

**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 Midstates Energy ) Docket No: 18-CONS-3196-CUIC  
Operating, LLC to authorize injection of saltwater )  
into the Squirrel formation at the Thrasher #10 ) CONSERVATION DIVISION  
enhanced recovery well, located in Section 25, )  
Township 13 South, Range 20 East, Douglas County, ) License No. 35503  
Kansas. )

**ORDER ON JUDITH WELLS' PETITION FOR RECONSIDERATION**

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 makes the following findings and conclusions:

**BACKGROUND:**

1. On October 12, 2017, Midstates Energy Operating, LLC (Midstates) filed an Application with the Commission seeking a permit to authorize the injection of saltwater into the Squirrel formation at the Thrasher #10 well, located in Section 25, Township 13 South, Range 20 East, Douglas County, Kansas.<sup>1</sup>

2. On October 20, 2017, Judith L. Wells filed a protest against Midstates' Application.<sup>2</sup> Between October 16, 2017, and December 19, 2017, numerous other protests were filed in this docket.<sup>3</sup>

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<sup>1</sup> Midstates Energy Operating, LLC, Application for Injection Well, p. 1 (Oct. 12, 2017) (Application). Midstates' Application is part of an "Application to Amend Injection Permit," filed the same day, under Permit No. E-31965, whereby the Thrasher #10 well would be added as a repressuring well along with the Thrasher I-5 well on the same lease.

<sup>2</sup> Letter of Protest – Judith L. Wells (Oct. 20, 2017).

<sup>3</sup> See *Order Designating Prehearing Officer and Setting Prehearing Conference*, ¶ 2 (Feb. 6, 2018).

3. On March 20, 2018, Midstates filed a Motion to Dismiss Protests (Motion to Dismiss), to which many responses were filed.<sup>4</sup>

4. On April 19, 2018, the Commission issued its *Order on Midstates' Motion to Dismiss Protests*, granting Midstates' Motion to Dismiss all protests filed in this docket except those of Douglas County, Kansas, James and Patricia Bondurant, and Judith L. Wells as Manager of Wells Partners, LP.<sup>5</sup>

5. On April 24, 2018, Terry Ballou and R L Hilbun pre-filed direct testimony on behalf of Midstates.<sup>6</sup> On May 15, 2018, Judith L. Wells pre-filed direct testimony.<sup>7</sup> On May 25, 2018, Jerry Knobel and Rene Stucky pre-filed direct testimony on behalf of Commission Conservation Staff (Staff).<sup>8</sup> On June 12, 2018, Judith L. Wells pre-filed rebuttal testimony.<sup>9</sup>

6. On June 26, 2018, the Commission held an evidentiary hearing.<sup>10</sup> The Commission heard live testimony from a total of seven witnesses, two on behalf of Midstates, three on behalf of Protestants, and two on behalf of Staff.<sup>11</sup> The parties had the opportunity to cross-examine the witnesses, as well as redirect their own witnesses.

7. On August 16, 2018, the Commission issued its *Order on Midstates' Application* (Order), approving Midstates' Application for injection authority at its Thrasher #10 well, with a maximum injection rate of 100 barrels per-day and a maximum injection pressure of 400 psig.<sup>12</sup> The Commission directed Staff to take any final steps necessary to process Midstates' Application

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<sup>4</sup> See *Order on Midstates' Motion to Dismiss Protests*, ¶¶ 5-16 (Apr. 19, 2018).

<sup>5</sup> *Order on Midstates' Motion to Dismiss Protests*, ¶ 40 (Apr. 19, 2018).

<sup>6</sup> Pre-Filed Direct Testimony of Terry Ballou (Apr. 24, 2018) (Ballou Direct); Pre-Filed Direct Testimony of R L Hilbun (Apr. 24, 2018) (Hilbun Direct).

<sup>7</sup> Prefiled Testimony of Judith L. Wells (May 15, 2018) (Wells Direct).

<sup>8</sup> Pre-filed Testimony of Jerry Knobel (May 25, 2018) (Knobel Direct); Pre-filed Testimony of Rene Stucky (May 25, 2018) (Stucky Direct).

<sup>9</sup> Prefiled Rebuttal Testimony of Judith L. Wells Manager, Wells Partners, LLC, a Limited Agricultural Company and Owner of the NW Quarter of Section 25, Township 13S, Range 20E (June 12, 2018) (Wells Rebuttal).

<sup>10</sup> Hearing Transcript, p. 1, lines 12-20 (June 26, 2018) (Tr.).

<sup>11</sup> Tr., p. 3, lines 2-23.

<sup>12</sup> Order on Midstates' Application, Ordering Clause A (Aug. 16, 2018).

administratively.<sup>13</sup> The Commission also directed Staff to investigate the Thrasher I-5 permit and file a Report and Recommendation to the Commission regarding that permit within 60 days of service of the Order.<sup>14</sup>

8. On August 31, 2018, Judith Wells filed a Petition for Reconsideration (PFR).

9. On September 7, 2018, Midstates filed a Response to Ms. Wells' PFR (Midstates Response),<sup>15</sup> and on September 10, 2018, Staff also filed a Response to her PFR (Staff Response).<sup>16</sup>

### **LEGAL STANDARDS:**

10. A petition for reconsideration must state the specific grounds upon which relief is requested.<sup>17</sup> The purpose of requiring matters to be raised in a petition for reconsideration is to inform the other parties and the Commission "where mistakes of law and fact were made in the order."<sup>18</sup> An order is lawful if it is within the statutory authority of the Commission and if the statutory rules are followed.<sup>19</sup> An order is reasonable if it is based on substantial competent evidence.<sup>20</sup> All actions of an administrative agency have a rebuttable presumption of validity.<sup>21</sup> As the party challenging the legality of the Commission's Order, Ms. Wells bears the burden of proving the Commission's action was invalid.<sup>22</sup>

### **FINDINGS AND CONCLUSIONS:**

11. Ms. Wells claimed in her PFR that because the Thrasher I-5 permit was revoked, and improperly reinstated by Rene Stucky, the Thrasher #10 Application should be denied.<sup>23</sup>

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<sup>13</sup> Order, Ordering Clause A.

<sup>14</sup> Order, Ordering Clause B.

<sup>15</sup> Response of Midstates Energy Operating, LLC to Petition for Reconsideration (Sept. 7, 2018).

<sup>16</sup> Staff's Response to Petition for Reconsideration (Sept. 10, 2018).

<sup>17</sup> K.S.A. 77-529(a).

<sup>18</sup> *Citizens' Util. Ratepayer Bd. v. State Corp. Comm'n*, 24 Kan. App. 2d 222, 228 (1997) (citing *Peoples Nat. Gas Div. of N. Nat. Gas Co. v. State Corp. Comm'n*, 7 Kan. App. 2d 519, 525 (1982)).

<sup>19</sup> *Kan. Gas & Elec. Co v. State Corp. Comm'n*, 239 Kan. 483, 496 (1986).

<sup>20</sup> *Id.*

<sup>21</sup> *Trees Oil Co. v. State Corp. Comm'n*, 279 Kan. 209, 226, 105 P.3d 1269 (2005).

<sup>22</sup> K.S.A. 77-621(a)(1). *See Trees Oil Co.*, 279 Kan. at 226.

<sup>23</sup> *See* PFR, ¶¶ 4-15.

According to Ms. Wells, the validity of the Thrasher #10 well is dependent on the validity of the Thrasher I-5 well.<sup>24</sup> The Commission finds these assertions lack merit.

12. Ms. Wells made no new argument here,<sup>25</sup> and therefore, provides no basis for reconsideration. The Commission's Order addressed Ms. Well's argument, and the Commission properly found "no basis for Ms. Wells' contention that the Thrasher #10 Application must *necessarily* be denied because the Thrasher I-5 permit was revoked."<sup>26</sup> The Commission found "the Thrasher #10 Application practically functions as a complete and original application, able to stand on its own merits," and thus, "[t]here is no need for an overly formalistic captivity to Staff's Form U-8 permit number, which is essentially just used for administrative ease."<sup>27</sup> Ms. Well's PFR provided no legal basis for an assertion of error on this point, and therefore, the Commission upholds the findings in its Order.<sup>28</sup>

13. In addition, Ms. Wells apparently disregarded the Commission's findings regarding the Thrasher I-5 permit. The Order established that "the Thrasher I-5 permit was not properly reinstated and cannot remain in its current status unaddressed."<sup>29</sup> The Commission ordered Staff "to investigate the permit and file a Report and Recommendation to the Commission in this docket within 60 days of service of this Order."<sup>30</sup> Thus, the Commission properly addressed Ms. Wells' concerns about the Thrasher I-5 well, and therefore, her PFR lacks merit on this point.

14. Ms. Wells claimed in her PFR that, although K.S.A. 55-152(a) requires the Commission to adopt rules and regulations necessary for the implementation of the oil and gas statutes including provisions for the construction, operation and abandonment of any well and the

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<sup>24</sup> PFR, ¶ 4.

<sup>25</sup> See Order, ¶ 41.

<sup>26</sup> Order, ¶ 64.

<sup>27</sup> Order, ¶ 64.

<sup>28</sup> See Order, ¶ 60.

<sup>29</sup> Order, ¶ 64.

<sup>30</sup> Order, Ordering Clause B.

protection of the usable water in Kansas from any actual or potential pollution from any well, “the commission has not adopted rules for the operation and abandonment of any well, or for the protection of the usable water.”<sup>31</sup> This argument also fails.

15. K.A.R. 82-3-400 through 82-3-412 provide rules and requirements pertaining to the construction and operation of injection wells which protect the fresh and usable waters of Kansas. Further, K.A.R. 82-3-104 through 82-3-106 provide for the protection of usable water. K.A.R. 82-3-111 through 82-3-120 provide requirements for the plugging and abandonment of wells, and K.A.R. 82-3-120 through K.A.R. 82-3-307 provide requirements for the operation of wells. Moreover, most of these rules and regulations are specifically authorized by K.S.A. 55-152. The Commission approved Midstates’ Application based on its rules and regulations which have been adopted under the authority of K.S.A. 55-152.<sup>32</sup> Hence, the Commission rejects Ms. Wells’ argument here.

16. Ms. Wells argued in her PFR that the Commission erred by failing to consider the operation and abandonment of wells in the vicinity of the Thrasher #10 well and by relying on the testimony of Mr. Ballou, Mr. Hilbun, and Mr. Stucky.<sup>33</sup> She claimed the Commission did not properly address her questions “regarding the cumulative injections into ongoing lifetime enhanced oil recovery wells that appear excessive in relation to oil produced.”<sup>34</sup> Ms. Wells further argued that “no engineering studies were done to test the permeability of the rock Mr. Ballou relied on, nor were geological maps produced to demonstrate that each lease is on its own reservoir and injections have no effect on shared reservoirs lying under the land of abutting surface rights owners.”<sup>35</sup> The Commission denies reconsideration on these arguments as well.

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<sup>31</sup> PFR, ¶ 17.

<sup>32</sup> See Order, ¶ 60.

<sup>33</sup> See PFR, ¶¶ 16-29.

<sup>34</sup> PFR, ¶ 18.

<sup>35</sup> PFR, ¶ 29.

17. Contrary to Ms. Well's assertion, the Commission considered the operation, abandonment, and cumulative injection volumes of wells in its Order. Mr. Hilbun, who was accepted by the Commission as an expert witness,<sup>36</sup> stated that fluid injection is "a transient activity, and the fluid is injected and fluid is pumped out. And that is a cycle rather than a . . . cumulative collection."<sup>37</sup> The Commission noted Mr. Hilbun's doubts that the Thrasher #10 well will communicate with wells located up to three (3) miles away.<sup>38</sup> Mr. Ballou, who was also accepted by the Commission as an expert witness,<sup>39</sup> testified that there are "dry lines in between" the wells in the Squirrel Sandstone, "[a]nd so, therefore, they will not communicate. And I have not seen them communicate from one to the other."<sup>40</sup> Mr. Ballou also testified that if an operator injects higher volumes of water into a well, the water simply channels to a producing well where it will flow out or can be pumped out, and therefore, there is no risk to fresh water resources.<sup>41</sup> Staff witness, Mr. Stucky, testified that injected water is "being confined in that reservoir, so it really has no bearing on usable or fresh water, and "[a]s far as protection of fresh and usable water, it's also been stated that an EOR is just kind of a recirculation thing. So no matter what volume or frequency of the recirculation, really it's going to have no effect on the fresh and usable water."<sup>42</sup> Based on this testimony, which was discussed in the Order, there is no basis for Ms. Wells' assertion that the Commission failed to address the merits of her testimony regarding the cumulative injections into ongoing lifetime enhanced oil recovery wells.

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<sup>36</sup> See Tr., p. 27, line 23 through p. 28, line 9.

<sup>37</sup> Order, ¶ 44.

<sup>38</sup> Order, ¶ 44.

<sup>39</sup> See Tr., p. 9, lines 10-24.

<sup>40</sup> Order, ¶ 48.

<sup>41</sup> Order, ¶ 48.

<sup>42</sup> Order, ¶ 54.

18. The Commission properly relied on the expert testimony of Mr. Hilbun, Mr. Ballou, Mr. Stucky and Mr. Knobel as a basis for its findings in favor of Midstates' Application.<sup>43</sup> The Commission rejected Ms. Wells' testimony about the ratio of water injected to oil produced because it was speculative and ably refuted by expert testimony.<sup>44</sup> Ms. Wells has provided no legal basis for her insinuation that the Commission was obligated to cross-examine Ms. Wells at hearing before it could make valid findings.<sup>45</sup> Ms. Wells has provided no basis for her additional insinuation that Mr. Ballou's expertise is questionable because "no engineering studies were done . . . nor were geological maps produced."<sup>46</sup> Nothing in Ms. Well's PFR calls into question the foundation laid and accepted for Mr. Ballou's, or any witnesses', expert qualifications, at the hearing.<sup>47</sup> The Kansas Supreme Court has held that "[t]he Commission is vested with wide discretion and . . . is presumed to act fairly, reasonably, and impartially."<sup>48</sup> "[I]t is for the Commission to determine the weight [to] be given [to . . . each factor covered by the evidence.]"<sup>49</sup> "The Commission is the trier of facts."<sup>50</sup> As the trier of facts, the Commission properly weighed, evaluated, and accepted the testimony of qualified experts and rejected Ms. Wells' contrary lay opinions.<sup>51</sup> Hence, the Commission denies reconsideration on this point.

19. Ms. Wells alleged in her PFR that the Commission should reconsider its Order because, "[i]n disregard of statutory requirements, MidStates Energy Investments operated the injections [sic] wells without a license and without required financial assurances, from June 2016 until September 2017."<sup>52</sup> The Commission rejects this argument as well.

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<sup>43</sup> See Order, ¶ 62.

<sup>44</sup> See Order, ¶ 62.

<sup>45</sup> See PFR, ¶ 18.

<sup>46</sup> PFR, ¶ 29.

<sup>47</sup> See ¶ 17 of this Order, *supra*.

<sup>48</sup> *Sw. Kansas Royalty Owners Ass'n v. State Corp. Comm'n*, 244 Kan. 157, 166 (1989).

<sup>49</sup> *Sw. Kansas Royalty Owners Ass'n*, 244 Kan. at 166.

<sup>50</sup> *Sw. Kansas Royalty Owners Ass'n*, 244 Kan. at 166.

<sup>51</sup> See Midstates Response, ¶ 13.

<sup>52</sup> PFR, ¶ 36. See PFR, ¶¶ 30-35.

20. K.A.R. 82-3-120(a)(1)(A) provides that an operator shall not drill, complete, service, plug, or operate any injection well without first obtaining or renewing a current license. The record in this proceeding demonstrates that Midstates had a current license when it filed its Application,<sup>53</sup> and there is no evidence that Midstates has failed to maintain its license throughout this proceeding.<sup>54</sup> Thus, whether Midstates operated the Thrasher lease without a license at some point prior to the filing of its Application is irrelevant to the Commission's findings in this docket. The Commission agrees with Midstates that "[t]he only facts concerning MidStates' operator's license which are germane to this Docket are [the] undisputed [facts that] MidState's [sic] held a valid operator's license at the time that the Application filed in this Docket came before the Commission and was the operator of the Thrasher Lease at that time."<sup>55</sup> Therefore, the Commission finds no basis for reconsideration on this issue.

#### **CONCLUSION:**

21. In her Petition for Reconsideration, Ms. Wells failed to raise any new argument regarding the Thrasher I-5 well's ostensible connection to the Commission's approval of Midstates' Application concerning the Thrasher #10 well. Further, Ms. Wells erroneously asserted that the Commission did not consider the operation and abandonment of injection wells. Moreover, Ms. Wells made the irrelevant allegation that at some point prior to the filing of its Application, Midstates operated the Thrasher lease without a current operator's license. None of Ms. Wells' contentions properly challenge the Commission's Order, which is based on substantial competent evidence, finding that Midstates' Application fulfills the requirements of Kansas law<sup>56</sup> and was

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<sup>53</sup> See Application for Injection Well, p. 1 (Oct. 12, 2017) (showing Operator License Number 35503).

<sup>54</sup> See Staff Response, ¶ 25.

<sup>55</sup> Midstates Response, ¶ 19.

<sup>56</sup> See Order, ¶ 65.



properly approved. Therefore, Ms. Wells' PFR is denied for failing to identify how the Commission erred in fact or at law.


**THEREFORE, THE COMMISSION ORDERS:**

- A. Ms. Wells' Petition for Reconsideration is denied.
- B. This Order constitutes final agency action as defined by K.S.A. 77-607(b)(1). Lynn M. Retz, Secretary to the Commission, is the agency officer designated to receive service of a petition for judicial review on behalf of the agency.<sup>57</sup>
- C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it deems necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 09/18/2018

  
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Lynn M. Retz  
Secretary to the Commission

Mailed Date: 09/19/2018

MJD

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<sup>57</sup> K.S.A. 77-613(e).

## CERTIFICATE OF SERVICE

18-CONS-3196-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 09/18/2018.

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