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December 13, 2006

RECEIVED

DEC 18 2006

VIA FACSIMILE FILING 505-827-2836Sally Worthington
Hearing Clerk
Office of the Secretary
1190 St. Francis Drive
Santa Fe, New Mexico 87502Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505RE: Matter of the Application of DKD, LLC Case No. 13686; Motion to Dismiss Amended
Application of DKD for Lack of Jurisdiction

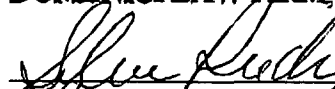
Dear Ms. Worthington:

Please find attached the *Motion to Dismiss Amended Application of DKD for Lack of Jurisdiction*. I am mailing the originals and copies. Please return a certified copies to me in the envelope I will be enclosing.

Thank you for your courtesies in this matter.

Sincerely,

DOMENICI LAW FIRM, P.C.


Sylvia Rudy, Admin. Asst.

srr/1338

encl.

cc: Dale Gandy

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

**AMENDED APPLICATION OF DKD, LLC
FOR AN ORDER REVOKING THE INJECTION
AUTHORITY FOR THE GANDY CORPORATION
STATE "T" WELL NUMBER 2, LEA COUNTY, NEW MEXICO**

CASE NO. 13686

**MOTION TO DISMISS AMENDED APPLICATION
OF DKD FOR LACK OF JURISDICTION**

COMES NOW Gandy Corporation (Gandy), by and through undersigned counsel of record, and for its Motion to Dismiss for Lack of Jurisdiction, states as follows.

This matter came before the Oil Conservation Division (the Division) on DKD's application requesting that the Division immediately and permanently revoke the authority of Gandy to utilize its State "T" Well No. 2 for the injection of produced water for disposal purposes. (Exhibit 1, Amended Application, attached hereto). The Amended Application includes a history of OCD actions taken in relation to the State "T" Well No. 2, including the initial order authorizing the injection of produced water into the well and various orders related to the use of the well. (*Id.* at ¶¶4-11). The Amended Application alleges that Gandy Corporation has violated various orders of the OCD and certain provisions of the New Mexico Oil and Gas Act (OGA). (*Id.* at ¶¶18-25). Based on the allegations in the Amended Application, DKD requested the Division order Gandy to "immediately and permanently" revoke Gandy's authorization to use State "T" Well No. 2 and to order Gandy to "immediately and permanently" plug and abandon the well. (*Id.* at p. 7).

The Commission "is a creature of statute, expressly defined, limited and empowered by the laws creating it." *Continental Oil Co. v. Oil Conservation Commission*, 70 N.M. 310, 373

P.2d 809 (S.Ct. 1962). The Commission may only act within the statutory provisions of the OGA and may only act within the authority delegated to it by the legislature. The allegations in, and relief sought by, the Amended Application demonstrate that it is a private action for injunctive relief brought by DKD against Gandy's continued use of the State "T" No. 2 well.

The OGA does not authorize a private party to bring an action for injunctive relief before either the Division or the Commission and does not grant either the OCD or the Commission the authority to hear such matters. The OGA, Section 70-2-29, NMSA 1978, sets forth the procedures for the institution of actions for injunctions by private parties:

In the event the division should fail to bring suit to enjoin any actual or threatened violation of any statute of this state with respect to the conservation of oil and gas, or of any provision of this act, or of any rule, regulation or order made thereunder, then any person or party in interest adversely affected by such violation, and who has notified the division in writing of such violation or threat thereof and has requested the division to sue, may, to prevent any or further violation, bring suit for that purpose in the district court of any county in which the division could have brought suit. If, in such suit, the court holds that injunctive relief should be granted, then the division shall be made a party and shall be substituted for the person who brought the suit, and the injunction shall be issued as if the division had at all times been the complaining party.

If DKD notifies the Division of the alleged violations and the Division chooses not to take action, the only action then allowed by the OGA is the filing of a lawsuit "in the district court of any county in which the division could have brought suit." The OGA does not authorize either the Division or the Commission to hear such actions.

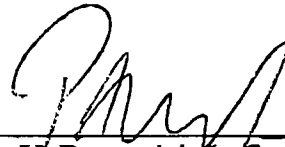
In addition to the Division and Commission's lack of jurisdiction to hear this matter, there is no need for further action on DKD's application because Gandy has filed a Form C-103 with the Division stating that the State "T" Well No. 2 will only be used until July 31st, 2007, at which time it will be plugged and abandoned. (Exhibit 2, Form C-103, attached hereto). As the evidence would show, allowing Gandy to continue use of the State "T" Well No. 2 until the end

of July, 2007 would not harm DKD's Watson "6" Well No. 1 because that well is cemented across the San Andreas.

The Commission may not rely on its broad powers to make and enforce rules, regulations and orders in §70-2-11 to ignore the specific provisions of §70-2-29. Based on the specific language of §70-2-11, if the Division does not take action based on written notice from DKD alleging violations of the OGA or related any rule, regulation or order, the only option that DKD has is to file suit in district court for injunctive relief. The Commission does not have jurisdiction to hear DKD's Amended Application and the matter should be dismissed.

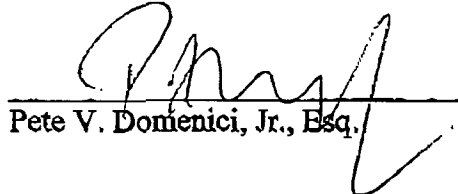
WHEREFORE, Gandy Corporation respectfully requests an order of the Commission dismissing DKD's Amended Application for an Order Revoking the Injection Authority for the Gandy Corporation State "T" Well Number 2, Lea County, New Mexico with prejudice.

Respectfully Submitted,



Pete V. Domenici, Jr., Esq.
Attorney for Gandy Corporation
320 Gold Ave. SW Suite 1000
Albuquerque, NM 87102
(505) 883-6250

I hereby certify that a true and correct copy of the foregoing was served on all parties of record on the 12 day of December 2006.



Pete V. Domenici, Jr., Esq.

**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

AMENDED APPLICATION

DKD, LLC ("DKD") through its undersigned counsel, Miller Stratvert P.A. (J. Scott Hall), requests the Division enter its order immediately and permanently revoking the authority of Gandy Corporation to utilize its State "T" Well No. 2 for the injection of produced water for disposal purposes. In support of its application, DKD states:

1. Gandy Corporation is the owner and operator of the State "T" Well No. 2 (API No. 30-025-03735) located 4,290' FSL and 500' FWL, Lot 12, Section 6, T16S, R36E, NMPM in Lea County, New Mexico. Gandy utilizes the State "T" Well No. 2 to dispose of produced water into the San Andres and Glorieta formations (SWD-836).

2. DKD is the owner and operator of the Watson "6" No. 1 Well (API No. 30-025-34197) located 2857' FSL and 1417' FWL in Unit N, Section 6, T16S, R36E, NMPM in Lea County, New Mexico. DKD utilizes the Watson "6" No. 1 Well for the disposal of produced water by injection into the Cisco and Canyon formations (SWD-834). DKD also owns and operates the Snyder "A" No. 1 Well (API No. 30-025-03727) located 2319' FSL and 330' FWL in Unit L of said Section 6. The Snyder "A" No. 1 Well was originally drilled to and produced from the Strawn formation.

3. Energen Resources Corporation operates the Snyder "B" No. 2 Well (API No. 30-025-03729) located 3656' FNL and 2310' FEL in Unit J drilled to the Pennsylvanian formation in the NE/4 of Section 6 (Unit J) and the Snyder "A" Com 1-6 Well (API No. 30-025-34073)



located 990' FSL and 874' FWL (Unit M) and drilled to and completed in the Strawn formation in the SW/4 of Section 6.

4. Pursuant to the Administrative Application filed by Pronghorn Management Corporation, the State "T" Well No. 2 was authorized by the Division to be utilized for the injection of salt water for disposal purposes into the San Andres and Glorieta formations from a depth of 6000' to 6200' (SWD-836). Under the Division's permit, Pronghorn was directed to plug the well back to 6500' and then squeeze cement from the existing cement top to the surface. Consequently, on July 9, 2002, the Division suspended Pronghorn's injection authority due to Pronghorn's failure to provide notice to area surface owners. Pronghorn's application was subsequently set for Examiner hearing in Case No. 12905 and on October 28, 2002 the Division issued Order R-11855 rescinding Pronghorn's injection authorization. Pursuant to an Application for Hearing De Novo filed by Pronghorn, on May 15, 2003, the Oil Conservation Commission issued Order No. R-11855-B reinstating SWD-836 and permitting Pronghorn to inject produced water into those intervals from 6000' to 6400'.

5. In June 2003, the State "T" Well No. 2 was transferred from Pronghorn to Gandy Corporation. On approximately August 19, 2003, Gandy Corporation perforated the State "T" Well No. 2 from 4810' to 6880', 1390' above and 680' below the depths authorized by the Division. In addition, Gandy set a packer at 4750, some 1200' higher than the Division specified. Because these additional perforated intervals and packer placement depth were not authorized by Order No. R-11855-B, on May 3, 2004, the Department Secretary and Acting Division Director issued an Emergency Shut-In Order directing Gandy Corporation to immediately cease injection operations into the well.

6. Subsequently, Gandy made application to the Division in Case No. 13293 for authorization to inject into the expanded perforation intervals. During the course of the

investigation in that case, it was determined that Gandy had installed a cast iron bridge plug and cemented the well at 10,288'. A cement plug was set at 7690' instead of at 6500' as the Division prescribed. Further, holes were found in the casing from 7650' to 7700' and from 4750' to 4815'. Cement was placed over the lower holes and over the upper holes without obtaining adequate squeeze operations on either one. The casing was then perforated at 4320' and from 4810' to 6880'. An injection packer was set somewhere between 4720' and 4740' instead of at 5950' as the Division had directed.

7. During the pendency of Case No. 13293, it was discovered that Gandy Corporation had resumed injection operations in violation of the Secretary's May 3, 2004 emergency shut-in order. Consequently, on June 29, 2004, Division counsel directed Gandy Corporation to cease injection into the State "T" Well No. 2 until all perforation depths not permitted under the order were squeezed off or until Gandy obtained an approved permit to inject into the depths previously perforated.

8. On July 9, 2004, following Examiner hearing, the Division issued Order No. R-12171 in Case No. 13293. At paragraph 12 of the Order, the Division found, *inter alia*:

(e) Additional well work is needed to ensure injected fluid remains in the proposed injection interval from 4810' to 6880'.

9. Order No. R-12171 granted Gandy Corporation's application for authorization to inject produced water into the San Andres and Glorieta formations from 4810' to 6880' through 3-1/2" plastic line tubing set in a packer located within 100' above the top of the perforation. Gandy's injection authorization was also made subject to the following express conditions in Order No. R-12171:

(3) The wellhead injection pressure on the well shall be limited to no more than 962 psi. In addition, the injection well or system shall be equipped with a pressure limiting device in workable condition which

shall, at all time, limit surface injection pressure to the maximum allowable pressure for this well. (emphasis added.)

(4) The Division Director may administratively authorize a pressure limitation in excess of the above upon a showing by the operator that such higher pressure will not result in migration of fluids out of the injection formation or the fracturing of the injection formation or confining strata.

(5) The operator shall notify in advance the supervisor of the Hobbs district office of the Division of the date and time of changes in packer, tubing, mechanical integrity tests, or any other work to be performed on this well.

(6) The operator shall immediately notify the Supervisor of the Division's Hobbs district office of the failure of the tubing, casing or packer in the disposal well or the leakage of water, oil or gas from or around this well or any producing or plugged and abandoned well within the area, and shall take all steps as may be timely and necessary to correct such failure or leakage.

(7) The operator shall take all steps necessary to ensure that the injected water enters only the proposed injection interval and is not permitted to escape to other formations or onto the surface using any conduit such as fractures or wells.

10. On April 25, 2005, Gandy Corporation made application to the Division on Form C-103 to perforate the State "T" Well No. 2 with 1220 additional holes at specified zones between 4810' to 6880'. The Division approved the proposed work-over on April 25, 2005 and the work was performed on or about that same date.

11. Following the issuance of Order No. R-12171 in July 2004, Gandy Corporation began to increase the volumes of water injected through the State "T" No. 2 Well while simultaneously increasing injection pressures. By approximately February 2005, Gandy was injecting at pressures in excess of the 962 psi limitation specified in Order No. R-12171. By April of 2005, observed surface pressures indicated that Gandy was injecting at approximately 1450 psi.

12. Following the resumption of injection operations on the State "T" Well No. 2 in July of 2004, DKD began to record consistently increasing casing pressures at the Snyder "A" No. 1 Well. On October 1, 2004, casing pressures on the well were approximately 30 pounds. By April 22, 2005, the casing pressure at the Snyder "A" No. 1 was approximately 870 pounds.

13. On April 21, 2005, Energen Resources Corporation experienced a water blowout at its Snyder "B" No. 2 Well located to the east of the Gandy Corporation State "T" No. 2 injection well. On April 22, 2005, the Division's Hobbs district office ordered Gandy Corporation to shut down injection operations at the State "T" No. 2 Well.

14. On May 6, 2005, Energen experienced a casing leak at the Snyder "A" Com No. 1 Well with water flows from the casing and tubing. On approximately May 17, 2005, it was determined that the Snyder "A" Com Well No. 1 had experienced a casing collapse at approximately 8825'. The well has since been plugged and abandoned.

15. On approximately September 15, 2005, Energen experienced water flows through the tubing of the Snyder "B" Well No. 2. It was subsequently determined that the well had experienced a casing collapse at 6365'.

16. Following the April 2005 suspension of injection operations, Gandy continued to operate the State "T" Well No. 2 at various pressures but below the 962 psi limitation under Order No. R-12171. At various times following the completion of a number of work-over operations on the State "T" Well No. 2, DKD experienced widely fluctuating casing pressures at the Snyder "A" Well No. 1 that correlated to Gandy's pumping and injection operations. Similar pressure fluctuations were experienced at the Energen Snyder "B" Well No. 2.

17. In the last few days immediately preceding the filing of this Application, it has been discovered that Gandy Corporation was again violating the 962 psi pressure limitation and was injecting fluids at pressures in excess of 1320 psi.

18. Gandy Corporation has failed to conduct injection operations to ensure injected fluids remain in the authorized injection intervals from 4810' to 6880'.

19. Gandy Corporation has failed to operate the State "T" Well No. 2 within the 962 psi pressure limitation specified in Order No. R-12171. Further, Gandy has failed to install a workable pressure limitation device which limits surface injection pressures to the maximum allowable pressure for the well.

20. Gandy Corporation has failed to submit monthly reports of disposal operations and disposition of produced water in accordance with Rules 706 and 1120.

21. Gandy Corporation has failed to operate the State "T" Well No. 2 in a manner to insure that injected water enters only the proposed injection interval and is not permitted to escape to other formations or onto the surface.

22. It appears that Gandy Corporation's State "T" Well No. 2 has a defective casing program or faulty cemented or corroded casing in violation of Division Rule 108.

23. Gandy Corporation has failed to notify the Division of the failure of the tubing, casing or packer in the disposal well or of the leakage of water, oil or gas from or around the State "T" Well No. 2 or from any producing, plugged or abandoned well within the area.

24. As a consequence of Gandy Corporation's operations of the State "T" Well No. 2, the waste of hydrocarbon reserves has occurred and there is a reasonable likelihood that the contamination of fresh waters may occur. Gandy's operations have caused the plugging and abandonment of wells that were otherwise capable of producing hydrocarbons, thereby causing waste. There also exists the reasonable likelihood that the continued injection operations will cause the damage or loss of additional producing wells in the area.

25. Gandy Corporation's operations of the State "T" Well No. 2 have resulted in the violation of NMSA § 70-2-12(2) (escape of water from strata into other strata); 70-2-12(4)

(drowning by water of any stratum or part thereof capable of producing oil or gas); and 70-2-12(15) (disposition of water produced ... in a manner that will afford reasonable protection against contamination of fresh water supplies).


WHEREFORE, after notice and hearing, Applicant requests the Division enter its order:

1. Immediately and permanently revoking Gandy Corporation's authorization to conduct injection operations through the State "T" Well No. 2;
2. Directing Gandy Corporation to take such actions as may be necessary to immediately reduce pressures in the injection formation and other formations so as to prevent further waste and to avoid further damage to other property;
3. Directing Gandy Corporation to immediately and permanently plug and abandon the State "T" Well No. 2;
4. Requiring Gandy to remediate, repair or plug any wells determined to have been damaged by Gandy's operations; and
5. Providing for such additional relief the Division determines appropriate.

Respectfully submitted,

MILLER STRATVERT P.A.

By:


J. Scott Hall
Attorneys for DKD, LLC
Post Office Box 1986
Santa Fe, New Mexico 87504-1986
(505) 989-9614

Submit 3 Copies To Appropriate District
Office

State of New Mexico
Energy, Minerals and Natural Resources

Form C-103
May 27, 2004

District I

1625 N. French Dr., Hobbs, NM 88240

District II

1301 W. Grand Ave., Artesia, NM 88210

District III

1000 Rio Brazos Rd., Aztec, NM 87410

District IV

1220 S. St. Francis Dr., Santa Fe, NM
87505

OIL CONSERVATION DIVISION
1220 South St. Francis Dr.
Santa Fe, NM 87505

WELL API NO.

30-025-03735

5. Indicate Type of Lease

STATE ☒ FEE ☐

6. State Oil & Gas Lease No.

7. Lease Name or Unit Agreement Name

8. Well Number

State T No. 002

9. OGRID Number

122811

10. Pool name or Wildcat

SUNDRY NOTICES AND REPORTS ON WELLS

(DO NOT USE THIS FORM FOR PROPOSALS TO DRILL OR TO DEEPEN OR PLUG BACK TO A
DIFFERENT RESERVOIR. USE "APPLICATION FOR PERMIT" (FORM C-101) FOR SUCH
PROPOSALS.)

1. Type of Well: Oil Well ☐ Gas Well ☒ Other SWD-836

2. Name of Operator

Gandy Corporation

3. Address of Operator

P.O. Box 827, Tatum, NM 88267

4. Well Location

Unit Letter L 4,280 feet from the South line and 500 feet from the West line

Section 6 Township 16 S Range 36 E NMPM County LEA

11. Elevation (Show whether DR, RKB, RT, GR, etc.)

3,976 DR

Fit or Below-grade Tank Application ☐ or Closure ☐

Fit type Depth to Groundwater Distance from nearest fresh water well Distance from nearest surface water

Fit Liner Thickness: mil Below-Grade Tank: Volume hbl: Construction Material

12. Check Appropriate Box to Indicate Nature of Notice, Report or Other Data

NOTICE OF INTENTION TO:

PERFORM REMEDIAL WORK ☐ PLUG AND ABANDON ☒TEMPORARILY ABANDON ☐ CHANGE PLANS ☐PULL OR ALTER CASING ☐ MULTIPLE COMPL ☐

SUBSEQUENT REPORT OF:

REMEDIAL WORK ☐ ALTERING CASING ☐COMMENCE DRILLING OPNS. ☐ P AND A ☐CASING/CEMENT JOB ☐OTHER: ☐OTHER: ☐

13. Describe proposed or completed operations. (Clearly state all pertinent details, and give pertinent dates, including estimated date of starting any proposed work). SEE RULE 1103. For Multiple Completions: Attach wellbore diagram of proposed completion or recompletion.

Gandy Corp. proposed to plug and abandon this well no later than July 31, 2007 by the following method:

1. Pull injection tubing and packer.
2. Go in hole with work string and cement retainer, set above perforations at approximately 4,700'.
3. Squeeze 50 sx class C cement in perforation, leaving at least 25' of cement above perforations.
4. Load hole with salt solution.
5. Spot 25 sx plug at 3,000'
25 sx plug at 8 5/8 shoe 1,350'
25 sx plug at 13 3/8 shoe 371'
6. 10 sx surface plug.
7. Erect marker and clean location.
8. File final sundry notice of plugging.

I hereby certify that the information above is true and complete to the best of my knowledge and belief. I further certify that any pit or below-grade tank has been will be constructed or closed according to NMOC guidelines ☐ a general permit ☐ or an (attached) alternative OCD-approved plan ☐.

SIGNATURE Dale Gandy TITLE President DATE 12-12-06

Type or print name: Dale Gandy

E-mail address:

Telephone No. (505) 396-0522

For State Use Only

APPROVED BY:

TITLE

DATE

Conditions of Approval (if any):

