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November 9, 2006

VIA FACSIMILE 505-476-3462 and U.S. Mail

Florene Davidson
Hearing Clerk
EMNRD
Oil Conservation District
1220 So. St. Francis Drive
Santa Fe, NM 87505

Re: *Conditional Request for Hearing by the Commission at the December 7, 2006 Meeting of Gandy Corporation's Request for Stay of Division Order R-12649*
Case No. 13686

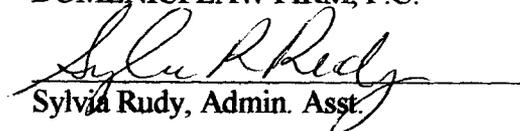
Dear Ms. Davidson:

Enclosed please find the *Conditional Request for Hearing by the Commission at the December 7, 2006 Meeting of Gandy Corporation's Request for Stay of Division Order R-12649* for filing with the Commission in the above captioned matter. Originals with copies are being sent via U.S. Mail. Please return an endorsed copy in the enclosed envelope.

Thank you for your courtesies in this matter.

Sincerely,

DOMENICI LAW FIRM, P.C.


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**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

**CONDITIONAL REQUEST FOR HEARING
BY THE COMMISSION AT THE DECEMBER 7, 2006 MEETING
OF GANDY CORPORATION'S REQUEST FOR STAY
OF DIVISION ORDER R-12649**

On October 24, 2006, the Oil Conservation Division (the Division) issued Order NO. R-12649 in the above-captioned matter. On November 8, 2006, Gandy Corporation filed an Application for a De Novo Hearing and a Request for Stay of Division Order R-12649. The procedural and factual background for this matter is set forth in detail in the Request for Stay. (Exhibit 1, Request for Stay of Division Order R-12649 at 1-3). Based on the language in Order R-12649, Gandy will be required to shut down its injection well on November 23, 2006 or face fines in the amount of \$1,000 per day. (Order R-12649, attached as Exhibit A to Exhibit 1, hereto). If Gandy is forced to shut down on November 23, 2006 and does not receive a stay of Order R-12649, it will cost Gandy approximately \$47,000 per month. (Exhibit 1 at 6).

Gandy hereby requests that the Commission exercise its inherent authority under the Oil and Gas Act and hear the Request for Stay at the Commission's next scheduled meeting on December 7, 2006. In the event that the Director of OCD denies the Request for Stay before the December 7, 2006 Commission meeting, Gandy requests that the Commission review the Director's denial.

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ARGUMENT

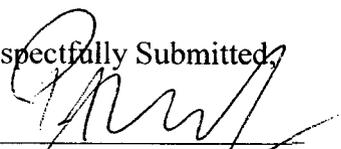
The Commission has the authority to review Gandy's request for a stay of Order R-12649 or the Director's denial of the Request pursuant to its inherent authority over all matters relating to the oil and gas industry in the State of New Mexico. The Oil and Gas Act specifically states that the Commission "shall have concurrent jurisdiction and authority with the division to the extent necessary for the commission to perform its duties as required by law." NMSA 1978, §70-2-6. The Oil and Gas Act grants the Commission broad statutory authority "to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified by any section thereof." NMSA 1978, §70-2-11; *Santa Fe Exploration Co. v. Oil Conservation Division*, 114 N.M. 103, 112, 835 P.2d 819 (S.Ct. 1992). When the Commission is sitting as a quasi-judicial body, the Commission has the inherent authority to supervise and control the movement and disposition of cases before it, including the granting of stays. *See Belser v. Cleireachain*, 2005-NMCA-073, 137 N.M. 623 (N.M.App 2005). This matter is currently pending before the Commission pursuant to Gandy's Application for De Novo Hearing. Therefore, the Commission has the inherent authority to hear Gandy's Request for Stay and to review any actions taken by the Director related to the Request for Stay before the December 7, 2006 Commission meeting.

Gandy's request for a stay meets the elements for granting a stay of an administrative order, as set forth in *Tenneco Oil Co. v. New Mexico Water Quality Control Commission*, 105 N.M. 708, 710, 735 P.2d 986 (N.M.App. 1986). (Exhibit 1 at 3-7). Gandy demonstrated that the continued use of the injection well will not adversely impact fresh water or the rights of DKD. (*Id.*). Gandy also demonstrated that it is likely to succeed on the merits at the de novo hearing. (*Id.*). Without a stay of Order R-12649, Gandy will be adversely affected while the requested

stay would not harm other interests and would preserve the status quo while this matter is pending before the Commission.

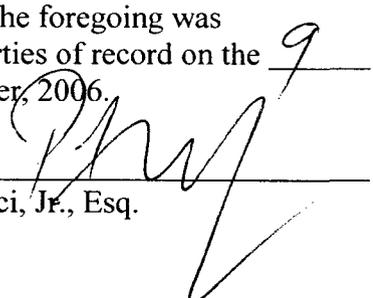
WHEREFORE, Gandy, based on the foregoing and the reasons set forth in the Request for Stay, Gandy requests that the Commission exercise its inherent authority under the Oil and Gas Act and hear Gandy's Request Stay at the Commission's next scheduled meeting on December 7, 2006. In the event that the Director denies the Request for Stay before the December 7, 2006 Commission meeting, Gandy requests that the Commission review such denial at that time.

Respectfully Submitted,



Pete V. Domenici, Jr., Esq.
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(505) 883-6250

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



Pete V. Domenici, Jr., Esq.