

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

**APPLICATION OF GOODNIGHT
MIDSTREAM PERMIAN, LLC TO AMEND
ORDER NO. R-7765, AS AMENDED TO
EXCLUDE THE SAN ANDRES FORMATION
FROM THE UNITIZED INTERVAL OF THE
EUNICE MONUMENT SOUTH UNIT
LEA COUNTY, NEW MEXICO**

CASE NO. 24278

**APPLICATION OF GOODNIGHT
MIDSTREAM PERMIAN, LLC TO AMEND
ORDER NO. R-7767 TO EXCLUDE THE SAN
ANDRES FORMATION FROM THE EUNICE
MONUMENT OIL POOL WITHIN THE
EUNICE MONUMENT SOUTH UNIT AREA,
LEA COUNTY, NEW MEXICO**

CASE NO. 24277

**APPLICATION OF GOODNIGHT PERMIAN
MIDSTREAM, LLC FOR APPROVAL OF A
SALTWATER DISPOSAL WELL, LEA COUNTY,
NEW MEXICO AND, AS A PARTY ADVERSELY
AFFECTED BY ORDER R-22869-A, FOR A
HEARING DE NOVO BEFORE THE FULL
COMMISSION, PURSUANT TO NMSA 1978,
SECTION 70-2-13.**

CASE NO. 24123

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

CASE NOS. 23614-23617

**APPLICATION OF EMPIRE NEW MEXICO TO
REVOKE THE INJECTION AUTHORITY
GRANTED UNDER ORDER NO. R22026 FOR
THE ANDRE DAWSON SWD #001, LEA COUNTY,
NEW MEXICO**

CASE NOS. 24018-24027

**OIL CONSERVATION DIVISION’S RESPONSE TO EMPIRE NEW MEXICO’S
MOTION FOR CLARIFICATION ON THE SCOPE OF HEARING AND BURDEN OF
PROOF**

The New Mexico Oil Conservation Division (“OCD”) hereby submits its Response to Empire New Mexico’s (“Empire”) Motion for Clarification on the Scope of Hearing and Burden of Proof. While OCD is not the target of Empire’s Motion, Empire’s view of OCD’s potential case as reflected in Section III of its Reply to OCD’s Motion to Vacate necessitates that OCD defend that case and will do so here. OCD’s position on the scope of the February 2025 hearing remains consistent over the life of these cases. In support thereof, OCD states as follows:

I. Introduction.

At its May 9, 2024 meeting, at which time the above-captioned cases were heard as to status and procedural issues only, the OCC directed the Parties to submit motions concerning the scope of the hearing set for September 2024. On or about May 23, 2024, OCD filed its Motion Concerning Hearing Scope, which outlined what OCD thought should be the contours of the hearing, including a subsequent Reply. Both Empire and Goodnight Midstream Permian (“Goodnight”) filed their respective Motions, Responses, and Replies. In its Scope Motion, OCD provided both statutory and administrative law, as well as references to relevant Rules of Civil Procedure, to assist the OCC in developing what became the OCC’s July 2, 2024 Joint Order (“Scope Order”) that set forth the scope of the matters before the OCC.

On August 26, 2024, Empire filed its Motion for Clarification, which centers on Goodnight’s arguments through other motions about burdens of proof and the substantive scope of Goodnight’s anticipated case, including defenses. While Empire’s Clarification Motion did not address OCD’s burden of proof or the scope of OCD’s case, Empire dedicated over three pages of its Response to

OCD's Motion to Vacate to the premise that OCD has no right to properly prepare, *via* discovery, a case for presentation because OCD's filed witness testimony does not fit within the Scope Order. *See* Empire's August 29, 2024 Reply to OCD's Emergency Motion, § III, pp. 5-8. Empire's characterization of OCD's case included the following, which OCD construes as positions that require a response by OCD:

- (a) OCD's filed testimony ". . . raises water quality issues but does not touch on the limited scope of issues being decided at the September hearing." *Id.* at p. 6.
- (b) That "[t]he water quality issues raised, at the eleventh hour, by the Division's "Witness Testimony Disclosure," are well outside the limited scope of the September hearing that was narrowed at the Division's request." *Id.* at p. 6. OCD notes here that Empire did not attempt to discern OCD's case theory or evidence prior to the exhibit and witness testimony disclosure deadline.
- (c) Empire wholly dismisses OCD's concerns as outlined in its witness testimony disclosure by stating "it is important to remember that the September hearing is limited only to the parties, wells, and issues identified in the Commission's Order limiting the scope. . ." and that "[t]he September hearing is neither the proper forum nor the proper procedure to establish a broader policy regarding saltwater disposal for the entire state of New Mexico." *Id.* at p. 7.

II. Relevant law.

The Oil and Gas Act ("OGA") governs oil and gas production in the State of New Mexico and is the primary law under which OCD operates. § 70-2-1, *et. seq.* NMSA. In particular, the OGA outlines the scope of OCD's authority to regulate the oil and gas industry. §§ 70-2-6, 70-2-7, and

70-2-12 NMSA. As part of OCD's authority, the OGA also defines key terms such as "waste," "pool," and provides OCD with the power to craft and implement regulations governing oil and gas production in the State of New Mexico. § 70-2-2, 70-2-3, 70-2-33, 70-2-6, and 70-2-12 NMSA. Above all else, OCD is obligated to prevent prohibited waste and to protect correlative rights. § 70-2-11 NMSA. For purposes relevant to this Response and attendant pleadings and to advance its interests in preventing prohibited waste and protecting correlative rights, OCD has authority to regulate:

- (a) Oil or water, among other things, from escaping its local strata into other strata;
- (b) Prevention of drowning of oil or gas producing strata, encroachment by water of productive strata, or any other kind of water encroachment upon productive strata to ensure production from those productive strata;
- (c) that wells be drilled, operated, and produced in a way that avoids injury to neighboring leases or property;
- (d) whether a given well or pool is an oil or gas pool, as well as the power to reclassify wells and pools as necessary;
- (e) injection into oil or gas pools; and
- (f) the management of produced water in relation to production, among other things, of oil and gas; and
- (g) to regulate the disposition, handling, transport, storage, recycling, treatment and disposal of produced water during, or for reuse in, the exploration, drilling, production, treatment or refinement of oil or gas, *including disposal by injection pursuant to authority delegated*

under the federal Safe Drinking Water Act, in a manner that protects public health, the environment and freshwater resources.

§ 70-2-12 (B)(2), (4), (7), (11), (14), and (15) NMSA *emphasis added; see also* § 70-2-18 NMSA.

19.15.26 NMAC, entitled “Injection,” is OCD’s body of regulations applicable to injection into New Mexican wells. 19.15.26.6 NMAC set forth the objective of OCD’s injection regulations: To regulate injection wells under the Oil and Gas Act and to maintain primary enforcement authority for the Safe Drinking Water Act (42 U.S.C. 300f et seq.) Underground Injection Control (UIC) program for UIC Class II wells.

The July 2, 2024 Scope Order states, in defining the scope of the pending hearing in the above-captioned matters: “Such evidence, testimony, and legal argument shall be limited to applications and wells by Goodnight or by Empire New Mexico LLC within the EMSU . . .” Scope Order, ¶ 3, p. 2.

III. OCD’s case fits squarely within the scope for these cases, as defined by OCC.

- a. As a general matter, OCD has jurisdiction over water injection and water quality concerns, justifying OCD’s active involvement in the above-captioned matters.

OCD contends, per § 70-2-12 (B) NMSA, that it possesses statutory authority over saltwater injection into wells in the State of New Mexico. OCD does not see this issue as controversial. Secondly, pursuant to the Oil and Gas Act, OCD developed a dedicated regulatory section solely to injection. 19.15.26 NMAC. More to the point, OCD is obligated (as demonstrated by OCD’s filed Exhibits 11 & 12) to uphold the federal Safe Drinking Water Act, which form the legal the basis of OCD’s anticipated cases precisely because the underlying issue is saltwater injection into wells inside the legal boundaries of the State of New Mexico.

- b. The OCC cannot consider Empire or Goodnight's Cases-in-Chief absent information about the Class II UIC permitting processes for the relevant wells, including surrounding areas.

As noted above in Section III(a), OCD maintains primary enforcement authority for the Federal Safe Drinking Water Act Underground Injection Control program for UIC Class II wells in the State of New Mexico. 19.15.26.6 NMAC. The Applications in the above captioned cases center on either requests for injection authority or termination of previously granted injection authority. The foundation of any well for which authority is sought to either inject or for which approval is sought to be revoked is permitting, specifically Class II UIC permitting which requires OCD to evaluate and protect Drinking Water. It is a *non-sequitur* argument to claim that OCD's goal to discuss UIC permitting (and the relationship of such permitting to drinking water in the area surrounding the subject wells) for the respective wells and the history for the geologic and geographic area are somehow beyond the scope as ordered by the OCC, which necessarily includes a review of the historical and current hydrological status of those wells and areas. More to the point, OCD seeks to clarify the exact impacts of what is sought by both parties on the drinking water in the relevant region, as specifically permitted by both the Oil and Gas Act and OCD's own regulations.

- c. OCD's case, therefore, falls within the scope as outlined in the July 2, 2024 Scope Order as a matter of law and fact.

OCD maintains jurisdiction over injection into New Mexican wells, maintains UIC Class II Primacy under the Safe Drinking Water Act, and OCD's case falls largely into a discussion of original permitting conditions to current-day hydrologic conditions, including how other states have handled similar situations to the one before the OCC. *See* OCD's filed Exhibits 1-2; 6-10;

12-13. OCD intends to present evidence on the overall process of UIC permitting and what OCD is obligated to do in relation to clean drinking water. *See* OCD's Exhibits 3-5; 11. OCD also anticipates proffering evidence discussing how the OCC might handle the current dispute in lieu of simply deciding who wins between the Operators. All the above are centered squarely on the relief requested in the respective Applications, as well as the effects of either Operator prevailing on drinking water in the region, which is intimately tied to the UIC permitting program.

IV. Summary

Based on the above arguments, OCD suggests here that Empire's characterization of OCD's anticipated cases before the OCC in terms of the Scope Order are legally and factually incorrect, justifying a disregarding of those positions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 12, 2024, this pleading was served by electronic mail on:

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