

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

Before Commissioners:      Shari Feist Albrecht, Chair  
                                 Jay Scott Emler, Commissioner  
                                 Dwight Keen, Commissioner

In the Matter of the Application of Brian L. Birk, dba Birk Petroleum to Authorize Injection of Saltwater into the Kansas City Formation at the Merritt #10, located in Section 7, Township 23 South, Range 15 East, Coffey County, Kansas.	)	Docket No. 19-CONS-3106-CUIC
	)	CONSERVATION DIVISION
	)	License No. 31280
	)	

**APPLICANT'S MOTION TO DISMISS THE PROTEST FILED HEREIN**

COMES NOW, the Applicant Brian L. Birk, dba Birk Petroleum and respectfully moves the Commission for an Order dismissing the protest in this Docket. In support of said Motion, Applicant states:

1. Each protest against the granting of an application for an order shall include specific allegations as to the manner in which the grant of the application will cause waste, violate correlative rights, or pollute the water resources of the state of Kansas. K.A.R. 82-3-135b(a).

2. The Commission recently held in its Final Precedential Order issued on April 4, 2018 in Docket 17-CONS-3689-CUIC, that "Without specific allegations or a statement of the direct and substantial interest of the Protestant, the Protestant has not demonstrated a valid interest."<sup>1</sup>

3. The Commission further stated in this Final Precedential Order that, "In order to satisfy standing requirements 'in Kansas, a person must demonstrate that [1] he or she suffered a cognizable injury and [2] that there is a causal connection between the injury and the challenged conduct.'" "A cognizable injury is established by showing...that

[an individual] personally suffers some actual or threatened injury as a result of the challenged conduct...[and]...[t]he injury must be particularized, i.e., it must affect the plaintiff in a personal and individual way.” “Mere allegations of possible future injury do not meet the requirements of standing and instead, any threatened injury must be certainly impending.” Additionally, “it is a well-recognized rule that [individuals] must assert his [or her] own legal rights and interests, and...*an injury must be more than a generalized grievance common to all members of the public.*”<sup>2</sup> (emphasis in original).

4. As the Commission noted in its Final Precedential Order, at the pre-evidentiary stage of the proceeding, a party need only demonstrate a prima facie case for standing. In other words, the Commission must determine if the facts alleged in the protest, and inferences to be made therefrom, demonstrate standing.<sup>3</sup>

5. The protest by Susan Royd-Sykes does not satisfy K.A.R. 82-3-135b because it does not demonstrate, even by a prima facie showing, that this protestant meets the “direct and substantial interest” standard. Her protest falls squarely in the category of protests rejected by the Commission in its Final Precedential Order, since it merely addresses general concerns without alleging an individual, personal, particularized and impending injury. This protest also fails to demonstrate a sufficient causal connection between such alleged injury and the proposed injection activity.<sup>4</sup> Nor does the protest show that Ms. Royd-Sykes has personally suffered some actual or threatened injury, nor that she faces a specific impending harm as a result of the Applicant’s planned actions.<sup>5</sup>

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<sup>1</sup> Final Precedential Order in Docket 17-CONS-3689-CUIC, ¶ 28.

<sup>2</sup> *Id.* ¶ 29.

<sup>3</sup> *Id.* ¶ 30.

<sup>4</sup> *Id.* ¶ 31.

<sup>5</sup> Docket No. 18-CONS-3195-CUIC, Order on Midstates’ Motion to Dismiss, ¶ 42 (April 19, 2018).

6. Applicant notes that Susan Royd-Sykes does not reside within a reasonable proximity to the subject Merritt #10 well, as she admits in her protest that her home is eight miles away, nor has she demonstrated a direct nexus to the Applicant's operations of the Merritt #10 well. This fact provides additional support to Applicant's claim that these Protestant lacks "standing" to protest and participate in this Docket.

7. The Commission's technical staff is empowered to conduct investigations and otherwise evaluate issues raised, and may testify and offer exhibits on behalf of the general public. K.A.R. 82-1-204(q). The generalized concerns raised by the protestant, to the extent any actually fall within the Commission's jurisdiction, are already investigated and evaluated by the Commission's technical staff. Allowing this protestant to, in essence, represent the general public in this matter by voicing these generalized concerns improperly usurps the role of the Commission's technical staff.

8. The Commission's technical staff has the technical expertise to fairly and fully evaluate the merits of the Application, and to ensure that granting the Application will be consistent with the Commission's duties to prevent waste, protect correlative rights, and protect fresh and usable water.

WHEREFORE, Applicant respectfully requests that the protest in this Docket be dismissed and held for naught for the various reasons recited herein; that the Application be allowed to proceed with administrative review and approval; and for such other and further relief as the Commission determines is just and equitable under the circumstances.

Respectfully submitted:

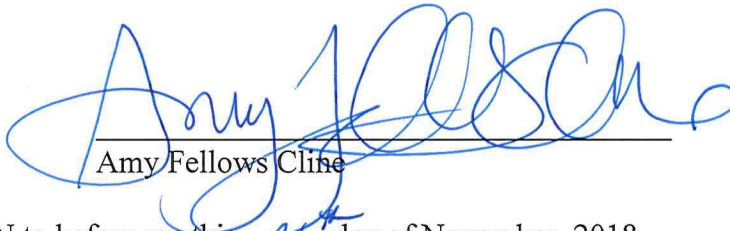
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By /s/ Amy Fellows Cline  
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VERIFICATION

STATE OF KANSAS            )  
  ) ss:  
COUNTY OF SEDGWICK    )

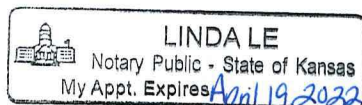
Amy Fellows Cline, of lawful age, being first duly sworn upon my oath, state that I am one of the attorneys for Applicant Brian L. Birk, dba Birk Petroleum; that I have read the above Motion; that I know the contents thereof and declare that the statements made therein are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Amy Fellows Cline

SUBSCRIBED AND SWORN to before me this 26<sup>th</sup> day of November, 2018.

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

My Appointment Expires:



### CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of November, 2018, the above **Applicant's Motion to Dismiss** was sent via electronic mail and/or United States Mail, postage prepaid, addressed to the following:

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