

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

**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**

2007 JAN 8 PM 3 23

**CASE NO. 13686
ORDER NO. R-12649
DE NOVO**

**MOTION TO STRIKE GANDY
CORPORATION'S NOTICE OF WITHDRAWAL
OF REQUEST FOR DE NOVO APPEAL**

DKD, LLC ("DKD") thorough its undersigned counsel, for its motion to strike Gandy Corporation's Notice of Withdrawal of Request for De Novo Appeal, states:

1. On January 5, 2007, the Gandy Corporation filed its Notice of Withdrawal.
2. The Notice of Withdrawal was not filed as a motion or as a stipulation.
3. Furthermore, the Gandy Corporation did not seek DKD's concurrence to this filing.
4. The Notice of Withdrawal, in essence, seeks to voluntarily dismiss Gandy Corporation's appeal in the above-referenced matter.
5. Rule 11-402(B) NMRA states: "Prior to entry of disposition, if all of the parties affected by an appeal or other proceedings shall sign and file with the appellate court clerk an agreement that the same be dismissed, an order of dismissal shall be entered and mandate or other process of the court shall issue immediately."
6. "The authorities are uniform to the effect that an appeal cannot be dismissed except on leave of court, and that an appellant cannot, as a matter of right, dismiss an appeal." *Henderson et al. v. Dreyfus*, 26 N.M. 262, 266, 191 P. 455, 457 (1920); see also, 5 C.J.S. Appeal and Error § 634 (citing *Henderson v. Dreyfus*).

7. While the appeals process within the Oil Conversation Division and Commission lacks an explicit rule, strong persuasive authority exists that prohibits Gandy Corporation from voluntarily dismissing the instant appeal as a matter of right.

8. Since there has been no disposition by the Commission, the Gandy Corporation must seek leave to dismiss the appeal either by formal motion or written stipulation entered into between the parties.

9. Without such leave, the Notice of Withdraw is of no force and effect and must be stricken.

10. As a result, the instant appeal remains pending before the Oil Conversation Commission, including any scheduled matters.

11. DKD, LLC does not object to Gandy Corporation's withdrawal of its Request for Stay of Division Order No. 2-12649 and the withdrawal of its Motion to Dismiss Amended Application.

WHEREFORE, DKD, LLC requests that the Commission Chairman grant its motion to strike Gandy Corporation's Notice of Withdrawal.

MILLER STRATVERT P.A.

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

Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing was delivered to counsel of record on the 8th day of January 2007, as follows:

Charles N. Lakins, Esq.
Pete Domenici, Jr., Esq.
Domenici Law Firm, P.C.
320 Gold Ave., SW, Suite 1000
Albuquerque, New Mexico 87102

Cheryl Bada, Esq.
Energy, Minerals & Natural Resources
Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505



J. Scott Hall