



alleges it is the owner of the surface where the Subject Well is located. VSFF offers the following bases for its objection: (i) the Subject Well interferes with its farming operation, allegedly causing lost revenue, and (ii) concerns regarding casing leaks within the Subject Well that could result in the contamination of fresh water.

4. On July 24, 2018, the Commission docketed a letter dated July 23, 2018 from Morning Star Farms, GP (“MSF”), objecting to the Application. In its letter MSF alleges it is the farm tenant of the land upon which the Subject Well is located, presumably by agreement with VSFF. The bases for MSF’s objection to the Application are substantively identical to those of VSFF. MSF and VSFF may hereinafter be collectively referred to as, “Protesters.”

5. The Subject Well has been assigned API No. 15-097-21577 and is located in the center of the Southeast Quarter of the Northwest Quarter (C SE/4 NW/4) of Section 34, Township 27 South, Range 19 West, Kiowa County, Kansas. The Subject Well passed a staff-witnessed mechanical integrity test on June 28, 2018.

6. The Protesters do not dispute that the Subject Well is located on a valid and subsisting oil and gas lease. The Protesters do not deny that the Subject Well is eligible for temporary abandonment status under K.A.R. 82-3-111 with approval of the proper exception. The Protesters do not contest that the Subject Well, if recompleted, could recover oil and gas reserves valued well in excess of the cost to conduct recompletion operations—thereby preventing waste and protecting the correlative rights of TGT and its lessor-mineral owners. The Protesters do not contest that plugging the Subject Well would cause waste.

#### **LEGAL AUTHORITY**

7. K.A.R. 82-3-135a(e) requires a protester to file a “valid protest.” A “valid protest” is one that contains “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.”<sup>1</sup> “A **valid protest . . . must specifically allege facts** as to how granting the application will cause waste, violate correlative rights, or pollute the water resources of the state of Kansas.”<sup>2</sup> “Without specific allegations or a statement of the direct and substantial interest . . . , the Protest[er] has not demonstrated a valid interest [in the Application].”<sup>3</sup>

8. The Commission has found that these requirements are akin to the requirements for standing.<sup>4</sup> A person can only show a “direct and substantial interest” by demonstrating that, “[1] he or she suffered a cognizable injury and [2] that there is a causal connection between the injury and the challenged conduct.”<sup>5</sup> “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.”<sup>6</sup> A protest that does not allege an individual, personal, particularized, and impending injury, and a causal connection between such injury and the proposed injection activity, does not demonstrate standing, and subjects the protest to dismissal on its face.<sup>7</sup>

12. Mere allegations of a possible future injury do not make a protest valid.<sup>8</sup> An operator is entitled to a presumption that it will conduct its operations in compliance with Commission regulations, specifically those designed to protect fresh water.<sup>9</sup> Speculation as to

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<sup>1</sup> K.A.R. 82-3-135ba(b) (emphasis added).

<sup>2</sup> *In re the Application of Cross Bar Energy, LLC*, Docket No. 17-CONS-3689-CUIC, Written Findings and Recommendations<sup>2</sup>, ¶ 28 (emphasis added).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at ¶ 29 (citing *Kansas Bldg. Indus. Workers Comp. Fund v. State*, 302 Kan. 656, 678 (2015)).

<sup>6</sup> *Id.* (citing *FV-1, Inc. for Morgan Stanley Mortg. Capital Holdings, LLC v. Kallevig*, 306 Kan. 204, 212 (2017)).

<sup>7</sup> *See id.* at ¶ 31.

<sup>8</sup> *See id.*

<sup>9</sup> *See id.* at ¶ 34.

possible harm to fresh water caused by an oil and gas operation is not sufficient to establish cognizable harm.<sup>10</sup>

### **ARGUMENT**

The protests submitted by Protesters are not “valid protests” under Commission regulations and orders, and should be dismissed. The letters of protest submitted by Protesters do not contain specific allegations as to why granting the Application would cause waste, violate correlative rights, or pollute fresh water. Without specific allegations of a cognizable injury that could result from the granting of the Application, the Protesters have not shown a “direct and substantial interest” in the Application, and the Commission should dismiss their protests.

Protesters put forth two arguments in opposition to the granting of the Application. First, Protesters argue that the mere existence of the Subject Well and associated infrastructure interfere with their farming operation, costing them revenues. These frivolous complaints belong in the district court, not before the Commission, because these complaints have nothing to do with the conservation of oil and gas resources, nor the protection of correlative rights and fresh water.

Second, Protesters claim to be concerned about potential casing leaks in the Subject Well that could result in the pollution of fresh water. These alleged concerns are completely unsubstantiated and entirely speculative, and therefore insufficient to demonstrate the cognizable harm necessary for Protesters to demonstrate a valid interest in the Application. More importantly, however, any concerns of casing leaks in the Subject Well have been completely negated by the fact that it passed a staff-witnessed mechanical integrity test just several weeks ago.

Finally, it is important to note that Protesters do not contest that a workover operation at the Subject Well is economic and could result in the recovery of substantial hydrocarbon reserves,

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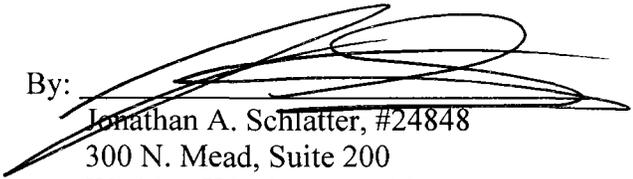
<sup>10</sup> *Id.*

thus preventing waste and protecting correlative rights. They do not contest that plugging the well would result in waste. Despite their unsubstantiated contentions, it is undeniable that the Subject Well is engineered in compliance with Commission regulations designed to prevent pollution of fresh water. In sum, the Protesters have had an opportunity to submit a valid protest and have failed to do so. Protesters offer no specific allegations showing a direct and substantial interest in the Application or any cognizable injury that could result from it being granted, and the Commission should dismiss their protests.

WHEREFORE, TGT requests that the protests submitted by Protesters be dismissed for the reasons set forth above. TGT further requests that, notice being proper and there being no timely or valid protest before the Commission, its Application for an exception to the 10-year temporary abandonment time limitations for the Subject Well be granted without incurring the time and cost of an evidentiary hearing, and to afford such other and further relief as the Commission deems necessary and proper.

Respectfully submitted,

MORRIS, LAING, EVANS, BROCK  
& KENNEDY, CHARTERED

By: 

Jonathan A. Schlatter, #24848

300 N. Mead, Suite 200

Wichita, KS 67202-2745

Telephone - (316) 262-2671

Facsimile - (316) 262-6226

Email - [jschlatter@morrislaing.com](mailto:jschlatter@morrislaing.com)

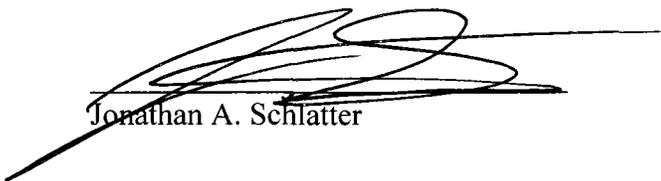
*Attorneys for TGT Petroleum Corporation*

**VERIFICATION**

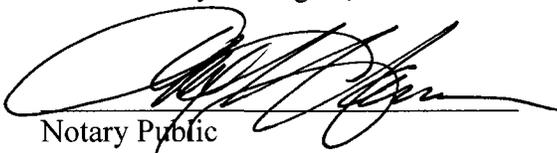
STATE OF KANSAS            )  
  ) ss:  
COUNTY OF SEDGWICK    )

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

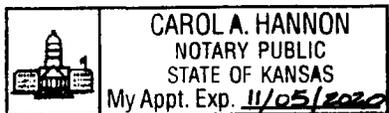
That he is the attorney for TGT Petroleum Corporation; he has read the above and forgoing Motion to Dismiss Protests, and is familiar with the contents and that the statements made therein are true and correct to the best of his knowledge and belief.

  
Jonathan A. Schlatter

SIGNED AND SWORN to before me this 20<sup>th</sup> day of August, 2018.

  
Notary Public

My Appointment expires: 11/05/2020



**CERTIFICATE OF SERVICE**

I, Jonathan A. Schlatter, hereby certify that on this 20<sup>th</sup> day of August, 2018, I caused the original of the foregoing **Motion to Dismiss Protests** 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 emailed to the following individuals:

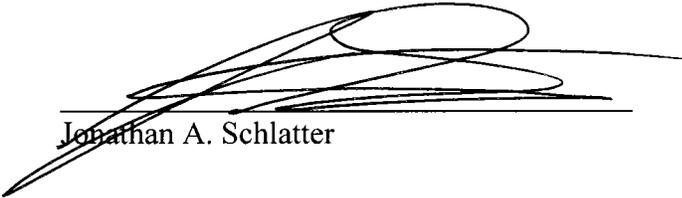
Michael Duenes, Assistant General Counsel  
Kansas Corporation Commission  
1500 SW Arrowhead Rd.  
Topeka, KS 66604  
[m.duenes@kcc.ks.gov](mailto:m.duenes@kcc.ks.gov)

Lauren Wright, Litigation Counsel  
Kansas Corporation Commission  
Conservation Division  
266 N. Main St. Ste. 220  
Wichita, KS 67202-1513  
[l.wright@kcc.ks.gov](mailto:l.wright@kcc.ks.gov)

and true and correct copies mailed by U.S.P.S., regular mail, postage prepaid, to

Alan R. Staab, Manager  
Voskuhl-Staab Family Farms, LLC  
2502 East 21<sup>st</sup> Street  
Suite B  
Tulsa, OK 74114

Roger Stotts  
Morning Star Farms, GP  
22259 183 Hwy  
Greensburg, KS 67054

  
Jonathan A. Schlatter