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April 9, 2003

HAND-DELIVERED

Lori Wrotenbery, Director
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

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APR 9 2003
Oil Conservation Division

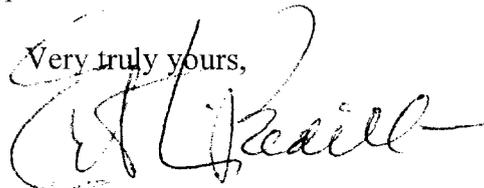
RE: OCC Case No. 12905, (de novo)

Dear Ms. Wrotenbery;

Enclosed are an original and four copies of Memorandum in Support of Salt Water Disposal Well in accordance with your directive at the close of the hearing on March 20, 2003.

Should you require additional information, please let us know.

Very truly yours,



ERNEST L. PADILLA

ELP/maq
cc: Pronghorn Management Corp.
Paul Owen, Esq.

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING

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CASE NO. 12905
(de novo)

Oil Conservation Division

IN THE MATTER OF THE APPLICATION OF
PRONGHORN MANAGEMENT CORP. FOR
SALT WATER DISPOSAL, LEA COUNTY, NEW MEXICO

**MEMORANDUM IN SUPPORT OF
SALT WATER DISPOSAL WELL**

Pronghorn Management Corp., by its attorney Ernest L. Padilla, PADILLA LAW FIRM, P. A., for its Memorandum in Support of Salt Water Disposal Well states:

A. Introduction.

This matter came before the Oil Conservation Division initially as an administrative application which resulted in an administrative order, SWD 836, being issued by the Oil Conservation Division. Thereafter, DKD, LLC, (DKD) the opposing party to this application filed a request for hearing before the Division on the basis that it had not received notice of the application. The record before the Division is clear that DKD's, predecessor in interest, Chesapeake Operating, Inc. did in fact receive notice of the application and did not file a protest. The record is also clear that DKD did not file its assignment from Chesapeake Operating, Inc. with the Lea County Clerk until after Pronghorn had filed its initial application with the Division.

The first basis of DKD's opposition to the application has been lack of notice, which at the Commission hearing was not raised. The second basis for DKD's

opposition at the Division hearing was that Pronghorn did not have authority to inject produced water in the San Andres and Glorieta formations, the proposed injection zones. DKD contends that an element or condition precedent to inject is that Pronghorn must have authority from the surface owner and/or the mineral owner prior to Commission having authority to issue an order approving the application. In support of its position, DKD has not presented any geological or engineering evidence of how the application would impair its correlative rights or how approval of the application would cause waste, which is the statutory purview of the Commission. See, Continental Oil Co. v. Oil Conservation Division, 70 NM 310, 373 P2d 809 (1962). Its attack, instead, is that approval of the application would sanction trespass by Pronghorn. This notion of trespass is clearly beyond the jurisdiction of the Commission.

B. The Commission lacks jurisdiction to consider whether Pronghorns's application will constitute trespass.

In its Memorandum in Opposition to Approval of Salt Water Disposal Well, DKD would have the Commission believe that it must determine what rights, if any, Pronghorn or its partners as owners of the surface estate on which the proposed injection well is located, have in the mineral estate and to what extent it may inject produced water not produced from Chesapeake Operating's oil and gas lease covering the injection zone. Approval of the Pronghorn's salt water is clearly within the Commission's regulatory power. A determination of a property right to inject is not. A determination of trespass is also not within the Commission's regulatory power.

Snyder Ranches, Inc. v. Oil Conservation Commission, 110 NM 637, 798 P2d 587 (1990) gives us a good idea of the distinction between approval of an application for

salt water injection and trespass. At 110 NM 640, the New Mexico Supreme Court states:

Having found substantial evidence to support the Commission and district court's conclusions, our analysis should end. However, in order to avoid future error, we take the opportunity to answer Snyder Ranches' assertion that the granting of Mobil's application to inject salt water into the disposal well authorizes a trespass against Snyder Ranches' property. We do not agree.

The State of New Mexico may be said to have licensed the injection of salt water into the disposal well; however, such license does not authorize trespass. The issuance of a license by the State does not authorize trespass or other tortious conduct by the licensee, nor does such license immunize the licensee from liability for negligence or nuisance which flows from the licensed activity. (citations omitted). In the event that an actual trespass occurs by Mobil in its injection operation, neither the Commission's decision, the district court's decision, nor this opinion would in any way prevent Snyder Ranches from seeking redress for such trespass.

It is clear from the foregoing that regulatory approval by the Commission of a salt water disposal operation and a determination of property rights and trespass are two different things, having separate jurisdictional bases. Continental Oil Co., supra, the landmark New Mexico case establishing the Commission's regulatory power said as much. In discussing the question of whether correlative rights were a corollary of waste, the New Mexico Supreme Court at 70 NM 324 said:

...If the protection of correlative rights were completely separate from the prevention of waste, then there might be no need of the commission as a party; but if such were true, it is very probable that the commission would be performing a judicial function, i.e., determining property rights and grave constitutional problems would arise. For the same reason, it must follow that, just as the commission cannot perform a judicial function, neither can the court perform an administrative one....(emphasis ours).

The Commission cannot determine, for example, whether injection of salt water in this case, and under the circumstances that DKD has posed for the Commission will be good or bad faith trespass.

C. *Surface/Mineral Estate distinctions are not relevant or material to the Commission's determination of whether salt water disposal is appropriate in this case.*

Irrespective of the foregoing analysis of the Commission's jurisdiction, Pronghorn feels compelled to address the interrelationship of the split surface and mineral estate. First, Pronghorn does not claim, nor does it want to test, the issue that surface ownership allows it to inject produced water. Pronghorn has obtained from Chesapeake Operating a letter which states that Chesapeake does not object to the proposed injection operation. Additionally, it has made application to the Commissioner of Public Lands for a salt water disposal easement. A copy of that application is attached hereto as Exhibit A, together with undersigned counsel's letter stating Pronghorn's position that the circumstances require a salt water disposal easement irrespective of its surface ownership.

Also attached, as Exhibit B, is a copy of the applicable rule of the Commissioner of Public Lands that an order of the Commission should be obtained before application for a salt water disposal easement. Because of the argument made by DKD, and apparently accepted by the Division, that a property right is an element or condition precedent of a salt water disposal application, Pronghorn has asked the Commissioner issue the salt water disposal easement subject to the Commission's approval of the instant application. By making the application for salt water disposal easement with the Commissioner of Public Lands, Pronghorn has conceded the issue of whether as surface owner it owns or has a property right to the "pore space" at the disposal interval at 6000 to 6,400 feet below the surface.

D. DKD's witness testified falsely on a material issue before the Commission.

It is interesting that DKD accuses Pronghorn of not having a salt water disposal easement from the Commissioner of Public Lands. It is more interesting that DKD does not itself have a salt water disposal easement from the Commissioner of Public Lands. Attached hereto as Exhibit C, are certified copies of tract book entries for the land involved which do not show that DKD has been issued a salt water disposal easement from the Commissioner. It is most interesting that Danny Watson, DKD's principal, testified in cross-examination that DKD had a salt water easement from the Commissioner. Attached as Exhibit D is a portion of Mr. Watson cross-examination concerning Mr. Watson's false testimony, amounting to perjury.

NMSA 1994, Section 30-25-1 defines perjury as follows:

Perjury consists of making a false statement under oath or affirmation, material to the issue or matter involved in the course of any judicial, administrative, legislative or other official proceeding, knowing such statement to be untrue.

Whoever commits perjury is guilty of a fourth degree felony.

Understandably, DKD is concerned about competition to its salt water disposal operation, but false testimony cannot be tolerated. Mr. Watson's false statement goes to a material issue involved this proceeding, which he raised and upon which the Division's examiner relied to rescind Administrative Order SWD-836.

E. Conclusion.

The notice deficiencies cited in the Division's order are now moot. Whether or not Pronghorn has a salt water disposal easement from the Commissioner of Public Lands should not be considered by the Commission and is not an element or condition precedent

for issuance of an order approving Pronghorn's application. Finally, the Commission cannot allow litigants before it to conveniently falsify testimony, for profit motives, such that the seriousness and fundamental basis, upon which oaths and affirmations are made by such litigants, undermine and diminish the solemnity and fair play of the Commission's proceedings.

For the foregoing reasons, the Commission should approve Pronghorn's application.

PADILLA LAW FIRM, P. A.

By: 
ERNEST L. PADILLA
P. O. Box 2523
Santa Fe, New Mexico 87504-2523
(505) 988-7577

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of this Memorandum in Support of Salt Water Well to be served upon Paul R. Owen, MONTGOMERY & ANDREWS PA, P.O. Box 2307, Santa Fe, New Mexico 87504-2307, on this 9th day of April, 2003.


ERNEST L. PADILLA