshaheen@spencerfane.com)  
[dortiz@spencerfane.com](mailto:dortiz@spencerfane.com)

Corey F. Wehmeyer  
SANTOYO WEHMEYER P.C.  
IBC Highway 281 N. Centre Bldg.  
12400 San Pedro Avenue, Suite 300  
San Antonio, Texas 78216  
[cwehmeyer@swenergylaw.com](mailto:cwehmeyer@swenergylaw.com)

***Attorneys for Empire New Mexico, LLC***

Jesse Tremaine  
Chris Moander  
Assistant General Counsels  
New Mexico Energy, Minerals, and  
Natural Resources Department  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505  
(505) 741-1231  
(505) 231-9312  
[jessek.tremaine@emnrd.nm.gov](mailto:jessek.tremaine@emnrd.nm.gov)  
[chris.moander@emnrd.nm.gov](mailto:chris.moander@emnrd.nm.gov)

***Attorneys for New Mexico Oil Conservation  
Division***

Matthew M. Beck  
PEIFER, HANSON, MULLINS & BAKER,  
P.A.  
P.O. Box 25245  
Albuquerque, NM 87125-5245  
Tel: (505) 247-4800  
[mbeck@peiferlaw.com](mailto:mbeck@peiferlaw.com)

***Attorneys for Rice Operating Company and  
Permian Line Service, LLC***

Miguel A. Suazo  
BEATTY & WOZNIAK, P.C.  
500 Don Gaspar Ave.  
Santa Fe, NM 87505  
(505) 946-2090  
[msuazo@bwenergylaw.com](mailto:msuazo@bwenergylaw.com)

***Attorneys for Pilot Water Solutions SWD,  
LLC***

Adam G. Rankin  
Adam G. Rankin

36879511

## Exhibit 1

**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

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”).<sup>1</sup>

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

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<sup>1</sup> 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 [CO<sub>2</sub>]. 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.”<sup>2</sup> 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**.”<sup>3</sup> The etymology of both ‘prevention’ and ‘prevent’ traces back to the Latin term *praevenire*, which means to ‘come before’ or to ‘anticipate.’<sup>4</sup>

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.

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

<sup>3</sup> *Prevent*, Merriam-Webster.com Thesaurus, [www.merriam-webster.com/thesaurus/prevent](http://www.merriam-webster.com/thesaurus/prevent) (emphasis added).

<sup>4</sup> *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 2

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

**OCC ORDER NO. R-24004**

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)

**Order Denying Goodnight's Applications & Partially Granting/Partially Denying  
Empire's Applications**

**COMES NOW**, the New Mexico Oil Conservation Commission ("Commission") and issues this ORDER in the adjudicatory hearing in the above-cited case numbers. Pursuant to NMSA 1978, Section 70-2-13 and 19.15.4 NMAC, the hearing occurred on approximately 18 days distributed between February 20, February 24-28, April 7-11, April 21-25, May 19-21, 2025. The hearing was presided over by Hearing Officer Rip Harwood, Esq. and attended by the Commissioners. Pursuant to 19.15.4.24 NMAC, the Commission upon reviewing the legal arguments, hearing testimony, exhibits, proposed Findings of Fact and Conclusions of Law, issues the following ORDER containing its statement of reasons:

**I. Introduction: Parties & Wells at Issue:**

1. PARTIES -Goodnight Midstream Permian, LLC is a midstream company that takes oil operation produced water (a/k/a salt water disposal) from operators from around the Permian Basin and injects it into salt water disposal (SWD) wells.
2. PARTIES -Empire New Mexico LLC is an oil production company that operates the Eunice Monument South Unit (EMSU).
3. INTERESTED PARTIES -Rice Operating Company is an operator of produced water injections wells in and around the EMSU. On 6/20/24, it filed an Entry of Appearance and Notice of Intervention.
4. INTERESTED PARTIES- Permian Line Service LLC is an operator of produced water injections wells in and around the EMSU. On 6/20/24, it filed an Entry of Appearance and Notice of Intervention.
5. INTERESTED PARTIES -Pilot Water Solutions SWD LLC is an operator of produced water injections wells within the EMSU. On 6/17/24, it filed an Entry of Appearance and Notice of Intervention.
6. PARTY THAT WITHDREW -The New Mexico Oil Conservation Division (Division) initially appeared but withdrew after Goodnight agreed to implement a monitoring program within and around the Capitan Reef Aquifer System that “satisfies the requirements upon [OCD] by the” U.S. EPA. Goodnight’s FOF #23 citing to the Division’s 5/15/25 Notice of Dismissal.
7. Goodnight Has Applied to Amend its Existing Permit with an Increased Disposal Rate Authorization for the Following SWD Well:

SWD Well Name	Date Applied for Expansion	Disposal Zone	Maximum Disposal rate	Case No.	Citations in the Record
<b>Dawson</b>	4/10/23	-4375 to -5,420 feet	Go from 25,000 Barrels of Water Per Day (bwpd) up to 40,000 bwpd	<b>Case No. 23775</b>	Goodnight Ex. A-9

8. Goodnight Has Applied for a Permit for a New Well (that was previously rejected by the Oil Conservation Division staff):

Name	Date Applied	Disposal Zone	Maximum Disposal rate	Case No.	Citations in the Record
<b>Piazza</b>	9/16/21. Date of Division hearing date: 9/15/22. Division Denied on: 11/29/23	-4,125 to -5,400 feet	40,000 bwpd	<b>Case No. 24123</b>	Goodnight Ex. A-2 Goodnight Ex. A-3 Goodnight Ex. A-8 Empire Ex. A-2

## 9. Goodnight Has Applied for a Permit for New Wells:

Name	Date Applied	Disposal Zone	Maximum Disposal rate	Case No.	Citations in the Record
<b>Gooden</b>	5/12/23	-4,200 to -4,900 feet	42,000 bwpd	<b>Case No. 23614</b>	Goodnight Ex. A-4, Empire Ex. A-2.
<b>Hernandez</b>	5/12/23	-4,200 to -5,300 feet	42,000 bwpd	<b>Case No. 23615</b>	Goodnight Ex. A-5, Empire Ex. A-2.
<b>Hodges</b>	5/12/23	-4,100 to -5,200 feet	42,000 bwpd	<b>Case No. 23616</b>	Goodnight Ex. A-6, Empire Ex. A-2.
<b>Seaver</b>	5/12/23	-4,200 to -5,300 feet	42,000 bwpd	<b>Case No. 23617</b>	Goodnight Ex. A-7, Empire Ex. A-2.

## 10. Empire has Applied to OCC to Revoke Goodnight's Injection Authority/Permit for Following SWD Wells:

SWD Well Name	Date of hearing granting approval	OCD date	Disposal Zone	Maximum Disposal rate	Case No.	Citations in the Record
<b>Dawson</b>	1/21/21		-4375 to -5,420 feet	25,000 (bwpd)	<b>Case No. 24018</b>	Alleman TR. 4/25/25 at 58:20-21



					Goodnight Ex. A-9 Goodnight Ex. B, para. 38
<b>Banks</b>	1/21/21	-4490 to -5420 feet	25,000 bwpd	<b>Case No. 24019</b>	Alleman TR. 4/25/25 at 68:16 Goodnight Ex. B, para. 38
<b>Sosa</b>	9/19/19	-4,592 to- 5,330 feet	29,477 bwpd	<b>Case No. 24020</b>	Alleman TR. 4/25/25 at 72:6-7 Goodnight Ex. B, para. 38
<b>Ryno</b>	None. It was administratively approved without a hearing. It started operations on 10/1/21.	-4,380 to- 5,560 feet.	16,441 bwpd	<b>Case No. 24025</b>	Alleman TR. 4/25/25 at 73:21 Empire Ex. A- 3 Goodnight Ex. B, para. 38

11. Empire presented expert witnesses including: (a) Jack Wheeler, (b) Dr. Robert Lindsay, (c) Laurence Melzer, (d) Dr. Robert Trentham, (e) Dr. James Buchwalter, (f) Galen Dillewyn, (g) Joseph McShane, (h) Frank Marek, (i) William West, (j) Stanley Birkhead and (k) Ryan Bailey.
12. Goodnight presented expert witnesses including: (a) Preston McGuire, (b) Tom Tomastik, (c) James Davidson, (d) Nathan Alleman, (e ) William Knights, (f) John McBeath, (g) Dr. Larry Lake.
13. The Commission heard and weighed expert witnesses and exhibits on topics ranging from, including but not limited to, economics, engineering, geology, hydrology and petrophysics, but the items listed below constitute the evidence that was most compelling and to which the Commission assigned the greatest weight as substantial evidence.

## **II. Grounds for Denying Goodnight's Applications:**

### **A. Based on the 1984 Commission Order, Empire has the exclusive rights to produce the ROZ in the EMSU.**

14. In Township 20-21 (South), Range 36-37 (East) in Lea County, comprising about 14,000 acres, approximately 15 miles southwest from Hobbs, New Mexico, an oil "field was discovered in 1929, and within ten years, it had already produced over a million barrels of oil." Wheeler TR. 4/8/25 at 142: 12-13.
15. From that time forward, generally, various operators extracted oil in the upper underground region of the field (Grayburg formation) and various operators used the lower underground region of the field (San Andres formation) to extract water (i.e. for use in oil water flood operations) or to inject oil production waste water (i.e. produced water or salt water) into disposal wells.
16. In the early 1980s, Gulf Oil Corporation (Gulf) applied to the New Mexico Oil Conservation Commission to request an Order to get the field organized as a "Unit" pursuant to the New Mexico Statutory Unitization Act, NMSA 1978, Sections 70-7-1 to -21.
17. On June 22, 1984, Gulf finalized an Unit Agreement among "the parties [who] are the owners of working, royalty, or other oil and gas interests in the Unit Area...." Empire Ex. A-4. The State of New Mexico State Land Office and United States BLM own 58% and 20% of the minerals in the Unit Area, respectively, and were included in the agreement. Empire's FOF #1 citing to Wheeler TR. 4/8/25 at 142:21-25.
18. The Unit Agreement, in section 10, gave the authority to Gulf, as the Unit operator: "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." Empire Ex. A-4.
19. The Agreement stated the San Andres was intended to be used initially for make-up water for water flooding operations for oil operations.
20. On November 7, 1984, the Commission held a public hearing on Gulf's request for the Commission to approve the Unit Agreement. Empire Ex. A-6.
21. On December 27, 1984, the Commission issued Order R-7765 approving the creation of the Eunice Monument South Unit Area ("EMSU"). Empire Ex. A-6
22. The Commission's Order established the vertical limits of the EMSU and put several formations into the EMSU. The top of the EMSU was set at: "100 feet below mean sea level or at the top of the Grayburg formation, whichever is higher." Empire Ex. A-6.
23. The bottom of the EMSU as "a lower limit at the base of the San Andres formation." Empire Ex. A-6.

24. On August 1, 2004, Gulf became part of Chevron USA. Chevron USA later sold its property status to ExxonMobil/XTO. Wheeler TR. 4/9/25 at 13:5-7.
25. On March 12, 2021, Empire purchased the EMSU from ExxonMobil/XTO. Empire's FOF #3 citing to Wheeler TR. 4/8/25 at 144:13-16. Empire also purchased the adjoining AGU and EMSU-B properties.
26. 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.
27. Based on the 1984 Commission Order, Empire has the exclusive rights to decide how to best extract oil in the EMSU.

**B. 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.**

28. Empire's witness, Dr. Lindsay, provided slides of the coring of two wells in the EMSU (EMSU 679 well and RR Bell well) that show there is oil saturation that is visible to the naked eye. Empire's FOF #31 citing to Lindsay TR. 2/24/25 at 18:17-24, 37:4-7.
29. The coring started above the Grayburg and extended down into the San Andres. Empire's FOF #31.
30. One slide showed with pictures of core samples "EMS-679 San Andres core" which the slide states is "from 95 ft to 105ft beneath top of the San Andres." The oil saturation (SO) measurement on the samples has eight readings of 18.3%, 19.9%, 21%, 22.8%, 25.4%, 30.2% 30.7%, 32.4%, 33%, 38.4%. Empire Ex. B-7.
31. One slide showed pictures of core samples "EMSU R.R. Bell #4 core" which the slide describes as "fair to good oil saturation." Empire Ex. B-9.
32. Cores of the EMSU 679 and the RR Bell Number 4 wells show oil stain in the San Andres, including right at the base of both cores, which indicates that oil saturations exist deeper into the San Andres. Empire FOF #82a citing to Lindsay TR. 2/24/25 at 20:11-21:2, 22:25-23:4.
33. These were the only cores presented in this hearing.
34. The well logs for the EMSU 679 and EMSU R.R. Bell #4 corroborated the core data. Empire Ex. B-23, B-25, B-26.
35. Empire's witnesses testified that a ROZ exists. Empire's FOF #82s citing to Lindsay TR. 2/24/25 at 37:4-5, Bailey TR. 2/25/25 at 277:20-278:18, Birkhead TR. 2/25/25 at 458:23-459:3, Birkhead TR. 2/26/25 at 647:5-13, Trentham TR. 2/27/25 at 829:18-22, Melzer TR. 2/27/25 at 845:23-846:3, 858:18-20, 863:18-20, Marek TR. 4/7/25 at 122:6-10, 21-23.

36. Goodnight's witnesses, Dr. Davidson, Mr. Knights, Dr. Lake and Mr. Tomastik agreed that a ROZ exists. Empire's FOF #82t citing to Davidson TR. 4/21/25 at 232:8-18, Tomastik TR. 4/25/25 at 104:19-21, Knights TR. 4/22/25 at 28:3-5, Lake TR. 4/24/25 at 223:4-21.
37. Goodnight's witness, Dr. Davidson, confirmed that oil saturation exists throughout the San Andres stating: "there's some up to 30 to 40 percent in there. They show up periodically up and down the system. So yes, there's oil down in there...." Empire's Response to Rice, p.3 citing to Davidson TR. 4/21/25 at 242:17-243:14.
38. Since there was substantial evidence presented at the hearing to establish the existence of a ROZ in the Grayburg and San Andres, 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.
39. Goodnight's application for proposed four new wells (Gooden, Hernandez, Hodges, Seaver) at 42,000 barrels a day each AND a fifth new well (Piazza) at 40,000 barrels a day AND an increase to an existing well (Dawson) up to 40,000 barrels a day will result in an addition of hundreds of thousands of barrels a day injected into the San Andres. Wheeler TR. 4/8/25 at 43:18-44:7.
40. Goodnight's six applications must be denied because the injection of hundreds of thousands of barrels a day conflicts with Empire's exclusive rights to extract oil in the EMSU because in order to perform a successful CO2 flood EOR project, the injection of CO2 and water must be monitored closely and adjustments made based upon design. Goodnight's SWD wells cannot dispose of water when Empire's active CO2 flood is being performed without adversely affecting economics. Empire's Ex. I. at 12.
41. Goodnight's six applications must be denied because the injection of hundreds of thousands of barrels a day conflicts with Empire's exclusive rights to extract oil in the EMSU because approval of the proposed new wells would contradict the responsibility of the Commission and Division to prevent the drowning by water of any stratum or part thereof capable of producing oil. Goodnight Ex. A-3, Conclusion of Law # 11.
42. This denial is consistent with the Division's conclusion in its order in the Piazza well application. Goodnight Ex. A-3.

### **III. Grounds for Partially Granting/Partially Denying Empire's Applications:**

#### **A. Empire DID adduce substantial evidence of the possibility of FUTURE impairment of correlative rights or waste in the EMSU.**

43. Empire's witness, Dr. Lindsay, provided a map titled: "EMSU-679 Lower Grayburg Fracture Study" and described it as "A Chevron in-house fracture study was performed on EMSU-679 oriented core (120 ft). Fractures were measured in the Lower Grayburg reservoir and upper San Andres residual oil zone (ROZ)." Empire Ex. B-12.
44. The Chevron fracture study is titled: "Eunice Monument South Unit Expansion Area B (EMSUB), Eunice Monument South Unit (EMSU) and Arrowhead Grayburg Unit (AGU) Fracture Study." Empire Rebuttal Exhibit J, Appendix 1.
45. Empire's witness, Dr. Lindsay, is familiar with the study because he worked for Chevron USA at the EMSU location from 1988-2002. Empire Ex. B
46. In the fracture study of the upper 36 feet of the San Andres in EMSU 679, there were 129 vertical fractures. Empire's FOF #33 citing to Lindsay TR. 2/24/25 at 28:10-30:21, 37:8-20. This could lead to communication between the Grayburg and San Andres.
47. Empire's witness, Dr. Buchwalter, built a model and the model shows to a reasonable degree that water is moving from the San Andres into the Grayburg. Empire's Closing Brief p. 20 citing to Buchwalter TR. 2/27/25 at 766:11. This could lead to communication between the Grayburg and San Andres.
48. Dr. Buchwalter's model is titled: "Empire Eunice Monument Study Presentation." Empire, Ex. M-1 to M-20.
49. Goodnight did not prepare any subsurface modeling to support their argument that the water influx from the San Andres to the Grayburg will not occur in the future. Empire's FOF #88c citing to Buchwalter TR. 2/27/25 at 767:3-8.

**B. Goodnight DID NOT adduce substantial evidence of the existence of a continuous barrier between the Grayburg and the San Andres and therefore DID NOT refute the potential for FUTURE impairment or waste in the EMSU.**

50. Goodnight asserted that there is a containment barrier that is located above Goodnight's disposal zones. Goodnight's FOF #19 citing to Goodnight Ex. B, para. 38-43.
51. This led to some witnesses to use the term Grayburg (above barrier) and San Andres (below barrier). This led others witnesses to use the term Upper San Andres (above barrier) and Lower San Andres (below the barrier) when testifying about the containment barrier.
52. Mr. McGuire prepared Goodnight Exhibit B-9 to draw a containment barrier across the EMSU. Goodnight Ex. B, para. 50. Goodnight Exhibit B-9 was unable to map a containment barrier continuously across the EMSU. Empire FOF #85q.

- a. Exhibit B-9 shows the Ryno well, but it shows no barrier between Goodnight's injection zone and Empire's producing Grayburg zone. Empire's Closing Brief, p. 17 citing to McGuire TR. 5/19/25 at 266: 6-14.
  - b. The barriers shown in the Well EMSU 462 do not correlate with the barriers in the EMSU 460 Well. Empire's Closing Brief, p. 17.
  - c. The barriers shown in the Banks well do not correlate with the barriers in the EMSU 462 Well. Empire's Closing Brief, p. 17.
  - d. The barriers shown in the Banks well do not correlate with the barriers in the Ryno well. Empire's Closing Brief, p. 17.
  - e. The barriers shown in the Sosa well do not correlate with the barriers in the Ryno well. Empire's Closing Brief, p. 17.
  - f. There was no barrier that was radially/laterally mappable across these wells, let alone across the 14,000+ acres of the EMSU. Empire's Closing Brief, p. 17.
  - g. Even Goodnight's witness, Mr. Knights, testified there was not a continual containment barrier. Instead, it was "a number of those barriers in amalgamation." Rice's FOF #10 citing to Knights TR. 4/22/25 at 212:11-20.
53. Empire's witness, Dr. Lindsay, testified on the lack of continuous barrier: "And then, when the Grayburg -- when the EMSU anticline formed and you take this flat-line strata and you flex it and make the asymmetric anticline, because it's dolomitized, dolomite is a brittle mineral, you fracture that and you break it. So even if you do have something there that is acting like a seal, now it's fractured. And then you get Mother Nature's Waterflood sweeping through and solution enhancing those vertical fractures and making them wider. And so to have a continuous barrier there, yes, you kind of start out with one, but you don't end up with one. And it doesn't look laterally continuous on logs." Lindsay TR. 2/24/25 at 153:15-154:3.
- C. However, the Commission concluded it is premature at present to grant Empire's applications to permanently revoke the injection authority of the existing wells because the Commission found Empire DID NOT adduce substantial evidence that their correlative rights in the Grayburg are CURRENTLY impaired by Goodnight's injection into the San Andres.**
54. The EMSU currently produces about 800 barrels of oil per day from the Grayburg. Goodnight's FOF #87 citing to Empire's Ex. I at 2, Ex. I-18.
55. Empire has not identified production data from any particular well within EMSU that shows evidence of impacts from Goodnight's disposal operations in its production or operation. Goodnight's FOF #89 citing to Goodnight Ex. B, para. 9, Ex. F at 33.
56. "[T]he strongest evidence" for no communication between the San Andres and Grayburg "is material balance, which is volumes and pressure" and the limited

change in pressures in the San Andres for the volumes of water that were both extracted and injected “is just amazing” and “a unique situation[.]” Goodnight’s FOF #58 citing to Knights TR. 4/22/25 at 251:7-252:2.

**D. In addition, the Commission concluded it is premature at present to grant Empire’s applications to permanently revoke the injection authority of the existing wells because the Commission found there was insufficient evidence presented at hearing to prove whether the ROZ is recoverable.**

57. Empire pointed to other EOR recovery projects within the San Andres formation:

- a. Seminole field, which is 45 miles from EMSU, yielded 68 million barrels from a ROZ.
- b. Tall Cotton Field, which is also 45 miles from EMSU, yielded 2,000 bopd. Empire’s Closing Brief, p. 24 citing to Trentham TR. 2/27/25 at 802:9-804:19, Melzer TR. 848:20-849:9, 856:14-857:7.

58. Recovery, however, is site-specific and is based on the conditions at the EMSU.

59. Empire did not compare the oil-in-place calculations done to the oil-in-place calculations at the other ROZ sites it referenced throughout its testimony, including the Seminole Field, Tall Cotton or Goldsmith. Rice’s FOF #115.

60. Goodnight’s witness, Dr. Lake, testified that Empire relied on a dimensionless curve that projects 18% oil recovery after 4 hydrocarbon pore volumes of CO<sub>2</sub>, which is two standard deviations about the mean for oil recovery for a CO<sub>2</sub> flood in a conventional reservoir. Goodnight’s FOF #162 citing to Lake TR. 4/24/25 at 175:10-17.

**E. Therefore, it is premature at present to grant Empire’s applications to permanently revoke the injection authority of the existing wells. Instead, the Commission will suspend the injection authority to provide Empire with the opportunity to establish a pilot project.**

61. The Commission will provide Empire with the opportunity to establish a CO<sub>2</sub> EOR pilot project within a period of 3 years to ascertain the recoverability of the ROZ.

62. To perform a successful CO<sub>2</sub> flood, the injection of CO<sub>2</sub> and water must be monitored closely and adjustments made based upon design. Goodnight’s SWD wells cannot dispose of water when an active CO<sub>2</sub> flood is being performed. Empire’s Ex. I. at 12.

63. Empire will then return to the Commission and present the further data/analysis.

64. The Commission’s rationale is grounded in the exchange between Commissioner Ampomah and Empire’s witness Mr. Wheeler. Wheeler TR. 4/9/25 at 52:7 to 53:2 (emphasis added).



Q. So if I flip that and then ask you -- and let's say if Empire will be willing to say that, okay, Commission should suspend, like you said, all the saltwater injection that is going on in the EMSU right now, give Empire time to prove that the oil, the ROZ, if it is there, is recoverable, will you be open to that?

A. That is the most fabulous suggestion I've heard this whole ten days of hearing.

Q. And how many years will Empire be open to that?

A. You know, you're getting me in more and more trouble with Mr. West. But I would think we could do it within a couple of years.

Q. So within that couple of years, Empire will have the opportunity to drill the other wells?

A. Yes, sir.

Q. And prove to see that if any of these claims -- you know, real evidence that the ROZ indeed exists and it's recoverable?

A. Yes, sir.

65. The Commission's rationale is also grounded in the exchange between Commissioner Lamkin and Empire's witness, Mr. Wheeler. Wheeler TR. 4/9/25 at 56:11-23 (emphasis added).

Q. I'm mainly speaking about if you -- if you guys had consent from the Commission to establish an EOR project and you had committed capital from your company, what do you think the timeline is in reference to Commissioner Ampomah's question about performing a pilot to verify that the ROZ is there and it's producible?

A. If you just do a small, small pilot project and the Commission requests it, I believe that we can get it and do it within that two-year period, where we're talking about drilling the wells and coring and then the analysis and everything of that to present to the Commission.

#### IV. Pending Motion:

**Goodnight's Motion to Amend the 1984 Order to exclude a portion of the San Andres is premature.**

66. On July 3, 2025, Goodnight filed "Renewed Motion for Judgment of Exclusion of San Andres Formation Within EMSU." The motion asked the Commission to exclude the San Andres from the EMSU.

67. Goodnight had previously filed requests to exclude the San Andres from the EMSU in Case Nos. 24277 and 24278 and following briefing by the parties, on July 2, 2024, the Commission issued an order staying those cases and excluding them from the scope



of this hearing. Empire's Response to Renewed Motion, p. 2 citing to the Commission's Joint Order on Goodnight's Motion to Limit Scope of Hearing on Cases within the EMSU and the Oil Conservation Division Motion Concerning the Scope of the Evidentiary Hearing Set for September 23-27, 2024 (July 2, 2024).

68. But even after the Commission stayed Goodnight's applications, Goodnight raised the same exclusion theory in a January 2025 Motion for Partial Summary Judgment. Empire's Response to Renewed Motion, p. 3 citing to Goodnight's Motion for Partial Summary Judgment (Jan. 23, 2025).
69. On February 14, 2025, the Commission denied the Motion and held that Goodnight's Motion was "precluded by issues of fact" and "otherwise not well-taken." Empire's Response to Renewed Motion, p. 4
70. On March 4, 2025, the Commission entered an Order regarding the scope of the hearing, but did not include anything about Goodnight's request to exclude the San Andres from the EMSU.
71. Any debate over the exclusion of the San Andres would require notice to, and likely participation from, multiple additional parties.
72. Unitization is "federally and state-approved contract that binds multiple entities and stakeholders, including Empire, the Bureau of Land Management and the New Mexico State Land Office." Empire's Response to Renewed Motion, p. 6.
73. Therefore, Goodnight's Motion request was previously stayed and denied and remains outside the scope of this proceeding and cannot be taken up at this time. The Motion is DENIED.

### **ORDER**

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. Based on the 1984 Commission Order, Empire has the exclusive rights to produce the ROZ in the EMSU. However, there was insufficient evidence presented at the hearing to prove whether the ROZ is recoverable.

The Commission therefore will provide Empire the opportunity to establish a CO2 EOR pilot project within a period of 3 years to ascertain the recoverability of the ROZ and return to the Commission with further data/analysis.

Based on the above summaries the Commission:

1. Denies Goodnight's applications to drill new wells Case No. 23614 (Gooden), Case No. 23615 (Hernandez), Case No. 23616 (Hodges), Case No. 23617 (Seaver), Case No. 24123 (Piazza);
2. Denies Goodnight's application to request existing increase in Case No. 23775 (Dawson);

3. Suspends 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.

The vote for this Order was unanimous. The Division will implement this Order.

*William Ampomah*

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William Ampomah, Ph.D.  
On behalf of the Commission

September 12, 2025

Date