

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

IN THE MATTER OF THE APPLICATION
OF DKD, LLC FOR AN ORDER DIRECTING
GANDY CORPORATION TO SHOW CAUSE, LEA
COUNTY, NEW MEXICO

CASE NO. 13686 *de novo*

ORDER NO. R-12649-B

ORDER DENYING MOTION FOR REMAND

THIS MATTER, having come before the New Mexico Oil Conservation Commission on motion of DKD, LLC to strike Gandy Corporation's Notice of Withdrawal of its request for a *de novo* appeal and the Oil Conservation Commission having reviewed and considered the motion and the testimony and evidence presented at the Oil Conservation Commission's January 11, 2007 hearing;

FINDS THAT:

1. DKD filed its Application and its Amended Application requesting that the Oil Conservation Division permanently revoke Gandy Corporation's authority to inject produced water for disposal purposes into its State "T" Well No. 2, which is located 4290 feet from the South line and 500 feet from the West line (Lot 12) of irregular Section 6, Township 16 South, Range 36 East, NMPM, in Lea County, New Mexico and that it require Gandy Corporation to reduce pressures in the injection formation, to plug and abandon the State "T" Well No. 2, and to repair or plug any wells determined to have been damaged as a result of Gandy Corporation's operation of the State "T" Well No. 2.
2. On April 27, 2006, the Oil Conservation Division heard DKD, LLC's Application and Amended Application.
3. On October 24, 2006, the Oil Conservation Division issued Order No. R-12649 revoking Gandy Corporation's authority to inject through the State "T" Well No. 2.
4. Gandy Corporation timely filed a request for *de novo* hearing of Order No. R-12649 with the Oil Conservation Commission.

5. On December 12, 2006, Gandy Corporation filed a C-103 form setting out its plan to plug and abandon the State "T" Well No. 2 by July 31, 2007.

6. On December 13, 2006, Gandy Corporation filed a Motion to Dismiss Amended Application of DKD for Lack of Jurisdiction.

7. DKD, LLC filed its response to Gandy Corporation's Motion to Dismiss on January 4, 2007.

8. Gandy Corporation filed a Notice of Withdrawal of the De Novo Appeal and a Notice to Withdraw the Motion to Dismiss on January 5, 2007.

9. On January 5, 2007, DKD, LLC filed a Request for Hearing on Gandy Corporation's Notice of Withdrawal.

10. On January 8, 2007, DKD, LLC filed a Motion to Strike Gandy Corporation's Notice of Withdrawal of Request for De Novo Appeal.

11. On January 8, 2007, Gandy Corporation filed its Motion to Continue the Oil Conservation Commission hearing on the de novo appeal scheduled for January 11, 2007.

12. On January 9, 2007, Gandy Corporation filed its Response to DKD's Request for Hearing on Gandy's Notice of Withdrawal, its Response to DKD's Motion to Strike Gandy's Notice of Withdrawal, and its Reply to DKD, LLC's Response to Gandy Corporation's Motion to Continue.

13. DKD, LLC filed its Reply Pursuant to Gandy Corporation's Response to DKD's Request for Hearing on January 9, 2007.

14. Gandy Corporation filed its Notice Provisionally Reinstating Motion to Dismiss on January 10, 2007.

15. The Oil Conservation Commission heard arguments on the motion to dismiss and the motion to strike the notice of withdrawal and received evidence on the motion to strike the notice of withdrawal at its hearing on January 11, 2007.

16. Oil Conservation Commission rules do not address the issue of withdrawal or dismissal of de novo appeals from the Oil Conservation Division to the Oil Conservation Commission.

17. However, the rules of civil procedure, which govern district court cases, and to which de novo appeals are most analogous provide guidance.

18. Rule 1-041 NMRA provides that a plaintiff may dismiss an action without a court order by filing a notice of dismissal before the defendant files an answer or other responsive pleading or if all parties who have appeared in the action stipulate to the dismissal. Otherwise, an action shall not be dismissed upon a plaintiff's motion without a court order and upon such terms the court deems proper.

19. Therefore, given that the time for filing a de novo appeal had passed and the matter had already been scheduled for hearing, Gandy Corporation should have either obtained DKD, LLC's concurrence in the notice to withdraw or should have filed a motion requesting it be allowed to withdraw its request for de novo appeal instead of filing a unilateral notice of withdrawal. This prevents harm to other parties that relied on the filing of the request for de novo appeal. Traditionally, once one party has filed a request for de novo appeal before the Oil Conservation Commission, other parties have not filed their own request for de novo appeal because the request does not provide detailed reasons for the appeal.

20. At the January 11, 2007 hearing, DKD, LLC stated that the Oil Conservation Commission should not allow Gandy Corporation to withdraw its de novo appeal because in addition to shutting in the State "T" Well No. 2 and plugging and abandoning it, DKD, LLC was requesting that the Oil Conservation Commission hold a de novo hearing and order Gandy Corporation to reduce the pressure in the reservoir by withdrawing water it has injected into the State "T" Well No. 2.

21. The State "T" Well No. 2 has been shut in since December 23, 2006.

22. Gandy Corporation has agreed not to operate the State "T" Well No. 2 between now and the time it plugs and abandons the well.

23. DKD, LLC failed to establish that Gandy Corporation's injection well was the sole source of the increased reservoir pressure.

24. In addition, DKD, LLC failed to show that the additional relief requested was within Oil Conservation Commission's authority since Gandy Corporation's permit does not include a provision requiring it to remove water it has injected into its disposal well nor do Oil Conservation Commission rules provide for such remedy.

25. Therefore, the Oil Conservation Commission denies DKD, LLC's Motion to Strike Gandy Corporation's Notice of Withdrawal of Request for De Novo Appeal.

26. Since the Oil Conservation Commission is allowing Gandy Corporation to withdraw its request for de novo appeal it is not necessary to address Gandy Corporation's motion to dismiss DKD, LLC's amended application for lack of jurisdiction.

IT IS THEREFORE ORDERED THAT:

A. DKD, LLC's Motion to Strike Gandy Corporation's Notice of Withdrawal of Request for De Novo Appeal is denied and Gandy Corporation may withdraw its request for de novo appeal subject to the following conditions:

1. Gandy Corporation will leave the State "T" Well No. 2 shut in and will not henceforth use it to inject.

2. Gandy Corporation will plug and abandon the State "T" Well No. 2 on or before July 31, 2007.

B. In future cases, a party shall only file a notice of withdrawal of a request for de novo appeal if the deadline for filing a de novo appeal has not passed or if all parties concur in the withdrawal. Otherwise, a party shall file a motion with the Oil Conservation Commission requesting an order allowing it to withdraw its request for de novo appeal.

DONE at Santa Fe, New Mexico on the 8th of February 2007.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION



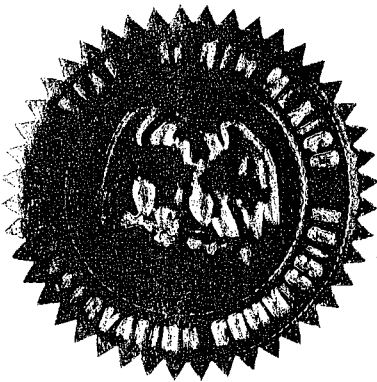
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WILLIAM OLSON, MEMBER



MARK E. FESMIRE, P.E., CHAIR



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