

1 State's current mailing address is 3001 Knox Street, Suite 403, Dallas, Texas 75205, and the
2 address of its registered agent, CT Corporation System, is 123 East Marcy Street, Santa Fe, New
3 Mexico 87501. Mountain States is a wholly-owned subsidiary of Apollo Resources
4 International, Inc., a corporation organized under the laws of the State of Utah.

5 FINDINGS

6 2. Pursuant to Section 1422(c) of the SDWA, 42 U.S.C. §300h-1(c), 40 C.F.R. Part 147
7 Subpart HHH §§ 147.3000-3016 (Lands of the Navajo), EPA administers the Underground
8 Injection Control ("UIC") program for Class II wells within the Navajo Nation. This UIC
9 program consists of the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart
10 HHH), and 148. The effective date of the UIC program for the Navajo Nation is November 25,
11 1988.

12 3. Respondent is a "person" within the meaning of Section 1401(12) of the SDWA,
13 42 U.S.C. § 300f(12).

14 4. At all times relevant to this action, Respondent owned and/or operated the following
15 UIC Class II injection well:

16 <u>UIC ID No.</u>	16 <u>Well</u>	16 <u>Status</u>
17 AZ-446	17 Navajo #10 (aka DBK #10)	17 Inactive

18 Navajo #10 is a Class II enhanced recovery injection well as defined by 40 C.F.R. §§ 144.3,
19 144.6(b), 146.3, and 146.5(b), located in the Chuska Mountains of Apache County, Arizona, in
20 the Dineh-Bi-Keyeh (aka "DBK") oil and gas field. The Dineh-Bi-Keyeh oil and gas field is
21 also located on Indian Land, specifically, on land within the boundaries of the Navajo Nation.

22 5. The injection well subject to this action was in existence as a Class II enhanced recovery
23 injection well on November 25, 1988 (the effective date of the UIC program in the Navajo
24 Nation) and is, therefore, rule-authorized pursuant to 40 C.F.R. § 144.22(a).

1 6. Sometime in May 2005 (but no later than May 31, 2007), Respondent ceased operation
2 of Navajo #10 after earth-movement at the well site rendered Navajo #10 inoperable as a Class II
3 injection well.

4 7. On August 31, 2007, Respondent sold Navajo #10 to Nacogdoches Oil and Gas, LLC
5 (“Nacogdoches”). Nacogdoches is a corporation organized under the laws of the State of Kansas
6 according to the records on the Kansas Secretary of State’s website,
7 <http://www.accesskansas.org/srv-corporations>.

8 **COUNT 1:**

9 8. 40 C.F.R. § 144.28(c)(2)(iv) requires that, after a cessation of operation of two (2) years,
10 the owner or operator of a rule-authorized well shall plug and abandon the well in accordance
11 with an EPA-approved plugging and abandonment plan unless the owner or operator provides
12 notice to EPA and describes actions or procedures, satisfactory to EPA, that the owner or
13 operator will take to ensure that the well will not endanger underground sources of drinking
14 water (“USDWs”) during the period of temporary abandonment.

15 9. Beginning sometime in May 2007 (but no later than May 31, 2007) more than two (2)
16 years had passed since Respondent had ceased operation of Navajo #10, and Respondent had not
17 plugged and abandoned Navajo #10, or demonstrated to EPA’s satisfaction that, if the
18 abandonment was temporary, Navajo #10 would not endanger USDWs during the period of
19 temporary abandonment.

20 10. From sometime in May 2007 (but no later than May 31, 2007) until Respondent’s sale
21 of Navajo #10 to Nacogdoches on August 30, 2007, Respondent was in violation of 40 C.F.R. §
22 144.28(c)(2)(iv) for failing to plug and abandon Navajo #10 in accordance with an EPA-
23 approved plugging and abandonment plan or, if the abandonment was temporary, describe
24 actions or procedures satisfactory to EPA that Navajo #10 would not endanger USDWs during
25 the period of temporary abandonment.

1 **COUNT 2:**

2 11. 40 C.F.R. § 144.28(l) requires that the transferor of a Class II well authorized by rule
3 shall notify EPA of a transfer of ownership or operational control of the well at least thirty (30)
4 days in advance of the proposed transfer. The notice shall include a written agreement between
5 the transferor and the transferee containing a specific date for transfer of ownership or
6 operational control of the well; and a specific date when the financial responsibility
7 demonstration required by UIC rules will be met by the transferee.

8 12. On August 31, 2007, Respondent sold Navajo #10 to Nacogdoches.

9 13. On March 13, 2008, Respondent informed EPA of its transfer of ownership of Navajo
10 #10 to Nacogdoches on August 31, 2007.

11 14. Respondent violated 40 C.F.R. § 144.28(l) by failing to notify EPA of the transfer of
12 ownership or operational control of Navajo #10 to Nacogdoches at least thirty (30) days in
13 advance of the August 31, 2007 transfer of ownership and/or operational control.

14 15. These violations are subject to an enforcement action under Section 1423 of the SDWA,
15 42 U.S.C. § 300h-2, which authorizes EPA to initiate civil and/or criminal enforcement actions
16 in court, as well as to issue administrative orders that mandate compliance with the SDWA and
17 its regulations and/or assess civil penalties for violations.

18 **PROPOSED ASSESSMENT OF**
19 **ADMINISTRATIVE CIVIL PENALTY**

20 16. Section 1423(c)(2) of the SDWA, 42 U.S.C. § 300h-2(c)(2), and 40 C.F.R. § 19.4, EPA
21 authorizes the administrative assessment of civil penalties in an amount not to exceed \$6,500 for
22 each day of violation for any past or current violation of the SDWA UIC Program, up to a
23 maximum administrative penalty of \$157,500, in any case relating to any underground injection
24 for the secondary or tertiary recovery of oil or natural gas.

25 17. Based on the foregoing findings of violation, EPA finds it appropriate to assess
Respondent a civil penalty of up to \$157,500 pursuant to Section 1423(c)(2) of the SDWA, 42

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1 U.S.C. § 300h-2(c)(2), and 40 C.F.R. §19.4, for Respondent's failure to comply with the UIC
2 regulations at 40 C.F.R. Part 144 as alleged in paragraphs 1 through 14 above. In assessing a
3 penalty for such violations, EPA appropriately took into account, in accordance with Section
4 1423(c)(4)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(4)(B), the following factors: (1) the
5 seriousness of the violations; (2) the economic benefit resulting from the violations; (3) the
6 history of such violations; (4) any good faith efforts to comply with the applicable requirements;
7 (5) the economic impact of the penalty on the violator; and (6) such other matters as justice may
8 require.

9 Brief Explanation of the Severity of
10 Respondent's Violation of 40 C.F.R. §144.28(c)(2)(iv):

11 As to the severity of the violation of 40 C.F.R. § 144.28(c)(2)(iv), the SDWA assures the
12 safety of the country's drinking water sources by preventing direct contamination of identified
13 water supplies and minimizing the risk that any potential drinking water sources be
14 contaminated. The UIC regulations assure that these sources are not rendered unfit by
15 underground injection of contaminants. In determining the severity of the violation, it is
16 appropriate to consider both the potential for actual harm resulting from the violation and the
17 extent of deviation from the UIC regulations. The most serious violations are those that threaten
18 human health or the environment or that violate crucial provisions of the UIC program.

19 The SDWA explicitly places on injection well owners or operators the burden of proving
20 that their wells will not endanger USDWs, and thus requires that well owners or operators
21 establish and maintain mechanical integrity to ensure that there is no significant leak in a well's
22 casing, tubing or packer, or significant fluid movement into an USDW through vertical channels
23 adjacent to the injection well bore. *See* 40 C.F.R. § 146.8(a). A well that is in use will readily
24 evidence a lack of mechanical integrity by gaining pressure in the casing/tubing annulus or
25 losing pressure in the tubing during injection. An unused well may never show any visible

1 evidence of a lack of mechanical integrity, and may result in the contamination of an USDW.
2 An underground injection well that is deep enough to penetrate an USDW acts as a potential
3 conduit for contamination of the water source, and may pose a serious threat to human health or
4 the environment. For this reason, the underlying UIC regulations require that whenever a well is
5 unused for a period of two years, it must either be tested for mechanical integrity or plugged.
6 Respondent's well was unused, untested, severely damaged, and unplugged for over two years.
7 This amounts to a serious deviation from the UIC regulatory requirements, in addition to posing
8 a significant risk of contamination of an USDW.

9 Brief Explanation of
10 the Severity of Respondent's Violation of 40 C.F.R. §144.28(l):

11 One purpose in requiring the transferor of a Class II well to give EPA notice of a transfer of
12 ownership thirty (30) days in advance of the proposed transfer is to ensure that financial
13 responsibility be maintained during a transfer of ownership. Thus, 40 C.F.R. § 144.28(l) requires
14 that the notice include a written agreement between the transferor and transferee containing a
15 specific date when the financial responsibility demonstration to EPA will be met by the
16 transferee. This requirement is important because the EPA must rely solely on the financial
17 responsibility demonstration of owners and operators of injection wells to assure that these wells
18 are not improperly abandoned or otherwise left in a manner that will endanger USDWs. Thus, in
19 the case of transfers, it is paramount for EPA to have in place a mechanism that will ensure that
20 there is no interruption in the financial responsibility for a well. For these reasons, we consider
21 Respondent's failure to notify EPA prior to the transfer of ownership of the Navajo #10 well in
22 accordance with 40 C.F.R. § 144.28(l) to be a significant violation of the UIC regulatory scheme.

23 18. If Respondent does not contest the findings and assessments set forth above,
24 Respondent may make payment of a \$157,500 penalty ten (10) days after the close of the public
25 comment period that is provided for in 40 C.F.R. § 22.45 in accordance with any of the

1 acceptable methods of payment listed in **Attachment 2**, "EPA Region 9 Collection Information,"
2 which is incorporated by reference as part of this Complaint.

3 19. Concurrent with payment of any penalty made pursuant to paragraph 18 above,
4 Respondent shall provide written notice of payment, referencing the title and docket number of
5 this case, via certified mail to each of the following:

6 Dave Basinger		Danielle Carr
7 Ground Water Office		Regional Hearing Clerk
8 U.S. EPA Region IX	and	U.S. EPA Region IX
75 Hawthorne Street (WTR-9)		75 Hawthorne Street (ORC-1)
San Francisco, CA 94105		San Francisco, CA 94105

9 20. Neither assessment nor payment of a civil administrative penalty pursuant to this
10 Complaint shall affect Respondent's continuing obligation to comply with the SDWA's UIC
11 Program, and with any separate compliance Order issued under Section 1423(c) of the SDWA,
12 42 U.S.C. § 300h-2(c), for the violations alleged herein.

13 **ANSWER AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

14 21. In accordance with Section 1423(c)(3)(A) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(A),
15 Respondent may request, within thirty (30) days of receipt of this Complaint, a hearing to contest
16 any material fact contained in the Complaint or to contest the appropriateness of the proposed
17 penalty set forth therein. If a hearing is requested, Subpart I of the Part 22 rules governs and sets
18 forth the procedures for such hearing.

19 22. If Respondent requests a hearing, members of the public, to whom EPA is obligated to
20 give notice of this proposed action, will have a right under Section 1423(c)(3)(C) of the SDWA,
21 42 U.S.C. § 300h-2(c)(3)(C), and 40 C.F.R. § 22.45 to be heard and to present evidence on the
22 appropriateness of the penalty assessment.

23 23. Respondent must, pursuant to Section 1423(c)(3)(A) of the SDWA, 42 U.S.C. § 300h-
24 2(c)(3)(A), send any request for a hearing to:

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1 Danielle Carr
2 Regional Hearing Clerk
3 U.S. EPA Region IX
4 75 Hawthorne Street (mail code: ORC-1)
5 San Francisco, CA 94105

6 **ANSWERING THE COMPLAINT**

7 24. If Respondent intends to contest any material fact upon which the Complaint is
8 based, or to contend that the proposed penalty is inappropriate or that Respondent is entitled to
9 judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA
10 Region IX both an original and one copy of a written Answer. 40 C.F.R. § 22.15(a). Such
11 Answer must be filed within thirty (30) days after service of this Complaint. *Id.* The address of
12 the Regional Hearing Clerk is provided in paragraph 23 above. Respondent must also serve a
13 *copy* of the Answer, in accordance with 40 C.F.R. § 22.15(a), to:

14 Richard Campbell
15 Office of Regional Counsel
16 U.S. EPA Region IX
17 75 Hawthorne Street (mail code: ORC-2)
18 San Francisco, CA 94105

19 25. Respondent's Answer must clearly and directly admit, deny, or explain each of the
20 factual allegations contained in the Complaint with regard to which Respondent has any
21 knowledge. 40 C.F.R. § 22.15(b). Where Respondent has no knowledge of a particular factual
22 allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b).
23 Respondent's failure in its Answer to admit, deny, or explain any material factual allegation
24 contained in the Complaint constitutes an admission of the allegation. 40 C.F.R. § 22.15(d).

25 26. The Answer must also state: (1) the circumstances or arguments that are alleged to
constitute the grounds of any defense, (2) the facts that Respondent disputes (and thus intends to
place at issue in the proceeding), (3) the basis for opposing the proposed relief, and (4) whether
Respondent requests a hearing. 40 C.F.R. § 22.15(b).

1 **FAILURE TO ANSWER THE COMPLAINT**

2 27. Respondent must file a written Answer with the Regional Hearing Clerk at the address
3 above within thirty (30) days of receipt of this Complaint to avoid entry of a Default Order
4 against you pursuant to 40 C.F.R. § 22.17 for a civil administrative penalty of up to \$157,500 as
5 proposed in this Complaint.

6 28. Any penalty assessed in the Default Order will become due and payable by Respondent
7 without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40
8 C.F.R. § 22.27(c). If necessary, EPA may then seek to enforce such Final Order of Default
9 against Respondent, and to collect the assessed penalty amount, which may be up to \$157,500, in
10 federal court.

11 **INFORMAL SETTLEMENT CONFERENCE**

12 29. Whether or not Respondent requests a formal hearing, Respondent may request an
13 informal settlement conference to discuss the facts of this case, the proposed penalty, and
14 settlement. 40 C.F.R. § 22.18(b). To request such a settlement conference, please contact:

15 Richard Campbell
16 Office of Regional Counsel
17 U.S. EPA Region IX
18 75 Hawthorne Street (mail code: ORC-2)
19 San Francisco, CA 94105
20 phone: (415) 972-3870

21 30. The parties may engage in settlement discussions regardless of whether Respondent
22 requests a hearing. 40 C.F.R. § 22.18(b)(1). A request for an informal settlement conference
23 constitutes neither an admission nor a denial of any of the matters alleged herein. EPA does not
24 deem a request for an informal settlement conference as a request for a hearing. 40 C.F.R. §
25 22.15(c).

31. Settlement discussions do not affect Respondent's obligation to file a timely Answer to
the Complaint pursuant to 40 C.F.R. § 22.15. *See also* 40 C.F.R. § 22.18(b)(1). EPA will not
modify its proposed penalty simply because an informal settlement conference is held.

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1 32. The terms and conditions of any settlement that may be reached as a result of a
2 settlement conference will be recorded in a written Consent Agreement signed by all parties. 40
3 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, EPA will execute a Final Order
4 ratifying the parties' Consent Agreement. 40 C.F.R. § 22.18(b)(3). In accepting the Consent
5 Agreement, Respondent waives any right to contest the allegations herein and waives any right
6 to appeal the Final Order accompanying the Consent Agreement. 40 C.F.R. § 22.18(b)(2).

7 **EFFECTIVE DATE**

8 33. This proceeding is initiated by the filing of this Complaint with the Regional Hearing
9 Clerk. For calculation of time frames provided herein, the "Effective Date" of this Complaint is
10 the date of service. Service is complete when the return mail receipt is signed by the Respondent
11 or a duly authorized representative of the Respondent, in accordance with the provisions of 40
12 C.F.R. §§ 22.5(b) and 22.7(c).

13
14 Date: April 23, 2008



15 Alexis Strauss, Director
16 Water Division
17 U.S. Environmental Protection Agency, Region IX
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CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Administrative Complaint and Proposed Assessment of Administrative Civil Penalty was filed with the Regional Hearing Clerk, Region 9, and that a copy was sent, certified mail, return receipt requested, to:

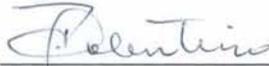
Mr. Dennis G. McLaughlin III
Chief Executive Officer
Mountain States Petroleum Company
3001 Knox Street, Suite 403
Dallas, Texas 75205

AND

CT Corporation System
Registered Agent for Mountain States Petroleum Company
123 East Marcy Street
Santa Fe, New Mexico 87501

4/23/08

Date



Name

RECEPTIONIST

Title