

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

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

In the Matter of the Application of RJM)	Docket No: 18-CONS-3382-CUIC
Company to Authorize Injection of Saltwater)	
into the Arbuckle/Granite Wash Formation at)	CONSERVATION DIVISION
the JB #2 Well Located in the SW/4 of Section)	
34, Township 16 South, Range 12 West,)	License No. 30458
<u>Barton County, Kansas.</u>)	

ORDER ON APPLICANT’S MOTION TO DISMISS THE PROTESTS FILED HEREIN

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being fully advised in the premises, the Commission finds the following:

Background

1. On May 4, 2018, RJM Company (RJM) filed an Application to authorize injection of saltwater into the Arbuckle/Granite Wash formation at the JB #2 well located in Barton County, Kansas.¹ Notice of the Application was published in the Great Bend Tribune newspaper on April 27, 2018.²
2. On May 14, 2018, Susan Royd-Sykes filed a letter of protest.³ She requested a hearing on May 24, 2018.⁴
3. On May 29, 2018, Dr. Lee Anne Coester filed a letter of protest and request for hearing.⁵

¹ Application (May 4, 2018).

² Proof of Publication – Great Bend Tribune (May 4, 2018).

³ Letter of Protest – Susan Royd-Sykes (May 14, 2018).

⁴ Letter Requesting Hearing – Susan Royd-Sykes (May 24, 2018).

⁵ Letter of Protest and Request for Hearing – Dr. Lee Anne Coester (May 29, 2018).

4. On May 29, 2018, Rachel Creager Ireland filed a letter of protest.⁶ She filed a request for hearing on June 12, 2018.⁷

5. On June 7, 2018, the Commission issued its *Order Designating Prehearing Officer and Setting Prehearing Conference*, scheduling a Prehearing Conference for June 21, 2018.⁸ A Prehearing Conference was held on June 21, 2018, with the Prehearing Officer, Commission Conservation Staff (Staff) counsel, Lauren Wright, Susan Royd-Sykes, Rachel Creager Ireland, Dr. Lee Anne Coester, and counsel for RJM in attendance.

6. On June 21, 2018, RJM filed a Motion to Dismiss the Protests Filed Herein (Motion to Dismiss), requesting that “all of the protests in this Docket be dismissed and held for naught.”⁹

Legal Standards

7. K.A.R. 82-3-135a(e) requires a protestant to file a “valid protest.” According to K.A.R. 82-3-135b(a), a valid protest is one that “include[s] a clear and concise statement of the direct and substantial interest of the protester in the proceeding, including 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.” A protestant can only show a “direct and substantial interest” in the Application where the protestant demonstrates that, “[1] he or she suffered a cognizable injury and [2] that there is a causal connection between the injury and the challenged conduct.”¹⁰ “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

⁶ Letter of Protest – Rachel Creager Ireland (May 29, 2018).

⁷ Email from Rachel Creager, Protestant, to Rene Stucky, Commission Director of UIC Program (June 12, 2018).

⁸ *Order Designating Prehearing Officer and Setting Prehearing Conference*, Ordering Clause B (June 7, 2018).

⁹ Applicant’s Motion to Dismiss the Protests Filed Herein, p. 3 (June 21, 2018).

¹⁰ See *Kansas Bldg. Indus. Workers Comp. Fund v. State*, 302 Kan. 656, 678, 359 P.3d 33, 49 (2015) (citations and internal quotations omitted). See also Docket No. 17-CONS-3689-CUIC, *Final Precedential Order*, ¶ 3 (Apr. 5, 2018).

way.”¹¹ “Mere allegations of possible future injury do not meet the requirements of standing and instead, any threatened injury must be certainly impending.”¹² Moreover, “an injury must be more than a generalized grievance common to all members of the public.”¹³

Findings and Conclusions

8. In its Motion to Dismiss, RJM relied on the reasoning in the Commission’s *Final Precedential Order* in the 17-CONS-3689-CUIC Docket (17-3689 Docket) to argue that “[t]he protests filed in this matter do not satisfy K.A.R. 82-3-135b because they do not demonstrate, even by a prima facie showing, that these protestants meet the ‘direct and substantial interest’ standard.”¹⁴ RJM argued that these protests “fall squarely in the category of protests rejected by the Commission in its Final Precedential Order”¹⁵ because they do not allege “an individual, personal, particularized and impending injury. These protests also fail to demonstrate a causal connection between such alleged injury and the proposed injection activity.”¹⁶

9. RJM argued that “the protestants do not reside within any reasonable proximity to the subject JB #2 well . . . nor have these protestants demonstrated a direct nexus to the Applicant’s operations of the JB #2 well.”¹⁷ RJM also asserted that allowing these protests to remain would “improperly usurp[] the role of the Commission’s technical staff.”¹⁸

¹¹ See *FV-I, Inc. for Morgan Stanley Mortg. Capital Holdings, LLC v. Kallevig*, 306 Kan. 204, 212, 392 P.3d 1248, 1255–56 (2017) (internal citations and quotations omitted). See also Docket No. 17-CONS-3689-CUIC, Written Findings and Recommendations, ¶ 29 (Mar. 29, 2018).

¹² See also *Labette Cty. Med. Ctr. v. Kansas Dep’t of Health & Env’t*, 2017 WL 3203383 at *8 (unpublished), 399 P.3d 292 (Kan. Ct. App. 2017). See also Docket No. 17-CONS-3689-CUIC, Written Findings and Recommendations, ¶ 29.

¹³ *Labette Cty. Med. Ctr.* 2017 WL 3203383 at *10 (internal citations and quotations omitted).

¹⁴ Motion to Dismiss, ¶ 5.

¹⁵ Motion to Dismiss, ¶ 5.

¹⁶ Motion to Dismiss, ¶ 5.

¹⁷ Motion to Dismiss, ¶ 6.

¹⁸ Motion to Dismiss, ¶ 7.

10. Ms. Royd-Sykes' protest letter expressed a generalized concern regarding the ecosystem of the Cheyenne Bottoms Wildlife Refuge,¹⁹ the cleanliness of Great Bend's water reservoirs,²⁰ and earthquakes in Barton County.²¹ Ms. Royd-Sykes' letter did not provide specific allegations as to the manner in which the grant of this particular Application will pollute Kansas' water resources.²² Her letter did not provide evidence that she has personally suffered injury, nor that she has expressed anything other than a generalized concern common to all members of the public.²³ At most, her letter advanced mere allegations of speculative future injury, which does not meet the regulatory standard for protests.²⁴ Thus, the Commission finds that Ms. Royd-Sykes has not filed a valid protest pursuant to K.A.R. 82-3-135b(a).

11. Dr. Coester's and Ms. Ireland's protest letters suffer from the same defects as those found in Ms. Royd-Sykes letter, explained in the previous paragraph.²⁵ Thus, the Commission finds that Dr. Coester and Ms. Ireland have not filed valid protests pursuant to K.A.R. 82-3-135b(a).

12. Based on the above, the Commission finds the protests of Susan Royd-Sykes, Dr. Lee Anne Coester, and Rachel Creager Ireland shall be dismissed. There are no other protests of record in this matter. As such, Staff is directed to process RJM's Application accordingly and advise the Commission if, in Staff's opinion, a hearing is necessary. Otherwise, the docket shall be closed, and there shall be no further proceedings.

¹⁹ Royd-Sykes Protest Letter, p. 1.

²⁰ Royd-Sykes Protest Letter, p. 1.

²¹ Royd-Sykes Protest Letter, p. 1.

²² See ¶ 7 of this Order, *supra*.

²³ *Id.*

²⁴ *Id.*

²⁵ See Letter of Protest – Dr. Lee Anne Coester; Letter of Protest – Rachel Creager Ireland.

THEREFORE, THE COMMISSION ORDERS:

A. RJM's Motion to Dismiss the Protests Filed Herein is granted. Staff shall process the Application accordingly.

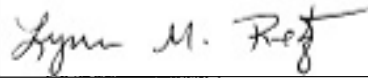
B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).²⁶

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

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 07/12/2018



Lynn M. Retz
Secretary to the Commission

Mailed Date: 07/13/2018

MJD

²⁶ K.S.A. 55-162; K.S.A. 55-606; K.S.A. 55-707; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

18-CONS-3382-CUIC

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail and electronic service on 07/12/2018.

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