

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

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Oil Conservation Division

APPLICATION OF PRONGHORN
MANAGEMENT CORPORATION FOR
APPROVAL OF A SALT WATER DISPOSAL
WELL, LEA COUNTY, NEW MEXICO.

CASE NO.: 12905 (*de novo*)

SUPPLEMENTAL MEMORANDUM IN OPPOSITION
TO APPROVAL OF SALT WATER DISPOSAL WELL

DKD, LLC, an interested party herein, by and through counsel, Montgomery & Andrews, P.A., submits this Supplemental Memorandum in Opposition to Approval of Salt Water Disposal Well. The Application should be denied because the Applicant has not secured the necessary approval and mineral lease to inject.

This Supplemental Memorandum incorporates the legal argument and authority set forth in the Memorandum in Opposition which was filed with the Commission and handed to the Commissioners at the March 20, 2003 Hearing Date. In particular, Pronghorn as surface owner cannot inject salt water into the well because it does not have permission to do so from the mineral estate owner. *See Cassinos v. Union Oil Co. of California*, 14 Cal.App.4th 1770, 18 Cal.Rptr.2d 574 (1993); *Gill v. McCollum*, 19 Ill.App.3d 402, 311 N.E.2d 741 (Ct. App. 1974); *TDC Engineering, Inc. v. Dunlap*, 686 S.W.2d 346 (Ct. App. Tex. 1985); *Farragut v. Massey*, 612 So. 325 (Miss. 1993). This is not a case of the Commission determining private property rights or trespass—simply one of the Commission determining whether the Applicant has the right to conduct the salt water disposal operations which it proposes. Simply stated, Pronghorn has no right to inject, and the Commission should not overlook that fact.

This Supplemental Memorandum is expressly limited to the subject which the Commission directed counsel to brief: the policy of the New Mexico State Land Office with respect to salt water disposal injection into minerals owned by the State. The other issues raised at the March 20, 2003 hearing are expressly not treated in this Supplemental Memorandum, as they are beyond the scope of the direction of the Commission.

The New Mexico State Land Office Rule respecting salt water disposal wells is attached hereto as Exhibit "A." In particular, that rule provides that:

Lessees are expected to comply with all lawful rules of the New Mexico Oil Conservation Division pertaining to the prevention of waste, which includes disposal of produced salt water or brine. If state lands are needed for a salt water disposal operation, then application for a Salt Water Disposal Easement Site shall be made

State Land Office Rule 1.063 (attached hereto as Exhibit "A").

Two aspects of SLO Rule 1.063 are particularly relevant in this matter. First, in the opening word of the Rule, the Rule contemplates that "Lessees" are the parties which are authorized to dispose of salt water on State lands, subject to the remaining provisions of the Rule. In this case, the lessee of the minerals underlying Pronghorn's proposed injection well is Chesapeake Operating, Inc., not Pronghorn. Pronghorn has no assignment or other conveyance of any right to inject.

The second aspect of SLO Rule 1.063 which is particularly relevant is that the party seeking to conduct salt water disposal applications must obtain a Salt Water Disposal Easement. Staff of the State Land Office were unclear on the State Land Office's position on how an application for a Salt Water Disposal Easement would be handled if the minerals underlying the proposed salt

water disposal injection well were already leased. However, in light of SLO Rule 1.063's contemplation that lessees are the parties authorized to conduct disposal operations, it is DKD's position that Pronghorn has no authority to conduct such operations under State Land Office Rules.

Although the Commission directed that this Supplemental Memorandum be filed by April 9, 2003, DKD files this document on April 11, 2003, after determining that neither counsel for the Commission, Stephen Ross, Esq., nor counsel for Pronghorn, Ernest Padilla, Esq., are opposed to such submission.

Therefore, DKD, LLC requests that the Commission deny the application of Pronghorn Management Corporation.

Respectfully Submitted,

MONTGOMERY & ANDREWS, P.A.

By 

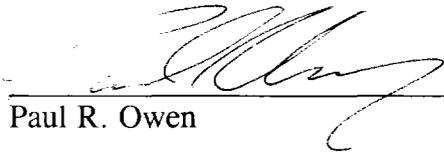
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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of April, 2003, I have caused a copy of our Supplemental Memorandum in Opposition to Approval of Saltwater Disposal Well in the above-captioned case to be served via first class U.S. Mail upon the following named parties:

Earnest L. Padilla, Esq.
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ATTORNEYS FOR APPLICANT PRONGHORN MANAGEMENT CORPORATION



Paul R. Owen

EXHIBIT A
Suppl. Memo
Salt Water Well
#12905 (denovo)

STATE RECORDS CENTER

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1. Location of well.
2. Depth, Log and Casing Record Production Data.

1.063 Salt Water Disposal. Lessees are expected to comply with all lawful rules of the New Mexico Oil Conservation Division pertaining to prevention of waste, which includes disposal of produced salt water or brine. If state lands are needed for a salt water disposal operation, then application for a Salt Water Disposal Easement Site shall be made to the "Oil and Gas Division" or application for a business lease shall be made to the "Land Surface Division" of the State Land Office, depending upon whether underground or surface disposal, respectively, is desired. Ordinarily, water produced on lease may be disposed of on lease without the Commissioner's permission if the disposal operation otherwise meets the approval of the Oil Conservation Division and is otherwise reasonable and accepted practice in the industry.

1.064 Royalty Purchase--Preference Right. Requests made by petroleum refineries within the state to the Commissioner to purchase state royalty oil as a preference right under the provisions of §§ 19-10-64 through 19-10-70 NMSA 1978 shall be accompanied by an order or ruling of the New Mexico Oil Conservation Division determining that the applicant is qualified and otherwise entitled to such preference. Requests to purchase state royalty oil on a bid basis may be made directly to the Commissioner in letter form. In either case, the applicant must identify the wells from which he desires to purchase the royalty oil.

1.065 Reservation of Right to Purchase Production. The state reserves a continuing option to purchase at anytime and from time to time, at the market price prevailing in the area on the date of purchase, all or part of the oil and gas that may be produced from the lands embraced in all leases issued on or after June 11, 1973.

1.066 Appeals from Decision of the Commissioner. Any party aggrieved by any ruling or decision of the Commissioner affecting such party's interest in any oil and gas lease may appeal to the appropriate District Court within sixty (60) days after such ruling or decision is rendered pursuant to § 19-10-23 NMSA 1978.

1.067 Fees.

A. Filing each application for oil and gas lease.....\$30.00