

DOMENICI LAW FIRM, P.C.

ATTORNEYS AT LAW

6100 Seagull NE, Suite 205
Albuquerque, New Mexico 87109

Pete V. Domenici, Jr.
pdomenici@domenicilaw.com

Jeanne Cameron Washburn
jwashburn@domenicilaw.com

-
(505) 883-6250 Telephone
(505) 884-3424 Facsimile

Charles N. Lakins
clakins@domenicilaw.com

Lorraine Hollingsworth
lhollingsworth@domenicilaw.com

September 15, 2005

Florene Davidson
Hearing Clerk
EMNRD
Oil Conservation District
1220 So. St. Francis Drive
Santa Fe, NM 87505

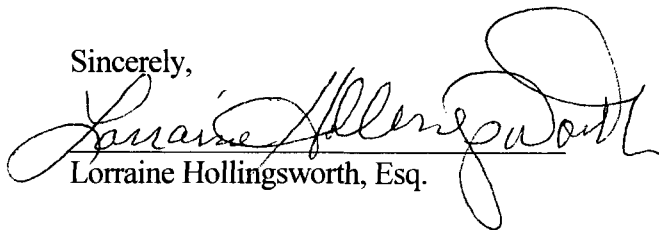
Re: Motion to Dismiss

Dear Ms. Davidson:

Attached please find the original and requisite copies of GMI's *Motion to Dismiss and Strike Controlled Recovery Inc.'s Response to GMI's Request for Review of Denial of Request for Partial Stay of Division Order R-12306-B* for filing with the Commission. The motion was faxed filed on September 14, 2005. Please return an endorsed copy in the enclosed envelope.

Thank you for your courtesies in this matter.

Sincerely,


Lorraine Hollingsworth, Esq.

Encls.

2005 SEP 19 PM 12 28

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

**APPLICATION OF GANDY MARLEY, INC.
TO MODIFY THEIR EXISTING NMOCD RULE 711
PERMIT NO. NM-01-019 SO THEY MAY ACCEPT
SALT-CONTAMINATED OILFIELD WASTES**

APPEAL OF ORDER NO. R-12306-B

CASE NO. 13480

**MOTION TO DISMISS CONTROLLED RECOVERY, INC.
AND STRIKE CONTROLLED RECOVERY INC.'S RESPONSE TO GMI'S
REQUEST FOR REVIEW OF DENIAL OF REQUEST FOR
PARTIAL STAY OF DIVISION ORDER R-12306-B**

COMES NOW Gandy Marley, Inc. (GMI), by and through undersigned counsel of record, and requests that the Commission find that Controlled Recovery Inc. (CRI) does not have standing to participate in this matter and to strike CRI's Response to GMI's Request for Review of Denial of Request for Partial Stay of Division Order R-12306-B.

The doctrine of standing requires that a person or entity wishing to participate in a matter before the Commission "must have a personal stake in the outcome" of the pending matter and the person or entity "must allege both injury in fact and a traceable causal connection between the claimed injury and the challenged conduct." *Key v. Chrysler Motors, Corp.*, 121 N.M. 764, 918 P.2d 350 (Sp.Ct.1996). "Injury in fact" is defined as a "legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *John Does I through III v. Roman Catholic Archdiocese of Santa Fe, Inc.*, 122 N.M. 307, 924 P.2d 273 (N.M.App. 1996). A party claiming standing under a statute "must demonstrate that the interest sought to be protected...is arguably within the zone of interests to be protected or regulated by

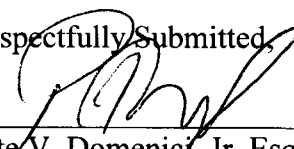
2005 SEP 19 PM 12:28

the statute." The Oil and Gas Act states that a "person having an interest in the subject matter of the hearing shall be entitled to be heard." §70-2-23, NMSA 1978.

CRI has not provided any evidence that it is "a person having an interest" in this matter. The purpose of Rule 711 permits is to protect human health and the environment. CRI has not demonstrated that it has a particularized interest, other than that of the general public, in the protection of the environment and groundwater located in the vicinity of the GMI facility. CRI has not identified any property adjacent to or near the GMI facility that could be impacted by the GMI facility. CRI's facility is not located near the GMI facility and there is no connection between the groundwater underlying the GMI facility and the CRI facility. Nor does CRI identify any particular public interest or public interest group which it represents. The only apparent interest of CRI in this matter is as a competitor to GMI, which is not an interest that is within the zone of interest protected by the provisions of Rule 711. Because CRI does not have standing in this matter, the Commission should strike CRI's Response to GMI's Request for Review of Denial of Request for Partial Stay of Division Order R-12306-B.

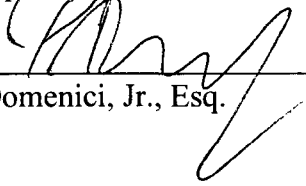
Wherefore, because CRI has not identified a specific, particularized interest in this matter, GMI requests that the Commission find that CRI does not have standing to participate in this matter and strike CRI's Response to GMI's Request for Review of Denial of Request for Partial Stay of Division Order R-12306-B.

Respectfully Submitted,



Pete V. Domenick, Jr. Esq.
Attorney for Gandy Marley Inc.
6100 Seagull Street NE, Suite 205
Albuquerque, NM 87109
(505) 883-6250

I hereby certify that a true and
correct copy of the foregoing was
served on all parties of record on the 14th
day of September, 2005.



Pete V. Domenici, Jr., Esq.