

**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 REBUTTAL WITNESS DISCLOSURE

The New Mexico Oil Conservation Division (“OCD”) hereby submits its Exhibit List and Witness testimony Disclosure pursuant to the Oil Conservation Commission’s Revised Pre-Hearing Order entered on December 5, 2024.

I. Reservation of rights

OCD reserves the right to supplement or amend this pleading. OCD also reserves the right to seek additional discovery by motion, which would be consistent with its reservation of rights to amend or supplement this pleading. OCD avers that such a reservation is proper given Hearing Officer Harwood’s December 30, 2024 Order Granting Empire New Mexico LLC’s Motion for Four-Day Extension of Time to File Requests for Subpoenas. In that Order, Hearing Officer Harwood granted Empire New Mexico LLC (“Empire”) the right to subpoena Goodnight Midstream Permian, LLC (“Goodnight”) witness Preston McGuire for deposition. *See* Order at p. 2, ¶ 7. In that same Order, Hearing Officer Harwood granted Goodnight the right to subpoena for deposition Empire expert witness Dr. Lindsay. *Id.* at p.3, ¶ 9. Additionally, it appears to OCD that discovery production conflicts remain between Goodnight and Empire such that additional and previously undisclosed documentation may yet be exchanged among the Parties, further limiting OCD’s ability to provide a full disclosure in this pleading of subject matter to be covered by OCD witness rebuttal testimony.

Therefore, discovery remains ongoing, justifying OCD’s reservation of right to amend this pleading based on new and previously undisclosed information expected to come from either or both depositions as outlined above.

II. Definitions

In the interest of clarifying the anticipated subject matter of testimony as outlined below, OCD provides the following definitions:

“Act” or “the Act” refers to the New Mexico Oil and Gas Act, codified at Chapter 70, Article 2 of the NMSA 1978

“Empire” refers to Empire of New Mexico.

“Goodnight” refers to Goodnight Permian Midstream LLC.

“Hiss Article” refers to *Movement of Ground Water in Permian Guadalupian Aquifer Systems, Southeastern New Mexico and Western Texas* from the New Mexico Geological Society Guidebook, 31st Field Conference, Trans-Pecos Region, 1980.

“Hiss Paper” or “the Hiss Paper” refers to the 1975 thesis paper for the University of Colorado Department of Geological Sciences entitled STRATIGRAPHY AND GROUNDWATER HYDROLOGY OF THE CAPITAN AQUIFER, SOUTHEASTERN NEW MEXICO AND WESTERN TEXAS by William Louis Hiss, B.S. Kansas State University, M.S. University of Oklahoma, 1960.

“Legislature” or “the Legislature” refers to the New Mexico Legislature.

“Operators” refers to Empire of New Mexico and Goodnight Permian Midstream, LLC, collectively.

“OCD” refers to the New Mexico Oil Conservation Division.

“OCC” refers to the New Mexico Oil Conservation Commission.

“State” refers to the State of New Mexico.

“San Andres” refers to the San Andres Formation, which underlies the Grayburg Formation, and is in the San Juan Basin in Southeastern New Mexico.

“UIC” refers to Underground Injection Control, a program originating from § 42 U.S.C. 1421-26, 1431, and 1442-43, as well as 40 C.F.R. Parts 144-48, and which seek to prevent contamination of Underground Sources of Drinking Water (“USDW”).

III. OCD Rebuttal Witness Disclosure.

a. Phillip Goetze, Engineering Bureau, UIC Permitting Group Manager

i. Introduction

Mr. Goetze has been employed by the Oil Conservation Division (OCD) for 11 years and is currently the manager of the UIC Group within the Engineering Bureau. He has extensive background in the administrative permitting for development and management of oil and gas resources under the state Oil and Gas Act. He is a technical reviewer of applications for Class II wells (including saltwater disposal wells and enhanced oil recovery (EOR) projects) under the New Mexico primacy agreement with the United States Environmental Protection Agency (USEPA) for its Underground Injection Control (UIC) Program of the Safe Drinking Water Act. During his tenure, Mr. Goetze has been a qualified hearing examiner for the OCD for cases ranging from compulsory pooling to protested applications for injection authority. Additional assignments related to his manager position include the development of practices and recommended guidance for UIC related subjects such as induced seismicity, exempted aquifers and Class II disposal impacts on producing intervals. He is responsible for preparing periodic reports for submission to the USEPA to demonstrate compliance with the SDWA and to respond to specific subject matters requests identified by the USEPA. In his capacity within the UIC Group, Mr. Goetze provides recommendations to management for modification of permitting and compliance practices which reflect new technology or processes that impact UIC functions. Mr. Goetze has also authored over 350 hearing orders in his capacity as an examiner.

Mr. Goetze has qualified as an expert witness for the OCD for cases before the Oil Conservation Commission involving UIC permit applications and in support of rulemaking (e.g. acid gas injection well applications, oil and gas casing requirements in the Roswell Artesian Basin, and reporting requirements for fracturing fluids). Mr. Goetze has also provided expert testimony before the New Mexico Water Quality Control Commission in support of rulemaking (e.g. expanded authority for UIC Class I hazardous disposal wells).

Prior experience to employment with the OCD, Mr. Goetze has over thirty years of experience developing and implementing a variety of projects with environmental, hydrologic, or regulatory applications. His prior government experiences include field mapping of mineral occurrences in wilderness areas for the U. S. Bureau of Mines as well as oil and gas leasing and mineral assessment for both the U. S. Geological Survey and the Bureau of Land Management. His employment with the private sector included supervision of numerous investigations of contaminated sites, the implementation and management of remediation projects, oversight of groundwater drilling projects, and project manager for the resolution of environmental compliance issues at private, tribal, state and federal properties.

Mr. Goetze graduated from the New Mexico Institute of Mining and Technology with a Bachelor of Science degree in geology and is currently a registered or licensed geologist in the states of Alaska, Arizona, and Texas. Mr. Goetze is also a Certified Professional Geologist, American Institute of Professional Geologist, and is Certified Hazardous Materials Manager through the Alliance of Hazardous Materials Professionals.

Mr. Goetze will provide expert testimony regarding the practices and operation of the UIC program within the OCD including the historical aspects of current UIC operations as they relate to the primacy agreement and past approvals of injection authority for various projects. Mr. Goetze

will also provide testimony regarding groundwater occurrences, hydrologic issues and the OCD current exempted aquifer program. Mr. Goetze also has direct experience for many of the original permit applications for the disposal wells involved in the cases as well as the original hearing between two principal parties in this matter. Additionally, Mr. Goetze has reviewed and will continue to review documentation from the Parties, including anticipated exhibits and discovery disclosures, to which he will apply his background, training, and experience. Therefore, Mr. Goetze is being qualified as an expert in hydrogeology, petroleum geology, and in all matters regarding the functions of the UIC program for the OCD. Mr. Goetze's *Curriculum Vitae* is labeled Exhibit 16.

ii. Rebuttal Subject Matter

Mr. Goetze, as OCD's expert on the matters of hydrology, geology, petroleum geology, underground injection controls, intends to provide rebuttal testimony on the following topics, subject to potential amendment based upon pending depositions and additional discovery disclosures (as noted in Section I above):

a. Bill Knights

Goodnight's witness Bill Knights, in his prefiled testimony dated August 26, 2024, stated that he reserved the right to amend or supplement his opinions should additional information become available. *See* Knights' Report, p.9. In his December 12, 2024 deposition, Knights testified that his opinions in this case were only final if he received no additional information. Knights Deposition Transcript at 157:15-158:5. Knights also admitted he had not reviewed any of OCD's filings, but in fact had discussed rebuttal testimony issued with Goodnight's Counsel. *Id.* at 158:17-159:10. OCD remains unclear what, if anything, Knights may have to say about OCD's

case based on the above. Mr. Goetze will address these opinions once disclosed and intends to rebut them, as necessary, at the evidentiary hearing in this matter.

b. James Buchwalter

Empire's witness James Buchwalter, in his December 13, 2024 deposition, testified that he had not reviewed OCD's filings in this case and therefore had not input any of OCD's information into his models underlying his testimony. *See* Buchwalter Deposition at 305:8-311:7. OCD remains unclear what, if anything, Buchwalter may have to say about OCD's case as it is also unclear what information Empire will have Buchwalter review in anticipation of filing rebuttal testimony. Mr. Goetze will address these opinions once disclosed and intends to rebut them, as necessary, at the evidentiary hearing in this matter.

c. Thomas Tomastik

Goodnight's witness Thomas Tomastik, in his prefiled testimony dated August 26, 2024, twice stated that he reserved the right to amend or supplement his opinions should additional information become available and that he would rebut related opinions from experts in this matter. *See* Tomastik Report, p. 5, ¶¶ 10-11. In his December 10, 2024 deposition, Tomastik re-adopted this position and admitted his opinions were not final as of his deposition. Tomastik Deposition at 157:19-158:21. Further, Mr. Tomastik admitted he intends to offer rebuttal testimony against OCD (citing aquifer exemptions and the Hobbs channel), but asserted his opinions as of his deposition were not final and would only be disclosed on the deadline for filing of rebuttal testimony, recognizing that doing so handicaps OCD as OCD will have no chance to further examine Tomastik on his opinions. *Id.* at 159:6-160:8. OCD remains unclear what, if anything, Tomastik may have to say about OCD's case as it is also unclear what information Goodnight will have Tomastik review in anticipation of filing rebuttal testimony. Mr. Goetze will address these

opinions once disclosed and intends to rebut them, as necessary, at the evidentiary hearing in this matter.

d. Dr. Robert Trentham

Empire's witness Dr. Trentham stated in his November 5, 2024 deposition that it is his opinion that the San Andres is hydrologically separated from the Capitan Reef. Trentham Deposition at 209:19-210:8. Mr. Goetze will address these opinions once disclosed and intends to rebut them, as necessary, at the evidentiary hearing in this matter.

e. Dr. Larry Lake

Goodnight witness Dr. Larry Lake, in his deposition on November 12, 2024, testified originally that he had no opinions on OCD's case, but then admitted that his opinions as of that date were not final and could be amended. Lake Transcript at 182:2-183:23. OCD remains unclear what, if anything, Dr. Lake may have to say about OCD's case as it is also unclear what information Goodnight will have Dr. Lake review in anticipation of filing rebuttal testimony. Mr. Goetze will address these opinions once disclosed and intends to rebut them, as necessary, at the evidentiary hearing in this matter.

f. Galen Dillewyn

Empire witness Galen Dillewyn, in deposition on December 17, 2024, testified that his opinions as of the date of his deposition were not final should additional information come to light, yet stated he had no opinions as to OCD's case at the time of deposition. Dillewyn Transcript at 232:16-233:18. Dillewyn also testified that he had not discussed rebuttal with Empire counsel. *Id.* OCD remains unclear what, if anything, Dillewyn may have to say about OCD's case as it is also unclear what information Empire will have Dillewyn review in anticipation of filing rebuttal

testimony. Mr. Goetze will address these opinions once disclosed and intends to rebut them, as necessary, at the evidentiary hearing in this matter.

g. General Rebuttal

Because neither Empire nor Goodnight addressed OCD's case in their various witness and exhibit disclosures, OCD is severely disadvantaged in its ability to provide rebuttal testimony at the time of this filing. Thus, as reserved above in Section I and reiterated here, OCD intends to rebut any testimony hostile to its case as soon as it can discern what, precisely, Empire and Goodnight have to say about OCD's case. Therefore, any Empire or Goodnight witness who provides rebuttal testimony in the filings due on February 6, 2025 will be countered by OCD as necessary.

b. OCD Deputy Director Brandon Powell

i. Introduction

OCD Deputy Director Powell manages the OCD's Engineering Bureau which contains the UIC Group. He has served with OCD in various positions for more than 18 years, including, engineering bureau chief, district supervisor, staff manager, inspection/enforcement supervisor, and environmental specialist. Mr. Powell's UIC experience has ranged from field implementation to policy oversight for the OCD. Mr. Powell in his various OCD capacities has testified in various OCD rule makings and other hearings as an OCD process expert. Prior to joining OCD, Mr. Powell was a facility manager and environmental technician for an environmental services company. His qualifications are described in previously filed Exhibit 1. Mr. Powell will testify regarding aspects of the history of the area, the OCD's activities for disposal, and the OCD's efforts to institute a uniform process for permitting. Deputy Director Powell's previously filed *Curriculum Vitae* is labeled as Exhibit 15.

ii. Rebuttal Subject Matter

Deputy Director Powell may address allegations that OCD's injection and related data, from reporting or otherwise, is flawed or invalid. Deputy Director Powell may address allegations that OCD's uniform permitting process is flawed or failed insofar as this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 6, 2025, this pleading was served by electronic mail on:

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