

OIL & GAS CONSERVATION COMMISSION  
MINUTES OF MEETING/OCTOBER 17, 2008  
STEVEN L RAUZI, OIL & GAS ADMINISTRATOR

NOTICE OF COMBINED PUBLIC MEETING AND POSSIBLE EXECUTIVE SESSION  
Amended  
**OIL AND GAS CONSERVATION COMMISSION**

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Oil and Gas Conservation Commission and to the general public that the Oil and Gas Conservation Commission will hold a meeting open to the public on October 17, 2008, at 10:00 a.m. in the Conference Room of the Arizona Geological Survey located at 416 West Congress Street Suite 100, Tucson, Arizona 85701. As indicated in the agenda, pursuant to A.R.S. § 38-431.03(A)(3) or (4), the Oil and Gas Conservation Commission may vote to go into executive session, which will not be open to the public, to consult with its attorney and receive legal advice with respect to any regular agenda item listed on this agenda.

The agenda for the meeting is as follows:

1. Call to Order
2. Approval of Minutes of Meeting of July 18, 2008
3. Report of State Geologist and Director about administrative, budget, and staff support matters
4. Report of Oil & Gas Administrator about new permits and drilling activity
5. Status of Ridgeway Arizona Oil Corporation 12-15-30 State (Permit 900)
6. Appeal by Gary Kiehne of Determination of Shut-In status for Ridgeway Arizona Oil Corp. State Well Number 11-21 (Permit 895). The Commission will conduct an administrative hearing under A.R.S. §§ 41-1092, et. seq., and 27-517. The Commission will hear evidence and arguments presented by the parties and will then rule on the appeal. The Commission will also consider and rule on the Motion to Dismiss filed by the State in this case.
7. Executive Session to receive legal advise regarding the discussion of appeal In the Matter of Shut-In Status for Ridgeway Arizona Oil Corp. State well Number 11-21 (Permit 895) Appellant: Gary Kiehne; and Motion to Dismiss
8. Call to the public
  - This is the time for the public to comment. Members of the Commission may not discuss items that are not on the agenda. Therefore, action taken as a result of public comment will be limited to directing staff to study the matter or scheduling the matter for further discussion and decision at a later date.
9. Announcements
10. Adjournment

The Oil and Gas Conservation Commission may vote to go into Executive Session, pursuant to A.R.S. § 38-431.03(A)(3) or (4), which will not be open to the public, to consult with its attorney and receive legal advice with respect to any regular agenda item listed on this agenda.

A copy of the agenda background material provided to Commission members (with the exception of material relating to possible executive sessions) is available for public inspection at the Oil and Gas Administrator's office, 416 West Congress, Suite 100, Tucson, Arizona 85701.

The public may be afforded an opportunity to comment on any item on the agenda; however, at the beginning of the meeting, the Commission may vote to set up a time limit on individual comments.

Dated this 15th day of October 2008

OIL AND GAS CONSERVATION COMMISSION



Steven L. Rauzi  
Oil and Gas Program Administrator

*Persons with a disability may request a reasonable accommodation such as a sign language interpreter, by contacting Steve Rauzi at (520) 770-3500. Requests should be made as early as possible to allow time to arrange the accommodation. This document is available in alternative formats by contacting Steve Rauzi at (520) 770-3500.*

## NOTICE OF COMBINED PUBLIC MEETING AND POSSIBLE EXECUTIVE SESSION

### OIL AND GAS CONSERVATION COMMISSION

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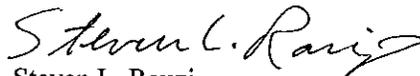
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A copy of the agenda background material provided to Commission members (with the exception of material relating to possible executive sessions) is available for public inspection at the Oil and Gas Administrator's office, 416 West Congress, Suite 100, Tucson, Arizona 85701.

The public may be afforded an opportunity to comment on any item on the agenda; however, at the beginning of the meeting, the Commission may vote to set up a time limit on individual comments.

Dated this 10th day of October 2008

OIL AND GAS CONSERVATION COMMISSION



Steven L. Rauzi  
Oil and Gas Program Administrator

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**OIL AND GAS CONSERVATION COMMISSION**  
416 West Congress #100  
Tucson, Arizona 85701

Minutes of Meeting  
July 18, 2008

Present:

Dr. J. Dale Nations, Chairman  
Mr. Robert L. Jones, Vice-Chairman  
Mr. Stephen R. Cooper, Member  
Ms. Michele P. Negley, Member  
Mr. Robert L. Wagner, Member  
Mr. Steven L. Rauzi, Oil and Gas Program Administrator

Dr. J. Dale Nations, Chairman, called the regular Commission Meeting of July 18 to order at 10:00 a.m. in Room 321, State Land Department Building in Phoenix, Arizona.

APPROVAL OF THE MINUTES OF THE MEETING OF APRIL 18, 2008

Mr. Jones moved, seconded by Mr. Wagner:

THAT THE MINUTES OF THE MEETING OF APRIL 18, 2008 BE ACCEPTED  
AS PRESENTED

Motion carried unanimously.

REPORT OF THE OIL AND GAS ADMINISTRATOR

The activity report of Mr. Rauzi was sent to the Commissioners and has been made a part of these minutes. He reported that two new permits were issued to Ridgeway Arizona Oil Corporation (Ridgeway) since the April 18 meeting and that Ridgeway had 13 wells in various stages of drilling, testing and completion.

STATUS OF RIDGEWAY ARIZONA OIL CORPORATION 12-15-30 STATE (PERMIT 900)

Mr. Rauzi reported that Ridgeway expected to plug and abandon the 12-15-30 well in August. Mr. White reported it was scheduled to be plugged the first week in August.

RIDGEWAY ARIZONA OIL CORPORATION REQUEST FOR SHUT-IN STATUS FOR THE 11-21 STATE (PERMIT 895) AND 9-21 STATE (PERMIT 897)

Mr. Rauzi reported that Ridgeway submitted completion reports dated June 16, 2008 for the 9-21 and 11-21 wells with a request to reclassify the wells from temporarily abandoned to shut-in. He noted that the wells have been in a temporarily abandoned status since 1998. Mr. Rauzi explained that the completion reports recorded Schlumberger test results of 1100 MCF of gas per day for the 9-21 and 1.96 MCF per day for the 11-21. He pointed out that the Schlumberger tests indicated severely damaged well bore conditions in both wells. Mr. Rauzi thought it appropriate to grant the reclassification noting that rules did not require the Commission to establish the future sustainable production of a well.

Ms. Van Quathem on behalf of Mr. Gary Kiehne noted that the definition of a shut-in well was one that is capable of production in paying quantities and questioned the evidence before the Commission that justified that determination. She opposed shut-in status.

Mr. Portman explained the Schlumberger pressure transient analysis (STAR) tests and how they measure the size of a reservoir when there is no pipeline to produce into. He described how drilling fluids can cause skin damage around the well bore and noted that the tests did indicate that both the 9-21 and 11-21 were producible.

At the request of Ms. Negley, Mr. Rauzi reviewed the H.J. Gruy reports prepared for the State Land Department and the Schlumberger STAR reports, which addressed the skin issue. Mr. Wagner noted that the Gruy report did not say the wells could not be productive in the future; they just could not make a determination. Ms. Negley was concerned about the uncertainty expressed in the Gruy report and the lack of a date of first production on the completion reports. Dr. Nations noted that the Schlumberger tests lasted from five to seven days and that the producing rates appeared to be economic considering the skin damage issue.

Mr. White indicated that it was necessary to rely on well tests and that it was not possible to fill in the date of first production on the completion reports because there could be no first production in a gas field until a pipeline infrastructure was built in order to produce and transport the gas.

Mr. Portman noted that Ridgeway had spent over \$40 million to define the boundaries and develop the field and that Ridgeway was able to raise over \$100 million dollars in private placement in the last three years. He indicated that this project has been very viable to investors because of the oil industry's efforts to squeeze more oil out of mature oil fields in the Permian basin.

Mr. Wagner moved, seconded by Mr. Jones:

TO RECLASSIFY THE 11-21 AND 9-21 WELLS FROM TEMPORARILY  
ABANDONED TO SHUT-IN STATUS

Motion carried unanimously.

RIDGEWAY ARIZONA OIL CORPORATION REQUEST TO DRILL HORIZONTAL  
SEGMENTS IN ITS WELLS LOCATED IN TOWNSHIPS 9 NORTH THROUGH 12 NORTH AND  
RANGES 28 EAST THROUGH 31 EAST

Mr. Rauzi reported that Ridgeway submitted application to drill horizontal segments in its wells located within Townships 9 through 12 North and Ranges 28 through 31 East and reviewed the requirements of A.A.C. R12-7-115(B) and R12-7-107(D). Mr. Cox indicated that he did not see a problem with this approach.

Ms. Negley moved, seconded by Mr. Jones:

TO AUTHORIZE THE OIL AND GAS ADMINISTRATOR TO APPROVE  
APPLICATIONS TO DRILL HORIZONTAL SEGMENTS IN WELLS LOCATED  
WITHIN TOWNSHIPS 9 THROUGH 12 NORTH, RANGES 28 THROUGH 31

EAST PROVIDED THAT EACH APPLICATION IS IN COMPLIANCE WITH A.A.C. R12-7-115(B) AND THAT NO HORIZONTAL SEGMENT CROSSES LEASE LINES OR EXTENDS BEYOND THE NORMAL SETBACKS AS SPECIFIED IN A.A.C. R12-7-107(D)

Motion carried unanimously.

STATUS OF RIDGEWAY ARIZONA OIL CORPORATION DRILLING PROGRAM BETWEEN ST JOHNS AND SPRINGVILLE INCLUDING POSSIBLE REPORT FROM A REPRESENTATIVE OF RIDGEWAY

Mr. Rauzi reported that Ridgeway had permitted 23 wells so far this year and had 13 wells in various stages of drilling, testing, or completion.

Mr. Portman reported that drilling activity had slowed and that Ridgeway was starting to concentrate on completions and how to deal with skin damage and produce the wells most effectively. He noted they were working on front-end engineering for a helium plant, CO<sub>2</sub> compression, and pipelines. Mr. Portman indicated they had recently raised another \$35 million in capital to continue developing the project including a CO<sub>2</sub> pilot in the Permian basin. He described how a CO<sub>2</sub> miscible flood process worked. Mr. Portman noted that the current spacing for gas wells was 640 acres and he anticipated that Ridgeway would eventually be asking to go to either 320 or 160 acres to more effectively drain the field.

In response to an inquiry from Mr. Dixon about delivery of the Cobb report to Cawley Gillespie, Mr. Portman reported that they expected some preliminary results from Cawley Gillespie in a few weeks to a month. Mr. Portman noted that the Cobb report shows how much gas is in place and that it is there; whereas the Cawley report will attempt to translate that into proven undeveloped reserves within accepted standards of reasonable certainty.

DISCUSSION ABOUT LIABILITY OF WELLS ON LEASES PENDING A DECISION FROM THE STATE LAND DEPARTMENT

Mr. Rauzi recalled discussion of the liability issue in the January 18 meeting and the memo delivered by Mr. Cox at the April 18 meeting. He noted that the Commission could not discuss it at the April meeting because it was not on the agenda. Mr. Cox explained that the Commission was not liable for harms occurring at the wells because of a "qualified immunity" under A.R.S. § 12-820.02(A)(5).

DISCUSSION ABOUT OIL AND GAS CONSERVATION COMMISSION LETTERHEAD

Mr. Rauzi provided the latest draft of the letterhead with the address between the state seal on the left and list of commissioners on the right. He noted the protocol is to put the State of Arizona above the agency name. The Commissioners accepted the letterhead with the address in accord with protocol and Commissioners listed alphabetically.

CALL TO THE PUBLIC

Mr. Dixon reported that as part of a budget reconciliation the State Land Department would increase application fees for oil and gas lease renewals and sales from \$100 to \$500 starting August 1.

ANNOUNCEMENTS

Dr. Nations discussed his attendance at the 2008 IOGCC (Interstate Oil and Gas Compact Commission) annual meeting in Calgary and noted that the new IOGCC director proposed holding the 2010 annual meeting in Tucson. He announced that business cards are available to Commissioners that wanted them. The Commission scheduled its next meeting at 10:00 a.m. on October 17, 2008, at the Arizona Geological Survey in Tucson.

ADJOURNMENT

Mr. Jones moved, seconded by Ms. Negley:

THAT THE MEETING BE ADJOURNED

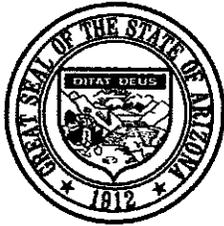
Motion carried unanimously. Time of adjournment was 11:25 a.m.

APPROVED

  
J. Dale Nations  
Chairman

GUESTS IN ATTENDANCE

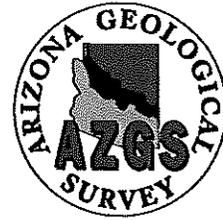
Curtis Cox	Assistant Attorney General
Joe Dixon	State Land Department
Bill Dowdle	State Land Department
Larry Meier	State Land Department
Barry Portman	Ridgeway Arizona Oil Corporation
Michele Van Quathem	Ryley Carlock & Applewhite
Yale Rogers	Self
Thomas White	Ridgeway Arizona Oil Corporation



Janet Napolitano  
Governor

State of Arizona  
**Arizona Geological Survey**

416 W. Congress, Suite 100  
Tucson, Arizona 85701  
(520) 770-3500  
www.azgs.az.gov



M. Lee Allison  
Director and State Geologist

October 10, 2008

To: Oil and Gas Conservation Commissioners

From: <sup>SLR</sup> Steven L. Rauzi, Oil and Gas Administrator

Re: Activity Report for the October 17, 2008, Meeting

Three new permits to drill were issued since your last meeting on July 18. Two permits were issued to Ridgeway Arizona Oil Corporation for wells at its ongoing CO<sub>2</sub> project between St Johns and Springerville. The third permit was issued to Wind River Corporation for a 7,000 ft exploration well in Northwest Arizona about ten miles southeast of St. George, Utah. The Wind River well is being drilled to test objectives in the Mississippian Redwall and Cambrian Tapeats. Wind River started drilling September 25 and is currently drilling below 1,120 ft.

Ridgeway has plugged and abandoned the 12-15-30 State (Permit 900), which is on a lease picked up by Hunt Oil. I notified Hunt Oil that Ridgeway had plugged the well.

Gary Kiehne appealed the Commission's July 18 decision to reclassify Ridgeway Arizona Oil Corporations' 11-21 well (Permit 895) from temporarily abandoned to shut-in. The hearing is set for consideration under agenda item 6. I mailed an amended notice of hearing to all affected parties on September 12. I previously emailed the appeal, motions, and responses to provide you with some time to familiarize yourselves with them. I have included a copy of them with this mailing. Curtis Cox will argue on behalf of the Commission. Christopher Munns of Arizona Solicitor General's Office will step in to advise the Commission on procedure during the hearing.

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**RYLEY CARLOCK & APPLEWHITE**  
One North Central Avenue, Suite 1200  
Phoenix, Arizona 85004-4417  
Telephone: 602/258-7701  
Telecopier: 602/257-9582

Michele Van Quathem - (Bar No. 019185)  
mvanquathem@rcalaw.com

Attorneys for Gary L. Kiehne

RECEIVED  
AUG 18 2008

**OIL AND GAS CONSERVATION COMMISSION**  
**STATE OF ARIZONA**

In the Matter of Shut-In Status for Ridgeway  
Arizona Oil Corp. State Well Number 11-21  
(Permit 895)

Case No. \_\_\_\_\_

Appellant: Gary Kiehne

**Notice of Appeal**

Gary Kiehne, by and through his undersigned attorneys, and pursuant to Arizona Revised Statutes section 41-1092.03, hereby notifies the Oil and Gas Conservation Commission ("Commission") of his appeal of the Commission's July 18, 2008 decision granting shut-in status to Ridgeway Arizona Oil Corp.'s state well number 11-21 (Permit 895). In support of this notice, Mr. Kiehne states:

1. **Appellant.** The Appellant in this matter is Gary Kiehne. As is explained below, Mr. Kiehne's legal rights and privileges were or will be determined by the appealable agency action described in this Notice. In addition, Mr. Kiehne, through his attorney, exercised his right

1 to comment on the appealable agency action prior to the Commission's final decision. Mr.

2 Kiehne's address is:

3 Gary Kiehne  
4 c/o Rode Inn  
5 P.O. Box 2039  
6 Springerville, Arizona 85938

7 **2. Other Parties.**

8 Ridgeway Arizona Oil Corp. ("Ridgeway") is a necessary party to this action.

9 Ridgeway's address is:

10 Ridgeway Arizona Oil Corp.  
11 Attn: Barry Lasker, President  
12 One Riverway, Suite 610  
13 Houston, Texas 77056

14 **3. Action Appealed.** At its July 18, 2008 public meeting, pursuant to agenda item  
15 number 5, the Commission determined that well number 11-21 (Permit 895) was entitled to  
16 shut-in status pursuant to Commission rule R12-7-125. The Commission's decision to grant  
17 shut-in status was not supported by substantial evidence, and was arbitrary, capricious and an  
18 abuse of discretion.

19 **4. Bases for Appeal.** The Commission did not have sufficient evidence to make a  
20 shut-in well determination regarding well number 11-21 at its July 18, 2008 hearing. Arizona  
21 Administrative Code subsections R12-7-125(A) and (B) require:

22 A. If drilling, injection, or production operations at a well are suspended, or  
23 have been suspended for 60 days, an operator shall plug the well under  
24 R12-7-127 unless the Commission permits the well to be temporarily  
25 abandoned or shut-in. The Commission shall not classify a well as shut-in  
26 until the operator submits a completion report under R12-7-121.

27 B. An operator may temporarily abandon or shut-in a well for up to 5 years if  
28 the operator demonstrates to a quorum of the Commission a future  
beneficial use of the well and submits a Sundry Notice to the Commission  
containing the following information:

1. Evidence of casing integrity as required in R12-7-112 including a  
complete description of the current casing, cementing, and perforation  
record of the well;

2. The stimulation and cement squeeze record and complete data on the results of any well tests performed to date; and
3. All other well data required in R12-7-121(A).

\*\*\*

In this case, well number 11-21 was drilled by Ridgeway in 1997, and had been classified by the Commission as temporarily abandoned since 1998. Also upon information and belief, Ridgeway did not submit a completion report for the well to the Commission until approximately June 18, 2008. At that time, Ridgeway requested the Commission grant the well shut-in status.

The Commission's rule R12-7-101 defines a "shut-in well" as "a well that is capable of production in paying quantities, is completed as a producing well, and is not presently being operated." Ridgeway provided the Commission with outdated, inappropriate, and incomplete data to support its shut-in determination request. Typically, shut-in status is not recognized absent up-to-date results from a four-point back pressure test that indicate the well is capable of sufficient production to support profitability projections. Upon information and belief, the old data submitted to the Commission demonstrated well number 11-21 had "skin damage" and was thus unable to produce. A Ridgeway representative confirmed at the July 18, 2008 meeting that the damage had not yet been repaired and would be repaired when the well was needed. Also upon information and belief, at the time of the decision, the Commission had no evidence before it regarding the current market for discovered substances, nor was there information regarding the costs of production and transportation or profit projections.

Prior to its decision, the Commission was provided with copies of two reports of H.J. Gruy and Associates, Inc. ("Gruy"), an oil and gas consultant firm. The reports were prepared in response to the State Land Department's request that Gruy assess the potential for the wells in question, including well number 11-21, to be capable of producing in paying quantities per industry standards. In both reports, a qualified professional opined that Ridgeway provided

1 insufficient information to determine if the wells were capable of producing in paying quantities.  
2 The information provided to Gruy was the same information provided to the Commission. The  
3 Commission had no other qualified opinion before it that disputed Gruy's conclusion.

4       Instead, comments made by some Commissioners at the meeting indicated they granted  
5 shut-in status in a desire to support Ridgeway's overall project efforts, or speculated that  
6 Ridgeway would not have invested so much money in a project if Ridgeway did not expect it to  
7 be profitable. These are arbitrary and capricious bases to grant shut-in status to a well when  
8 there is insufficient evidence to support that status pursuant to the Commission's rules.

9       Gary Kiehne has been injured, or will be injured, by the Commission's decision  
10 regarding the shut-in status of well number 11-21. Well number 11-21 is located on land leased  
11 by Ridgeway from the State Land Department under lease number 13-101357. The term of state  
12 lease number 13-101357 was to expire January 18, 2006. On January 17, 2006, at the last  
13 minute, and in order to extend the lease, Ridgeway requested the State Land Department  
14 recognize well number 11-21 was shut-in to take advantage of a lease term that would allow  
15 Ridgeway to extend the lease by payment of shut-in royalties. On January 18, 2006, Gary  
16 Kiehne and others submitted applications for the same land covered by lease number 13-101357,  
17 and Mr. Kiehne (through application number 13-110557) was determined the successful  
18 applicant, subject to the outcome of Ridgeway's shut-in royalty clause request. *See Exhibit A,*  
19 *State Land Department Order No. 164-2006/2007, attached.*

20  
21       Despite the opinion provided by Gruy that there was insufficient evidence to determine  
22 well number 11-21 was capable of producing in paying quantities, the State Land Department  
23 later expressed its intention to defer its decision on well status to the Commission in an April 23,  
24 2008 letter to Ridgeway. Therefore, the Commission's decision has directly injured, or will  
25 directly injure, Mr. Kiehne's interest in state land lease number 13-101357.  
26  
27  
28

1 Mr.Kiehne hereby requests a hearing and reimbursement for its fees and costs as  
2 authorized by Arizona Revised Statutes section 41-1007.

3 DATED this 15th day of August, 2008.

4 RYLEY CARLOCK & APPLEWHITE

5  
6 By Michele Van Quathem  
7 Michele Van Quathem  
8 Ryley Carlock & Applewhite  
9 One North Central Avenue, Suite 1200  
Phoenix, Arizona 85004-4417  
Attorneys for Gary Kiehne

10 Original of the foregoing sent via overnight  
11 mail and e-mail this 15th day of August, 2008,  
12 to:

13 Oil and Gas Conservation Commission  
14 c/o Steve Rauzi, Administrator  
15 416 W. Congress, Suite 100  
16 Tucson, Arizona 85701  
Steve.rauzi@azgs.az.gov

17 Original of the foregoing hand-delivered  
18 this 15<sup>th</sup> day of August, 2008, to:

19 Curtis Cox  
20 Arizona Attorney General's Office  
1275 W. Washington  
21 Phoenix, Arizona 85007

22 Teresa Craig  
23 Arizona Attorney General's Office  
1275 W. Washington  
24 Phoenix, Arizona 85007

25 Colin Campbell  
26 2929 N. Central Avenue  
27 21<sup>st</sup> Floor  
28 Phoenix, Arizona 85012-2793

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Original of the foregoing sent via overnight  
mail this 15th day of August, 2008, to:

Barry Lasker  
Ridgeway Arizona Oil Corp.  
One Riverway, Suite 610  
Houston, Texas 77056

By Joyce Gesick  
Joyce Gesick

**BEFORE THE ARIZONA OIL AND GAS CONSERVATION COMMISSION**

In the Matter of Shut-In Status for  
Ridgeway Arizona Oil Corp. State Well  
Number 11-21 (Permit 895)

Appellant: Gary Kiehne

**NOTICE OF HEARING**

Notice is hereby given that a hearing to consider the Notice of Appeal in the above-entitled captioned matter will be held on the **17th day of October, 2008 at 10:00 A.M.** before the Arizona Oil and Gas Conservation Commission at the Commission's offices at 416 W. Congress Suite 100, Tucson, Arizona 85701.

The Appellant and any other parties to the above-captioned proceedings are hereby notified that they have the right to appear on the date and time specified in this Notice of Hearing with legal counsel, if they so choose.

If the Appellant or any other party fails to appear at the hearing, the Arizona Oil and Gas Conservation Commission may proceed in their absence and a decision may be issued based upon the evidence of record.

This matter is set for a full evidentiary hearing under A.R.S. §§ 41-1092, *et. seq.* to consider the Appellant's challenge to the Commission's decision to grant shut-in status to Well Number 11-21 (Permit 895) under A.A.C. R12-7-125.

The parties may be represented by counsel, may introduce evidence through witnesses and documents and may cross-examine witnesses of other parties, and may have a court reporter present, which is the responsibility of the party desiring a court reporter. The Commission

may issue subpoenas on behalf of any party. The party requesting the issuance of a subpoena shall be responsible for the service of that subpoena.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, by contacting the Oil and Gas Administrator Steven L. Rauzi at (520) 770-3500. Requests should be made as early as possible to allow time to arrange the accommodation.

DATED this 5th day of September, 2008

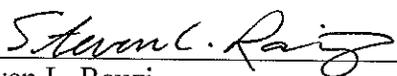
  
\_\_\_\_\_  
Steven L. Rauzi  
Oil and Gas Administrator

A copy of the foregoing was mailed via Certified U.S. Mail, Return Receipt Requested, this 5th day of September, 2008.

Michele Van Quathem  
Ryley Carlock & Applewhite, P.A.  
One North Central Avenue  
Suite 1200  
Phoenix, AZ 85004-4417  
Attorney for Appellant

Curtis Cox  
Assistant Attorney General  
Office of the Attorney General  
1275 W. Washington  
Phoenix, AZ 85007  
Attorney for State

Christopher A. Munns, Assistant Attorney General  
Solicitor General's Office  
1275 West Washington  
Phoenix, AZ 85007

  
\_\_\_\_\_  
By: Steven L. Rauzi  
Oil and Gas Administrator

**BEFORE THE ARIZONA OIL AND GAS CONSERVATION COMMISSION**

In the Matter of Shut-In Status for  
Ridgeway Arizona Oil Corp. State Well  
Number 11-21 (Permit 895)

Appellant: Gary Kiehne

**AMENDED NOTICE OF HEARING**

Notice is hereby given that a hearing to consider the Notice of Appeal in the above-entitled captioned matter will be held on the **17th day of October, 2008 at 10:00 A.M.** before the Arizona Oil and Gas Conservation Commission at the Commission's offices at 416 W. Congress Suite 100, Tucson, Arizona 85701.

The Appellant and any other parties to the above-captioned proceedings are hereby notified that they have the right to appear on the date and time specified in this Notice of Hearing with legal counsel, if they so choose.

If the Appellant or any other party fails to appear at the hearing, the Arizona Oil and Gas Conservation Commission may proceed in their absence and a decision may be issued based upon the evidence of record.

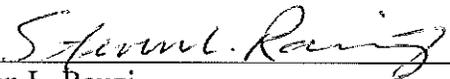
This matter is set for a full evidentiary hearing under A.R.S. §§ 41-1092, *et. seq.* to consider the Appellant's challenge to the Commission's decision to grant shut-in status to Well Number 11-21 (Permit 895) under A.A.C. R12-7-125.

The parties may be represented by counsel, may introduce evidence through witnesses and documents and may cross-examine witnesses of other parties, and may have a court reporter present, which is the responsibility of the party desiring a court reporter. The Commission

may issue subpoenas on behalf of any party. The party requesting the issuance of a subpoena shall be responsible for the service of that subpoena.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, by contacting the Oil and Gas Administrator Steven L. Rauzi at (520) 770-3500. Requests should be made as early as possible to allow time to arrange the accommodation.

DATED this 12th day of September, 2008

  
\_\_\_\_\_  
Steven L. Rauzi  
Oil and Gas Administrator

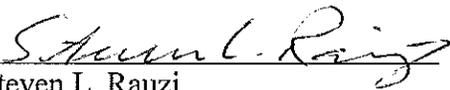
A copy of the foregoing was mailed via Certified U.S. Mail, Return Receipt Requested, this 12th day of September, 2008.

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Ryley Carlock & Applewhite, P.A.  
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Attorney for Appellant

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\_\_\_\_\_  
By: Steven L. Rauzi  
Oil and Gas Administrator

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13  
14 **BEFORE THE ARIZONA OIL AND**  
15 **GAS CONSERVATION COMMISSION**

16 In the Matter of Shut-In Status for Ridgeway  
17 Arizona Oil Corp. State Well Number 11-21  
18 (Permit 895)

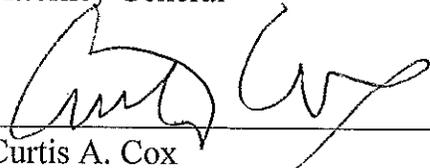
19 Appellant: **Gary Kiehne**

20 **NOTICE OF APPEARANCE**

21 **PLEASE TAKE NOTICE** that Curtis A. Cox, Assistant Attorney General will appear  
22 on behalf of the Oil and Gas Conservation Commission on the above-entitled matter.

23 **DATED** this 18 day of September, 2008.

24 TERRY GODDARD  
25 Attorney General

26   
Curtis A. Cox  
Assistant Attorney General  
Environmental Enforcement Section

1 **Original** filed this 18<sup>th</sup> day of  
2 September, 2008, with:

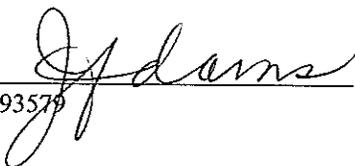
3 Arizona Oil and Gas Conservation Commission  
4 Attn: Steven L. Rauzi  
5 Oil and Gas Administrator  
6 416 W. Congress, Suite 100  
7 Tucson, Arizona 85701

8 **Copies** sent by U.S. Mail and  
9 Inter-office mail this 18<sup>th</sup> day  
10 of September, 2008, to:

11 Michele Van Quathem  
12 Ryley Carlock & Applewhite, P.A.  
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26

21   
22 \_\_\_\_\_  
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9 **BEFORE THE ARIZONA OIL AND**  
10 **GAS CONSERVATION COMMISSION**

12 In the Matter of Shut-In Status for Ridgeway  
13 Arizona Oil Corp. State Well Number 11-21  
(Permit 895)

14 Appellant: **Gary Kiehne**

**MOTION TO DISMISS**

17 Comes now, the State of Arizona ("State") and moves the Oil and Gas Conservation  
18 Commission ("Commission") to dismiss Gary L. Kiehne's ("Appellant's" or "Kiehne's")  
19 Notice of Appeal because (1) Kiehne *lacks standing* to appeal the Oil and Gas Commission's  
20 determination, and (2) Appellant's appeal *is not ripe* because Appellant's real grievance will  
21 not be decided nor remedied until the State Land Department's ("Department's") leasing  
22 decision becomes final. In support, the State provides the following memorandum.  
23  
24

1 MEMORANDUM OF AUTHORITY

2 Factual Background

3  
4 On April 23, 2008, the State Land Department issued a letter stating the Department's  
5 intention to deny Ridgeway Arizona Oil Corporation's request to extend state land leases, Nos.  
6 13-101357 and 13-101510. (Exhibit A, April 23, 2008 Letter from State Land Department  
7 (emphasis added)). However, the State Land Department stated that it would defer – *into the*  
8 *future* – its final formal leasing decision until a date after the Oil and Gas Conservation  
9 Commission's shut-in status decision for Ridgeway wells located on the state land parcels. *Id.*  
10 (emphasis added). The State Land Department instructed Ridgeway "to apply with the Arizona  
11 Oil and Gas Conservation Commission for shut-in status . . . by filing the appropriate well  
12 completion documents. . . ." *Id.* The State Land Department stated that if Ridgeway secured  
13 shut-in status from the Oil and Gas Conservation Commission, then the State Land Department  
14 would extend Ridgeway's leases. Otherwise, the State Land Department determined that Gary  
15 Kiehne would be awarded the lease. *Id.*

16  
17  
18  
19 Kiehne's real grievance, therefore, is with the State Land Department, and his real  
20 interest and harm lies with the State Land Department's determination of the state land lease.<sup>1</sup>  
21 In other words, Kiehne has no direct grievance with, nor direct interest in, the outcome of the  
22 Oil and Gas Commission's decision to grant the well shut-in status:  
23

24 In spite of this fact, on August 15, 2008, Kiehne filed *two* Notices of Appeal ("NOA") –  
25

26  

---

1 The State Land Department asserts that its April 23, 2008 letter is not a final formal decision, and therefore, is insulated from administrative appeal. The State, in this motion, does not take a position in this regard. Whether or not Kiehne can appeal the April 23, 2008 letter is a matter he must address with the State Land Department.

1 one with the Oil and Gas Conservation Commission and one with the State Land Department.  
2 Both appeals seek to redress the same grievance – Kiehne’s failure to secure state land lease,  
3 No. 13-101357, *from the State Land Department*. (See Exhibit A, Notice of Appeal, State Land  
4 Department, Aug. 15, 2008)(emphasis added). In the State Land Department NOA, Appellant  
5 appealed the State Land Department April 23, 2008 letter. In the Oil and Gas Conservation  
6 Commission NOA, Appellant claimed the same grievance. In both appeals, Appellant seeks the  
7 same remedy – a final determination awarding the state land lease to Kiehne from the State  
8 Land Department.  
9  
10

11 Argument

- 12  
13 I. **STANDING: Appellant does not have standing to challenge the Oil and Gas**  
14 **Conservation Commission decision because Appellant has not been “adversely**  
15 **affected” by the Commission’s action; rather, Appellant claim of adverse affect**  
16 **is based on the the State Land Department’s administrative actions.**

17 The Oil and Gas Conservation Commission should dismiss this appeal because Gary  
18 Kiehne does not have standing to pursue his grievance before the Commission. Rather, Kiehne  
19 should pursue his grievance with the State Land Department based on his dispute with the  
20 Department’s decision. In Arizona, the legal doctrine of “standing” requires that each party  
21 seeking to appeal have an interest in the outcome of the appeal. *Chambers v. United Farm*  
22 *Workers Organizing Committee*, 25 Ariz. App. 104, 541 P.2d 567 (1975). And a party may not  
23 appeal an order unless he is directly aggrieved by the order. *Id.* Since Appellant is not directly  
24 aggrieved by the Oil and Gas Conservation Commission’s determination, and since his interest  
25 is not directly affected by the outcome of the commission appeal, he lacks standing to appeal.  
26

1 Appellant filed his appeal pursuant to A.R.S. § 41-1092.03. Under A.R.S. § 41-1092.03,  
2 standing is referred to as “adverse affect.” A.R.S. § 41-1092.03 states that a notice of appeal  
3 “may be filed by a party who will be *adversely affected* by the appealable agency action. . .”  
4 (emphasis added). To demonstrate standing – through adverse affect – a party must  
5 demonstrate that he is truly aggrieved by the disputed decision or order. *See In re Estate of*  
6 *Victor Friedman*, 217 Ariz. 548, 551, 177 P.3d 290, 293 (1977). A party is aggrieved if the  
7 decision denies that party a property right or imposes on that party a substantial burden or  
8 obligation. *Id.* Further, the “aggrievement” must be direct; it must flow *directly* from the order,  
9 and not merely result by applying a legal principle from one case to another. *See Id.* at 552; 117  
10 P.3d at 294 (emphasis added).  
11  
12  
13

14 Gary Kiehhe’s grievance in this case arises – *directly* – from his inability to secure leases  
15 *from the State Land Department*, not from the Oil and Gas Commission’s shut-in status  
16 determination. Gary Kiehne’s interest in the Oil and Gas Conservation Commission’s decision  
17 is only indirect due to the wording in the State Land Department’s April 23, 2008 letter. In  
18 other words, Kiehne appealed the Oil and Gas Conservation Commission’s decision solely  
19 because the State Department, in its April 23, 2008 letter, stated that the Department would  
20 defer and base its lease decision on the Oil and Gas Conservation Commission’s decision.  
21  
22 Whether or not Kiehne is directly harmed, and adversely affected, by the State Land  
23 Department leasing decision, however, remains directly dependent on the final action(s) of the  
24 State Land Department. The Oil and Gas Conservation Commission has no statutory authority  
25 to decide the outcome of the lease dispute.  
26

1 Similarly, the State Land Department has no statutorily obligation to defer its decision, nor  
2 condition its decision, on the Oil and Gas Conservation Commission decision. Although the  
3 State Land Department may consider the shut-in status of the wells on the state land, the State  
4 Land Department decision is not dependent on that status as has been suggested. Therefore,  
5 Kiehne's real grievance remains with the State Land Department and rests with the outcome of  
6 the State Land Department decision-making process.  
7

8  
9 Appellant Kiehne should be appealing the State Land determination. His harm – failure to  
10 secure the land lease – will not be remedied by the Oil and Gas Conservation Commission decision.  
11 Kiehne will not incur any direct benefit by changing the Oil and Gas Conservation Commission's  
12 decision. He fails to have standing before the Oil and Gas Conservation Commission because he  
13 can only remedy his grievance by achieving a favorable decision from the State Land Department  
14 after the Commission's decision.  
15

16  
17 **II. RIPENESS: Appellant does not have standing to appeal because Appellant's**  
18 **claim is not ripe.**

19 Kiehne's appeal should also be dismissed because his grievance is not yet ripe. The  
20 doctrine of ripeness is similar to standing; ripeness prevents review of a grievance that has not  
21 become final, and that may never occur. Under A.R.S. § 12-902, the scope of appeal under the  
22 Administrative Review Act is limited to the review of a *final decision* of an administrative  
23 agency. *Arizona Commission of Agriculture and Horticulture v. Jones*, 91 Ariz. 183, 187 (Ariz.  
24 1962). The statute A.R.S. § 12-901, defines a final appealable decision as any decision, order  
25 or determination by an administrative agency that terminates the matter before the agency. *Id.*  
26

1 Kiehne's grievance – the failure to secure his lease – has not become final and has not  
2 been terminated before the State Land Department. The leasing grievance remains a pending  
3 matter under consideration by the Department. Kiehne's claim of harm – failure to secure the  
4 lease – is, therefore, only speculative. The harm will only result if the State Land Department  
5 follows through with a final decision against Kiehne. However, the State Land Department is  
6 not bound by the April 23, 2008 letter. The State Land Department has stated that the decision  
7 in the April 23, 2008 letter is not yet final.  
8

9  
10 Even Kiehne's appeal to the State Land Department also suggests that his grievance is  
11 presently only speculative. In the State Land Department NOA, Kiehne stated, "... Gary  
12 Kiehne has been injured, *or will be injured*, by the Department's decision regarding the shut-in  
13 status of well number 11-21." (Exhibit A, Notice of Appeal, State Land Dept. (Aug. 15, 2008)  
14 (emphasis added)). Because the State Land Department has not issued a final determination,  
15 Kiehne is unable to state affirmatively that he has in fact been injured by that decision.  
16  
17

18 Appellant's NOA to the Oil and Gas Commission should be dismissed because  
19 Appellant is unable to demonstrate that he will be remedied by a favorable Oil and Gas  
20 Commission decision. Because State Land Department's decision remains pending and could  
21 result in a determination favorable to Kiehne, regardless of the Oil and Gas Conservation  
22 Commission's decision, Kiehne's grievance and appeal is not ripe for review.  
23

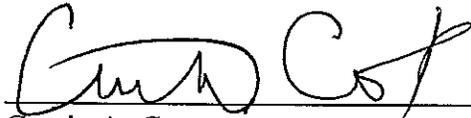
#### 24 Conclusion

25 For the foregoing reasons, the State requests that the Oil and Gas Conservation  
26 Commission, dismiss the Appellant's Notice of Appeal for lack of standing. Specifically, the

1 Oil and Gas Conservation Commission should order the following: Appellant's Notice of  
2 Appeal is dismissed because Appellant has not been adversely affected by the Oil and Gas  
3 Conservation Commission's decision, and Appellant's grievance, which rests with the state land  
4 lease determination, is not yet ripe. Therefore, Appellant lacks standing to file his Notice of  
5 Appeal.  
6

7  
8 **DATED** this 17<sup>th</sup> day of September, 2008.

9 TERRY GODDARD  
10 Attorney General

11 

12 Curtis A. Cox  
13 Assistant Attorney General  
14 Environmental Enforcement Section

15 **Original** filed this 17<sup>th</sup> day of  
16 September, 2008, with:

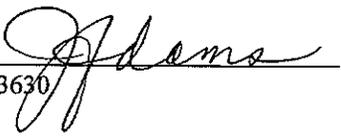
17 Arizona Oil and Gas Conservation Commission  
18 Attn: Steven L. Rauzi  
19 Oil and Gas Administrator  
20 416 W. Congress, Suite 100  
Tucson, Arizona 85701

21 **Copies** sent by U.S. Mail and  
22 Inter-office mail this 17<sup>th</sup> day of  
23 September, 2008, to:

24 Michele Van Quathem  
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11   
12 #293630

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7 Attorneys for Gary L. Kiehne

8 **OIL AND GAS CONSERVATION COMMISSION**

9 **STATE OF ARIZONA**

RECEIVED

SEP 29 2008

10 In the Matter of Shut-In Status for  
11 Ridgeway Arizona Oil Corp. State Well  
12 Number 11-21 (Permit 895)

Case No. \_\_\_\_\_

13 Appellant: Gary Kiehne

**RESPONSE TO  
MOTION TO DISMISS**

14 This Response to Motion to Dismiss is submitted by Gary Kiehne in response to  
15 the State's Motion to Dismiss filed on or about September 17, 2008. The State's  
16 Motion should be denied because:

17 (1) The Arizona Administrative Procedure Act clearly provides to a party  
18 who will be adversely affected by the appealable agency action a right of appeal  
19 and due process that includes a hearing. Parties are granted the opportunity to  
20 respond and present evidence and argument on all relevant issues. Gary Kiehne  
21 is adversely affected by the Commission's decision because he is the successor to  
22 the State Land lease upon which well number 11-21 is located.

23 (2) The State's "ripeness" and "standing" arguments and legal citations in its  
24 Motion to Dismiss are based upon discretionary common law court policy that is  
25 not applicable in an administrative agency proceeding governed by the  
26 Administrative Procedure Act.  
27  
28

1 **I. BACKGROUND**

2 State Land Department Order number 164-2006/2007 recognized Gary Kiehne as  
3 the successful applicant for the land covered by Ridgeway Arizona Oil Corporation's  
4 ("Ridgeway's") prior lease number 13-101357, subject to the outcome of Ridgeway's  
5 shut in well royalty clause request. *See Order, attached as Exhibit A.* Well number 11-  
6 21, at issue in this appeal, is located on the land covered by State Land lease number 13-  
7 101357. (Mr. Kiehne's application number for this land is 13-110557.) Mr. Kiehne  
8 also owns overriding royalty interests in a number of state and federal leases near the  
9 land where well number 11-21 is located.

10 By a letter dated April 23, 2008, Joseph Dixon, a Geologist for the State Land  
11 Department, informed Thomas White at Ridgeway that data received by the Department  
12 "does not allow a determination to be made on the potential for the wells to be capable  
13 of production." *See Letter, attached as Exhibit B.* The letter continued to explain that  
14 the Department was not satisfied with the proof offered to support the assertion  
15 Ridgeway's wells were capable of producing in paying quantities. The letter then  
16 concluded as follows:

17 Understanding that Ridgeway would appeal a decision to deny paying  
18 shut-in royalty on the two leases, prior to issuing a formal decision on the  
19 matter, the ASLD advises Ridgeway to apply with the Arizona Oil and  
20 Gas Conservation Commission (OGCC) for shut-in status of the three  
21 wells by filing the appropriate well completion documents as per Arizona  
22 Administrative Code (ACC) Title 12, Chapter 7, Article 1, Section R12-7-  
23 121. *If the OGCC grants Ridgeway shut-in status for the three wells,*  
24 *the ASLD will honor this determination and extend the two leases under*  
25 *shut-in royalty provisions for an additional five years from the*  
26 *expiration date of the leases (January 18, 2006).* Ridgeway should  
27 complete this action by the next OGCC on July 18, 2008...

23 (emphasis added). Following this letter, Ridgeway applied for shut-in status for well  
24 number 11-21 (Permit 895) to the Oil and Gas Conservation Commission  
25 ("Commission"), relying on the same information that was already submitted to the  
26 State Land Department to support its request. At its July 18, 2008 public meeting, the  
27 Commission determined based upon the same information submitted to the State Land  
28

1 Department that well number 11-21 was entitled to shut-in status pursuant to  
2 Commission rule R12-7-125.

3 Mr. Kiehne timely submitted a Notice of Appeal in this action. Mr. Kiehne  
4 intends to demonstrate at the hearing in this matter that the Commission lacked  
5 sufficient evidence to support a shut-in well determination regarding well number 11-  
6 21, and that well 11-21 is damaged and not capable of producing in paying quantities.

7  
8 **II. THE ADMINISTRATIVE PROCEDURE ACT REQUIRES A HEARING  
9 TO PROCEED IN THIS MATTER; THE MOTION TO DISMISS  
10 SHOULD BE DENIED**

11 The Arizona Administrative Procedure Act, Arizona Revised Statutes, Title 41,  
12 chapter 6, was enacted in 1995 to govern administrative agency appeals. The  
13 Commission is an administrative agency subject to the Administrative Procedure Act.  
14 See A.R.S. § 41-1092.02, Exhibit C. Unless an agency or action is specifically excepted  
15 from the Administrative Procedure Act, the Act applies to all agency actions. *Id.*

16 Arizona Revised Statute section 41-1092.03.B. provides:

17 B. A party may obtain a hearing on an appealable agency action or  
18 contested case by filing a notice of appeal or request for a hearing with the  
19 agency within thirty days after receiving the notice prescribed in subsection  
20 A of this section. The notice of appeal or request for a hearing may be  
21 filed by a party whose legal rights, duties or privileges were determined by  
22 the appealable agency action or contested case. A notice of appeal or  
23 request for a hearing also may be filed by a party who will be adversely  
24 affected by the appealable agency action or contested case and who  
25 exercised any right provided by law to comment on the action being  
26 appealed or contested, provided that the grounds for the notice of appeal or  
27 request for a hearing are limited to issues raised in that party's comments.

28 (emphasis added), Exhibit D. This section covers appeals by parties who were already  
injured or who will be adversely affected. In this case, at the very least, Gary Kiehne  
will be affected by the Commission's decision. The language in the State Land  
Department's letter was unequivocal: "If the OGCC grants Ridgeway shut-in status for  
the three wells, the ASLD will honor this determination and extend the two leases under  
shut-in royalty provisions . . ." See Exhibit B.

1 We are unsure why the State Land Department decided to defer the shut-in  
2 determination to the Commission. Perhaps there was a concern A.R.S. section 27-558  
3 requires the State Land Department to rely on the Commission for determinations of  
4 issues within its jurisdiction. That section provides that “[t]he development of oil and  
5 gas leases issued pursuant to [the article governing lease of state lands for oil and gas]  
6 shall be in accordance with the laws of the state relating to the conservation of oil and  
7 gas.” See Exhibit E. If the State Land Department is required to defer its decision, then  
8 Mr. Kiehne was already prejudiced by the Commission’s decision.

9 Even if the State Land Department changes its mind, however, and decides to  
10 deny Ridgeway the shut-in clause lease extension despite the Commission’s July 18,  
11 2008 grant of shut-in status to well number 11-21, Mr. Kiehne is already the recognized  
12 successful lessee in that circumstance, and the condition and status of well 11-21  
13 located within Mr. Kiehne’s leased property, is obviously a direct and immediate  
14 concern for him. Either way, Mr. Kiehne is directly affected by the Commission’s shut-  
15 in determination. Mr. Kiehne’s interest in the outcome of this case is not dependent  
16 upon the State Land Department’s final determination. Mr. Kiehne’s grievance with the  
17 Commission’s decision in this case can be resolved by a reversal of the Commission’s  
18 decision.

19 In addition, Mr. Kiehne owns overriding royalty interests in properties in the  
20 immediate area of the parcel on which 11-21 is located, and because of these interests,  
21 environmental claims could be asserted against Mr. Kiehne if wells are not  
22 appropriately maintained.

23 The Administrative Procedure Act requires the Commission to grant Mr. Kiehne  
24 due process -- “[a]ll parties shall have the opportunity to respond and present evidence  
25 and argument on all relevant issues.” A.R.S. § 41-1092.07, Exhibit F; see also A.R.S. §  
26 27-517 (“Any interested person shall . . . have the right to have the commissioner call a  
27 hearing . . . in respect to any matter within the jurisdiction of the commissioner...”),  
28 Exhibit G. Clearly the Commission must provide Mr. Kiehne with the opportunity to

1 respond and present evidence and argument on all relevant issues in this appeal, and the  
2 Motion to Dismiss must be denied.

3  
4 **III. “RIPENESS” AND “STANDING” ARE COMMON LAW CONCEPTS  
5 APPLICABLE IN COURTS AND NOT IN ADMINISTRATIVE  
6 PROCEEDINGS; THE MOTION TO DISMISS SHOULD BE DENIED**

7 Mr. Kiehne’s right to proceed with this appeal is explicitly provided by the  
8 Arizona Administrative Procedure Act provisions reviewed above. The “ripeness” and  
9 “standing” case law cited in the Motion to Dismiss does not apply to this appeal for  
10 several reasons.

11 First, the “standing” and “ripeness” case law cited by the State does not apply to  
12 the Administrative Procedure Act provisions governing this appeal. The State cites  
13 Chambers v United Farm Workers Organizing Committee, 25 Ariz. App. 104, 541 P.2d  
14 567 (1975) to support its argument the “standing” doctrine should apply in this action to  
15 prevent Mr. Kiehne’s appeal. The Chambers case, however, clearly was brought  
16 initially in the Arizona court system – it was not an administrative appeal brought under  
17 the Administrative Procedure Act. 541 P.2d at 568. The Chambers case involved a  
18 determination of the plaintiff’s right to appeal from a judgment of the Yuma County  
19 Superior Court to the Arizona Court of Appeals pursuant to then Arizona Rule of Civil  
20 Procedure 73(a), a rule not applicable to this administrative appeal. In this case, as is  
21 explained above, the Administrative Procedure Act (and indeed the Commission’s own  
22 statutes), authorize this appeal hearing. The State also cites In re Estate of Victor  
23 Friedman, 217 Ariz. 548, 551, 177 P.3d 290, 293 (2008), for the proposition that the  
24 “adverse effect” standard in the Administrative Procedure Act requires a party in an  
25 administrative appeal to demonstrate that “he is truly aggrieved by the disputed decision  
26 or order.” *See Motion to Dismiss*, p. 4. The Friedman case, however, was not an  
27 administrative appeal brought under the Administrative Procedure Act. Friedman was a  
28 probate case filed initially in Maricopa County Superior Court, and the holding cited in  
that appeal case was an interpretation of a standard in Rule 1 of the Arizona Rules of

1 Civil Appellate Procedure. Those rules apply only to judicial appeals. Even in original  
2 judicial cases in Arizona, the “standing” principles are not requirements a court must  
3 follow because the Arizona Constitution contains no case or controversy requirement.  
4 *See Strawberry Water Co. v. Paulsen*, 2008 WL 2895941, ¶¶ 7, 8 (Ariz. App. Div. 1  
5 2008) (standing only raises “questions of prudential or judicial restraint”) (internal  
6 citations omitted). If any similar “ripeness” and “standing” principles apply in this  
7 appeal, their terms are defined expressly by the Administrative Procedure Act’s  
8 language reviewed above, and not case law regarding judicial application of  
9 inapplicable statutes and rules.

10 Second, as was discussed above, pursuant to the Administrative Procedure Act’s  
11 requirements, Mr. Kiehne is directly affected by the Commission’s decision whether or  
12 not the State Land Department eventually defers its shut-in decision to the Commission.

13 Third, the State’s argument that Mr. Kiehne’s appeal is not “ripe” is similarly  
14 based upon inapplicable legal requirements. The State cites judicial review statutes in  
15 A.R.S. Title 12 applicable to a superior court’s review of administrative appeals such as  
16 the current appeal. The cited provisions and the supporting case law will only apply  
17 after Mr. Kiehne exhausts his right to appeal the Commission’s decision within the  
18 administrative process and then appeals the resulting decision to the Superior Court.  
19 Even so, this appeal meets those standards already.

20 An administrative agency has only those limited powers granted to it by the  
21 legislature, and it can exercise only those powers expressly or impliedly granted. Fund  
22 Manager, Public Safety Personnel Retirement System v. Tucson Police Public Safety  
23 Personnel Retirement System Bd., 137 Ariz. 536, 540, 672 P.2d 201, 205 (Ariz. App.  
24 1983) (internal citations omitted), Exhibit C. The Legislature has expressly required the  
25 Commission to provide a hearing through the Administrative Procedure Act and  
26 through the Commission’s own statutes.

27 For all the reasons cited above, the Motion to Dismiss should be denied.  
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DATED this 26th day of September, 2008.

RYLEY CARLOCK & APPLEWHITE

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ORIGINAL and 5 copies of the foregoing sent overnight mail  
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10 **BEFORE THE ARIZONA OIL AND**  
11 **GAS CONSERVATION COMMISSION**

12 In the Matter of Shut-In Status for Ridgeway  
13 Arizona Oil Corp. State Well Number 11-21  
(Permit 895)

14 Appellant: **Gary Kiehne**

**State's Reply – Motion to Dismiss**

17 The State of Arizona ("State") submits the following Reply to Kiehne's Response  
18 to the Motion to Dismiss in further support of the State's request that the Oil and Gas  
19 Conservation Commission ("Commission") dismiss Kiehne's appeal pursuant to the  
20 State's Motion to Dismiss ("Motion") because Kiehne lacks standing under A.R.S. § 41-  
21 1092.03(B).  
22

23 **A. By appealing to the Oil and Gas Conservation Commission, Kiehne has appealed in**  
24 **the wrong forum; since his alleged injury arises from a State land leasing decision,**  
**the proper forum for his appeal is with the State Land Department.**

The Commission should focus on the elements of standing contained in A.R.S. § 41-

1 1092.03(B). A.R.S. § 41-1092.03(B) authorizes an appeal by two categories of appellant: (1) a  
2 party whose legal rights, duties or privileges were determined by the appealable agency action  
3 *or* (2) a party who will be adversely affected by the appealable agency action . . . and who  
4 exercised any right provided by law to comment on the action being appealed. Kiehne cited this  
5 statute in his Response; he agrees that it is applicable.<sup>1</sup>  
6

7  
8 Kiehne is attempting to appeal as a member of the second class of appellants.<sup>2</sup> In this  
9 regard, an appeal is permissible by

10 . . . a party who will be adversely affected by the appealable agency  
11 action . . . and who exercised any right provided by law to comment on  
12 the action being appealed . . . provided that the grounds for the notice  
13 of appeal or request for a hearing are limited to issues raised in that  
party's comments.

14 A.R.S. § 41-1092.03(B). Kiehne fails to meet these requirements in his appeal to the  
15 Commission. If Kiehne is adversely affected, it will result from the State Land Department's  
16 leasing decision, not the Commission's decision. Kiehne's appeal, therefore, is misplaced.  
17

18 At the Commission's July 18, 2008 meeting, as well as in his notice of appeal, Kiehne  
19 raised only one area of concern or one issue – his desire to succeed Ridgeway Arizona Oil  
20 Corporation ("Ridgeway") as the lessee of State Land Lease No. 13-101357 where well number  
21 11-21 is located.<sup>3</sup> Kiehne's adverse impact results from the State Land Department's leasing  
22

23  
24 <sup>1</sup> The State's Motion to Dismiss is based on the statutory standing requirements contained in A.R.S. § 41-  
1092.03(B), not the Arizona Constitution as suggested by Kiehne in his Response to Motion to Dismiss.  
25 Any reference or argument about standing under the Arizona Constitution is irrelevant.

26 <sup>2</sup> In this case, only Ridgeway is within this first category – the party whose legal rights, duties or privileges  
were determined by the appealable agency action.

<sup>3</sup> A.R.S. § 41-1092.03(B) limits the issues on appeal to the issues raised by the Appellant at the hearing:  
"grounds for the notice of appeal or request for a hearing are limited to issues raised in that party's

1 decision. Therefore, Kiehne should bring his appeal before the State Land Department when  
2 the Department issues its final administrative decision. The Oil and Gas Conservation  
3 Commission has no authority to remedy Kiehne's adverse impact by extending the State land  
4 lease to him.  
5

6 **B. The State Land Department's decision and the Oil and Gas Conservation**  
7 **Commission's decision are independent decisions, and an appeal of one will not**  
8 **resolve an appeal of the other.**

9 In his Response, Kiehne suggested that the State Land Department's decision and the  
10 Commission's decision were statutorily linked by A.R.S. § 27-558. Kiehne is incorrect. There  
11 is no statute linking the State Land Department's leasing decision to the Commission's  
12 decision. In fact, the opposite is true and evident by the State Land Department statutes. The  
13 Department is now required *by statute* to conduct an independent review and determination of  
14 shut-in status for its State land *leasing* decisions. *See* Attachment A, A.R.S. § 27-555.01(B) ("To  
15 successfully assert shut-in status. . ."). Also, the Department's shut-in lease decision is, *by*  
16 *statute*, an independent "appealable agency order." *See* Attachment A, A.R.S. § 27-555.01(C).  
17 This statutory scheme exemplifies that the State Land Department decision and the Oil and Gas  
18 Conservation Commission decisions are intended to be independent and distinct. The State  
19 Land Department can ignore the Commission's decision – regardless of the letter that Kiehne  
20 relies upon to support his appeal to the Commission. Kiehne is not authorized to appeal his  
21 leasing issues or seek a remedy his alleged injury before the Commission.  
22  
23  
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25

26 comments." In his Response, Kiehne raises at least one new issue that was not included in Kiehne's  
comments nor raised in his notice of appeal: "overriding royalty interests" that he claims will give rise to

1       **C. The Commission is not authorized to remedy a State land leasing decision and**  
2       **appeal allegedly “deferred” to the Commission by the State Land Department.**

3           Kiehne states, “. . . the State Land Department decided *to defer* the shut-in determination  
4 to the Commission. . . .” Kiehne Response at 4 (emphasis added). This statement is incorrect.  
5 The Commission is not authorized to decide *deferred* State Land Department decisions, as  
6 suggested by Kiehne. The Commission would be acting illegally if it directly or indirectly  
7 attempted to make a State Land Department shut-in lease determination. This distinction is  
8 clearly evidenced by the legislatures adoption of the changes in A.R.S. § 27-555.01. Kiehne’s  
9 implication that it can appeal a deferred State Land Department decision to the Commission is  
10 misplaced. If Kiehne believes that the State Land Department “deferred” its authority to the  
11 Commission, then Kiehne should raise the issue with the State Land Department, and not with  
12 the Commission.  
13  
14  
15

16       **D. Although not mandatory, the Commission may consider and follow the case law**  
17       **submitted by the State based on its persuasive explanation of the standing**  
18       **requirement.**

19           Kiehne’s Response states that the State’s cited case law, although “discretionary”, is “not  
20 applicable in an administrative agency proceeding. . . .” See Response at 1. Kiehne is incorrect.  
21 Although the case law cited in the State’s Motion is not mandatory authority,<sup>4</sup> the Commission  
22 may still consider it. If the Commission finds it persuasive, the Commission *may* use it to  
23

---

24 “environmental claims . . . if wells are not appropriately maintained.” This claim should be disregarded  
25 from consideration.

26 <sup>4</sup> If the caselaw is mandatory authority, then the Commission would have no choice but to follow the law  
stated in the case. When case law is persuasive authority, the Commission is not required to follow the law  
stated in the case, but may consider it and follow it for its persuasive value on the issue under  
consideration.

1 understand the principles of standing, and the Commission *may* follow it. In other words, the  
2 State has provided the case law to the Commission to better explain the principles of standing  
3 and urges the Commission to consider the case law's persuasive explanation to find that Kiehne  
4 lacks standing under A.R.S. § 41-1092.03(B) (although the Commission's decision will have no  
5 affect on Kiehne's standing to challenge the State Land Department and seek a remedy in that  
6 forum).  
7

8  
9 The basic principles of standing are further described in "General Principles of  
10 Administrative Review" in the *Arizona Appellate Handbook*, vol. 3, 3<sup>rd</sup> ed., which is published  
11 by the State Bar of Arizona. Like the cited case law, the *Arizona Appellate Handbook* is  
12 persuasive authority that the Commission may consider and rely upon to understand and decide  
13 standing. The *Arizona Appellate Handbook* states the following:  
14

15 Arizona courts have relied heavily on federal case law in the few Arizona cases  
16 on standing. . . The United States Supreme Court has developed a two-pronged  
17 test for determining whether an appellant has standing to bring suit to review  
18 *administrative agency action*. First, the appellant must satisfy the court that he  
19 has suffered some threatened or actual injury, economic or otherwise, *from the*  
20 *administrative action . . . Implicit in this "injury in fact" prong of the test is the*  
21 *requirement that the appellant show that his injury is "fairly traceable" to the*  
*administrative action of which he complains. . . The appellant also must be*  
*able to demonstrate that the injury he has suffered will be redressed by the*  
*relief he seeks...*

22 Resolving the question of standing in Arizona usually requires a careful  
23 study of the specific statute authorizing review of the particular administrative  
24 action involved. . . Standing of particular parties to maintain an action may be  
25 determined by the express language of the statutes or regulations upon which  
the action is based.

26 *Arizona Appellate Handbook* at 31.2.1 (emphasis added).

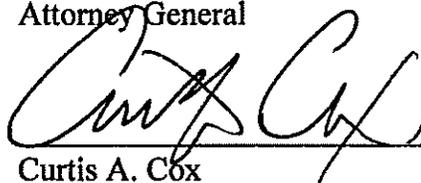
1 To have standing, Kiehne's adverse affect or injury must be *traceable to* and *redressible*  
2 *by* the Commission. Kiehne lacks both traceability and redressibility for his injury. Kiehne's  
3 adverse affect or injury is *traceable* to the State Land Department's leasing decision, not the  
4 Commission's. Further, Kiehne's injury will not be *redressed* by a favorable Commission  
5 decision; rather it will be redressed by the State Land Department. Even if the Commission's  
6 decision is favorable to Kiehne, he will not walk away from the appeal with the lease. Kiehne  
7 will still have to secure a favorable decision the State Land Department. Kiehne, therefore,  
8 lacks standing with the Commission.

11 **Conclusion**

12  
13 For the foregoing reasons, the State requests that the Oil and Gas Conservation  
14 Commission dismiss the Appellant's Notice of Appeal for lack of standing. Specifically, the  
15 Oil and Gas Conservation Commission should order the following: Appellant's Notice of  
16 Appeal is dismissed because Appellant has not been adversely affected by the Oil and Gas  
17 Conservation Commission's decision, and Appellant does not have standing to file a Notice of  
18 Appeal under A.R.S. § 41-1092.03(B).

19  
20 DATED this 10th day of October, 2008.

21  
22 TERRY GODDARD  
23 Attorney General

24 

25 Curtis A. Cox  
26 Assistant Attorney General  
Environmental Enforcement Section

1  
2 **Original** filed this 10<sup>th</sup> day of  
3 October, 2008, with:

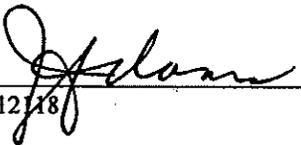
4 Arizona Oil and Gas Conservation Commission  
5 Attn: Steven L. Rauzi  
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8 Tucson, Arizona 85701

9 **Copies** sent by U.S. Mail and  
10 Inter-office mail this 10<sup>th</sup> day of  
11 October, 2008, to:

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#31218

# **Attachment A**

27-555.01. Extension of lease due to lack of transportation, processing facilities or market

A. When the owner of an oil and gas lease issued pursuant to this chapter has discovered oil or gas on the leased premises or on lands joined therewith in a cooperative or pooled unit, while the lease is in full force and effect, but is unable to produce oil or gas in paying quantities because of lack of transportation or processing facilities or a market for the oil or gas that would support production in paying quantities, each lease on which there is an oil or gas well or which is part of the cooperative or pooled unit shall be extended beyond the primary term, or any extension of the lease under section 27-555, subsection E, paragraph 1, from year to year, but not to exceed a period of five years, by payment of a shut-in oil or gas royalty of one dollar per acre for the first year, two dollars per acre for the second year and three dollars per acre for the third, fourth and fifth years, payable in advance annually on the anniversary date of the lease. If the payment is made it will be deemed that oil or gas is being procured and produced in paying quantities from the leased premises for such year.

B. To successfully assert shut-in status under subsection A of this section, the owner of the lease must:

1. Complete the well by installing and perforating production casing, by installing a production liner at reservoir depth or by other standard industry practices.

2. File a standard well completion report with the commission indicating an oil or gas discovery.

3. Submit to the department, not later than thirty days before the expiration of the lease, and at or before tendering the first year's shut-in royalties, a copy of the well completion report filed with the commission and the information described in either subdivision (a) or (b) of this paragraph. A well meeting either of the following criteria is considered to be capable of production in paying quantities for the purposes of this section:

(a) A calculation reasonably demonstrating that, as of the date of submission, the monthly proceeds of the well would be expected to exceed the well's monthly operating expenses, if transportation and processing facilities were present and a market existed. The owner may estimate monthly production based on well test results and any other data the owner considers helpful, estimate the monthly value of that production using approximate then-current pricing and estimate monthly operating expenses for the well based on recent history of comparable wells. Costs of drilling, completing and equipping the well shall not be considered in the calculation.

(b) Information satisfying any other alternate test that may be adopted by the department for demonstrating capability to produce in paying quantities, if transportation and processing facilities were present and a market existed.

C. If the department considers that the requirements of subsection B of this section have not been met, it has ninety days after receiving the submission required under subsection B, paragraph 3 of this section in which to deny shut-in status by appealable agency order, which must identify with reasonable particularity the basis for the determination that the requirements of subsection B of this section have not been met. The lease shall remain in effect pending final resolution, whether administrative, judicial or otherwise, as to whether the criteria in subsection B of this section have been met.

D. Subsection B of this section sets forth the full set of information that an owner of a lease must furnish the department with reasonable particularity before the expiration of the lease for which shut-in status is asserted. To assert shut-in status, further reviews or additional tests or audits shall not be conducted for the owner to be entitled to a lease extension pursuant to this section.

E. This section shall apply to existing oil and gas leases in good standing.

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RECEIVED  
OCT 16 2008

13 **BEFORE THE ARIZONA OIL AND**  
14 **GAS CONSERVATION COMMISSION**

15 In the Matter of Shut-In Status for Ridgeway  
16 Arizona Oil Corp. State Well Number 11-21  
17 (Permit 895)

18 **STATE'S PRE-HEARING**  
19 **MEMORANDUM**

20 Appellant: **Gary Kiehne**

21 Kiehne claims that he has been harmed by the Oil and Gas Conservation Commission's  
22 ("Commission's") July 2008 decision to designate Well No. 11-21 as a shut-in well.

23 **Burden of Proof and Standard of Review**

24 **Burden of Proof:**

Pursuant to A.R.S. § 41-1092.07(G), Kiehne has the burden of proof.

**Standard of Review:**

The Commission is authorized and should uphold its decision unless Kiehne proves to the Commission that its decision is not supported by substantial evidence, is illegal, is arbitrary

1 and capricious, or is an abuse of discretion. *See* A.R.S. § 12-910. Kiehne's challenge is limited  
2 to the issues raised in his comments at the July 18, 2008 Commission meeting.  
3

#### 4 Prehearing Motions

5 The State of Arizona ("State") filed a Motion to Dismiss ("Motion") and incorporates by  
6 reference that motion herein. The State herein renews its Motion to Dismiss and urges the  
7 Commission to dismiss this appeal pursuant to that Motion.  
8

#### 9 Background

10 On July 18, 2008, the Oil and Gas Conservation Commission held a public meeting.  
11 Prior to the July 18 Commission meeting, the Commission published an agenda with the items  
12 to be discussed. One of the agenda items noticed and discussed was "Ridgeway Arizona Oil  
13 Corporation ("Ridgeway") request for shut-in status for the 11-21 State (Permit 895) and 9-21  
14 State (Permit 897)." The Commission voted to declare both of the wells shut-in. The  
15 Commission based its decision on the definition of "shut-in well" in A.A.C. § R12-7-101 and  
16 the requirements in A.A.C. § R12-7-125 as well as A.A.C. § R12-7-121. The Commission also  
17 considered the Well Completion Report; the STAR Report; the Gruy and Associates Reports;  
18 comments at the July 18, 2008 Commission meeting including oral comments made by  
19 Kiehne's representatives and oral comments made by representatives of Ridgeway; and the  
20 Commission's specialized knowledge and expertise. Based on the evidence and the legal  
21 standards in A.A.C. §§ R12-7-101, 121, and 125, the Commission correctly exercised its  
22 discretion. The Commission did not err in making the well shut-in determination.  
23  
24  
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26

1 Memorandum

2  
3 **I.**

4 Kiehne's principle arguments are (1) that the Commission was arbitrary based on the  
5 evidence that it considered in making its decision and (2) that the Commission did not use the  
6 correct standard or definition of "shut-in well" in making its determination. Both arguments  
7 fail. The Commission's decision was supported by substantial evidence, was not illegal, was  
8 not arbitrary and capricious, and was not an abuse of discretion.  
9

10 **II.**

11 The Commission is required to follow its rules. Rule A.A.C. § R12-7-101 does not  
12 require that the Commission make its determination based on evidence or reports dated within a  
13 specific timeframe, as Kiehe seems to imply. If the Commission finds that the evidence  
14 submitted is reasonable, relevant and credible, then the Commission should consider that  
15 evidence. There is nothing in the rule allowing the Commission to reject evidence merely  
16 because it has been alleged to be "outdated." In fact, the Commission risks being found  
17 arbitrary if it determines that the evidence must be within a certain timeframe because that time  
18 requirement is not written in the rule. Kiehne's claim that the Commission considered outdated  
19 evidence should be rejected.<sup>1</sup>  
20  
21  
22

23 **III.**

24 Kiehne alleges that the Commission failed to consider sufficient evidence that the well is  
25 "capable of production in paying quantities." See A.A.C. § R12-7-101 ("Shut-in well' means a  
26

1 well that is capable of production in paying quantities, is completed as a producing well, and is  
2 not presently being operated.”) The Commission is *not required* to base its decision on  
3 profitability, transportation costs, operating costs, and other factors alleged by Kiehne.  
4 Consideration of these factors is discretionary. When the Commission adopted the rules for  
5 “shut-in status”, it did not include a list of required factors. In the Preamble to the Notice of  
6 Final Rulemaking, the Commission explained that the rule was being changed to “add a new  
7 shut-in status to distinguish between inactive wells that are capable of production (shut-in) from  
8 those that are not (temporarily abandoned)...” *Arizona Administrative Register*, vol. 6, issue 53,  
9 at p. 4828. Further requirements were simply not intended.  
10  
11  
12

#### 13 IV.

14 There is not a consistent national standard nor definition of “shut-in well.” There is also no  
15 definition of “shut-in well” in the Arizona Statutes. The Arizona Legislature recently passed a  
16 statute – applicable to the State Land Department for lease determinations - that excludes certain  
17 costs from consideration for “shut-in” leases. *See* A.R.S. § 27-555.01. The State Land Department  
18 is required to exclude the following from its determination of “production in paying quantities”:  
19 costs of drilling, completion, and equipping the well. A.R.S. § 27-555.01(B)(3)(a). It also allows  
20 the State Land Department to consider the well owner’s estimate of monthly production as well as  
21 “any other data the owner considers helpful.” A.R.S. § 27-555.01(B)(3)(a). This statute is broad.  
22 Although this statute is not applicable to the Commission, the Commission may consider it.  
23  
24  
25  
26

---

<sup>1</sup> At the July Commission meeting, Kiehne failed to state why the report is not credible due to its date.

1           The regulations for the United States Department of Interior do not include a definition for  
2 “shut-in well.” Although, it defines “production in paying quantities” as “production from a lease  
3 of oil and/or gas of sufficient value to exceed direct operating costs and the cost of lease rentals or  
4 minimum royalties.” 43 C.F.R. § 3160.0-6. This regulation maybe inconsistent with the Arizona  
5 State Land Department requirement to exclude certain costs.  
6

7           The *Dictionary of Petroleum Exploration, Drilling and Production*, Norman J. Hyne,  
8 Ph.D., defines a “shut-in well” as “a producing well that is temporarily turned off. The well  
9 could be shut-in for a workover, lack of gas market, or other reasons.” *Dictionary* at p. 464.  
10 This definition is also very broad. “Temporarily abandoned” is defined as a well that has been  
11 shut in but has not been plugged. *Dictionary* at p. 518. “Paying quantities” is merely defined as  
12 “production from a well that would economically justify continued production by the  
13 operator...” *Dictionary* at p. 368. However, “commercial quantity” has this definition: “there is  
14 no consistent definition for commercial quantity. It could be large enough...to economically  
15 justify (make a profit) the development and production... A prudent person experienced in this  
16 area would expect a profit after costs.” *Dictionary* at p. 93. The Dictionary is not mandatory  
17 authority, and the Commission is not required to consider it.  
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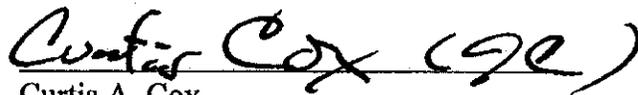
22           Clearly, from these examples, there is no consistent standard for defining a “shut-in  
23 well” or “production in paying quantities.” The Commission should closely follow its rule.  
24 The Commission should not strictly adhere to any standard that is not codified into statute or  
25 rule.  
26

1 **CONCLUSION**

2 The Commission was not arbitrary in its July determination. The Commission did not  
3 violate its discretion. The Commission properly used its discretion in its determination and  
4 should reject Kiehne's appeal because he is unable to meet his burden of proof.  
5

6 **RESPECTFULLY SUBMITTED** this 15<sup>th</sup> day of October, 2008.

7  
8 TERRY GODDARD  
9 Attorney General

10   
11 Curtis A. Cox  
12 Assistant Attorney General  
13 Environmental Enforcement Section  
14

15 **Original** filed this 15<sup>th</sup> day of  
16 October, 2008, with:

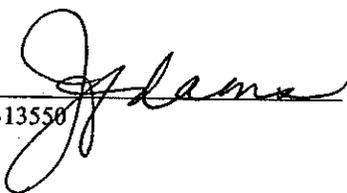
17 Arizona Oil and Gas Conservation Commission  
18 Attn: Steven L. Rauzi  
19 Oil and Gas Administrator  
20 416 W. Congress, Suite 100  
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21 **Copies** sent by U.S. Mail and  
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OCT 17 2008

8 **OIL AND GAS CONSERVATION COMMISSION**

9 **STATE OF ARIZONA**

10 In the Matter of Shut-In Status for  
11 Ridgetway Arizona Oil Corp. State Well  
12 Number 11-21 (Permit 895)

Case No. \_\_\_\_\_

13 Appellant: Gary Kiehne

14 **APPELLANT'S RESPONSE TO**  
15 **STATE'S PRE-HEARING**  
16 **MEMORANDUM**

17 This Response to the State's Pre-Hearing Memorandum is submitted in response  
18 only to the legal authorities cited in the State's Pre-Hearing Memorandum  
19 ("Memorandum"). Mr. Kiehne generally denies the State's legal conclusions stated in  
20 the Memorandum, and will present evidence and argument in support of his assertions  
21 at the hearing on October 17, 2008.

22 **Standard is Preponderance of the Evidence**

23 The State asserts the standard of review in this case is that the "decision is not  
24 supported by substantial evidence, is illegal, is arbitrary and capricious, or is an abuse of  
25 discretion," citing Arizona Revised Statute section 12-910. This is an incorrect  
26 standard. This is an administrative agency appeal and not a judicial appeal in the  
27 Superior Court challenging an agency decision. Section 12-910 applies to judicial  
28 appeals.

The appropriate standard in this case is whether the Appellant demonstrates by a  
"preponderance of the evidence" that the applicant for the well in question was not  
entitled to the shut-in status determination made at the July 18, 2008 Commission

1 meeting. See Culpepper v. State, 187 Ariz. 431, 437-438, 930 P.2d 508, 514-515  
2 (Ariz.App. Div. 1 1996). In Culpepper, the Arizona Court of Appeals was asked to  
3 determine the appropriate standard to be followed by an administrative agency in a  
4 contested case proceeding under the Arizona Administrative Procedure Act, sections  
5 41-1061 to 41-1066. The Court noted that no Arizona case had yet decided that issue,  
6 so it relied on federal precedent in its determination that the preponderance of the  
7 evidence standard should apply.

8 In addition, the Office of Administrative Hearings rule R2-19-119 requires  
9 application of a preponderance of the evidence standard. To apply a different standard  
10 in this would be inconsistent.

#### 11 **Shut-In Well Status**

12 Appellant agrees the Commission's rule R12-7-101 defines "shut-in well" as "a  
13 well that is capable of production in paying quantities, is completed as a producing well,  
14 and is not presently being operated." These elements will be addressed in detail at the  
15 hearing. In addition, the Commission should consider the contrasting definition of a  
16 "temporarily abandoned well," which means "a well that is not capable of production in  
17 paying quantities and is not presently being operated." R12-7-101.

18 The State's Memorandum contains a review of a variety of potential standards  
19 for a "shut-in well", and the State alleges they are not consistent. They clearly are  
20 similar. The Commission's rule definition requires a determination whether the well is  
21 "capable of production in paying quantities." The State cites the 2008 amended version  
22 of Arizona Revised Statute section 27-555.01 as one authority the Commission might  
23 consider. New subsection (B)(3)(a) of that statute requires a "calculation reasonably  
24 demonstrating that, as of the date of submission, the monthly proceeds of the well  
25 would be expected to exceed the well's monthly operating expenses." Please note this  
26 language requires expected profit evidence be submitted as of the date of the request for  
27 shut-in status.

28

1 The State also cites United States Department of Interior regulations that require  
2 proof of production "of sufficient value to exceed direct operating costs and the cost of  
3 lease rentals or minimum royalties." State's Memorandum, p.5. This standard also  
4 requires an evaluation of the value of the production versus the listed costs.

5 The State offers definitions from an industry dictionary that similarly defines  
6 "paying quantities" to include an economic element.

7 The State has not, however, included one of the most-frequently cited out-of-  
8 state cases on this subject that should serve as persuasive authority in Arizona. In  
9 Hydrocarbon Management, Inc. v. Tracker Exploration, Inc., 861 S.W.2d 427, 433-434  
10 (Tex.App. 1993), rehearing overruled (1993), the Texas Court of Appeals held and  
11 explained as follows:

12 We believe that the phrase "capable of production in paying quantities"  
13 means a well that will produce in paying quantities if the well is turned  
14 "on," and it begins flowing, without additional equipment or repair.  
15 Conversely, a well would not be capable of producing in paying  
16 quantities if the well switch were turned "on," and the well did not  
17 flow, because of mechanical problems or because the well needs rods,  
18 tubing, or pumping equipment.

19 Capable has been defined as:

20 susceptible; comprehensive; having attributes (as physical or  
21 mental power) required for performance or accomplishment;  
22 having traits conducive to or features permitting; having  
23 general efficiency and ability; having legal right to own, enjoy,  
24 or perform.

25 Webster's Ninth New Collegiate Dictionary 203 (1985).

26 Hence, to be capable of producing in paying quantities, a well must  
27 have traits conducive to, *features permitting, or having attributes*  
28 *required to* produce an amount of production sufficient to pay the  
lessee a profit, even small, over the operating and marketing expenses,  
although the cost of drilling the well may never be repaid. *Garcia v.*  
*King*, 139 Tex. 578, 164 S.W.2d at 511. The well must be in such a  
condition that when it is turned "on," it begins to produce in paying  
quantities."

The Hydrocarbon case relies on the plain language of the same phrase adopted  
by the Commission in its definition of a shut-in well.

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Conclusion

The standard to be used by the Commission in its determination of Mr. Kiehne's appeal is whether the evidence before the Commission establishes by a preponderance of the evidence that well number 11-21 is not entitled to shut-in status under applicable law. Applicable law includes the Commission's definition of a shut-in well as one that is capable of production in paying quantities. The plain language of that definition, as well as persuasive authority cited by the Parties, means the well must be, at the time of the request for shut-in status, capable of producing a sufficient quantity of gas such that the Applicant is expected to make a profit. The evidence at the hearing will demonstrate that the well is not capable of production, and the Commission has been provided no data to support the "paying quantities" requirement.

RESPECTFULLY SUBMITTED this 16th day of October, 2008.

RYLEY CARLOCK & APPLEWHITE

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ORIGINAL sent overnight mail  
this 16h day of October, 2008 to:

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COPY of the foregoing sent by e-mail and  
first class U.S. mail to:

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10 *Joye Seavick*

**BEFORE THE ARIZONA OIL AND GAS CONSERVATION COMMISSION**

In the Matter of Shut-In Status for  
Ridgeway Arizona Oil Corp. State Well  
Number 11-21 (Permit 895)

Appellant: Gary Kiehne

**ORDER GRANTING MOTION TO  
DISMISS**

On October 17, 2008, the Arizona Oil and Gas Conservation Commission met to consider Gary Kiehne's ("Appellant") appeal of the Commission's decision to grant shut-in status to Well Number 11-21 (Permit 895) under A.A.C. R12-7-125. Michele Van Quathem appeared as attorney on behalf of Appellant. The State was represented by Assistant Attorney General Curtis Cox. Christopher Munns of the Solicitor General's Office was present to provide independent legal advice to the Commission.

As a preliminary matter, the Commission entertained a Motion to Dismiss filed by the State on grounds that Appellant lacked standing to file a notice of appeal under A.R.S. § 41-1092.03. After full consideration of the record in this matter and the arguments of the parties, the Commission voted to GRANT the State's Motion to Dismiss. The Commission concluded that the Appellant suffers no direct and adverse effect from its decision to grant shut-in status to Well Number 11-21 because the harm of which Appellant complains arises from the decision of the Arizona Land Department, a separate state agency, whether to grant a lease on state land to Appellant.

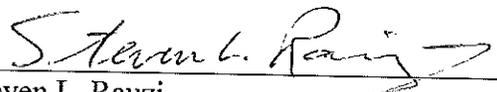
**ORDER**

The State's Motion to Dismiss is GRANTED.

**NOTICE**

This Order is subject to review or rehearing pursuant to A.R.S. § 41-1092.09. A written request for rehearing or review must be filed within 30 days after service of this decision. In the alternative, a party may appeal this decision by filing a proper and timely action for judicial review in Superior Court pursuant to A.R.S. § 12-901 *et seq.* The filing of a motion for review or rehearing is not a prerequisite for obtaining judicial review of the Board's Order.

DATED this 24 day of October, 2008.



Steven L. Rauzi  
Oil and Gas Administrator

A copy of the foregoing was mailed via Certified U.S. Mail, Return Receipt Requested, this 24 day of October, 2008.

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By: Steven L. Rauzi  
Oil and Gas Administrator

OGCC Meeting Oct 17, 2008

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Thomas White	RidgeWay
BARRY PORTMAN	RidgeWay
MICHELE VAN QUATHEN	KIEHNE
DAN W. SNOW	Kiehne
GARY KRCHAK	SELF
WILL CAMPBELL	RidgeWay
Michael Rice	SELF
Joe Dixon	AZ State Land Dept.
CURTIS COX	AGO
MARIONA SANDORAL	AGO