



PublicService Commission <psc@utah.gov>

Fidelity Exploration et. al., v. Pacific Energy & Mining et. al.

1 message

Terry Spencer <terry@spencerandcollier.com>
To: psc@utah.gov

Wed, Jan 2, 2019 at 11:03 AM

Please find the attached order Granting Motion for Preliminary Injunction below.

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 **Fidelity v. PEMC - Order Granting Moion for Preliminary Injunction.pdf**
147K

The Order of the Court is stated below:

Dated: May 16, 2016
02:59:46 PM

/s/ LYLE R. ANDERSON
District Court Judge



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*Attorneys for Plaintiffs Fidelity Exploration &
Production Company, Kirkwood Oil & Gas LLC,
Nerd Gas Company LLC, and Wesco Operating Inc.*

IN THE SEVENTH JUDICIAL DISTRICT COURT
GRAND COUNTY, STATE OF UTAH

FIDELITY EXPLORATION &
PRODUCTION COMPANY, a Delaware
corporation; KIRKWOOD OIL & GAS LLC,
a Wyoming limited liability company; NERD
GAS COMPANY LLC, a Wyoming limited
liability company; and WESCO OPERATING
INC., a Wyoming corporation,

Plaintiffs,

v.

PACIFIC ENERGY & MINING COMPANY,
a Nevada corporation; ENTRADA
ENTERPRISES LLC, a Nevada limited
liability company; and JMD RESOURCES
INC., a Nevada corporation,

Defendants.

**ORDER GRANTING MOTION FOR
PRELIMINARY INJUNCTION**

Case No. 160700016

Judge Lyle R. Anderson

This matter comes before the Court on the Motion for Preliminary Injunction (the "Motion") filed by the plaintiffs. The court has considered the pleadings in connection with the Motion, as well as the evidence and argument presented at the hearing on the Motion, and finds as follows:

1. Plaintiffs will suffer irreparable harm through the risk of damage to the wells in the Cane Creek Federal Exploratory Unit and the underlying oil and gas resource, irretrievable loss of the oil and gas resource on which royalties are being paid, and the loss of revenue from selling the residue gas. These damages cannot be adequately compensated in monetary damages because they can only be estimated by conjecture.
2. The irreparable harm to plaintiffs outweighs any damage to defendants that may be caused from issuing this injunction and requiring them to continue to transport the residue gas from the Blue Hills Gas Plant to the Northwest Pipeline.
3. There is a public interest in not wasting the oil and gas resource, through either flaring or possibly damaging the oil and gas resource by shutting in the wells.
4. Defendants' request that plaintiffs deliver \$10,000,000 cash to the defendants' bank account as the bond required under Section 15.1 of the Transportation Agreement (attached as Exhibit 1 to the Declaration of Darwin Subart ("Transportation Agreement")) is not reasonable. Defendants specifically told Fidelity Exploration and Production Company ("Fidelity") that Fidelity's property - now transferred to Kirkwood Oil & Gas LLC ("Kirkwood"), Nerd Gas Company LLC ("Nerd") and Wesco Operating Inc. ("Wesco") - is what they counted on to insure Fidelity's performance under their agreement. And if corrosion from bacteria were an urgent concern, defendants would test

the products more frequently than every six months and would have expressed more concern about the unsuccessful test in late 2015. The court thinks it is likely that defendants' expressed concerns are not the same as their actual concerns.

5. There is a substantial likelihood that plaintiffs will prevail on the merits for a permanent injunction.
6. Plaintiffs, Kirkwood, Nerd, and Wesco assume and agree to perform all of the rights, duties, and obligations under the Transportation Agreement.

The court ORDERS as follows:

1. The Motion is granted and defendants are ordered to transport the residue gas from the Blue Hills Gas Plant through the lateral pipeline to the Northwest pipeline.
2. Defendants are not allowed to shut in the lateral pipeline and refuse to transport residue gas from the Blue Hills Gas Plant without seeking leave of the court unless there is an immediate threat to the public safety.
3. Plaintiffs are required to post with the court security in the amount of \$100,000, either by security bond or letter of credit.
4. Plaintiffs will provide to defendants letters from their insurance carrier that confirm that the defendants are additional insureds under the plaintiffs' insurance policies that were previously submitted to the court as exhibits to the Motion.
5. This Preliminary Injunction shall remain in effect until this matter may be heard upon a motion for permanent injunction.

SO ORDERED.

Approved as to form:

/s/ Craig C. Halls (w/express permission)

Craig C. Halls

Attorney for Defendants

In accordance with Utah R. Civ. P. 10(e) and Utah State District Courts Efiling Standard No. 4, this Order does not bear the handwritten signature of the Court, but instead displays an electronic signature at the top of the first page of this Order.