

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

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|--|---|------------------------------|
| In the Matter of the Application of Darrah |) | Docket No. 25-CONS-3342-CWLE |
| Oil Company, L.L.C. for a well location |) | |
| exception for its Drummond #1 well, to be |) | CONSERVATION DIVISION |
| located in the S/2 SE/4 of Section 26, |) | |
| Township 33 South, Range 5 East, Cowley |) | License No. 35615 |
| County, Kansas. |) | |

PRE-FILED REBUTTAL TESTIMONY OF

MIKE ATTERBURY

DARRAH OIL COMPANY, LLC

1 **Q. Have you reviewed the Pre-Filed Testimony of Jake Eastes on behalf of Commission**
2 **Staff and the Direct Prefiled Testimony of James O. Brown on behalf of protesters**
3 **submitted in this docket?**

4 A. Yes.

5 **Q. At 7:5-10 of Mr. Eastes' testimony, he requests additional information with respect**
6 **to the Pre-Filed Direct Testimony you submitted in that docket. Are you able to**
7 **provide that information?**

8 A. Yes. Mr. Eastes requested information concerning the top lease that the protesters granted
9 to VAL Energy, Inc. ("VAL"), over the NE/4 of Section 35-T33S-R5E, Cowley County,
10 Kansas ("Brown Lands"), covered by Darrah Oil's valid and subsisting Brown Lease.

11 As background, VAL is an exploration company who has recently drilled several
12 successful wells in the area of the proposed Drummond #1 well (see Pre-Filed Rebuttal
13 Testimony of Jarred Leis, at 3:12-16), and in the same target formation Darrah Oil seeks
14 to test with its Drummond #1. In that regard, VAL is a direct competitor to Darrah Oil.
15 VAL's wells are identified in the Pre-Filed Rebuttal Testimony of Jarred Leis.

16 With respect to Mr. Eastes request, the protesters actually granted two top leases covering
17 the Brown Lands, among other lands. Each top lease is limited to those depths below the
18 base of the Mississippi chert. Darrah Oil's Brown Lease currently covers the Brown Lands
19 as to all depths, and Darrah Oil intends to test depths below the base of the Mississippi
20 chert when drilling its Drummond #1 well (see Pre-Filed Direct Testimony of Jarred Leis,
21 at 3:21-29). According to the Memorandum filed of record, the first top lease was granted
22 for a term of 5 years beginning January 13, 2022. According to an Addendum to Oil and
23 Gas Lease filed of record, the second top lease was granted for a term of 5 years beginning

1 February 2, 2023. Darrah Oil has provided copies of the top leases to Commission staff,
2 and obviously protesters are aware of the top leases they signed.

3 Notably, each top lease contains a provision requiring VAL to drill four test wells “during
4 the first year following its acquisition of all oil, gas and mineral rights for the leases to be
5 drilled and its approval of title.” To me, this provision acknowledges that the top leases
6 are junior in right to Darrah Oil’s Brown Lease. In my experience, this provision also
7 inherently implies that the underlying intent of granting the top leases was to prompt a
8 lessor-mineral owner demand on the existing operators of the acreage covered by the top
9 leases to release deep rights pursuant to an alleged breach of the implied covenant to
10 explore and develop. This underlying intent is corroborated by Mr. Brown’s Direct Prefiled
11 Testimony at 2:16-3:4, where he suggests Darrah Oil’s Brown Lease may be terminated or
12 no longer valid for not further developing the Brown Lands over a period of years. This
13 testimony appears to be a thinly veiled accusation that Darrah Oil has breached the implied
14 covenant to explore and develop the Brown Lease. Protesters have never lodged any such
15 complaint against Darrah Oil in that regard, nor made any demand to further develop the
16 Brown Lease. In fact, as I previously testified, protesters actually demanded Darrah Oil
17 release the Brown Lease as to the N/2 NE/4 of Section 35, and enter into a new “no-drill”
18 lease that would have prohibited Darrah Oil from further exploration on those lands.

19 Lastly, it should be noted that Darrah Oil only recently acquired the Brown Lease from
20 Range Oil Company, Inc., and has had limited time to evaluate the Brown Lands for further
21 exploration and development.

22 **Q. Does VAL maintain rights under these top leases?**

1 A. On August 14, 2025, I learned that VAL had filed a Release of Disclaimer of Interest
2 releasing its rights under the original top lease. VAL has not, however, released its rights
3 under the subsequent top lease. You only need one, and obviously the preference would
4 be to have the one with the most term left on it, that being the subsequent top lease. I would
5 also like to reiterate that protesters are clearly working with VAL to free up the lease rights
6 in the area, including those presently owned by Darrah Oil. The demand that Darrah Oil
7 agree to release acreage and grant a no-drill lease is direct evidence of that.

8 **Q. At 7:16-21, Mr. Eastes seeks clarification regarding the unitization provision in the**
9 **Brown Lease. Can you provide clarification in that regard?**

10 A. Yes. At 2:3 of Mr. Brown's Direct Prefiled Testimony, he alleges that the "unitization
11 rights have been deleted from the Brown Lease." Mr. Eastes requests clarification as to
12 how or why those unitization rights became deleted.
13 Exhibit A attached to my testimony is a recorded copy of the Brown Lease. As you can
14 see, the Brown Lease was granted on April 17, 1975, by G. Donald Brown and Helen
15 Brown ("Lessors"), whom I believe were Mr. Brown's parents. The unitization provision
16 can be found in Paragraph 5 of the Brown Lease. As you can see, the unitization provision
17 was struck at the request of the Lessors when the Brown Lease was granted more than 50
18 years ago. As such, the only way Darrah Oil could voluntarily form an oil unit to drill the
19 Drummond #1 well would be if protesters agreed to amend the Brown Lease to allow for
20 the formation of a unit, or entered into some other agreement allowing for unitization. As
21 I testified in my Pre-Filed Direct Testimony at 4:28-5:8, the protesters refused to agree to
22 any such amendment or agreement.

1 **Q. At 7:23-8:5, Mr. Eastes seeks clarification regarding protesters alleged offer to**
2 **Darrah Oil to revise the Brown Lease as to the N/2 NE/4 of Section 35, rather than**
3 **agree to an amendment. Can you provide clarification in that regard?**

4 A. Yes. I covered this in detail in my Pre-Filed Direct Testimony at 5:17-6:15. To be clear,
5 Protesters did not offer to revise the Brown Lease as suggested in Mr. Brown's testimony
6 at 2:4-7. Rather, protesters demanded that Darrah Oil release all of its longstanding rights
7 to the Brown Lease insofar as it covers the N/2 NE/4 of Section 35.

8 In exchange for this release, protesters proposed to grant a new lease covering the N/2 NE/4
9 on terms highly unfavorable to Darrah Oil. The new lease proposed by protesters would
10 have included a no-drill clause, prohibiting Darrah Oil from conducting drilling activities
11 of any kind on the N/2 NE/4, and a Pugh clause that would cause the new lease to lapse six
12 (6) months after it was granted as to all lands not included in a producing unit. While
13 protesters may have proposed a 40-acre oil unit provision, the offsetting Muret lease only
14 allows for 10-acre oil units. As such, the new lease would have lapsed in six months as to
15 all of the N/2 NE/4 other than the few acres included in the 10-acre oil unit that could have
16 been formed to drill the Drummond #1 well. I say a few acres, because in order to comply
17 with statewide-minimum setbacks, the unit formed to drill the Drummond #1 well at its
18 proposed location could have only included approximately 3 acres from the new lease
19 offered by protesters, with the remaining 7 acres contributed from the Muret Lease. This
20 proposal completely ignored Darrah Oil's existing rights under the Brown Lease, which
21 lease certainly does not contain a Pugh clause or no-drill clause.

22 At this point, I think it is rather obvious that the protesters proposal was intended to force
23 Darrah Oil to release its leasehold rights in the Brown Lease as to the N/2 NE/4 so that the

1 top lease granted to VAL could take effect, or so that protesters could subsequently grant
2 a lease to VAL. This would allow Darrah Oil's direct competitor to drill on acreage it
3 otherwise controlled, to the detriment of Darrah Oil's working interest partners. It is my
4 belief that this tactic was employed to leverage the cost and expense of this forum to extract
5 rights from Darrah Oil that protesters otherwise could not claim, and is inappropriate.

6 **Q. Does this conclude your testimony?**

7 A. Yes.

VERIFICATION


STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

Mike Atterbury, being first duly sworn, deposes and says that he is the Mike Atterbury referred to in the foregoing "PRE-FILED REBUTTAL TESTIMONY OF MIKE ATTERBURY" to be filed before the State Corporation Commission of the State of Kansas in Docket No. 25-CONS-3342-CWLE, and that the contents thereof are true and correct to the best of his information, knowledge, and belief.



Mike Atterbury

SIGNED AND SWORN to before me on this 20th day of August, 2025.



Notary Public

My Commission expires: 3-9-2027



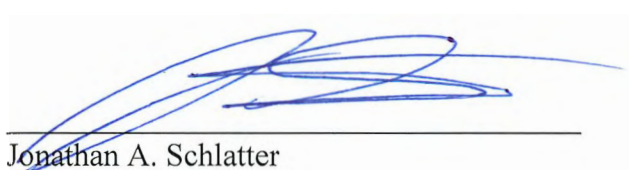
CERTIFICATE OF SERVICE

The undersigned certifies that on this 22nd day of August, 2025, I caused the original of the foregoing **Pre-Filed Rebuttal Testimony of Mike Atterbury** to be electronically filed with the Conservation Division of the State Corporation Commission of the State of Kansas, and caused true and correct copies of the same to be delivered by electronic mail to the following persons:

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