

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

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

In the Matter of the Application of Kent A. Deutsch, d/b/a Deutsch Oil Company and Globe Operating, Inc., for a Well Location Exception For the Morrison A, Morrison B, and Batman Morrison #1 Wells in E/2 NE/4 of Section 28-21-13, Stafford County, Kansas.	)	Docket No. 17-CONS-3026-CWLE
	)	CONSERVATION DIVISION
	)	License Nos. 3180(Deutsch), 6170(Globe)

**MOTION TO EXPAND PROCEDURAL SCHEDULE**

COME NOW Robro Royalty Partners, Ltd., and Bitter End Royalties, L.P. (collectively, “Protestants”), and move the State Corporation Commission for the State of Kansas (“Commission”) for an order expanding the procedural schedule established by the Prehearing Officer Order Setting Procedural Schedule and Protective Order and Discovery Order (“Scheduling Order”). Protestants’ submit the following in support of their motion:

1. On January 17, 2017, the prehearing officer designated by the Commission entered the Scheduling Order in this matter. The Scheduling Order provides in pertinent part that:

- a. The close of discovery shall be February 24, 2017. Scheduling Order ¶ 4.
- b. Protestants’ Pre-Filed Direct Testimony shall be submitted by March 17, 2017.

*Id.*

- c. “[A]ny party may serve upon any other party written discovery or data requests.” Scheduling Order ¶ 21.

2. On February 8, 2017, Protestants propounded upon Applicants by email and by U.S. Mail Protestants’ First Data Requests to Applicants (“Data Requests”).

3. Applicants did not respond or otherwise object to the Data Requests within the period of time prescribed by the Scheduling Order. Scheduling Order ¶ 22. As such, Applicants have waived their right to object any of the Data Requests. Scheduling Order ¶ 23.

4. On February 24, 2017, Protestants filed a Motion to Compel Responses to Protestants' First Data Requests ("Motion to Compel"). Applicants did not respond to the Motion to Compel, and the Commission has not yet ruled on the Motion to Compel. A copy of Protestants' Data Requests are attached as Exhibit A to the Motion to Compel.

5. Protestants' ask the Commission to take administrative notice of the Motion to Compel.

6. Prior to filing the Motion to Compel, Protestants sent Applicants a letter advising that Protestants' would be filing the motion in advance of the close of discovery to preserve their right to pursue the discovery sought from Applicants. Protestants advised that they would consider withdrawing the Motion to Compel if Applicants would agree to an expanded procedural schedule. Applicants did not respond to this letter.

7. On March 6, 2017—well beyond the deadline to respond—Protestants' received paper copies of Applicants' responses to the Data Requests. Applicants' responses are plainly deficient and constitute bad faith. The following examples demonstrate some of the many deficiencies contained in Applicants' responses to the Data Requests:

- a. Applicants do not identify the person who prepared the responses and who can answer questions concerning the same. The scheduling order requires that "[r]esponses to data requests shall be verified and shall identify the person(s) who actually prepared the response and can answer additional questions relating to the

response.” Scheduling Order ¶ 22. Protestants are entitled to know who responded to the Data Requests so they may ask additional questions relating to the same.

- b. Applicants’ responses are verified by their attorney of record, rather than the party who prepared the responses. This is also in contravention to the Scheduling Order. Scheduling Order ¶ 22. Obviously the party who actually prepared the responses to the Data Requests should be the party who attests to their completeness, accuracy and truthfulness.
- c. Applicants provide the same canned response—“All such documents are attached”—to virtually every Data Request seeking documents. The scheduling order requires that, “[e]ach data request shall be answered separately and preceded by the request to which the answer pertains. Responses shall be clearly identified and, if consisting of several pages, shall be labeled and organized in a manner that makes review of the pages convenient.” Scheduling Order ¶ 22. Protestants are entitled to know which of the 62 pages of documents furnished are responsive to each Data Request.<sup>1</sup>
- d. Applicants’ responded “All such documents are attached” to Data Requests 5, 10, 17, 25, 27, 29, 31, 33, 42, 48, 51, 54, and 55. As far as Protestants can tell, no documents responsive to these requests were furnished by Applicants. These documents should be furnished to Protestants.
- e. In Data Requests 27 and 54 Protestants specifically requested copies of Applicants’ barrel tests and gauge reports. Applicants did not furnish these documents,

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<sup>1</sup> Several of the documents are public record or were attached to the Application, and do not appear to be responsive to any Data Request.

however, Applicants conspicuously refer to their barrel tests and gauge reports in support of their responses to Data Requests 16, 34, and 47. This is demonstrative of Applicants' bad faith efforts to respond to the Data Requests.

- f. Applicants' responses to the Data Requests contradict one another. For example, in response to Data Request #30, Applicants' indicate a separate tank battery was set for the Morrison B well in March of 2014. Then, Applicants' state a separate tank battery was set for the Morrison B well in January 2015 in response to Data Request #32. This is further evidence of Applicants' bad faith.

8. Applicants' failure to timely and adequately respond to the Data Requests prejudices Protestants, and inhibit Protestants' ability to prepare and submit substantive pre-filed direct testimony. Protestants' have sought only clearly relevant information, as evidenced by Applicants' failure to object, and are entitled to discovery of the information requested in the Data Requests.

9. In light of the foregoing, Protestants' request that the Commission enter an order expanding the procedural schedule set forth in Scheduling Order as follows:

- |  |                     |
|--|---------------------|
| a. Close of Discovery                            | May 5, 2017         |
| b. Protestants' Pre-Filed Direct Testimony       | Due by May 19, 2017 |
| c. Commission Staff's Pre-Filed Direct Testimony | Due by May 26, 2017 |
| d. Rebuttal Testimony                            | Due by June 2, 2017 |
| e. Evidentiary Hearing                           | June 15, 2017       |

In the meantime, Protestants' will endeavor to resolve its discovery disputes with Applicants consistent with the mandate of the Scheduling Order. Scheduling Order ¶ 23 ("Parties shall negotiate in good faith to resolve discovery disputes.") If Protestants' are unable to timely resolve their discovery disputes with Applicants, Protestants will move the Commission to compel such responses and seek proper sanctions pursuant to ¶ 25 of the Scheduling Order.

10. Protestants proffer that if this Motion to Expand Procedural Schedule is granted by the Commission, their previously filed Motion to Compel will be mooted.

WHEREFORE, for the foregoing reasons Protestants' request that the Commission grant this Motion to Expand Procedural Schedule, afford Protestants' the relief above-requested, and provide such other relief as the Commission deems just and proper.

Respectfully submitted,

MORRIS, LAING, EVANS, BROCK  
& KENNEDY, CHARTERED

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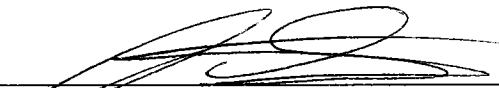
*Attorneys for Robro Royalty Partners, Ltd., and  
Bitter End Royalties, L.P.*

**VERIFICATION**

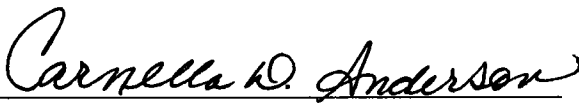
STATE OF KANSAS            )  
  ) ss.  
COUNTY OF SEDGWICK    )

Jonathan A. Schlatter, being of lawful age and being first duly sworn upon his oath, deposes and says:

That he is the attorney for Robro Royalty Partners, Ltd., and Bitter End Royalties, L.P.; he has read the above and forgoing Motion to Expand Procedural Schedule and is familiar with the contents and that the statements made therein are true and correct to the best of his knowledge and belief.

  
\_\_\_\_\_  
Jonathan A. Schlatter

SUBSCRIBED AND SWORN to before me this 14th day of March, 2017.

  
\_\_\_\_\_  
Notary Public

My Appointment expires:

*June 17, 2019*



**CERTIFICATE OF SERVICE**

I, Jonathan A. Schlatter, hereby certify that on this 14th day of March, 2017, I caused the original of the foregoing **Motion to Compel Responses to Protestants' First Data Requests** to be electronically filed with the Conservation Division of the State Corporation Commission of the State of Kansas, and caused true and correct copies to be transmitted to by email and U.S. Mail, postage prepaid, to the parties set forth below:

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Jonathan A. Schlatter