THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Thomas E. Wright, Chairman
Michael C. Moffet
Joseph F. Harkins

In the Matter to Show Cause on the Commission's Own Motion Issued to Quest Cherokee, LLC with regard to responsibility under K.S.A. 55-179 for plugging abandoned wells on the Mary Douglas Lease in the NW/4 of Section 16, Township 29 South, Range 17 East, Wilson County, Kansas.	)	Docket No. 07-CONS-155-CSHO CONSERVATION DIVISION License No. 33344

ORDER ON SHOW CAUSE HEARING

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (KCC or Commission) on its Show Cause Order issued to Quest Cherokee, LLC (Quest Cherokee) and subsequent hearing on the matter. After giving due consideration to the record herein, the statutes of Kansas, and the Commission's rules and regulations, the Commission finds and concludes as follows:

FINDINGS OF FACT

1. On February 23, 2007, the Commission issued a Show Cause Order in this docket requiring Quest Cherokee and Frank and Janice Fuller, doing business as Fuller Oil, to appear at a hearing to show cause why they should not be held responsible for plugging the abandoned wells on the Mary Douglas Lease under K.S.A. 55-179. By Order dated April 30, 2007, the Commission dismissed Mr. and Mrs. Fuller from the proceeding on the Motion of Commission Staff, without objection from Quest. On June 29, 2007, Commission Staff prefiled direct testimony, and Quest Cherokee prefiled direct testimony on July 9, 2007. On November 29, 2007, and December 21, 2007, respectively, the Kansas Independent Oil and Gas Association (KIOGA) and the Eastern Kansas Oil & Gas Association (EKOGA and collectively referred to

hereinafter with KIOGA as Intervenors) filed Motions to Intervene in this docket, which were granted. On February 4, 2008, KIOGA and EKOGA prefiled direct testimony. The Commission heard the merits of the case on February 14, 2008. John McCannon appeared on behalf of Commission Staff (Staff) and the public generally; David E. Bengston appeared on behalf of Quest Cherokee; David W. Nickel appeared on behalf of intervenor KIOGA; and David E. Pierce and Sayra Y. Hurley appeared on behalf of intervenor EKOGA. All parties filed post-hearing briefs.

2. The Commission finds that the relevant facts of this proceeding are not materially at issue. At least 22 abandoned wells (abandoned wells) are located in the Northwest Quarter of Section 16, Township 29 South, Range 17 East, Wilson County, Kansas (subject property). Little is known about when or how the abandoned wells were drilled or constructed or what person drilled the abandoned wells. However, all of the abandoned wells were drilled and last operated under lease agreements pre-dating 1982.[1]

3. On January 26, 2001, a new gas-only lease covering the subject property was granted to Jack F. Overstreet (Mary Douglas Lease). This lease was subsequently assigned to Legacy International, Inc. and Devon SFS Operating, Inc. (Devon). On August 9, 2001, while holding the January 26, 2001 leasehold interest, Devon drilled the Mary Douglas 16-1, a coalbed natural gas well. On December 22, 2003, Quest purchased the January 26, 2001 leasehold interest, including the Mary Douglas 16-1 well, from Devon and has operated the Mary Douglas 16-1 until the present date. No party or successor of interest to the January 26, 2001 lease has

[1] Prefiled Testimony of Troy Russell, filed June 29, 2007 (Russell), p.2; Prefiled Testimony of David P Bleakley on behalf of EKOGA, filed February 4, 2008 (Bleakley), p. 9.

conducted known operations on the subject property other than those associated with the drilling, completion, and day-to-day operation of the Mary Douglas 16-1.[2]

4. The issue to be determined by the Commission in this docket is whether Quest Cherokee is a person legally responsible for the proper care and control of the abandoned wells under K.S.A. 55-179(b). This statute lists four categories of persons that shall be legally responsible for abandoned wells, as follows:

> For the purposes of this section, a person who is legally responsible for the proper care and control of an abandoned well shall include, but is not limited to, one or more of the following: Any operator of a waterflood or other pressure maintenance program deemed to be causing pollution or loss of usable water; the current or last operator of the lease upon which such well is located, irrespective of whether such operator plugged or abandoned such well; the original operator who plugged or abandoned such well; and any person who without authorization tampers with or removes surface equipment or downhole equipment from an abandoned well.[3]

Commission Staff argued that Quest Cherokee should be found legally responsible for the abandoned wells as the current operator of an active lease covering the acreage on which the abandoned wells are physically located.[4] Quest Cherokee, KIOGA, and EKOGA argued that Quest Cherokee, as the operator of a new oil and gas lease under which none of the abandoned wells were drilled, operated, or abandoned, should not be found legally responsible for the abandoned wells.[5]

5. Staff's position is based on previous Commission interpretations of K.S.A. 55-179(b), particularly the decision in the Order on Show Cause issued June 4, 2004, in KCC Docket No. 04-CONS-074-CSHO (referred to as the New Donna Lee Order), and subsequent

[2] Russell, pp. 2-3; Bleakley, p. 30.
[3] K.S.A. 55-179(b).
[4] Russell, pp. 4-5.
[5] Prefiled Testimony of Gary Laswell, on behalf of Quest Cherokee, filed July 10, 2007 (Laswell), pp. 9-10; Bleakley, p. 22; Prefiled Testimony of Jon M. Callen, on behalf of KIOGA, filed February 4, 2008 (Callen), pp. 11-12.

Commission orders upholding that interpretation.[6] In the New Donna Lee Order, the Commission, by a 2-1 majority, found a lessee that merely enters into a mineral lease covering a parcel of property does not render the lessee legally responsible for abandoned wells geographically located on such property. Rather, the Commission focused on the "physical operation and control" language found in the statutory definition of operator contained in K.S.A. 55-150(e). The Commission concluded some type of physical activity or assumption of control is required before the lessee may be considered the lease operator and found legally responsible for abandoned wells on the lease under K.S.A. 55-179(b). The Commission found physical activity included such things as drilling or operating a well on the lease and assumption of control included signing a Request for Change of Operator or taking a lease assignment or new lease that provides for assumption of plugging responsibility for the abandoned wells. The Commission ultimately concluded that, once a party has undertaken physical activity or assumed control of a lease, the person becomes legally responsible under K.S.A. 55-179(b) for all abandoned wells physically located on the leased acreage.[7]

6. Commissioner Krehbiel filed a separate opinion to the New Donna Lee Order, concurring in part and dissenting in part, that focused on the word "located" as used in K.S.A. 55-179(b). The dissenting opinion stated that the term "located" in K.S.A. 55-179(b) did not refer to a well's physical or geographic location on a parcel of property, but meant instead that a well is "located" on a lease with respect to the lease agreement giving authority to permit and drill the well. Under this interpretation of K.S.A. 55-179(b), a lessee entering into a new oil and gas lease covering a piece of property containing pre-existing abandoned wells is not legally responsible for the abandoned wells, even if the lessee undertakes physical operations under

[6] Tr., 56.
[7] New Donna Lee Order, ¶¶ 12-16.

authority of the new lease agreement, because the pre-existing abandoned wells are not "located" on the new lease. Using this approach, the operator of the lease acreage is legally responsible for an abandoned well on the leased acreage only if the operator is in privity of contract with the lease under which the abandoned well was permitted and drilled, either as the original lessee or as an assignee of the lease. Intervenors urge the Commission to adopt Krehbiel's reasoning here as Commission policy.[8]

7. Generally speaking, the crux of the argument by Quest Cherokee and Intervenors is that Staff seeks to impose responsibility for the abandoned wells by relying solely on dicta in the New Donna Lee Order that is not supported by the language of K.S.A. 55-179(b). Quest Cherokee and Intervenors argue, *inter alia*, that Krehbiel's interpretation of K.S.A. 55-179(b) should govern this proceeding, resulting in the Commission concluding that Quest Cherokee is not legally responsible for the abandoned wells under K.S.A. 55-179(b).

CONCLUSIONS OF LAW

8. K.S.A. 55-179(b) sets out four nonexclusive categories of persons legally responsible for the proper care and control of an abandoned well: 1) Any operator of a waterflood or pressure maintenance program deemed to be causing pollution or loss of usable water; 2) the current or last operator of the lease upon which such well is located, irrespective of whether such operator plugged or abandoned such well; 3) the original operator who plugged or abandoned such well; and 4) any person who tampered with or removed surface or downhole equipment from an abandoned well without authorization. Evidence in this proceeding demonstrated the only conceivable category under which Quest Cherokee could be held responsible for the abandoned wells is as the "current or

[8] Callen, p. 18.

last operator of the lease upon which such [wells are] located, irrespective of whether [Quest Cherokee] plugged or abandoned such well[s]."[9]

9. A statute that is clear and unambiguous must be given effect as written. In such case, the Commission has no need to employ the canons of statutory construction. Only when an ambiguity exists may the Commission look to the historical background of the statute and employ rules of statutory construction to interpret a statute's meaning.[10] Both sides of this issue argued that the plain language of K.S.A. 55-179(b) supports their respective positions. The parties examined the meaning of several terms defined in K.S.A. 55-150 that were used by the Legislature in K.S.A. 55-179(b). Having reviewed these arguments and examined the plain language of K.S.A. 55-179(b), the Commission concludes that this statute is ambiguous and requires interpretation to be enforceable. These ambiguities are discussed in more detail below. The Commission acknowledges that it has the responsibility to carry out the legislative policy surrounding this statute and notes its long history involved in regulating the oil and gas industry in Kansas. Therefore, if the scope of and limitations on the powers of the Commission regarding this statute are examined in judicial proceedings, the Commission's interpretation of K.S.A. 55-179(b) should be given great weight and may be entitled to controlling significance.[11]

10. In interpreting K.S.A. 66-179(b), the Commission must keep in mind the maxims of statutory interpretation. The Kansas Supreme Court has recognized that "the rules of statutory construction are well known and require us to interpret a statute to give

[9] K.S.A. 55-179(b).
[10] *Kansas Industrial Consumers Group, Inc.,v Kansas Corporation Comm'n*, 36 Kan. App. 2d 83, 100, 138 P.3d 338 (2006).
[11] *Trees Oil Company v. Kansas Corporation Comm'n*, 279 Kan. 209, 227, 105 P.3d 1269 (2005).

the effect intended by the legislature,[12] construe the statute to avoid unreasonable results,[13] and read the statute to give effect, if possible, to the entire act and every part thereof.[14][15] The Court has further recognized that ordinary words are to be given their ordinary meaning, and that a statute should not be so read in a manner to add meaning that is not readily found therein or to read out what as a matter of ordinary English language is in it.[16]

11. Definitions of terms used in K.S.A. 55-179 are contained in K.S.A. 55-150 "unless the context requires a different meaning."[17] "Operator" is defined in K.S.A. 55-150(e) as a "person who is responsible for the physical operation and control of a well, gas gathering system or underground porosity storage of natural gas."[18] If this definition of operator is inserted into the language of K.S.A. 55-179(b), the result would read that "a person who is legally responsible for the proper care and control of an abandoned well shall include . . . the current or last [person who is responsible for the physical operation and control of a well] of the lease upon which such [abandoned] well is located . . .."[19] In the oil and gas industry, the term "operator" is used to describe the party "that has control over the day-to-day operation of an oil and gas well, or operation to drill and complete a well."[20]

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[12] *State ex rel. Stephan v. Kansas Racing Comm'n*, 246 Kan. 708, 719, 792 P.2d 971 (1990).
[13] *Wells v. Anderson*, 8 Kan. App. 2d 431, 433, 659 P.2d 833, *rev. denied* 233 Kan. 1093 (1983).
[14] *KPERS v Reimer & Koger Assocs., Inc.*, 262 Kan. 635, 643-44 (1997).
[15] *GT, Kansas, L.L.C. v Riley County Register of Deeds*, 271 Kan. 311, 316, 22 P.3d 600 (2001)(citations shown in footnotes).
[16] *Director of Taxation v Kansas Krude Oil Reclaiming Co.*, 236 Kan. 450, 455, 691 P.2d 1303 (1984).
[17] K.S.A. 55-150.
[18] K.S.A. 55-150(e).
[19] K.S.A. 55-179(b).
[20] Bleakley, p. 33.

12. Here the Commission must determine if Quest Cherokee is the current or last person "responsible for the physical operation and control of a well" of the lease upon which the abandoned wells are located.[21] The Commission finds that Quest Cherokee, under its current leasehold interest covering the subject property, is not the current or last person responsible for the physical operation of the abandoned wells. The last person responsible for physical operation of the abandoned wells would have been the last operator of the wells at the time the old lease expired in 1982. Through its current Mary Douglas Lease, and its exclusive right to produce gas under that lease, Quest Cherokee may exercise enough control over the abandoned wells that it could be found the current person responsible for the physical control of the wells. But, by incorporating "operator" as defined by K.S.A. 55-150(e) into K.S.A. 55-179(b), the statute requires that Quest Cherokee be the current person responsible for both "the physical operation and control" of the abandoned wells. Quest Cherokee is not the current or last person responsible for the physical operation of the abandoned wells even though it may currently have physical control of the well. Thus, even if Quest Cherokee is the current or last person responsible for physical control of the abandoned wells, this control is not enough to find Quest Cherokee responsible for the abandoned wells under K.S.A. 55-179(b) if Quest is not also responsible for physical operation of these wells.

13. To resolve this docket, the Commission must decide whether Quest Cherokee's physical operation and control of the Mary Douglas 16-1 makes Quest Cherokee legally responsible for the abandoned wells under K.S.A. 55-179(b). The record demonstrates, and all parties to the case agree, that Quest Cherokee is the current person responsible for the physical operation and control of the Mary Douglas 16-1 gas

[21] K.S.A. 55-150(e).

well, pursuant to an assignment of the January 6, 2001 lease covering the Northwest Quarter of Section 16, Township 29 South, Range 17 East, Wilson County, Kansas. The question is whether the Mary Douglas 16-1 well is "of the lease upon which the [abandoned wells] are located."[22]

14. K.S.A. 55-150 does not define "lease" or "located." Furthermore, the legislative history gives little insight into the Legislature's intent behind the meaning of "the current or last operator of the lease upon which such well is located, irrespective of whether such operator plugged or abandoned such well," as used in K.S.A. 55-179(b). Applying the rules of statutory construction, the question is whether "lease" and "located" should be given their ordinary, everyday meanings, whatever those meanings may be, or whether "the lease" and "located" have "acquired a peculiar and appropriate meaning in law" that must be used in construing K.S.A. 55-179(b).[23]

15. The Commission concludes that the term "lease" has acquired a peculiar and appropriate meaning in law as used in K.S.A. 55-179(b). The Commission finds the term "lease" refers to a particular oil and gas lease agreement, i.e., a specific contract or legal document, by which the owner of minerals underlying a parcel of property grants another party the exclusive right to produce oil and gas from such property. As used in K.S.A. 55-179(b), the term "lease" does not refer to the actual land or parcel of property from under which the oil or gas may be produced. This meaning is consistent with at least one lay and one legal definition of "lease" when referring to a lease agreement or

[22] K.S.A. 55-179(b).
[23] K.S.A. 77-201 Second. See Post-Hearing Brief of EKOGA, at 3.

contract.[24] Furthermore, K.S.A. 55-179(b) (emphasis added) states "**the** lease upon which such well is located," which further qualifies the meaning of "lease" in the statute.

16. The Commission finds that the term "located" as used in K.S.A. 55-179(b) has also acquired a peculiar and appropriate meaning in law. The Commission determines that "located" here refers not to the place of physical location of an abandoned well, but rather to whether such well was drilled, operated, or plugged, or whether any paperwork was filed with the Commission, regarding such well under the terms of the particular lease contract. By such conduct, the operator has demonstrated responsibility for the physical operation and control of such well to qualify as an operator of the well under K.S.A. 55-150(e). The Commission believes that this is the most reasonable interpretation of "located" in the context of K.S.A. 55-179(b) and that it should be employed in interpreting this statute.

17. Applying this interpretation to the undisputed facts of this case, the Commission concludes that Quest Cherokee is not the current or last operator of the lease upon which the abandoned wells are located under K.S.A. 55-179(b). Quest Cherokee is the operator of the Mary Douglas Lease, a 2001 gas lease covering the Northwest Quarter of Section 16, Township 29 South, Range 17 East, Wilson County, Kansas. The subject wells were drilled, operated, and abandoned pursuant to oil and gas leases which expired, at the latest, in 1982. This was nearly 20 years before legal existence of the current lease, under which Quest Cherokee operates one well. Furthermore, Quest Cherokee did not operate or file any paperwork with the Commission, or take any other action impacting the status quo, regarding any of the abandoned wells under the authority of the Mary

[24] *Webster's II New College Dictionary* 625 (Houghton Mifflin Company 1999) (1995) and *Black's Law Dictionary* 907 (8th ed. 2004), respectively.

Douglas Lease.[25] As such, the Commission finds and concludes that no legal basis exists for finding Quest Cherokee to be "a person legally responsible for the proper care and control of" these abandoned wells under K.S.A. 55-179(b).

POLICY CONSIDERATIONS

18. The Commission's findings and conclusions are limited to the particular facts of this case. Yet policy considerations were taken into account in reaching the decision in this docket. In weighing and evaluating the testimony herein, the Commission finds that testimony by David Bleakley in particular explained problems encountered by small scale operators attempting to develop a lease.[26] As was done with the New Donna Lee Order, Staff will use this decision in investigating future cases to determine abandoned well responsibility. Thus, the Commission understands this decision will have a broad impact upon future regulation of the oil and gas industry regarding responsibility for abandoned wells.

19. Practically speaking, this decision may increase the number of abandoned wells for which no party may be found responsible. But the Commission believes this decision will encourage better industry-wide reporting of abandoned wells to its Conservation Division. Previously, industry operators may have been reluctant to report abandoned wells for fear of being held legally responsible for them under K.S.A. 55-179. Now industry operators should voluntarily report abandoned well locations to the Commission's Conservation Staff without fear of being assigned liability as the operator of a new lease and new well covering the same acreage on which the abandoned wells are located. The Commission cannot currently quantify the likely increase in the number of abandoned wells reported in Kansas as a result of this Order, but the

[25] Bleakley, pp. 37-38 (by taking certain actions, an operator of a new lease may become liable as a responsible party for abandoned wells).
[26] Bleakley, p. 9.

Commission anticipates a significant increase. As a result, abandoned wells in Kansas will remain at the forefront of the Commission's regulatory agenda.

20. The Commission recognizes a number of factors have contributed to the general problem of abandoned wells in Kansas for which no legally responsible party may be found, referred to in the industry as orphaned wells. First, early development of the oil and gas industry in Kansas preceded statutory and regulatory schemes assigning responsibility for abandoned wells.[27] Second, in the past the Commission has lacked resources to enforce Kansas statutes and Commission regulations.[28] Today, the Conservation Division has approximately 40 Central Office personnel and 40 Field or District Office personnel. These 80 employees must regulate an industry with approximately 2,500 active licensees in Kansas, who drill, operate, and plug wells 24 hours a day, and who make administrative filings for tens of thousands of wells each calendar year. Even with today's advancements in technology, Staff is unable to witness the drilling, completion, and eventual plugging of every oil and gas well in Kansas. And the Commission recognizes it will never have sufficient personnel to witness all such operations. For these reasons, the Commission depends upon industry operators to drill, maintain, and plug their wells as required by Commission regulations.

21. Nor can the Commission's Staff investigate and verify factual information contained on every Intent to Drill, Affidavit of Completion, or Plugging Report, among countless other regulatory filings. Again, the Commission is dependent on industry participants to truthfully and completely report data contained in such filings. Clearly regulation of the oil and gas industry in the State of Kansas involves a symbiotic relationship between the Commission and its Staff and industry participants. As such, the burden to address abandoned wells in Kansas must be borne

[27] Tr., 135-36 (Bleakley).
[28] Tr., 139 (Bleakley).

not only by the Commission and the State of Kansas, but also by the oil and gas industry as a whole.

22. To address this shared responsibility, the Commission finds and concludes that an investigatory docket should be opened regarding orphaned wells in Kansas. Both Intervenors have urged that the Commission open a generic docket to take evidence on these issues that will enable the Commission to develop rules and regulations on a prospective basis concerning abandoned wells.[29] Callen, testifying on behalf of KIOGA, cited experience gained from all parties through operating the well-plugging funds and urged exploration of various funding mechanisms to improve the well-plugging programs.[30] Bleakley, testifying as an expert witness on behalf of EKOGA, noted that the current health of the industry may provide an opportunity to require operators to participate in solving the problem of finding and plugging abandoned wells.[31]

23. The Commission specifically recognizes that the generic docket will need to address two issues: (a) historical problems, including finding the numerous, unknown abandoned wells awaiting discovery; and (b) future planning to prevent new wells from becoming abandoned. During this generic proceeding, the Commission notes that members of the Conservation Staff may be designated to serve in an advisory role to further interaction among the interested parties to seek a resolution of this complex problem. With this in mind, the Commission directs its Conservation Staff to file a motion no later than September 1, 2008, that articulates issues that should be addressed in the docket and proposes a process for going forward with the investigation. The Commission anticipates this generic docket will examine (1) the current statutory and regulatory framework for determining those persons legally responsible for

[29] Callen, p. 6; Transcript of Hearing on February 14, 2008, (Tr.), pp. 150-51 (Bleakley).
[30] Tr., 112, 122-23 (Callen).
[31] Tr., 152-53 (Bleakley).

abandoned wells; (2) the funding of State funds used to plug abandoned wells in Kansas – currently the Well Plugging Assurance Fund, and the Abandoned Oil and Gas Well Fund;[32] (3) the methods industry participants use to transfer legal responsibility for oil and gas wells and leases in Kansas, as well as the methods used to report these transfers to the Commission; and (4) any other matters coming to the attention of the Commission or its Staff related to correcting problems with abandoned wells.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Quest Cherokee, L.L.C. is not a person legally responsible for the proper care and control of the abandoned wells under K.S.A. 55-179(b). Commission Staff is hereby ordered to plug the 22 abandoned wells identified in this docket immediately, using the appropriate State funds.

B. Commission Staff is hereby directed to file a motion no later than September 1, 2008, to open a general, investigative docket as discussed in paragraph 23 above.

C. Any party affected by this Order may file with the Commission a Petition for Reconsideration pursuant to K.S.A. 2007 Supp. 77-529(a). Such a petition must be filed within fifteen (15) days after service of this Order and must state the specific grounds upon which relief is requested. Three days will be added if service of the Order is by mail. The Petition for Reconsideration shall be filed with the Executive Director of the Kansas Corporation Commission Conservation Division, 130 South Market, Room 2078, Wichita, Kansas 67202.

D. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order, or orders, as it may deem necessary.

[32] K.S.A. 55-166; K.S.A. 55-192; Callen, pp. 3-4 (explaining creation and purpose of funds); Bleakley, pp. 16-20 (explaining legislative initiatives).

BY THE COMMISSION IT IS SO ORDERED.

Wright, Chmn; Moffet, Com.; Harkins, Com.

Dated: JUL 16 2008

Date Mailed: 7/16/08

Susan K. Duffy
Executive Director

mjc

CERTIFICATE OF SERVICE

I hereby certify that on 7/16/08, I caused a true and correct copy of the foregoing "Order on Show Cause Hearing" to be served by placing the same in the United States mail, postage prepaid, to the following parties:

David E. Bengtson
Stinson Morrison Hecker LLP
1625 N. Waterfront Parkway, Suite 300
Wichita, Kansas 67206-6602
Attorneys for Quest Cherokee, LLC

David W. Nickel
Depew Gillen Rathbun & McInteer, LC
8301 East 21st St. North, Suite 450
Wichita, Kansas 67206-2936
Attorneys for KIOGA

David E. Pierce
4133 N.W. Brickyard Road
Topeka, Kansas 66618-3530
Attorney for EKOGA

John McCannon
130 S. Market, Room 2078
Wichita, KS 67202
Attorney for Commission Staff

Litigation Counsel
Kansas Corporation Commission