

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Jay Scott Emler, Chairman
Shari Feist Albrecht
Pat Apple

In the matter of a Compliance Agreement) Docket No. 16-CONS-3876-CMSC
between Steven A. Leis and Commission Staff)
regarding bringing the twenty-eight wells in) CONSERVATION DIVISION
Woodson County into compliance with K.A.R.)
82-3-111.) License No.: 33900

FINAL ORDER

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the record, and being duly advised, the Commission finds:

Background:

1. On March 10, 2016, Commission Staff (Staff) filed a Motion for the Commission to Adopt a Compliance Agreement between Staff and Steven A. Leis (Operator) concerning twenty-eight (28) unplugged wells in Woodson County.

2. On March 15, 2016, the Commission approved the Compliance Agreement.

3. On March 29, 2016, L.D. and Cheryl McCormick (Landowners) filed a Petition for Intervention and a separate Petition for Reconsideration. Landowners alleged that the Commission should reconsider the approval of the Compliance Agreement for the following reasons:

- a. There are three additional wells, the Hartzler #22, Hartzler #30, and Hartzler #48, that are unplugged wells on Landowners' land that are not listed in the Compliance Agreement.¹

¹ Petition for Reconsideration at 1-2 (Mar. 29, 2016).

- b. Landowners did not receive written notice of the Commission's consideration and approval of the compliance agreement.²
- c. The "Hartzler" lease covering Landowners' land was released by Operator on or about August 15, 2014.³
- d. The Compliance Agreement violates Landowners' legal right to have all wells plugged, equipment removed, and the land restored under K.S.A. 55-177 by giving Operator more time to plug the wells than allowed by the statute.⁴
- e. The Commission's Order approving the Compliance Agreement is arbitrary and capricious due to the lack of sufficient factual or legal findings supporting a three-year time frame to plug the twenty-eight (28) wells.⁵

4. On April 8, 2016, Staff filed responses in opposition to both petitions. Staff argued that the Operator's obligations to the Landowners are not within the Commission's jurisdiction and that this matter only concerns the Operator's duty to the Commission to plug wells.⁶

5. On April 26, 2016, the Commission granted intervention to Landowners and granted their Petition for Reconsideration. Pursuant to K.S.A. 77-521(c)(1), the Commission limited the landowners participation in the docket to address only the Operator's regulatory duties to the Commission and that any testimony offered to further any private cause of action may be stricken.⁷ Specifically the Commission stated, "[t]estimony may be offered regarding additional wells alleged to exist that are not within the original compliance agreement."⁸

² *Id.* at 5-6.

³ *Id.* at 6-7.

⁴ *Id.* at 7-8.

⁵ *Id.* at 9-10.

⁶ Staff's Response to Landowner's Petition for Intervention at 6-7 (Apr. 8, 2016)

⁷ Order Granting Intervention of LD and Cheryl McCormick, Granting Reconsideration, Designating a Prehearing Officer, and Scheduling a Prehearing Conference at 3 (Apr. 26, 2016).

⁸ *Id.*

6. On May 10, 2016, the Operator filed a response to the Commission's order granting intervention and reconsideration asking that the Commission "summarily" dismiss the "complaint" filed by the Landowners.⁹ Therein, the Operator produced a settlement agreement between the Landowners and the Operator entered into on August 15, 2014 and filed in Woodson County District Court Case No. 12-CV-18.¹⁰

7. On May 23, 2016, the Landowners filed a response to the Operator's May 10, 2016 filing. The Landowners asked the Commission to not consider the Operator's response because it was not timely filed.¹¹ Nonetheless, the Landowners address, in detail, the Operator's contentions regarding the Woodson County Settlement.¹² The Landowners conclude that the Woodson County lawsuit "is a separate and distinct case . . . and it has nothing to do with this case."¹³

8. On June 1, 2016, the Operator filed a reply to the Landowners' May 23, 2016 response. The Operator clarifies for the record that the May 10, 2016 filing was a motion for summary judgement.¹⁴

9. On July 19, 2016, the Commission found that the Operator's May 10, 2016 filing was a motion for summary judgment and denied the motion concluding that the record did not sufficiently support summary judgment.¹⁵

10. On September 6, 2016, Steve Korf filed testimony on behalf of Staff. Mr. Korf noted that given the number of wells on the property and the adequate condition of the wells, a

⁹ Steven A. Leis' Response to Order Granting Intervention of LD and Cheryl McCormick and Further Granting Reconsideration to Order Entered by State Corporation Commission on March 15, 2016 at 3 (May 10, 2016).

¹⁰ *Id.* at attachment.

¹¹ Response of LD & Cheryl McCormick to Steven A Leis Response et al. at 5 (May 23, 2016)..

¹² *Id.* at 3-5.

¹³ *Id.* at 5.

¹⁴ Response to Filing of L.D. and Cheryl McCormick on or about May 23, 2016 at 2 (June 1, 2016).

¹⁵ Order Denying Summary Judgement at 3 (July 19, 2016).

three-year plugging schedule is standard and forcing any accelerated time table may result in an economic detriment to the State and the general public.¹⁶

11. On September 9, 2016, Operator filed testimony, on his own behalf, testifying that he is willing to plug the wells pursuant to the Compliance Agreement.¹⁷

12. On September 19, 2016, Landowners filed testimony on their own behalf. Landowners reiterated the concerns brought in their Petition for Reconsideration.¹⁸ Landowners also attached a proposed Stipulation and Agreement for Well Plugging and Compliance Agreement (Proposed Compliance Agreement) with additional terms that they found appropriate, including, but not limited to: ground conditions prior to plugging, advanced notice, appropriate tax and insurance forms, and use of existing roads.¹⁹

13. On October 11, 2016, Operator filed rebuttal testimony testifying that Landowners have prevented him from plugging the additional wells and privately addressing any concerns with the wells on Landowners' land.²⁰

14. On October 14, 2016, Steve Korf filed Rebuttal Testimony on behalf of Staff. Mr. Korf primarily testified to how Staff was able to identify Operator's responsibility for the wells listed in the Compliance Agreement, as well as Staff's problems with the Landowners' Proposed Compliance Agreement.²¹

¹⁶ Prefiled Testimony of Steve Korf at 2-3 (Sept. 6, 2016).

¹⁷ Prefiled Testimony of Steven A. Leis at 2-4 (Sept. 9, 2016).

¹⁸ See generally Direct Pre-Filed Testimony of LD McCormick (Sept. 19, 2016); Direct Pre-Filed Testimony of Cheryl McCormick (Sept. 19, 2016).

¹⁹ Direct Pre-Filed Testimony of LD McCormick at Ex. G.

²⁰ Rebuttal Response by Steven A. Leis at p. 2-3, 4.

²¹ Prefiled Rebuttal Testimony of Steve Korf, at p. 2-6 (Oct. 14, 2016).

15. On October 14, 2016, Landowners submitted Rebuttal Testimony, presenting testimony that rebutted numerous allegations of the Operator.²²

16. On October 16, 2016, the hearing in this matter was held at which the Commission deferred a decision on Staff's objections that large portions of the testimony were outside of the Commission's jurisdiction and should therefore be stricken pursuant to the order granting intervention.²³

Findings and Conclusions:

17. The Commission finds that the Compliance Agreement should be reinstated and Staff shall supplement the Compliance Agreement if necessary, after investigation, as further explained herein.

18. The Landowners were granted intervention limited in scope to only additional wells that had been discovered and the Operator's regulatory duties to the Commission pursuant to K.S.A. 82-3-111. As Staff points out, the matter concerns only the plugging of wells.²⁴ The Landowners have been afforded the opportunity and the Commission has heard their concern regarding additional wells. The Operator has expressly, on the record, agreed that he would plug additional wells on the Landowners' property.²⁵ Therefore, Staff is directed to work with the Operator and the Landowners to secure information regarding the alleged additional wells and their location that may necessitate supplementing the Compliance Agreement. Staff shall cause to be filed an executed addendum to the Compliance Agreement, if necessary, at the conclusion of that process. Based upon the available information in the record, the Commission is satisfied

²² See generally Direct Pre-Filed Rebuttal Testimony of L.D. McCormick (Oct. 14, 2016); Direct Pre-Filed Rebuttal Testimony of Cheryl McCormick (Oct. 14, 2016).

²³ Transcript at 6-7, 9-10.

²⁴ See Staff's Response to Landowner's Petition for Intervention at 7-8.

²⁵ Transcript at 41.

that this process will be conducted cordially and successfully amongst the Parties and will not necessitate further Commission action or affirmation.

19. The Landowners raise K.S.A. 55-177 as a matter within the Commission's jurisdiction. Pursuant to K.S.A. 55-177, it is against the public policy of the state to leave surface lands un-remediated after abandoning oil and gas wells. This statute is applicable "unless the owner of the land and the abandoning party have entered into a contract providing otherwise."²⁶

20. Here, the Operator and the Landowners appear to have entered into a contract regarding the termination of the lease and efforts to cease all oil and gas operations upon the property. The Commission therefore finds that K.S.A. 55-177 is inapplicable.²⁷

21. There is nothing further for the Commission to consider. The Landowners have introduced testimony and pleadings regarding numerous matters that are simply not within the Commission's jurisdiction. But for the Woodson County settlement, only remediation of the land would be in the Commission's purview. The lease, subsequent termination, negotiations thereupon and the resulting litigation in a Court of competent jurisdiction are the proper courses to take up such matters.

22. The Commission finds that granting Staff's motion to strike is unnecessary. The testimony has been received into the record and heard and accorded its due weight.

23. Therefore, the Commission orders that the Compliance Agreement be reinstated. The Compliance Agreement was previously set to begin on May 30, 2016. That date shall be adjusted to January 30, 2017 and such further dates adjusted in accordance therewith. Staff shall

²⁶ K.S.A. 55-177(a).

²⁷ Petition for Reconsideration at 7-9.

cause to be filed an addendum, if necessary, accounting for any additional wells and the time frame in which the Operator shall address any additions to the Compliance Agreement.

THEREFORE, THE COMMISSION ORDERS:

A. The Compliance Agreement is reinstated with the adjusted start date of January 30, 2017.

B. Staff shall investigate the allegations of additional wells and file an addendum, if necessary, in accordance with this order.

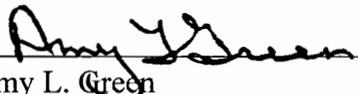
C. Any party affected by this Order may file with the Commission a petition for reconsideration pursuant to K.S.A. 77-529(a). The petition shall be filed within 15 days after service of this Order and must state the specific grounds upon which relief is requested.²⁸ The petition shall be addressed to the Commission and sent to 266 N. Main, Ste. 220, Wichita, Kansas 67202.

D. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Emler, Chairman; Albrecht, Commissioner; Apple, Commissioner

Dated: DEC 06 2016



Amy L. Green
Secretary to the Commission

DLK/amt

²⁸ K.S.A. 66-118b; K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

I certify that on 12/6/16, I caused a complete and accurate copy of this Order to be served via United States mail, with the postage prepaid and properly addressed to the following:

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And delivered electronically to:

Jonathan R. Myers
Conservation Division Central Office

John Almond
KCC District #3

/s/ Paula J. Murray
Paula J. Murray
Legal Assistant
Kansas Corporation Commission