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March 14, 2006

**VIA FACSIMILE FILING 505-476-3462**

Florence Davidson  
Oil Conservation Division  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

RE: Matter of the Application of DKD, LLC for an Order Directing Gandy Corporation to Show Case, Lea County, New Mexico; Case No. 13686

Dear Ms. Davidson:

Please find attached Intervenor Gandy-Marley's *Withdrawal of Motion to Dismiss and Request for Decision on the Merits* for filing in the above captioned case.

Thank you for your courtesies.

Sincerely,  
DOMENICI LAW FIRM, P.C.

  
Charles N. Lakins, Esq.

cc: 1679  
J. Scott Hall, Attorney for DKD  
Gail MacQuesten, Attorney for OCD

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

**IN THE MATTER OF THE APPLICATION OF  
DKD, LLC FOR AN ORDER REVOKING THE  
INJECTION AUTHORITY FOR THE GANDY  
CORPORATION STATE "T" WELL NO. 2,  
LEA COUNTY, NEW MEXICO**

**CASE NO. 13686**

**INTERVENOR'S WITHDRAWAL OF MOTION TO DISMISS  
AND REQUEST FOR DECISION ON THE MERITS**

COMES NOW the Intervenor Gandy Corporation, by and through undersigned counsel of record, and for its Withdrawal of Motion to Dismiss and Request for a Decision on the Merits states as follows:

1. A Hearing on DKD's Application was held before the Oil Conservation Division Hearing Examiner on April 27, 2006. Through its Application, DKD challenged the permit issued by the OCD and also challenged Gandy Corporation's ("Gandy") operations under that permit. At the hearing, all evidence indicated that Gandy's permit was properly issued, the permit was not appealed, and that Gandy is operating within its permit.
2. At the Hearing, the attorney for OCD raised concerns under NMAC 19.15.14.1227 about the Division's authority to hear the application. Intervenor moved to dismiss DKD's Application for lack of jurisdiction and standing.
3. Intervenor Gandy Corporation hereby withdraws its motion to dismiss, and requests that DKD's Application be denied based upon the evidence presented as applied to the legal rights at issue.

4. At the hearing, Danny Watson, owner of DKD, testified: 1) that he had "tried, and tried and tried" to get OCD to shut down Gandy's State "T" Well No. 2 injection well through previous proceedings before the OCD and OCC; 2) that the primary reason for DKD's Application in this case was due to his worry about any potential future impact to DKD's Watson 6 No. 1 injection well from Gandy's State "T" injection well operations; 3) that DKD's last efforts at production from DKD's Snyder "A" No. 1 well were undertaken in August 2004; 4) that DKD recognized its plugging obligation in December 2005 and has received an extension (which is probably not legal or complete) from OCD until June 15, 2006 to plug and abandon DKD's Snyder "A" Well, 5) that no down-hole attempts have been made to isolate the source of the Snyder "A" Well pressure; and 6) that his initial request that OCD take action against Gandy occurred in February 2006, after he had acknowledged he would plug and abandon DKD's Snyder "A" No. 1 well.
5. Mr. George Friesen, DKD's expert, testified that: 1) well casing collapse history in the area can be traced to the 1960s; 2) DKD's injection well is cemented to surface; 3) as long as a well is cemented to surface, the casing is protected and it is sealed from injection. DKD's own expert witness testified, in essence, that DKD's concern that its injection well could be impacted by Gandy's operations is unfounded, because DKD's well is cemented to surface and therefore is sealed from injection.
6. DKD's and Energen's attorney, Mr. Scott Hall, informed the Hearing Examiner that Energen (owner of the Snyder A "Com" 1-6 and Snyder B No. 2 wells referenced in DKD's Application) was on notice of the hearing and chose not to participate.

7. Mr. Larry Scott testified that from the evidence presented no definitive conclusion could be drawn regarding subsurface pressures or the source of the surface pressure in DKD's well from the evidence presented by DKD.
8. Larry Gandy testified that the March 2005 spike in Gandy's injection pressure was caused by a third-party dumping LCMs into the State "T" well, causing it to become plugged. He further testified about the clean-out operations that Gandy had to conduct and the legal proceeding underway to recover from the negligent third-party.
9. The exhibits introduced showed that: 1) DKD's Snyder A well had not produced since 1997 (Gandy Exhibit 4); 2) DKD's claims concerning any impact on correlative rights, potential harm to DKD's injection well from Gandy's injection well, the financial threat to DKD's existing operations that could result in loss of revenue to DKD from Gandy's injection operations, and other matters, were all previously considered and determined by the Division and Commission. See i.e. OCD Order R-11855, ¶5h, OCC Order R-118555-B, ¶16, & ¶18, OCD Order R-12171, ¶12a, ¶12b, & ¶13.
10. The evidence further demonstrated that the pressure readings on DKD's Snyder "A" well were at multiple times in excess of the injection pressure on Gandy's State "T" well, indicating - as DKD's expert had testified to - that the relational data was "bad data," and therefore unreliable. (Compare Gandy Exhibit 5 with Gandy Exhibit 20; i.e. Jan 05, Feb 05, Apr 05, May 05, Oct 05, Nov 05, and Dec 05).
11. The evidence further demonstrated that based upon a step-rate test performed on Gandy's State "T" well in December 2005, the well is injecting into the permitted formation and no fractures were indicated in the well case, and that from the results of the test OCD has authorized Gandy to inject at up to 1,930 PSIG.

12. The right to inject is not a correlative right.
13. DKD presented no evidence that supported or proved up any of the claims made in DKD's Application and Amended Application.
14. DKD failed to demonstrate that any operator's correlative rights are being impacted by Gandy's injection operations of its State "T" well.
15. The evidence clearly demonstrated that Gandy Corporation operates its State "T" injection well in full compliance of all New Mexico Statutes and OCD Rules and Regulations.
16. All evidence presented demonstrated that OCD has previously thoroughly considered Gandy's State "T" injection well operations and *all* of DKD's concerns on multiple prior occasions, and in each instance the Division has determined that Gandy's operations protect the environment, prevent waste, and do not impact any other operator's correlative rights.

**WHEREFORE**, Gandy Corporation hereby withdraws its motion to dismiss and requests that the Oil Conservation Division make a determination on the merits that:

1. All of DKD's concerns have previously been addressed and decided by OCD;
2. DKD's concern about a potential impact to its injection well is not only unfounded based upon DKD's expert's testimony, but also that the right to inject is not a correlative right;
3. The evidence did not establish an impact to correlative rights, or waste, due from Gandy's State "T" injection well operations;
4. DKD did not provide clear and convincing or a preponderance of evidence that supported or proved up any claim made in DKD's Application and Amended Application;

5. Gandy Corporation is operating its State "T" injection well in full compliance of all New Mexico Statutes and OCD Rules and Regulations; and
6. Deny DKD's Amended Application.

Respectfully Submitted,  
DOMENICI LAW FIRM, P.C.

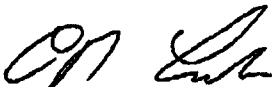


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I certify that on the 10th day of May 2006, a true and correct copy of the foregoing was faxed and mailed to the following:

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