THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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

In the Matter of the Notice of Denial of License Renewal Application to Agricultural Energy Services.	)	Docket No.: 17-CONS-3529-CMSC
	)	CONSERVATION DIVISION
	)	License No.: 34089

STAFF'S RESPONSE TO OPERATOR'S MOTION FOR SUMMARY JUDGMENT

Commission Staff ("Staff") of the State Corporation Commission of the State of Kansas ("Commission") files this Response to Agricultural Energy Services' ("AES") Motion for Summary Judgment. AES's motion should be denied. Pursuant to K.S.A. 55-155(c)(4), the evidence will demonstrate an association between AES and First National Oil, Inc. ("First National"), an entity suspended for non-compliance with Commission regulations, which merits denial of AES's license renewal application. In support of its Response, Staff states as follows.

I. JURISDICTION

1. K.S.A. 74-623 provides that the Commission has the exclusive jurisdiction and authority to regulate oil and gas activities.

2. K.S.A. 55-155 provides the Commission authorization to license operators and contractors as defined by K.S.A. 55-150.

II. BACKGROUND

3. On March 24, 2017, Commission Staff denied AES's license renewal application due to its association with First National, KCC License #6230.

4. On March 30, 2017, AES timely appealed.

5. On August 8, 2017, AES filed a motion for summary judgment. Staff's response was delayed by mutual agreement.

6. On November 9, 2017, the prehearing officer issued an order establishing a December 8, 2017, deadline for Staff's response to AES's motion.

7. On November 16, 2017, the Commission issued an Order Setting Procedural Schedule, setting this matter for a February 15, 2018, evidentiary hearing.

III. DISCUSSION

8. AES's motion for summary judgment should be denied. The most relevant facts in this matter, as they will be presented to the Commission at hearing, are quite simple:

a. Under K.S.A. 55-155, all officers, directors, partners, or members of an applicant must be in good standing with the Commission in order for the applicant to obtain a license.

b. Montgomery Escue is vice-president of AES,[1] but Montgomery Escue, as a director of First National,[2] is not in good standing with the Commission, because First National's license is suspended for non-compliance with Commission Dockets 14-CONS-189-CPEN and 17-CONS-3014-CPEN.[3]

c. Therefore, under K.S.A. 55-155, AES's license application cannot be approved, because Montgomery Escue is an officer of AES, but Montgomery Escue, as a director of First National, is not in good standing with the Commission.

9. In AES's motion for summary judgment, it makes three contentions: (1) AES is not associated with First National Oil within the meaning of K.S.A. 55-155(c)(4) and the plain language of K.S.A. 55-155(c)(4) does not allow the Commission to deny AES's license; (2) that Staff's interpretation of K.S.A. 55-155 violates AES's due process rights and is impermissibly

[1] *See* Exhibit A, AES's Response to Staff's Information Request.
[2] *See, e.g.*, Exhibit B, First National's most recent annual report filed with the Kansas Secretary of State.
[3] *See, e.g.*, Exhibit C, the suspension letter in Docket 17-CONS-3014-CPEN.

vague; and (3) the doctrine of claim preclusion bars the Commission from denying AES's license. Staff disagrees with AES regarding each of these contentions.

a. AES is associated with First National Oil within the meaning of K.S.A. 55-155(c)(4) and it is appropriate for the Commission to deny AES's license

10. It is undisputed that K.S.A. 55-155(c)(4) applies to AES.[4] That statute states:

> (c) No application or renewal application shall be approved until the applicant has:
>
> (4) demonstrated to the commission's satisfaction that the following comply with all requirements of chapter 55 of the Kansas Statutes Annotated, and amendments thereto, all rules and regulations adopted thereunder and all commission orders and enforcement agreements, if the applicant is not registered with the federal securities and exchange commission: (A) The applicant; (B) any officer, director, partner or member of the applicant; (C) any stockholder owning in the aggregate more than 5% of the stock of the applicant; and (D) any spouse, parent, brother, sister, child, parent-in-law, brother-in-law or sister-in-law of the foregoing.

11. The plain language of K.S.A. 55-155(c)(4) states that if any officer, director, partner, or member of an applicant has not complied with all Commission regulations, then the applicant cannot have a license. The plain language of K.S.A. 55-155(c)(4) also states that if any *spouse or parent* of any officer, director, partner, or member of an applicant has not complied with all Commission regulations, then the applicant cannot have a license.

12. Applying this language to the present case, Montgomery Escue is vice-president of AES and his wife is president of AES.[5] At the same time, Montgomery Escue and Jeffery Escue are directors of First National Oil, and Nelson Escue, who is Montgomery Escue's father, is president, secretary, and treasurer of First National.[6] Montgomery Escue has had power of

[4] *See* AES's Motion for Summary Judgment, Paragraph 19.
[5] In filing its response to Staff's discovery request, AES states Montgomery Escue is vice president, see Exhibit A, but in AES's motion for summary judgment, Exhibit 3, AES states Montgomery Escue is president.
[6] *See* Exhibit B, First National's most recent annual report filed with the Kansas Secretary of State.

attorney over his father for many years.[7] The vast majority of wells currently on AES's license were at some point in time transferred from First National to AES.[8]

13. First National has neglected to renew its Commission license. It continues to have eight abandoned, unplugged wells on its suspended license, which expired in June 2016, in violation of K.S.A. 55-179, K.A.R. 82-3-120, and the Commission's Penalty Order in Docket 17-CONS-3014-CPEN. First National Oil also owes the Commission $5,500 pursuant to that Penalty Order.[9] The entity also continues to be in violation of the Commission's Order in Docket 14-CONS-189-CPEN, which ordered First National to obtain temporary abandonment status for one of the wells still remaining on its license.[10]

14. K.S.A. 55-155(c)(4) is in place to ensure that a person cannot incorporate or otherwise shift licensure to avoid Commission regulations regarding abandoned wells. Further, since the legal theories of piercing the corporate veil and alter ego are well-established, K.S.A. 55-155(c)(4) only has meaning if the Commission's ability to deny licenses extends beyond those theories. The practical result of allowing AES to obtain its license would be that the Escue family would be allowed to leave its bad assets on First National's license, shift its good assets onto AES's license, and avoiding any negative consequences for the bad assets. Those bad assets would then become a state liability.[11] This is exactly what K.S.A. 55-155(c)(4) is designed to prevent, and was recognized as a state and legislative interest by both the district and appellate courts in the *Denman* decision.[12]

---

[7] *See* Exhibit A, AES's discovery request response, Page 4.
[8] *See* Exhibit D, AES's current well inventory, and Exhibit E, Transfer of Operator (T-1) Forms between First National and AES.
[9] *See* Penalty Order (August 4, 2016), Paragraphs A & D.
[10] *See* Penalty Order (October 18, 2013), Paragraphs 5 & B. The Waldron #2-25 remains on First National's license. The Carter #3-36 was subsequently transferred to AES's license and plugged.
[11] *See* K.S.A. 55-179.
[12] *See* Exhibit F, which is the District Court's decision in *John M. Denman Oil Co. Inc. et al v. State Corporation Commission of the State of Kansas*, Case No. 12C402, Memorandum Opinion and Entry of Judgment, p. 36-37; see also the Appellate Court's decision, 342 P.3d 958, 963, ("But such a rule would greatly hinder the KCC's ability to get wells plugged.").

15. There is clear legal basis for the Commission to conclude that Montgomery Escue is not in good standing with the Commission because First National is not in good standing with the Commission. Montgomery Escue is an officer of First National.[13] An artificial entity acts only through its officers, employees, and agents. Further, it is certainly possible at law for officers to be liable for corporate offenses. Here, K.S.A. 55-155(c)(4) does not even make any person other than First National, including Montgomery Escue, personally liable for the regulatory violations of First National. In no way is AES legally obligated to bring First National into compliance with Commission regulations.

16. Under the proper reading of K.S.A. 55-155(c)(4), however, Montgomery Escue is not in good standing with the Commission, because First National is not in good standing with the Commission. And K.S.A. 55-155(c)(4) requires AES's license to be denied unless First National Oil is in good standing with the Commission, or until the officers, directors, partners, or members of AES, and their immediate relatives, can demonstrate they are in good standing with the Commission. To rule otherwise would create a gaping regulatory and statutory loophole, allowing persons to use corporate status to keep good assets while unjustly leaving the state with the liabilities associated with the person's bad assets.

b. AES has been provided ample due process

17. Without detailed explanation, AES states that denial of its license would violate due process under the 14th Amendment of the United States Constitution. Even if denial of a license constitutes a deprivation of life, liberty, or property, which is necessary to implicate the 14th Amendment, the clear evidence demonstrates AES has been provided notice and the opportunity to be heard before a fair tribunal, the hallmarks of the 14th Amendment's procedural due process, and no substantive due process rights have been abrogated in any way.

[13] See Exhibit B, First National's most recent annual report filed with the Kansas Secretary of State.

18. AES argues that a Commission interpretation of K.S.A. 55-155(c)(4) as construed by Staff would be void for vagueness, stating that such an interpretation would fail to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits.[14] AES further argues such application encourages arbitrary and discriminatory enforcement.[15] Staff posits that a person of ordinary intelligence would reasonably expect statutory prohibitions against a person leaving its bad assets on one license, shifting its good assets onto another license, and avoiding any negative consequences for the bad assets. K.S.A. 55-155(c)(4) is the statute that clearly prohibits such behavior.

c. The Commission is obligated to enforce K.S.A. 55-155(c)(4)

19. Staff's March 24, 2017, Notice of Denial letter posited two problems with First National license. First, unplugged wells remain on its expired license. This violates K.S.A. 55-179, K.A.R. 82-3-120, and the Commission's Penalty Order in Docket 17-CONS-3014-CPEN, wherein First National still owes the Commission $5,500 in penalties. Second, First National had not complied with the Commission's Order in Docket 14-CONS-189-CPEN.

20. AES notes that in an October 6, 2014, motion to close Docket 13-CONS-299-CMSC, an attorney for Staff stated "the undersigned investigated whether the corporate veil could be pierced with regard to First National and Agricultural Energy Services, LLC ('AES'), and determined there was not a sufficient relationship between the entities to pursue joint liability for the wells," and complains, therefore, that the Commission is barred by the doctrine of claim preclusion from enforcing K.S.A. 55-155(c)(4).

21. AES's contention makes no sense for three primary reasons. First, Staff does not posit in the present matter that the corporate veil should be pierced or that there is joint liability for the eight unplugged wells remaining on First National's expired, suspended license. The

[14] *See* AES's Motion for Summary Judgment, Paragraph 31-34.
[15] *See id.*

allegations and legal theories in the present matter are completely different, and so the doctrine of claim preclusion does not apply. Second, the statement by Staff's attorney in that filing was not at issue in that docket, and the Commission made no holding on that specific matter. Third, many of First National's current compliance problems post-date that docket, so there would presumably be new facts, even if the allegations and legal theories were the same. The present matter, simply put, has nothing to do with what occurred in Docket 13-CONS-299-CMSC. The Commission should enforce K.S.A. 55-155(c)(4) as written, regardless of anything that may have occurred in unrelated previous dockets.

IV. CONCLUSION

WHEREFORE, for the reasons described above, Commission Staff respectfully requests the Commission deny the relief sought by Operator and permit this matter to proceed to an evidentiary hearing.

Respectfully submitted,

Jonathan R. Myers, #25975
Litigation Counsel
Kansas Corporation Commission
266 N. Main, Suite 220
Wichita, Kansas 67202-1513
Phone: 316-337-6200; Fax: 316-337-6211

VERIFICATION

STATE OF KANSAS)
) ss.
COUNTY OF SEDGWICK)

Jonathan R. Myers, of lawful age, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas; that he has read and is familiar with the foregoing *Response,* and attests that the statements therein are true to the best of his knowledge, information and belief.

Jonathan R. Myers, S. Ct. #25975
Litigation Counsel
State Corporation Commission
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 8 day of Dec, 2017.

Notary Public

My Appointment Expires: 3/07/19

PAULA J. MURRAY
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 3/07/19

CERTIFICATE OF SERVICE

I certify that on 12/8/17, I caused a complete and accurate copy of "Staff's Response to Operator's Motion for Summary Judgment" to be served electronically to the following:

Lee Thompson
Thompson Law Firm, LLC
106 E. 2nd Street North
Wichita, KS 67202-2005
lthompson@tslawfirm.com
Attorney for Agricultural Energy Service

Karl F. Hirsch
Hirsch, Heath & White, PLLC
901 Cedar Lake Boulevard
Oklahoma City, OK 73114
khirsch@hhwlawfirm.com
Attorney for Agricultural Energy Services

Jonathan R. Myers, Litigation Counsel
KCC Central Office

Michael J. Duenes, Assistant General Counsel
KCC Topeka Office

/s/ Paula J. Murray
Paula J. Murray
Legal Assistant
Kansas Corporation Commission

Exhibit

A

Before the Kansas Corporation Commission

RESPONSE AND OBJECTIONS BY
AGRICULTURAL ENERGY SERVICES, LLC (AES) TO

Information Request by Commission Staff

Staff Request No. 1

Company Name: Staff Request to AES

Docket Number: 17-CONS-3529-CMSC

Request Date: August 29, 2017

Date Information Needed: September 12, 2017 – *EXTENDED TO SEPTEMBER 22 BY AGREEMENT.*

Please provide the following:

AES filed, noticed and serve its objections to Staff Request No. 1 on August 31, 2017. AES hereby withdraws its objections to the numbered separate requests below as to numbers 1 through 9 and 11 & 12. AES affirms its objections to numbers 10, 13 and 14 as further detailed below.

1. Who is the President of Agricultural Energy Services?

   Cheryl Fitch (wife of Montgomery Escue)

2. Who is the Vice-President of Agricultural Energy Services?

   Montgomery Escue

3. Who is the Secretary of Agricultural Energy Services?

   There is no Secretary

4. Is there any officer, director, partner, or member of Agricultural Energy Services, other than President, Vice-President, or Secretary?

   Cheryl Fitch is a director.

   4A. If yes, what other positions are there, and who are the persons in those positions?

5. Please provide the job duties of each officer, director, partner, or member of Agricultural Energy Services, described by person.

President: Supervisory and business related management.
Vice President: Management of operations

6. How many shares of capital stock are issued in Agricultural Energy Services?

   1000

7. Please provide a list of each individual or entity owning capital stock in Agricultural Energy Services, including the number of shares each individual or entity owns.

   Cheryl Fitch – 100%

8. For each non-individual listed in answer to #7 above, please provide the name of each officer, director, partner, or member of each entity.

   Not applicable

9. Please describe any financial interest in Agricultural Energy Service retained by Montgomery Escue that is not described via answering #1-#8 above.

   None.

10. In what manner and how much is each officer, director, partner, or member of Agricultural Energy Services compensated for their work?

    AES reaffirms its noticed objection on the grounds that the information requested is not relevant to the matters at issue. The only facts at issue are whether First National is affiliated with AES. KSA 55-155 governs licensure of AES. The Staff alleges that the license should be denied because AES is "related to First National Oil, Inc. which is in violations of KCC regulations" As shown herein, and is obvious by common sense and logic, First National, a corporation is not and cannot be subsumed under the rubric of the factual predicates for application of KSA 55-155 (c)(4).

11. If not answered via questions #1-10, what is Amy Cooper's association with Agricultural Energy Services?

    Ms. Cooper is an independent contractor who provides bookkeeping services.

12. Does Agricultural Energy Services have any employees?
12A. If yes, what are their names and positions?

No.

13. Please provide a summary of payments/financial transactions made by Agricultural Energy Services to First National Oil, Inc.

AES reaffirms its noticed objection on the grounds that the information requested is not relevant to the matters at issue. The only facts at issue are whether First National is affiliated with AES. KSA 55-155 governs licensure of AES. The Staff alleges that the license should be denied because AES is "related to First National Oil, Inc. which is in violations of KCC regulations" As shown herein, and is obvious by common sense and logic, First National, a corporation is not and cannot be subsumed under the rubric of the factual predicates for application of KSA 55-155 (c)(4).

AES further reasserts its objection to the Request as overly broad and vague.

AES provides further explanation of the reasons for the objections to Numbers 13 & 14 under the heading Discussion, below.

14. Please provide a summary of payments/financial transactions made by First National Oil, Inc. to Agricultural Energy Services.

AES reaffirms its noticed objection on the grounds that the information requested is not relevant to the matters at issue. The only facts at issue are whether First National is affiliated with AES. KSA 55-155 governs licensure of AES. The Staff alleges that the license should be denied because AES is "related to First National Oil, Inc. which is in violations of KCC regulations" As shown herein, and is obvious by common sense and logic, First National, a corporation is not and cannot be subsumed under the rubric of the factual predicates for application of KSA 55-155 (c)(4).

AES further reasserts its objection to the Request as overly broad and vague.

AES provides further explanation of the reasons for the objections to Numbers 13 & 14 under the heading Discussion, below

DISCUSSION

The Discovery Order in this Docket provides that written objection shall specifically explain all grounds relied upon for objecting to each data request. AES has done so.

The request for any "financial transactions or payments made by AES to First National and by First National to AES is so broad as to encompass any number of transactions, none of which are prohibited by the statute, such as loans or gifts.

Perhaps more importantly, at the time various penalty orders were issued to First National in 2011, its President, Nelson Escue, father of Montgomery Escue, experienced major health and age-related problems and failed to act on a number of obligations. His son, Montgomery Escue was given a power of attorney to try and help his father. This setting was outlined in a letter to the Conservation Staff in 2012, and incorporated in a final Order entered in Docket 13 CONS-299-CMSC, which was intended to implement a settlement discussed between the parties. Copies of an email from the attorney to the Conservation Division and the final order are attached.

Part of the voluntary efforts of Montgomery were to file a change of operator on many of the wells as to which First National had been penalized and assume responsibility for those wells, voluntarily. The various checks written by AES for First National penalties resulted from those negotiations, transfers and efforts of a son to help his father and the actions which replaced an operator which was financially insecure (First National) with an operator willing to perform under the KCC regime (AES) and the history will show that has been done.

One check written by First National in payment of an Invoice Dated August 7, 2013 was in error. Ms. Cooper performed contract bookkeeping services for both First National and AES and when told to write a check on the Peters and Hirn Ranch, did so on a First National check in error. She will verify that fact in an Affidavit. The subsequent year payment for those wells were all made, properly by AES. Various invoices provided by Staff purporting to show some connection were invoices sent to AES as operator of the referenced wells and paid by AES as the operator. No financial arrangements were made or existed between First National and AES as to the transfer of operations; a voluntary act by Montgomery to replace First National with the obligations of a solvent operator, AES.

The background and resolution of First National issues was cooperative and carefully thought out. As noted in the Order entered in Docket No. 13-CONS-299-CMSC:

> "The foregoing Compliance Schedule and terms of this order relate only to the named party and no other party is claimed or alleged to be responsible for the

wells on Exhibit A excepting only such wells as to which a Change of Operator form has been filed with the Commission." Order at p. 2, ¶ 7.

As noted above, Montgomery Escue's voluntary act in transferring operating status for several First National wells to AES was voluntary and never intended to nor did it in fact create any vicarious liability or connection between AES and First National.

For purposes of this proceeding, more importantly, none of those circumstances establish that First National ever occupied any status which would result in an imputation of liability to AES.

Submitted by: Joshua Wright

Submitted to: Lee Thompson

Person who prepared response and can answer questions:

Facts provided by Montgomery Escue and Amy Cooper. Objections and Discussion authored by counsel, Lee Thompson.

Exhibit

B

For Profit Corporation Annual Report

1. Corporation Name: FIRST NATIONAL OIL, INC.
2. Business Entity ID No.: 0150425
3. Tax Closing Date: April 2017
4. State of Incorporation: KS
5. Official Mailing Address:
   Amy Cooper, PO Box 31866, EDMOND OK 73003

6. Location of Principal Office:
   400 North Washington, Liberal KS 67901

7. Officers:

   Nelson B Escue - Treasurer or equivalent (This officer is also a director)
   10610 Snyder Road La Mesa, CA 919415759
   Nelson B Escue - Secretary or equivalent (This officer is also a director)
   10610 Synder Road La Mesa, CA 919415759
   Nelson B Escue - President or equivalent (This officer is also a director)
   10610 Snyder Road La Mesa, CA 919415759

8. Directors:

   Montgomery Escue - 2845 Ashton Terrace Oviedo, FL 32765
   Jeffrey Escue - 16113 NE Grantham Rd Amboy, WA 98601

9. Nature and Kind of Business:
   Oil and Gas Production

10. Total number of shares of capital stock issued: 1000

11. Does this corporation hold more than 50% equity ownership in any other business entity on file with the Kansas Secretary of State? No

12. Does this corporation own or lease land in Kansas suitable for use in agriculture? No

Federal Employer Identification Number (FEIN): 0480697487

"I declare under penalty of perjury pursuant to the laws of the state of Kansas that the foregoing is true and correct."

Executed on May 03 2017

Signature of authorized Officer: Nelson B Escue

Title/Position of the signer: President

Electronic File Stamp Information:

Filed

* Date: 05/03/2017
* Time: 03:28:56 PM

Exhibit

C

Conservation Division
266 N. Main St., Ste. 220
Wichita, KS 67202-1513

Kansas
Corporation Commission

Phone: 316-337-6200
Fax: 316-337-6211
http://kcc.ks.gov/

Jay Scott Emler, Chairman
Shari Feist Albrecht, Commissioner
Pat Apple, Commissioner

Sam Brownback, Governor

September 12, 2016

Amy Cooper
First National Oil, Inc.
PO Box 31866
Edmond, OK 73003-0032

NOTICE OF LICENSE SUSPENSION
License No. 6230
Docket No. 17-CONS-3014-CPEN

Operator:

Our records indicate that you are in violation of a Commission Order in the above Docket.

Your license is hereby suspended.

Until your license is reinstated, it is illegal for you to conduct oil and gas operations in Kansas.

If, after 10 days from the date of this letter, Commission Staff discover you performing oil and gas operations, Staff will recommend a Shut-In Order, including an additional $10,000 penalty. If you are already shut-in, you must remain shut-in.

Any outstanding monetary penalty may be sent to collections.

You may review the Commission Order, which was mailed to you, at the Commission's website. If you have questions, you may contact us at the phone number listed at the top of this page.

Sincerely,

Legal Department Staff

Exhibit

D

LIC 34089 EXPIRES 03/30/2017 KOLAR
Agricultural Energy Services

KANSAS CORPORATION COMMISSION
OIL and GAS CONSERVATION DIVISION

Operator Well Inventory

Lease Name	Well#	API#	TVD	COUNTY	Sec/Twp/Rng/Dir	Q4Q3Q2Q1	Ft.N/S	Ft.E/W	Well Type	Well Status	KDOR Gas/Oil
CARTER	1-36 (	15175002160000	5970	SEWARD	36 33 31 W	NWSE	1964 S	1917E	OIL	PR	110236
CLAWSON A	2-1	15175219260000	5721	SEWARD	1 31 32 W	NESWSW	990 S	990 W	OG	PR	136616
D BROWN	1-19	15175219920000	6675	SEWARD	19 34 33 W	S2NENE	990 N	660 E	GAS	PR 226832	
DON THORP	1-23	15175221500000	5869	SEWARD	23 33 31 W	SWSWNENW	4165 S	3772E	OG	PR	139686
DON THORP	2-23	15175221860000	5812	SEWARD	23 33 31 W	NWNW	4664 S	4604E	GAS	PR 232517	
HAMKER B	1-20	15081216180000	5800	HASKELL	20 30 31 W	NESWSE	990 S	1650E	GAS	PR 230152	
HIRN RANCH	1-17	15175204110000	6266	SEWARD	17 33 32 W	NE	3960 S	1320E	GAS	PR 209816	
HIRN RANCH	2-16	15175204710000	6350	SEWARD	16 33 32 W	SWSENW	2970 S	3630E	GAS	PR 210040	
LATIMER	1-1	15175101660001	5906	SEWARD	1 34 31 W	NWNE	4713 S	2011E	GAS	PR 230281	
LOUTHAN	1-23	15175100780000	5930	SEWARD	23 33 31 W	SWNE	3313 S	1998E	GAS	PR 226116	
MASSONI	1	15175000030000	5993	SEWARD	5 33 31 W	NWSE	1980 S	1980E	GAS	PR 206163	
MUELLER D	1	15175207230000	6745	SEWARD	30 34 34 W	SWNW	1980 N	660 W	GAS	PR 212488	
MUELLER D	3	15175207490000	6600	SEWARD	30 34 34 W	SWNENWNW	554 N	766 W	OIL	PR	120824
NEUMANN	1-23	15175219030000	3300	SEWARD	23 33 31 W	SWSWNESW	1347 S	1395W	GAS	PR 225782	
NIX	1-15	15175212640001	6450	SEWARD	15 33 33 W	E2NE	1320 N	660 E	GAS	IN 228052	
PETERS	1-15	15175000380000	6471	SEWARD	15 33 33 W	NWSENESW	1935 S	3261E	GAS	PR 206147	
PETERS	2-15	15175221330000	6487	SEWARD	15 33 33 W	S2SE	660 S	1320E	GAS	PR 232165	
PETERS	3-15	15175221610001	6440	SEWARD	15 33 33 W	SWSW	660 S	660 W	OG	PR 232166	

Exhibit

E

KANSAS CORPORATION COMMISSION
OIL & GAS CONSERVATION DIVISION

Form T-1
April 2004
Form must be Typed
Form must be Signed
All blanks must be Filled

REQUEST FOR CHANGE OF OPERATOR
TRANSFER OF INJECTION OR SURFACE PIT PERMIT

Check Applicable Boxes:

- ☐ Oil Lease: No. of Oil Wells _____ **
- ☑ Gas Lease: No. of Gas Wells 1 **
- ☐ Gas Gathering System: _____
- ☐ Saltwater Disposal Well - Permit No.: _____
  - Spot Location: _____ feet from ☐ N / ☐ S Line
  - _____ feet from ☐ E / ☐ W Line
- ☐ Enhanced Recovery Project Permit No.: _____
  - Entire Project: ☐ Yes ☐ No
  - Number of Injection Wells _____ **

Field Name: _____

**** Side Two Must Be Completed.**

Effective Date of Transfer: September 10, 2009

KS Dept of Revenue Lease No.: 209816

Lease Name: Hirn #1-17

Sec. 17 Twp. 33S R. 32 ☐ E ☑ W

Legal Description of Lease: C NE Section 17-33S-32W

County: Seward

Production Zone(s): ~~Chester~~ Morrow

Injection Zone(s): _____

Surface Pit Permit No.: _____ (API No. if Drill Pit, WO or Haul)

_____ feet from ☐ N / ☐ S Line of Section

_____ feet from ☐ E / ☐ W Line of Section

Type of Pit: ☐ Emergency ☐ Burn ☐ Settling ☐ Haul-Off ☐ Workover ☐ Drilling OR

Past Operator's License No. 06230

Past Operator's Name & Address: First National Oil, Inc.

150 Plaza Drive, Suite B-3, Liberal, KS 67901

Title: Attorney in fact

Contact Person: ~~Nelson Escue~~ Montgomery Escue

Phone: ~~619-697-8595~~ 407-365-2500

Date: September 10, 2009

Signature: _____

New Operator's License No. 34089

New Operator's Name & Address: Agricultural Energy Services

1755 W. Broadway Street, Suite 6, Oviedo, FL 32765

RECEIVED
FEB 22 2010
KCC WICHITA

Title: _____

Contact Person: Montgomery Escue

Phone: 407-365-2500

Oil / Gas Purchaser: Unimark

Date: September 10, 2009

Signature: _____

RECEIVED
NOV 16 2009
KCC WICHITA

Acknowledgment of Transfer: The above request for transfer of injection authorization, surface pit permit # _____ has been noted, approved and duly recorded in the records of the Kansas Corporation Commission. This acknowledgment of transfer pertains to Kansas Corporation Commission records only and does not convey any ownership interest in the above injection well(s) or pit permit.

_____ is acknowleged as the new operator and may continue to inject fluids as authorized by Permit No.: _____. Recommended action: _____

Date: _____ _____
Authorized Signature

_____ is acknowleged as the new operator of the above named lease containing the surface pit permitted by No.: _____.

Date: _____ _____
Authorized Signature

DISTRICT _____ EPR 4-27-10 PRODUCTION 4/28/10 UIC 4-27-10

Mail to: Past Operator New Operator District

090109 Hirn 1-17.pdf

SCANNED

Side Two

Must Be Filed For All Wells

KDOR Lease No.: 209816

* Lease Name: Hirn #1-17 * Location: NE of Section 17-33S-32W

Well No.	API No. (YR DRLD/PRE '67)	Footage from Section Line (i.e. FSL = Feet from South Line)		Type of Well (Oil/Gas/INJ/WSW)	Well Status (PROD/TA'D/Abandoned)
1	15-175-20411 ✓	3960' Circle FSL/FNL (FSL circled)	1320' Circle FEL/FWL (FEL circled)	Gas	PROD
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		

A separate sheet may be attached if necessary

* When transferring a unit which consists of more than one lease please file a separate side two for each lease. If a lease covers more than one

KANSAS CORPORATION COMMISSION
OIL & GAS CONSERVATION DIVISION

REQUEST FOR CHANGE OF OPERATOR
TRANSFER OF INJECTION OR SURFACE PIT PERMIT

Form T-1
April 2004
Form must be Typed
Form must be Signed
All blanks must be Filled

Check Applicable Boxes:

- ☐ Oil Lease: No. of Oil Wells _____ **
- ☑ Gas Lease: No. of Gas Wells 1 **
- ☐ Gas Gathering System: _____
- ☐ Saltwater Disposal Well - Permit No.: _____
  - Spot Location: _____ feet from ☐ N / ☐ S Line
  - _____ feet from ☐ E / ☐ W Line
- ☐ Enhanced Recovery Project Permit No.: _____
  - Entire Project: ☐ Yes ☐ No
  - Number of Injection Wells _____ **
- Field Name: _____

** Side Two Must Be Completed.

Effective Date of Transfer: September 10, 2009
KS Dept of Revenue Lease No.: 210040 V/A
Lease Name: Hirn #2-16
__ - __ - __ - __ Sec. 16 Twp. 33S R. 32 ☐ E ☑ W
Legal Description of Lease: SW SE NW Section 16-33S-32W
County: Seward
Production Zone(s): Upper Kearny Member (Morrow.)
Injection Zone(s): _____

091009_Hirn_2_16.pdf

Surface Pit Permit No.: _____ (API No. if Drill Pit, WO or Haul)
_____ feet from ☐ N / ☐ S Line of Section
_____ feet from ☐ E / ☐ W Line of Section

Type of Pit: ☐ Emergency ☐ Burn ☐ Settling ☐ Haul-Off ☐ Workover ☐ Drilling OR

Past Operator's License No. 06230 ✓
Past Operator's Name & Address: First National Oil, Inc.
150 Plaza Drive, Suite B-3, Liberal, KS 67901
Title: _____

RECEIVED
FEB 22 2010
KCC WICHITA

Contact Person: ~~Nelson Escue~~ Montgomery Escue
Phone: ~~620 607-0595~~ 407 365-2500
Date: September 10, 2009
Signature: _____

New Operator's License No. 34089 ✓
New Operator's Name & Address: Agricultural Energy Services
1755 W. Broadway Street, Suite 6, Oviedo, FL 32765
Title: _____

Contact Person: Montgomery Escue
Phone: 407-365-2500
Oil / Gas Purchaser: Unimark
Date: September 10, 2009
Signature: _____

RECEIVED
NOV 16 2009
KCC WICHITA

Acknowledgment of Transfer: The above request for transfer of injection authorization, surface pit permit # _____ has been noted, approved and duly recorded in the records of the Kansas Corporation Commission. This acknowledgment of transfer pertains to Kansas Corporation Commission records only and does not convey any ownership interest in the above injection well(s) or pit permit.

_____ is acknowleged as the new operator and may continue to inject fluids as authorized by Permit No.: _____. Recommended action: _____

Date: _____ _____
Authorized Signature

_____ is acknowleged as the new operator of the above named lease containing the surface pit permitted by No.: _____.

Date: _____ _____
Authorized Signature

DISTRICT _____ EPR 5-11-10 PRODUCTION 5/11/10 UIC 5-11-10
Mail to: Past Operator _____ New Operator _____ District _____

SCANNED

Side Two

Must Be Filed For All Wells

KDOR Lease No.: 210040

* Lease Name: Him #2-16 * Location: SW SE NW of Section 16-33S-32W

Well No.	API No. (YR DRLD/PRE '67)	Footage from Section Line (i.e. FSL = Feet from South Line)		Type of Well (Oil/Gas/INJ/WSW)	Well Status (PROD/TA'D/Abandoned)
1	15-175-20471√	2970' (FSL circled) Circle FSL/FNL	3630' (FEL circled) Circle FEL/FWL	Gas	PROD
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		

A separate sheet may be attached if necessary

* When transferring a unit which consists of more than one lease please file a separate side two for each lease. If a lease covers more than one

KANSAS CORPORATION COMMISSION
OIL & GAS CONSERVATION DIVISION

REQUEST FOR CHANGE OF OPERATOR
TRANSFER OF INJECTION OR SURFACE PIT PERMIT

Form T-1
April 2004
Form must be Typed
Form must be Signed
All blanks must be Filled

Check Applicable Boxes:

- ☐ Oil Lease: No. of Oil Wells _____ **
- ☑ Gas Lease: No. of Gas Wells 1 **
- ☐ Gas Gathering System: _____
- ☐ Saltwater Disposal Well - Permit No.: _____
  - Spot Location: _____ feet from ☐ N / ☐ S Line
  - _____ feet from ☐ E / ☐ W Line
- ☐ Enhanced Recovery Project Permit No.: _____
  - Entire Project: ☐ Yes ☐ No
  - Number of Injection Wells _____ **

Field Name: _____

**** Side Two Must Be Completed.***

Effective Date of Transfer: September 10, 2009

KS Dept of Revenue Lease No.: 230281 ✓ KB

Lease Name: Latimer #1

__ - __ - __ - __ Sec. 1 Twp. 34S R. 31 ☐ E ☑ W

Legal Description of Lease: NW NE of Section 1-34S-31W

County: Seward

Production Zone(s): Morrow

Injection Zone(s): _____

091009_Latimer_1.pdf

Surface Pit Permit No.: _____ (API No. if Drill Pit, WO or Haul)

_____ feet from ☐ N / ☐ S Line of Section

_____ feet from ☐ E / ☐ W Line of Section

Type of Pit: ☐ Emergency ☐ Burn ☐ Settling ☐ Haul-Off ☐ Workover ☐ Drilling

Past Operator's License No. 06230 ✓

Past Operator's Name & Address: First National Oil, Inc.

150 Plaza Drive, Suite B-3, Liberal, KS 67901

Title: ~~President~~ Attorney in fact

Contact Person: ~~Nelson Escue~~ Montgomery Escue

Phone: ~~619-687-9595~~ 407-365-2500

Date: September 10, 2009

Signature: _____

New Operator's License No. 34089

New Operator's Name & Address: Agricultural Energy Services

1755 W. Broadway Street, Suite 6, Oviedo, FL 32765

RECEIVED
FEB 22 2010
KCC WICHITA

Title: Vice President

Contact Person: Montgomery Escue

Phone: 407-365-2500

Oil / Gas Purchaser: DCP Midstream

Date: September 10, 2009

Signature: _____

RECEIVED
NOV 16 2009
KCC WICHITA

Acknowledgment of Transfer: The above request for transfer of injection authorization, surface pit permit # _____ has been noted, approved and duly recorded in the records of the Kansas Corporation Commission. This acknowledgment of transfer pertains to Kansas Corporation Commission records only and does not convey any ownership interest in the above injection well(s) or pit permit.

_____ is acknowleged as the new operator and may continue to inject fluids as authorized by Permit No.: _____. Recommended action: _____

Date: _____ _____
Authorized Signature

_____ is acknowleged as the new operator of the above named lease containing the surface pit permitted by No.: _____.

Date: _____ _____
Authorized Signature

DISTRICT _____ EPR 4-27-10 PRODUCTION 4/28/10 UIC 4-27-10

Mail to: Past Operator New Operator District

Side Two

Must Be Filed For All Wells

KDOR Lease No.: 230281

* Lease Name: Latimer #1   * Location: NW NE Section 1-34S-31W

Well No.	API No. (YR DRLD/PRE '67)	Footage from Section Line (i.e. FSL = Feet from South Line)		Type of Well (Oil/Gas/INJ/WSW)	Well Status (PROD/TA'D/Abandoned)
1	15-175-10166-0001 ✓	1320' Circle FSL/FNL (FNL circled)	1320' Circle FEL/FWL (FEL circled)	Gas	PROD
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		

RECEIVED
NOV 1 6 2009
KCC WICHITA

RECEIVED
FEB 2 2 2010
KCC WICHITA

A separate sheet may be attached if necessary

* When transferring a unit which consists of more than one lease please file a separate side two for each lease. If a lease covers more than one

KANSAS CORPORATION COMMISSION
OIL & GAS CONSERVATION DIVISION

REQUEST FOR CHANGE OF OPERATOR
TRANSFER OF INJECTION OR SURFACE PIT PERMIT

Form T-1
April 2004
Form must be Typed
Form must be Signed
All blanks must be Filled

Check Applicable Boxes:

- ☐ Oil Lease: No. of Oil Wells _____ **
- ☑ Gas Lease: No. of Gas Wells 1 **
- ☐ Gas Gathering System: _____
- ☐ Saltwater Disposal Well - Permit No.: _____
  - Spot Location: _____ feet from ☐ N / ☐ S Line
  - _____ feet from ☐ E / ☐ W Line
- ☐ Enhanced Recovery Project Permit No.: _____
  - Entire Project: ☐ Yes ☐ No
  - Number of Injection Wells _____ **

Field Name: _____

**** Side Two Must Be Completed.***

Effective Date of Transfer: September 10, 2009

KS Dept of Revenue Lease No.: 226116 V/inj

Lease Name: Louthan #1-23

__ - __ - SW - NE Sec. 23 Twp. 33 R. 31 ☐ E ☑ W

Legal Description of Lease: NE/4 Section 23; NW/4 Section 24, all in 33S-31W

County: Seward

Production Zone(s): ~~LKC~~, ~~Mississippian~~ ~~Atoka~~ Chase

Injection Zone(s): _____

091009_Louthan_1_23.pdf

Surface Pit Permit No.: _____ (API No. if Drill Pit, WO or Haul)

_____ feet from ☐ N / ☐ S Line of Section

_____ feet from ☐ E / ☐ W Line of Section

Type of Pit: ☐ Emergency ☐ Burn ☐ Settling ☐ Haul-Off ☐ Workover ☐ Drilling OR

Past Operator's License No. 06230 /

Past Operator's Name & Address: First National Oil, Inc.

2340 Tampa Avenue, Suite H, El Cajon, CA 92020

Title: President ATtorney in Fact

Contact Person: ~~Nelson B. Escue~~ Montgomery Escue

Phone: ~~619-697-9595~~ 407-365-2500

Date: _____

Signature: _____

New Operator's License No. 34089

New Operator's Name & Address: Agricultural Energy Services

1755 W. Broadway Street, Suite 6, Oviedo, FL 32765

RECEIVED
FEB 22 2010
KCC WICHITA

Title: Vice President

Contact Person: Montgomery Escue

Phone: 407-365-2500

Oil / Gas Purchaser: Oil Producers of Kansas

Date: _____

Signature: _____

RECEIVED
NOV 16 2009
KCC WICHITA

Acknowledgment of Transfer: The above request for transfer of injection authorization, surface pit permit # _____ has been noted, approved and duly recorded in the records of the Kansas Corporation Commission. This acknowledgment of transfer pertains to Kansas Corporation Commission records only and does not convey any ownership interest in the above injection well(s) or pit permit.

_____ is acknowleged as the new operator and may continue to inject fluids as authorized by Permit No.: _____. Recommended action: _____

Date: _____ _____
Authorized Signature

_____ is acknowleged as the new operator of the above named lease containing the surface pit permitted by No.: _____.

Date: _____ _____
Authorized Signature

DISTRICT _____ EPR 4-27-10 PRODUCTION 4/28/10 UIC 4-27-10

Mail to: Past Operator New Operator District

Must Be Filed For All Wells

KDOR Lease No.: 226116

* Lease Name: Louthan #1-23 * Location: SW NE 23-33S-31W

Well No.	API No. (YR DRLD/PRE '67)	Footage from Section Line (i.e. FSL = Feet from South Line)		Type of Well (Oil/Gas/INJ/WSW)	Well Status (PROD/TA'D/Abandoned)
1	15-175-10078 ✓	1980 Circle FSL/FNL (FNL circled)	1980 Circle FEL/FWL (FEL circled)	Gas	PROD
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		RECEIVED
		FSL/FNL	FEL/FWL		NOV 16 2009
		FSL/FNL	FEL/FWL		KCC WICHITA
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		RECEIVED
		FSL/FNL	FEL/FWL		FEB 22 2010
		FSL/FNL	FEL/FWL		KCC WICHITA
		FSL/FNL	FEL/FWL		

A separate sheet may be attached if necessary

* When transferring a unit which consists of more than one lease please file a separate side two for each lease. If a lease covers more than one

KANSAS CORPORATION COMMISSION
OIL & GAS CONSERVATION DIVISION

REQUEST FOR CHANGE OF OPERATOR
TRANSFER OF INJECTION OR SURFACE PIT PERMIT

Form T-1
April 2004
Form must be Typed
Form must be Signed
All blanks must be Filled

Check Applicable Boxes:

- ☐ Oil Lease: No. of Oil Wells _____ **
- ☑ Gas Lease: No. of Gas Wells 1 **
- ☐ Gas Gathering System: _____
- ☐ Saltwater Disposal Well - Permit No.: _____
  - Spot Location: _____ feet from ☐ N / ☐ S Line
  - _____ feet from ☐ E / ☐ W Line
- ☐ Enhanced Recovery Project Permit No.: _____
  - Entire Project: ☐ Yes ☐ No
  - Number of Injection Wells _____ **
- Field Name: _____

**** Side Two Must Be Completed.***

Effective Date of Transfer: September 10, 2009
KS Dept of Revenue Lease No.: 225782 ✓ WA
Lease Name: Neuman #1-23
__ - __ - C - SW Sec. 23 Twp. 33 R. 31 ☐ E ☑ W
Legal Description of Lease: NE/4 and SW/4
County: Seward
Production Zone(s): Council Grove
Injection Zone(s): _____

091009_Neuman_1_23.pdf

Surface Pit Permit No.: _____ (API No. if Drill Pit, WO or Haul)
_____ feet from ☐ N / ☐ S Line of Section
_____ feet from ☐ E / ☐ W Line of Section
Type of Pit: ☐ Emergency ☐ Burn ☐ Settling ☐ Haul-Off ☐ Workover ☐ Drilling BP

Past Operator's License No. 06230 ✓
Past Operator's Name & Address: First National Oil, Inc.
2340 Tampa Avenue, Suite H, El Cajon, CA 92020
Title: President Attorney in fact

Contact Person: ~~Nelsen B. Escue~~ Montgomery Escue
Phone: ~~619-697-9595~~ 407-365-2500
Date: _____
Signature: [signature]

New Operator's License No. 34089 ✓
New Operator's Name & Address: Agricultural Energy Services
1755 W. Broadway Street, Suite 6, Oviedo, FL 32765
RECEIVED
FEB 22 2010
KCC WICHITA
Title: Vice President

Contact Person: Montgomery Escue
Phone: 407-365-2500
Oil / Gas Purchaser: Oil Producers of Kansas
Date: _____
Signature: [signature]

RECEIVED
NOV 16 2009
KCC WICHITA

Acknowledgment of Transfer: The above request for transfer of injection authorization, surface pit permit # _____ has been noted, approved and duly recorded in the records of the Kansas Corporation Commission. This acknowledgment of transfer pertains to Kansas Corporation Commission records only and does not convey any ownership interest in the above injection well(s) or pit permit.

_____ is acknowleged as the new operator and may continue to inject fluids as authorized by Permit No.: _____. Recommended action: _____

Date: _____ _____
Authorized Signature

_____ is acknowleged as the new operator of the above named lease containing the surface pit permitted by No.: _____.

Date: _____ _____
Authorized Signature

DISTRICT _____ EPR 4-27-10 PRODUCTION 4/28/10 UIC 4-27-10
Mail to: Past Operator New Operator District

Side Two

Must Be Filed For All Wells

KDOR Lease No.: 225782

* Lease Name: Neuman #1-23 * Location: C SW 23-33S-31W

Well No.	API No. (YR DRLD/PRE '67)	Footage from Section Line (i.e. FSL = Feet from South Line)		Type of Well (Oil/Gas/INJ/WSW)	Well Status (PROD/TA'D/Abandoned)
1	15-175-21903 ✓	1347' Circle (FSL)/FNL	1395 Circle FEL/(FWL)	Gas	PROD
		____ FSL/FNL	____ FEL/FWL		
		____ FSL/FNL	____ FEL/FWL		
		____ FSL/FNL	____ FEL/FWL		
		____ FSL/FNL	____ FEL/FWL		
		____ FSL/FNL	____ FEL/FWL		
		____ FSL/FNL	____ FEL/FWL		
		____ FSL/FNL	____ FEL/FWL		
		____ FSL/FNL	____ FEL/FWL		
		____ FSL/FNL	____ FEL/FWL		
		____ FSL/FNL	____ FEL/FWL		
		____ FSL/FNL	____ FEL/FWL		
		____ FSL/FNL	____ FEL/FWL		
		____ FSL/FNL	____ FEL/FWL		
		____ FSL/FNL	____ FEL/FWL		
		____ FSL/FNL	____ FEL/FWL		RECEIVED
		____ FSL/FNL	____ FEL/FWL		NOV 16 2009
		____ FSL/FNL	____ FEL/FWL		KCC WICHITA
		____ FSL/FNL	____ FEL/FWL		
		____ FSL/FNL	____ FEL/FWL		
		____ FSL/FNL	____ FEL/FWL		RECEIVED
		____ FSL/FNL	____ FEL/FWL		FEB 22 2010
		____ FSL/FNL	____ FEL/FWL		KCC WICHITA
		____ FSL/FNL	____ FEL/FWL		

A separate sheet may be attached if necessary

* When transferring a unit which consists of more than one lease please file a separate side two for each lease. If a lease covers more than one

KANSAS CORPORATION COMMISSION
OIL & GAS CONSERVATION DIVISION

REQUEST FOR CHANGE OF OPERATOR
TRANSFER OF INJECTION OR SURFACE PIT PERMIT

Form T-1
April 2004
Form must be Typed
Form must be Signed
All blanks must be Filled

Check Applicable Boxes:

- ☐ Oil Lease: No. of Oil Wells _____ **
- ☑ Gas Lease: No. of Gas Wells 1 **
- ☐ Gas Gathering System: _____
- ☐ Saltwater Disposal Well - Permit No.: _____
  - Spot Location: _____ feet from ☐ N / ☐ S Line
  - _____ feet from ☐ E / ☐ W Line
- ☐ Enhanced Recovery Project Permit No.: _____
  - Entire Project: ☐ Yes ☐ No
  - Number of Injection Wells _____ **

Field Name: _____

**** Side Two Must Be Completed.***

Effective Date of Transfer: September 10, 2009

KS Dept of Revenue Lease No.: 228052 KWR

Lease Name: Nix #1-15

__ - __ - __ - __ Sec. 15 Twp. 33S R. 33 ☐ E ☑ W

Legal Description of Lease: E/2 NE/4 of Sec. 15-33S-33W

County: Seward

Production Zone(s): Morrow

Injection Zone(s): _____

RECEIVED
NOV 16 2009
KCC WICHITA

091009_Nix_1_15.pdf

Surface Pit Permit No.: _____ (API No. if Drill Pit, WO or Haul)

_____ feet from ☐ N / ☐ S Line of Section

_____ feet from ☐ E / ☐ W Line of Section

Type of Pit: ☐ Emergency ☐ Burn ☐ Settling ☐ Haul-Off ☐ Workover ☐ Drilling

Past Operator's License No. 06230

Past Operator's Name & Address: First National Oil, Inc.

150 Plaza Drive, Suite B-3, Liberal, KS 67901

Title: Attorney in fact

Contact Person: ~~Nelson Escue~~ Montgomery Escue

Phone: ~~620-697-8505~~ 407-365-2500

Date: September 10, 2009

Signature: _____

New Operator's License No. 34089

New Operator's Name & Address: Agricultural Energy Services

1755 W. Broadway Street, Suite 6, Oviedo, FL 32765

Title: _____

RECEIVED
FEB 22 2010
KCC WICHITA

Contact Person: Montgomery Esade

Phone: 407-365-2500

Oil / Gas Purchaser: Anadarko Energy Services

Date: September 10, 2009

Signature: _____

Acknowledgment of Transfer: The above request for transfer of injection authorization, surface pit permit # _____ has been noted, approved and duly recorded in the records of the Kansas Corporation Commission. This acknowledgment of transfer pertains to Kansas Corporation Commission records only and does not convey any ownership interest in the above injection well(s) or pit permit.

_____ is acknowleged as the new operator and may continue to inject fluids as authorized by Permit No.: _____. Recommended action: _____

Date: _____ _____
Authorized Signature

_____ is acknowleged as the new operator of the above named lease containing the surface pit permitted by No.: _____.

Date: _____ _____
Authorized Signature

DISTRICT _____ EPR 4-27-10 PRODUCTION 4/28/10 UIC 4-27-10

Mail to: Past Operator New Operator District

Must Be Filed For All Wells

KDOR Lease No.: 228052

* Lease Name: Nix #1-15 * Location: E/2 NE/4 Section 15-33S-33W

Well No.	API No. (YR DRLD/PRE '67)	Footage from Section Line (i.e. FSL = Feet from South Line)		Type of Well (Oil/Gas/INJ/WSW)	Well Status (PROD/TA'D/Abandoned)
1	15-175-21264-00-01 ✓	1320' Circle FSL/(FNL)	660' Circle (FEL)/FWL	Gas	PROD
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		RECEIVED
		FSL/FNL	FEL/FWL		NOV 1 6 2009
		FSL/FNL	FEL/FWL		KCC WICHITA
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		RECEIVED
		FSL/FNL	FEL/FWL		FEB 2 2 2010
		FSL/FNL	FEL/FWL		KCC WICHITA
		FSL/FNL	FEL/FWL		

A separate sheet may be attached if necessary

* When transferring a unit which consists of more than one lease please file a separate side two for each lease. If a lease covers more than one

KANSAS CORPORATION COMMISSION
OIL & GAS CONSERVATION DIVISION

REQUEST FOR CHANGE OF OPERATOR
TRANSFER OF INJECTION OR SURFACE PIT PERMIT

Form T-1
April 2004
Form must be Typed
Form must be Signed
All blanks must be Filled

Check Applicable Boxes:

- ☐ Oil Lease: No. of Oil Wells _____ **
- ☑ Gas Lease: No. of Gas Wells 1 **
- ☐ Gas Gathering System: _____
- ☐ Saltwater Disposal Well - Permit No.: _____
  - Spot Location: _____ feet from ☐ N / ☐ S Line
  - _____ feet from ☐ E / ☐ W Line
- ☐ Enhanced Recovery Project Permit No.: _____
  - Entire Project: ☐ Yes ☐ No
  - Number of Injection Wells _____ **

Field Name: _____

**** Side Two Must Be Completed.***

Effective Date of Transfer: September 10, 2009

KS Dept of Revenue Lease No.: 206147 (LKS)

Lease Name: Peters #1-15

__ - __ - __ - __ Sec. 15 Twp. 33S R. 33 ☐ E ☑ W

Legal Description of Lease: NE SW of Section 15-33S-33W

County: Seward

Production Zone(s): Morrow

Injection Zone(s): _____

091009_Peters_1_15.pdf

Surface Pit Permit No.: _____ (API No. if Drill Pit, WO or Haul)

_____ feet from ☐ N / ☐ S Line of Section

_____ feet from ☐ E / ☐ W Line of Section

Type of Pit: ☐ Emergency ☐ Burn ☐ Settling ☐ Haul-Off ☐ Workover ☐ Drilling OR

Past Operator's License No. 06230

Past Operator's Name & Address: First National Oil, Inc.

150 Plaza Drive, Suite B-3, Liberal, KS 67901

Title: _____

Contact Person: ~~Nelson Escue~~ Montgomery Escue

Phone: ~~620-607-3595~~ 407-365-2500

Date: September 10, 2009

Signature: [signature]

New Operator's License No. 34089

New Operator's Name & Address: Agricultural Energy Services

1755 W. Broadway Street, Suite 6, Oviedo, FL 32765

RECEIVED
FEB 22 2010
KCC WICHITA

Title: _____

Contact Person: Montgomery Escue

Phone: 407-365-2500

Oil / Gas Purchaser: _____

Date: September 10, 2009

Signature: [signature]

RECEIVED
NOV 16 2009
KCC WICHITA

Acknowledgment of Transfer: The above request for transfer of injection authorization, surface pit permit # _____ has been noted, approved and duly recorded in the records of the Kansas Corporation Commission. This acknowledgment of transfer pertains to Kansas Corporation Commission records only and does not convey any ownership interest in the above injection well(s) or pit permit.

_____ is acknowleged as the new operator and may continue to inject fluids as authorized by Permit No.: _____. Recommended action: _____

Date: _____ _____
Authorized Signature

_____ is acknowleged as the new operator of the above named lease containing the surface pit permitted by No.: _____.

Date: _____ _____
Authorized Signature

DISTRICT _____ EPR 4-27-10 PRODUCTION 4/28/10 UIC 4-27-10

Mail to: Past Operator New Operator District

Side Two

Must Be Filed For All Wells

KDOR Lease No.: 206147

* Lease Name: Peters #1-15 * Location: NE SW Section 15-33S-33W

Well No.	API No. (YR DRLD/PRE '67)	Footage from Section Line (i.e. FSL = Feet from South Line)		Type of Well (Oil/Gas/INJ/WSW)	Well Status (PROD/TA'D/Abandoned)
1	15-175-00038 ✓	1980' FSL	3300' FEL	Gas	Prod
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		RECEIVED
		FSL/FNL	FEL/FWL		NOV 16 2009
		FSL/FNL	FEL/FWL		KCC WICHITA
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		RECEIVED
		FSL/FNL	FEL/FWL		FEB 22 2010
		FSL/FNL	FEL/FWL		KCC WICHITA

A separate sheet may be attached if necessary

* When transferring a unit which consists of more than one lease please file a separate side two for each lease. If a lease covers more than one

KANSAS CORPORATION COMMISSION
OIL & GAS CONSERVATION DIVISION

REQUEST FOR CHANGE OF OPERATOR
TRANSFER OF INJECTION OR SURFACE PIT PERMIT

Form T-1
April 2004
Form must be Typed
Form must be Signed
All blanks must be Filled

Check Applicable Boxes:

- ☐ Oil Lease: No. of Oil Wells _____ **
- ☑ Gas Lease: No. of Gas Wells 1 **
- ☐ Gas Gathering System: _____
- ☐ Saltwater Disposal Well - Permit No.: _____
  - Spot Location: 990 feet from ☐ N / ☑ S Line
  - 1650 feet from ☑ E / ☐ W Line
- ☐ Enhanced Recovery Project Permit No.: _____
  - Entire Project: ☐ Yes ☐ No
  - Number of Injection Wells _____ **
- Field Name: Lette

**** Side Two Must Be Completed.***

Effective Date of Transfer: 2-01-2010

KS Dept of Revenue Lease No.: 230152 ✓ KB

Lease Name: Hamker

C - NE - SW - SE Sec. 20 Twp. 30 R. 31 ☐ E ☑ W

Legal Description of Lease: C NE SW SE Sec. 20-30S-31W

RECEIVED
APR 05 2010
KCC WICHITA

County: Haskell

Production Zone(s): Chase

Injection Zone(s): _____

020110 Hamker.pdf

Surface Pit Permit No.: 15-081-21618-000 (API No. if Drill Pit, WO or Haul)

990 feet from ☐ N / ☑ S Line of Section

1650 feet from ☑ E / ☐ W Line of Section

CLS: 1/10/04

Type of Pit: ☐ Emergency ☐ Burn ☐ Settling ☐ Haul-Off ☐ Workover ☐ Drilling OR

Past Operator's License No. 06230 ✓

Past Operator's Name & Address: First National Oil, Inc.

150 Plaza Drive, Suite B3, Liberal, KS 67901

Title: Attorney in Fact

Contact Person: Montgomery Escue

Phone: 407-365-2500

Date: March 29, 2010

Signature: Montgomery Escue

New Operator's License No. 34089 ✓

New Operator's Name & Address: Agricultural Energy Services, Inc.

1755 W. Broadway St., Suite 6, Oviedo, FL 32765

Title: Vice President

Contact Person: Montgomery Escue

Phone: 407-365-2500

Oil / Gas Purchaser: Regency Gas

Date: March 29, 2010

Signature: Montgomery Escue

Acknowledgment of Transfer: The above request for transfer of injection authorization, surface pit permit # 15-081-21618-000 has been noted, approved and duly recorded in the records of the Kansas Corporation Commission. This acknowledgment of transfer pertains to Kansas Corporation Commission records only and does not convey any ownership interest in the above injection well(s) or pit permit.

_____ is acknowleged as the new operator and may continue to inject fluids as authorized by Permit No.: _____. Recommended action: _____

Date: _____ _____
Authorized Signature

_____ is acknowleged as the new operator of the above named lease containing the surface pit permitted by No.: _____.

Date: _____ _____
Authorized Signature

DISTRICT _____ EPR 6-11-10 PRODUCTION 6/14/10 UIC 6-11-10

Mail to: Past Operator _____ New Operator _____ District _____

Mail to: KCC - Conservation Division, 130 S. Market - Room 2078, Wichita, Kansas 67202

Side Two

Must Be Filed For All Wells

KDOR Lease No.: 230152

* Lease Name: Hamker * Location: C NE SW SE Sec. 20-30S-31W

Well No.	API No. (YR DRLD/PRE '67)	Footage from Section Line (i.e. FSL = Feet from South Line)				Type of Well (Oil/Gas/INJ/WSW)	Well Status (PROD/TA'D/Abandoned)
1	15-081-21618 ~~15-175-081-21618~~	990	Circle (FSL)/FNL	1650	Circle (FEL)/FWL	Gas	Prod
			FSL/FNL		FEL/FWL		
			FSL/FNL		FEL/FWL		
			FSL/FNL		FEL/FWL		
			FSL/FNL		FEL/FWL		
			FSL/FNL		FEL/FWL		
			FSL/FNL		FEL/FWL		
			FSL/FNL		FEL/FWL		
			FSL/FNL		FEL/FWL		
			FSL/FNL		FEL/FWL		
			FSL/FNL		FEL/FWL		
			FSL/FNL		FEL/FWL		
			FSL/FNL		FEL/FWL		
			FSL/FNL		FEL/FWL		
			FSL/FNL		FEL/FWL		
			FSL/FNL		FEL/FWL		
			FSL/FNL		FEL/FWL		
			FSL/FNL		FEL/FWL		
			FSL/FNL		FEL/FWL		
			FSL/FNL		FEL/FWL		
			FSL/FNL		FEL/FWL		
			FSL/FNL		FEL/FWL		
			FSL/FNL		FEL/FWL		
			FSL/FNL		FEL/FWL		

RECEIVED
APR 05 2010
KCC WICHITA

A separate sheet may be attached if necessary

* When transferring a unit which consists of more than one lease please file a separate side two for each lease. If a lease covers more than one section please indicate which section each well is located.

KANSAS CORPORATION COMMISSION
OIL & GAS CONSERVATION DIVISION

REQUEST FOR CHANGE OF OPERATOR
TRANSFER OF INJECTION OR SURFACE PIT PERMIT

Form T-1
April 2004
Form must be Typed
Form must be Signed
All blanks must be Filled

Check Applicable Boxes:

- [x] Oil Lease: No. of Oil Wells 1 **
- [x] Gas Lease: No. of Gas Wells 1 **
- [ ] Gas Gathering System: ____
- [ ] Saltwater Disposal Well - Permit No.: ____
  Spot Location: 1980 g 660 oil feet from [x] N / [ ] S Line
  554 gas 766 oil feet from [ ] E / [x] W Line
- [ ] Enhanced Recovery Project Permit No.: ____
  Entire Project: [ ] Yes [ ] No
  Number of Injection Wells ____ **
- Field Name: Wide Awake

**** Side Two Must Be Completed.***

Effective Date of Transfer: 2-01-2010 ✓ ✓
KS Dept of Revenue Lease No.: 120824 (oil) 212488 (gas)
Lease Name: Mueller D 1 & D 3 MB
__ - __ - __ - NW Sec. 30 Twp. 34 R. 34 [ ] E [x] W
Legal Description of Lease: NW/2 Sec. 30-34S-34W

County: Seward
Production Zone(s): Mississippi (oil) Chester (gas)
Injection Zone(s): ____

RECEIVED
APR 05 2
KCC WICHITA

020110 Mueller.pdf

Surface Pit Permit No.: 15-175-20723 (gas) 15-175-20749 (oil)
(API No. if Drill Pit, WO or Haul)

1980 (gas) 660 (oil) feet from [x] N / [ ] S Line of Section
554 (gas) 766 (oil) feet from [ ] E / [x] W Line of Section

Type of Pit: [ ] Emergency [ ] Burn [ ] Settling [ ] Haul-Off [ ] Workover [ ] Drilling OR

Past Operator's License No. 06230 ✓
Past Operator's Name & Address: First National Oil, Inc.
150 Plaza Drive, Suite B3, Liberal, KS 67901
Title: Attorney in Fact

Contact Person: Montgomery Escue
Phone: 407-365-2500
Date: March 29, 2010
Signature: [signature]

New Operator's License No. 34089 ✓
New Operator's Name & Address: Agricultural Energy Services, Inc.
1755 W. Broadway St., Suite 6, Oviedo, FL 32765
Title: Vice President

Contact Person: Montgomery Escue
Phone: 407-365-2500
Oil / Gas Purchaser: Plains Marketing
Date: March 29, 2010
Signature: [signature]

Acknowledgment of Transfer: The above request for transfer of injection authorization, surface pit permit # 15-175-20723 (gas) 15-175-20749 (oil) has been noted, approved and duly recorded in the records of the Kansas Corporation Commission. This acknowledgment of transfer pertains to Kansas Corporation Commission records only and does not convey any ownership interest in the above injection well(s) or pit permit.

____ is acknowleged as the new operator and may continue to inject fluids as authorized by Permit No.: ____. Recommended action: ____

Date: ____ ____
Authorized Signature

____ is acknowleged as the new operator of the above named lease containing the surface pit permitted by No.: ____.

Date: ____ ____
Authorized Signature

DISTRICT ____ EPR 8-16-10 PRODUCTION 8/17/10 UIC 8-17-2010
Mail to: Past Operator ____ New Operator ____ District ____

Mail to: KCC - Conservation Division, 130 S. Market - Room 2078, Wichita, Kansas 67202

Side Two

Must Be Filed For All Wells

KDOR Lease No.: 120824 (oil) 212488 (gas)

* Lease Name: Mueller D 1 & D 3 * Location: NW/2 Sec. 30-34S-34W

Well No.	API No. (YR DRLD/PRE '67)	Footage from Section Line (i.e. FSL = Feet from South Line) Circle FSL/FNL	Circle FEL/FWL	Type of Well (Oil/Gas/INJ/WSW)	Well Status (PROD/TA'D/Abandoned)
1-30	15-175-20723 ✓	1980 FNL	660 FWL	Gas	Prod
3-30	15-175-20749 ✓	554 FNL	766 FWL	Oil	Prod
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		RECEIVED
		FSL/FNL	FEL/FWL		APR 05 2010
		FSL/FNL	FEL/FWL		KCC WICHITA

A separate sheet may be attached if necessary

* When transferring a unit which consists of more than one lease please file a separate side two for each lease. If a lease covers more than one section please indicate which section each well is located.

KANSAS CORPORATION COMMISSION
OIL & GAS CONSERVATION DIVISION

Form T-1
March 2010
Form must be Typed
Form must be Signed
All blanks must be Filled

REQUEST FOR CHANGE OF OPERATOR
TRANSFER OF INJECTION OR SURFACE PIT PERMIT

Form KSONA-1, Certification of Compliance with the Kansas Surface Owner Notification Act, MUST be submitted with this form.

Check Applicable Boxes:

- [x] Oil Lease: No. of Oil Wells 1 **
- [ ] Gas Lease: No. of Gas Wells ____ **
- [ ] Gas Gathering System: ____
- [ ] Saltwater Disposal Well - Permit No.: ____
  - Spot Location: ____ feet from [ ] N / [ ] S Line
  - ____ feet from [ ] E / [ ] W Line
- [ ] Enhanced Recovery Project Permit No.: ____
  - Entire Project: [ ] Yes [ ] No
  - Number of Injection Wells ____ **

Field Name: Thirty-One

***** Side Two Must Be Completed.***

Effective Date of Transfer: August 29, 2012

KS Dept of Revenue Lease No.: 136616

Lease Name: Clawson A #2-1

_ NE _ SW _ SW Sec. 1 Twp. 31 R. 32 [ ] E [x] W

Legal Description of Lease: SW

RECEIVED
KANSAS CORPORATION COMMISSION
SEP 04 2012
CONSERVATION DIVISION
WICHITA, KS

County: Seward

Production Zone(s): ____

Injection Zone(s): ____

Surface Pit Permit No.: ____ *(API No. if Drill Pit, WO or Haul)*

____ feet from [ ] N / [ ] S Line of Section

____ feet from [ ] E / [ ] W Line of Section

Type of Pit: [ ] Emergency [ ] Burn [ ] Settling [ ] Haul-Off [ ] Workover [ ] Drilling

Past Operator's License No. 06230

Past Operator's Name & Address: First National Oil, Inc.

1755 W. Broadway St., Suite 6, Oviedo, FL 32765

Title: President

Contact Person: Nelson B. Escue

Phone: 619-442-4442

Date: 08.29.12

Signature: ATTORNEY-IN-FACT

New Operator's License No. 34089

New Operator's Name & Address: Agricultural Energy Services, Inc.

1755 W. Broadway St., Suite 6

Oviedo, FL 32765

Title: ____

Contact Person: Montgomery Escue

Phone: 407-365-2500

Oil / Gas Purchaser: Plains Marketing, LP

Date: 08.29.12

Signature: ____

Acknowledgment of Transfer: The above request for transfer of injection authorization, surface pit permit ____ has been noted, approved and duly recorded in the records of the Kansas Corporation Commission. This acknowledgment of transfer pertains to Kansas Corporation Commission records only and does not convey any ownership interest in the above injection well(s) or pit permit.

____ is acknowledged as the new operator and may continue to inject fluids as authorized by Permit No.: ____. Recommended action: ____

Date: ____ *Authorized Signature*

____ is acknowledged as the new operator of the above named lease containing the surface pit permitted by No.: ____.

Date: ____ *Authorized Signature*

DISTRICT ____ EPR 9/11/12 PRODUCTION 9.12.12 UIC 9-12-12

Mail to: Past Operator ____ New Operator ____ District ____

Mail to: KCC - Conservation Division, 130 S. Market - Room 2078, Wichita, Kansas 67202

082912_Clawson_A_2_1.pdf

Side Two

Must Be Filed For All Wells

KDOR Lease No.: 136616

* Lease Name: Clawson A #2-1 * Location: SW 1-31-32W

Well No.	API No. (YR DRLD/PRE '67)	Footage from Section Line (i.e. FSL = Feet from South Line)		Type of Well (Oil/Gas/INJ/WSW)	Well Status (PROD/TA'D/Abandoned)
2-1	15-175-21926	990 Circle FSL/FNL (FSL circled)	990 Circle FEL/FWL (FWL circled)	Oil	~~Prod~~ In per CP111
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		

RECEIVED
KANSAS CORPORATION COMMISSION
SEP 04 2012
CONSERVATION DIVISION
WICHITA, KS

A separate sheet may be attached if necessary

* When transferring a unit which consists of more than one lease please file a separate side two for each lease. If a lease covers more than one section please indicate which section each well is located.

KANSAS CORPORATION COMMISSION
OIL & GAS CONSERVATION DIVISION

Form KSONA-1
July 2010
Form Must Be Typed
Form must be Signed
All blanks must be Filled

CERTIFICATION OF COMPLIANCE WITH THE KANSAS SURFACE OWNER NOTIFICATION ACT

This form must be submitted with all Forms C-1 (Notice of Intent to Drill); CB-1 (Cathodic Protection Borehole Intent); T-1 (Request for Change of Operator Transfer of Injection or Surface Pit Permit); and CP-1 (Well Plugging Application). Any such form submitted without an accompanying Form KSONA-1 will be returned.

Select the corresponding form being filed: ☐ **C-1** (Intent) ☐ **CB-1** (Cathodic Protection Borehole Intent) ☒ **T-1** (Transfer) ☐ **CP-1** (Plugging Application)

OPERATOR: License # 34089
Name: Agricultural Energy Services, Inc.
Address 1: 1755 W. Broadway St., Suite 6
Address 2:
City: Oviedo State: FL Zip: 32765 + ____
Contact Person: Montgomery Escue
Phone: (407) 365-2500 Fax: (407) 386-9929
Email Address: montgomery.escue@agenergy.com

Well Location:
NE SW SW Sec. 1 Twp. 31 S. R. 32 ☐ East ☒ West
County: Seward
Lease Name: Clawson A Well #: 2-1

If filing a Form T-1 for multiple wells on a lease, enter the legal description of the lease below:

RECEIVED
KANSAS CORPORATION COMMISSION
SEP 04 2012
CONSERVATION DIVISION
WICHITA, KS

Surface Owner Information:
Name: Clawson Land Partnership
Address 1: PO Box 279
Address 2:
City: Plains State: KS Zip: 67869 + ____

When filing a Form T-1 involving multiple surface owners, attach an additional sheet listing all of the information to the left for each surface owner. Surface owner information can be found in the records of the register of deeds for the county, and in the real estate property tax records of the county treasurer.

If this form is being submitted with a Form C-1 (Intent) or CB-1 (Cathodic Protection Borehole Intent), you must supply the surface owners and the KCC with a plat showing the predicted locations of lease roads, tank batteries, pipelines, and electrical lines. The locations shown on the plat are preliminary non-binding estimates. The locations may be entered on the Form C-1 plat, Form CB-1 plat, or a separate plat may be submitted.

Select one of the following:

☒ I certify that, pursuant to the Kansas Surface Owner Notice Act (House Bill 2032), I have provided the following to the surface owner(s) of the land upon which the subject well is or will be located: 1) a copy of the Form C-1, Form CB-1, Form T-1, or Form CP-1 that I am filing in connection with this form; 2) if the form being filed is a Form C-1 or Form CB-1, the plat(s) required by this form; and 3) my operator name, address, phone number, fax, and email address.

☐ I have not provided this information to the surface owner(s). I acknowledge that, because I have not provided this information, the KCC will be required to send this information to the surface owner(s). To mitigate the additional cost of the KCC performing this task, I acknowledge that I am being charged a $30.00 handling fee, payable to the KCC, which is enclosed with this form.

If choosing the second option, submit payment of the $30.00 handling fee with this form. If the fee is not received with this form, the KSONA-1 form and the associated Form C-1, Form CB-1, Form T-1, or Form CP-1 will be returned.

I hereby certify that the statements made herein are true and correct to the best of my knowledge and belief.

Date: _____ Signature of Operator or Agent: _____ Title: _____

Mail to: KCC - Conservation Division, 130 S. Market - Room 2078, Wichita, Kansas 67202

KANSAS CORPORATION COMMISSION
OIL & GAS CONSERVATION DIVISION

Form T-1
March 2010
Form must be Typed
Form must be Signed
All blanks must be Filled

REQUEST FOR CHANGE OF OPERATOR
TRANSFER OF INJECTION OR SURFACE PIT PERMIT

Form KSONA-1, Certification of Compliance with the Kansas Surface Owner Notification Act, MUST be submitted with this form.

Check Applicable Boxes:

- [x] Oil Lease: No. of Oil Wells 1 **
- [x] Gas Lease: No. of Gas Wells ____ **
- [ ] Gas Gathering System: ____
- [ ] Saltwater Disposal Well - Permit No.: ____
  - Spot Location: ____ feet from [ ] N / [ ] S Line
  - ____ feet from [ ] E / [ ] W Line
- [ ] Enhanced Recovery Project Permit No.: ____
  - Entire Project: [ ] Yes [ ] No
  - Number of Injection Wells ____ **

Field Name: KISMET

***** Side Two Must Be Completed.***

Effective Date of Transfer: September 10, 2012

KS Dept of Revenue Lease No.: 206163 ✓ AR

Lease Name: Massoni 1-5

__ - __ - NW - SE Sec. 5 Twp. 33 R. 31 [ ] E [x] W

Legal Description of Lease: LONG. -100.71427
LAT. 37.20422

County: Seward

Production Zone(s): LOWER KEARNY MEMBER

Injection Zone(s): ____

Surface Pit Permit No.: ____ *(API No. if Drill Pit, WO or Haul)*

____ feet from [ ] N / [ ] S Line of Section

____ feet from [ ] E / [ ] W Line of Section

Type of Pit: [ ] Emergency [ ] Burn [ ] Settling [ ] Haul-Off [ ] Workover OR [ ] Drilling

RECEIVED
SEP 17 2012
KCC WICHITA

091012_Massoni_1_5.pdf

Past Operator's License No. 6230 ✓

Past Operator's Name & Address: First National Oil, Inc.

1755 W. Broadway St., Suite 6, Oviedo, FL 32765

Title: President

Contact Person: Nelson B. Escue

Phone: 619-442-4442

Date: Sept. 10, 2012

Signature: ATTORNEY-IN-FACT

New Operator's License No. 34089 ✓

New Operator's Name & Address: Agricultural Energy Services, Inc.

1755 W. Broadway St., Suite 6, Oviedo, FL 32765

Title: ____

Contact Person: Montgomery Escue

Phone: 407-365-2500

Oil / Gas Purchaser: Plains Marketing, LP

Date: Sept. 10, 2012

Signature: ____

Acknowledgment of Transfer: The above request for transfer of injection authorization, surface pit permit # ____ has been noted, approved and duly recorded in the records of the Kansas Corporation Commission. This acknowledgment of transfer pertains to Kansas Corporation Commission records only and does not convey any ownership interest in the above injection well(s) or pit permit.

____ is acknowledged as the new operator and may continue to inject fluids as authorized by Permit No.: ____. Recommended action: ____

Date: ____ ____
Authorized Signature

____ is acknowledged as the new operator of the above named lease containing the surface pit permitted by No.: ____.

Date: ____ ____
Authorized Signature

DISTRICT ____ EPR 9/21/12 PRODUCTION 9.26.12 UIC 9-24-12

Mail to: Past Operator ____ New Operator ____ District ____

Mail to: KCC - Conservation Division, 130 S. Market - Room 2078, Wichita, Kansas 67202

Side Two

Must Be Filed For All Wells

KDOR Lease No.: 206163 ✓

* Lease Name: Massoni 1-5 * Location:

Well No.	API No. (YR DRLD/PRE '67)	Footage from Section Line (i.e. FSL = Feet from South Line)		Type of Well (Oil/Gas/INJ/WSW)	Well Status (PROD/TA'D/Abandoned)
1	15-175-00003	1980 Circle FSL/FNL	1980 Circle FEL/FWL	GAS/OIL	PROD.
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		

RECEIVED
SEP 17 2012
KCC WICHITA

A separate sheet may be attached if necessary

* When transferring a unit which consists of more than one lease please file a separate side two for each lease. If a lease covers more than one section please indicate which section each well is located.

KANSAS CORPORATION COMMISSION
OIL & GAS CONSERVATION DIVISION

Form KSONA-1
July 2010
Form Must Be Typed
Form must be Signed
All blanks must be Filled

CERTIFICATION OF COMPLIANCE WITH THE KANSAS SURFACE OWNER NOTIFICATION ACT

This form must be submitted with all Forms C-1 (Notice of Intent to Drill); CB-1 (Cathodic Protection Borehole Intent); T-1 (Request for Change of Operator Transfer of Injection or Surface Pit Permit); and CP-1 (Well Plugging Application). Any such form submitted without an accompanying Form KSONA-1 will be returned.

Select the corresponding form being filed: ☐ **C-1** (Intent) ☐ **CB-1** (Cathodic Protection Borehole Intent) ☒ **T-1** (Transfer) ☐ **CP-1** (Plugging Application)

OPERATOR: License # 34089
Name: Agricultural Energy Services, Inc.
Address 1: 1755 W. Broadway St., Suite 6
Address 2:
City: Oviedo State: FL Zip: 32765 + ____
Contact Person: Montgomery Escue
Phone: (407) 365-2500 Fax: (407) 386-9929
Email Address: montgomery.escue@agenergy.com

Well Location:
__ - __ - NW - SE Sec. 5 Twp. 33 S. R. 31 ☐ East ☒ West
County: Seward
Lease Name: Massoni Well #: 1-5

If filing a Form T-1 for multiple wells on a lease, enter the legal description of the lease below:

Surface Owner Information:
Name: Midway Development, L.L.C.
Address 1: PO Box 504
Address 2:
City: Beloit State: KS Zip: 67420 + ____

When filing a Form T-1 involving multiple surface owners, attach an additional sheet listing all of the information to the left for each surface owner. Surface owner information can be found in the records of the register of deeds for the county, and in the real estate property tax records of the county treasurer.

If this form is being submitted with a Form C-1 (Intent) or CB-1 (Cathodic Protection Borehole Intent), you must supply the surface owners and the KCC with a plat showing the predicted locations of lease roads, tank batteries, pipelines, and electrical lines. The locations shown on the plat are preliminary non-binding estimates. The locations may be entered on the Form C-1 plat, Form CB-1 plat, or a separate plat may be submitted.

Select one of the following:

☒ I certify that, pursuant to the Kansas Surface Owner Notice Act (House Bill 2032), I have provided the following to the surface owner(s) of the land upon which the subject well is or will be located: 1) a copy of the Form C-1, Form CB-1, Form T-1, or Form CP-1 that I am filing in connection with this form; 2) if the form being filed is a Form C-1 or Form CB-1, the plat(s) required by this form; and 3) my operator name, address, phone number, fax, and email address.

☐ I have not provided this information to the surface owner(s). I acknowledge that, because I have not provided this information, the KCC will be required to send this information to the surface owner(s). To mitigate the additional cost of the KCC performing this task, I acknowledge that I am being charged a $30.00 handling fee, payable to the KCC, which is enclosed with this form.

If choosing the second option, submit payment of the $30.00 handling fee with this form. If the fee is not received with this form, the KSONA-1 form and the associated Form C-1, Form CB-1, Form T-1, or Form CP-1 will be returned.

I hereby certify that the statements made herein are true and correct to the best of my knowledge and belief.

Date: 9-10-12 Signature of Operator or Agent: _____ Title: _____

RECEIVED
SEP 17 2012
KCC WICHITA

Mail to: KCC - Conservation Division, 130 S. Market - Room 2078, Wichita, Kansas 67202

KANSAS CORPORATION COMMISSION
OIL & GAS CONSERVATION DIVISION

REQUEST FOR CHANGE OF OPERATOR
TRANSFER OF INJECTION OR SURFACE PIT PERMIT

Form T-1
April 2004
Form must be Typed
Form must be Signed
All blanks must be Filled

Check Applicable Boxes:

- [x] Oil Lease: No. of Oil Wells 1 **
- [x] Gas Lease: No. of Gas Wells 1 **
- [ ] Gas Gathering System: ____
- [ ] Saltwater Disposal Well - Permit No.: ____
  - Spot Location: ____ feet from [ ] N / [ ] S Line
  - ____ feet from [ ] E / [ ] W Line
- [ ] Enhanced Recovery Project Permit No.: ____
  - Entire Project: [ ] Yes [ ] No
  - Number of Injection Wells ____ **

Field Name: ____

**** Side Two Must Be Completed.***

Effective Date of Transfer: April 21, 2014

KS Dept of Revenue Lease No.: 110236✓

Lease Name: Carter 1-36

__ - C - NW - SE Sec. 36 Twp. 33 R. 31 [ ] E [x] W

Legal Description of Lease: 1980 North, 1980 West from the SE corner

County: Seward

Production Zone(s): ____

Injection Zone(s): ____

Surface Pit Permit No.: ____ *(API No. if Drill Pit, WO or Haul)*

____ feet from [ ] N / [ ] S Line of Section

____ feet from [ ] E / [ ] W Line of Section

Type of Pit: [ ] Emergency [ ] Burn [ ] Settling [ ] Haul-Off [ ] Workover OR [ ] Drilling

Past Operator's License No. 06230✓

Past Operator's Name & Address: First National Oil, Inc

1755 W Broadway Street, Suite 6, Oviedo, Florida 32765

Title: Attorney in Fact

Contact Person: Montgomery Escue

Phone: 407-365-2500

Date: 04/21/2014

Signature: ____

New Operator's License No. 34089✓

New Operator's Name & Address: Agricultural Energy Services, Inc

1755 W. Broadway Street, Suite 6, Oviedo, Florida 32765

Title: Vice President

Contact Person: Montgomery Escue

Phone: 407-365-2500

Oil / Gas Purchaser: N/A

Date: 04/21/2014

Signature: ____

Acknowledgment of Transfer: The above request for transfer of injection authorization, surface pit permit # ____ has been noted, approved and duly recorded in the records of the Kansas Corporation Commission. This acknowledgment of transfer pertains to Kansas Corporation Commission records only and does not convey any ownership interest in the above injection well(s) or pit permit.

____ is acknowleged as the new operator and may continue to inject fluids as authorized by Permit No.: ____. Recommended action: ____

Date: ____ *Authorized Signature*

____ is acknowleged as the new operator of the above named lease containing the surface pit permitted by No.: ____.

Date: ____ *Authorized Signature*

DISTRICT ____ EPR 4/24/14 PRODUCTION 4-24-14 UIC 4/24/14

Mail to: Past Operator ____ New Operator ____ District ____

Mail to: KCC - Conservation Division, 130 S. Market - Room 2078, Wichita, Kansas 67202

KCC WICHITA

APR 24 2014

RECEIVED

Side Two

Must Be Filed For All Wells

KDOR Lease No.: 110236 ✓

* Lease Name: Carter 1-36 * Location: C NW SE 36-33-34W

Well No.	API No. (YR DRLD/PRE '67)	Footage from Section Line (i.e. FSL = Feet from South Line)		Type of Well (Oil/Gas/INJ/WSW)	Well Status (PROD/TA'D/Abandoned)
1-36 (1) ~~160113~~	15-175-00216 ✓	1964 Circle (FSL) FNL	1917 Circle (FEL) FWL	Oil & Gas	TA
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		
		FSL/FNL	FEL/FWL		

KCC WICHITA
APR 24 2014
RECEIVED

A separate sheet may be attached if necessary

* When transferring a unit which consists of more than one lease please file a separate side two for each lease. If a lease covers more than one section please indicate which section each well is located.

Exhibit

F

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION SEVEN

JOHN M. DENMAN OIL CO., INC., and GARY AND KAYLA BRIDWELL, D/B/A BLACK RAIN ENERGY, Petitioners, vs. THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, Respondent.	)	Case No. 12C402

GARY AND KAYLA BRIDWELL, D/B/A BLACK RAIN ENERGY, Petitioners, vs. THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, Respondent.	)	Case No. 12C407

MEMORANDUM OPINION AND ENTRY OF JUDGMENT

NATURE OF THE CASE:

These are appeals by the Petitioners involved pursuant to the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*, as authorized by K.S.A. 66-118c and K.S.A. 77-609. The appeals are from a decision of the Kansas Corporation Commission on petitions for reconsideration entered by the Commission under the authority of K.S.A. 55-179(c), which assigned liability to the Petitioners and another entity, either in whole or in part, as "legally responsible" for plugging certain oil and gas wells located on certain described property in Chautauqua County, Kansas. The Commission's *Order on Reconsideration* included in its judgment findings of plugging liability for all of the wells at issue, but where it deemed grounds also existed for more than one of the Petitioners to be "legally responsible", it assigned that liability in multiple fashion and described that liability as joint and several with

another of the current Petitioners and/or the non-appearing business entity TSCH, LLC.

It is the Petitioner Denman's position that full liability for plugging the wells deemed abandoned on this property rests with either the Bridwell petitioners as d/b/a Black Rain Energy or, more appropriately, with a business entity under the name of TSCH, LLC, which, though given notice for hearing before the Commission, made no appearance.

Petitioner Denman also claims that responsibility for the abandonment of a well cannot be assigned to it because the Commission entered into an agreement with the Petitioners Bridwell d/b/a Black Rain Energy that provided the Bridwell petitioners the option of plugging or returning to service the wells on the property at issue, hence, Denman asserts, the Commission "waived" any enforcement action against Denman. Further, Denman asserts that the Bridwell petitioners obtained a new oil and gas lease from the landowner subsequent, which Denman claims extinguished any tail liability it may have had under the original

oil and gas lease which had been assigned to the Bridwell petitioners by Denman, hence, Denman argues, the authority to drill or oversee wells on the property, *i.e.*, "operate" them, was derived from the new lease, not the one Denman had assigned to the Bridwell petitioners. This new lease was also the lease assigned to TSCH by the Bridwell petitioner before this proceeding before the Commission was initiated.

Conversely, the Bridwell petitioners argue here in their *Petition for Review* that the new lease, in fact and law, was but a mere extension or renewal of the original lease held by Denman that had been assigned to them, hence, the authority and control over the subject wells, as received by TSCH by assignment from them, was, from any perspective, all that of TSCH.

As may be seen therefore, the various petitioners' interests principally only merge in the assertion TSCH is the "legally responsible" party and, further, in disclaiming that authority rests in the Commission to find multiple parties liable for the same well, or

wells, particularly, resulting in what the Commission described as joint and several liability for the plugging duty found.

The parties appeared before the Commission by way of separate notice from the Commission for the same hearing event before the Commission, but their individual appeals from the Commission's *Order on Reconsideration* were consolidated appropriately before this Court subsequent to avoid, perhaps, any conflict of opinion on the issues raised.

THE FACTS OF RECORD:

The facts announced by the Kansas Corporation Commission, reflected, after the hearing held and affirmed on reconsideration, as follows, however, the bracketing has been added by the Court for clarity or as a reference to the record:

> "6. The facts in this matter were uncontested and were as follows:
>
> a. The M.A. Alexander lease is located on the E/2 NW/4 and W/2 NE/4 of Section 31, Township 34 South, Range 12 East, Chautauqua County, Kansas.
>
> b. Following a complaint by the surface

owner [on that property] of abandoned wells [on that property] on August 6, 2007, Staff began an investigation.

c. From its investigation, Staff determined that Denman was the current lease owner and operator.

d. The lease Denman was operating under dates back to 1903. Denman owned and operated the lease from at least 1939.

e. Production from the lease [by Denman] stopped sometime in 1989.

f. During Staff's inspection of the lease on April 30, 2008, it found 32 unplugged wells. Another inspection by Staff in November 2010 found 12 additional unplugged wells.

g. Staff advised Denman of the compliance issues on the lease in October 2007, and Denman informed Staff that he was conveying the lease to Bridwell.

h. In July 2008 [ROA at p. 234], Denman assigned the lease to Bridwell, and a transfer of operator (T-1 form) was filed with the Commission transferring operatorship of 32 wells on the lease from Denman to Bridwell [ROA at pps. 238-241].

i. On December 30, 2008, Staff sent a Notice of Violation letter to Bridwell concerning compliance issues on the lease [ROA at pps. 096-097].

j. In response to the Notice of Violation, Bridwell entered into a compliance agreement with Staff in January 2009; the

agreement required Bridwell to return to production or plug at least two wells per month [ROA at p. 244].

k. Bridwell never complied with the agreement. He eventually equipped three wells and produced them for a short time, but did not plug any wells.

l. Bridwell acquired new leases on the property [one dated February 12, 2009 (ROA at pps. 175-179) and one dated February 23, 2009 (ROA at pps. 171-174), both covering the same land from its multiple owners] and assigned [these new] leases to TSCH in March 2010 [ROA at pps. 235-237]. Bridwell also filed a transfer of operator form with the Commission, transferring the 32 wells that had been transferred to him by Denman to himself as operator for TSCH, on April 1, 2010 [ROA at pps. 241-243].

m. TSCH ran pipe in two wells, equipped one well for injection and applied for injection authority for that well, and filed an application for a ten-year temporary abandonment ('TA') exception for the 32 wells listed on the April 1, 2010, transfer [ROA at pps. 112-124]."

ROA: *Order on Show Cause* at pps. 471-472.

To preface the Commission's decision, the substantive statute under which it was acting - K.S.A. 55-179 - is set out:

"a) Upon receipt of any complaint filed pursuant to K.S.A. 55-178 and amendments thereto, the commission shall make an

investigation for the purpose of determining whether such abandoned well is polluting or is likely to pollute any usable water strata or supply or causing the loss of usable water, or the commission may initiate such investigation on its own motion. If the commission determines:

(1) That such abandoned well is causing or likely to cause such pollution or loss; and

(2)(A) that no person is legally responsible for the proper care and control of such well; or (B) that the person legally responsible for the care and control of such well is dead, is no longer in existence, is insolvent or cannot be found, then, after completing its investigation, and as funds are available, the commission shall plug, replug or repair such well, or cause it to be plugged, replugged or repaired, in such a manner as to prevent any further pollution or danger of pollution of any usable water strata or supply or loss of usable water, and shall remediate pollution from the well, whenever practicable and reasonable. The cost of the investigation; the plugging, replugging or repair; and the remediation shall be paid by the commission from the well plugging assurance fund or the abandoned oil and gas well fund, as appropriate.

(b) For the purposes of this section, a person who is legally responsible for the proper care and control of an abandoned well shall include, but is not limited to, one or more of the following: Any operator of a waterflood or other pressure maintenance program deemed to be causing pollution or loss of usable water; the current or last operator of the lease upon

which such well is located, irrespective of whether such operator plugged or abandoned such well; the original operator who plugged or abandoned such well; and any person who without authorization tampers with or removes surface equipment or downhole equipment from an abandoned well.

(c) Whenever the commission determines that a well has been abandoned and is causing or is likely to cause pollution of any usable water strata or supply or loss of usable water, and whenever the commission has reason to believe that a particular person is legally responsible for the proper care and control of such well, the commission shall cause such person to come before it at a hearing held in accordance with the provisions of the Kansas administrative procedure act to show cause why the requisite care and control has not been exercised with respect to such well. After such hearing, if the commission finds that the person is legally responsible for the proper care and control of such well and that such well is abandoned, in fact, and is causing or is likely to cause pollution of any usable water strata or supply or loss of usable water, the commission may make any order or orders prescribed in K.S.A. 55-162, and amendments thereto. Proceedings for reconsideration and judicial review of any of the commission's orders may be held pursuant to K.S.A. 55-606, and amendments thereto.

(d) For the purpose of this section, any well which has been abandoned, in fact, and has not been plugged pursuant to the rules and regulations in effect at the time of plugging such well shall be and is hereby deemed likely to cause pollution of any usable water strata or supply.

(e) For the purpose of this section, the person legally responsible for the proper care and control of an abandoned well shall not include the landowner or surface owner unless the landowner or surface owner has operated or produced the well, has deliberately altered or tampered with such well thereby causing the pollution or has assumed by written contract such responsibility." (Emphasis added)

The Commission's *Order on Show Cause*, in relevant part, concluded as follows:

"III. FINDINGS AND CONCLUSION

10. All of the wells on the M.A. Alexander lease are abandoned in fact. Except for the three wells produced for a short time by Bridwell in 2009, none of the wells have produced since 1989. TSCH applied for an exception to the 10-year TA time limitation, but its application was denied [ROA at pps. 125-129]. Because the wells are not plugged, in service, or temporarily abandoned, the wells are abandoned in fact.

11. The wells on the M.A. Alexander lease are causing or are likely to cause pollution of usable water or supply or loss of useable water. During their inspections, Staff found the wells on the lease to be in various stages of disrepair. Many of the wells had rotted casing and high fluid levels. With its application for an exception to the 10-year TA time limit, TSCH submitted a letter from Boyd K. Parker, a licensed Geologist [ROA at pps. 123-124]. Mr. Parker stated that the wells were not likely cemented to surface and that there was a water bearing formation at about 500 feet. The rotted and rusted casing above

the cement would allow entry of water from that formation into the producing formation.

12. The Commission finds that K.S.A. 55-179 allows the Commission to find that more than one party is responsible for plugging the abandoned wells on the property.

13. Having found that the wells are abandoned in fact and that the wells pose a risk to usable water, the Commission must decide which party or parties are responsible for plugging the wells. Each party's responsibility is addressed in turn.

III. A. DENMAN

14. Denman is responsible for all the wells on the lease, except for the three wells that Bridwell actually repaired and returned to service. Denman operated the lease from 1939, under an assignment of the original 1903 lease, until Denman ceased production in 1989. At the time production ceased in 1989, Denman was responsible for all of the wells on the lease. None of the wells, except for the three wells produced by Bridwell for a short time [ROA at p. 217: Gary Bridwell testimony 1:1 - 1:18; l. 14 - l. 19], ever produced again. The Commission finds that Denman was the original operator who abandoned the wells on the lease, except for the three wells actually produced by Bridwell, and is a responsible party to plug those wells under K.S.A. 55-179. An assignment of the lease to Bridwell and the transfer to Bridwell of 32 of the wells some 19 years after production ceased on the lease does not change the fact that Denman abandoned the wells in 1989 and should have plugged them at that time.

III. B. BRIDWELL

15. Bridwell is a responsible party for all of the wells on the lease. Bridwell accepted an assignment of the 1903 lease from Denman. This is the lease all of the wells were drilled or produced under. In addition, Bridwell accepted responsibility for 32 of the wells when he signed the transfer of operator form for those wells from Denman to him. The wells were never transferred to a new operator, nor was the 1903 lease ever assigned to another party. The purported transfer of the 32 wells from Bridwell to TSCH listed Bridwell as the operator for TSCH and was signed by Bridwell. This transfer of operator was not effective to transfer the wells to TSCH since it was not listed as the new operator and was not signed by TSCH. Bridwell never assigned the 1903 lease to TSCH; what he assigned were the two new leases he took on the property in 2009. Since Bridwell never assigned the 1903 lease under, which all the wells were drilled or operated, and never transferred the wells to another operator, he is the last operator of the 1903 lease, the lease agreement all the wells were drilled and operated under, and is a responsible party under K.S.A. 55-179.

III. C. TSCH

16. TSCH is a responsible party for the injection well it permitted and equipped and for the 32 wells that were included in its application for an exception to the 10-year TA limit as the last operator under the 2009 leases. TSCH accepted an assignment of the 2009 leases on the property from Bridwell. As an operator under new leases, it is responsible under the Commission's Quest Order

> for wells it physically operated or for wells it filed paperwork with the Commission indicating the wells for which it was taking responsibility. TSCH physically operated the injection well and permitted the well for injection. It also indicated it accepted responsibility for 32 of the wells when it filed the application for an exception to the 10-year TA limitation for those wells. TSCH is not a responsible party for the other 12 wells on the property because it never physically operated those wells or filed any paperwork indicating it was accepting responsibility for those wells."

Order on Show Cause at ROA: pps. 473-476.

The Denman party and the Bridwell party each filed a motion for reconsideration, which motions the Commission denied, listing those parties' complaints and addressing them as follows:

> "**I. DENMAN**
>
> 4. In its Petition for Reconsideration, Denman alleges several errors by the Commission:
>
> > a. The evidence disregarded by the Commission establishes that TSCH has the exclusive obligation to plug the abandoned wells on the lease.
> >
> > b. The only reason the Commission found Denman and Bridwell responsible was because the Commission doubted TSCH had the financial resources to plug the wells.

c. The Commission failed to recognize and enforce indemnity provisions in the various assignments.

d. The Commission does not have authority to find multiple responsible parties jointly and severable responsible.

5. The Commission disagrees that TSCH has the exclusive obligation to plug the abandoned wells on the lease. The evidence was uncontested that Denman operated the lease from 1939 until production ceased in 1989. Once production ceased for 90 days and the wells were not temporarily abandoned, the wells became abandoned wells under Commission regulations and were required to be plugged by Denman at that time. There is ample evidence in the record to find that Denman is responsible to plug the wells as the original operator who abandoned the wells.

6. The Commission disagrees with Denman's allegation that the only reason the Commission found Denman and Bridwell responsible was because it doubted that TSCH was financially able to plug the wells. The Commission made no such finding, it found Denman and Bridwell responsible because each was in one of the categories of responsible parties set out in K.S.A. 55-179 and the Commission's interpretation of the statute in the Quest Case, docket number 07—CONS—155-CSHO. In fact, the Commission did find that TSCH was also a responsible party. Whether it had financial resources to plug the wells was not a basis of the Commission's decision.

7. The assignments and the indemnity provision contained therein are private agreements between the parties involved. The

Commission doesn't have jurisdiction to enforce such agreements; that is for the Kansas Courts. Denman believes that it has indemnity rights, it is free to pursue those rights in the proper forum.

8. K.S.A. 55-179 clearly contemplates that multiple parties may be responsible for plugging a particular well. The statute, however, does not provide any formula or guidance for apportioning responsibility. Since the legislature could have provided for apportioning responsibility when multiple parties are found responsible but did not, the Commission must assume that the legislature meant for each responsible party to be fully liable for plugging the well.

9. In his petition, Denman states 'imposition of joint and several liability arbitrarily fails to honor good faith attempts by operators to comply with the Commission's regulatory requirements.' Although the Commission has already set out its reasons for finding joint and several liability, it must point out that in this case Denman showed very little good faith to comply with the Commission's regulations. After producing the wells in question for 50 years Denman ceased production in 1989. It did not plug or temporarily abandon the wells as required for 17 years and only assigned the lease after Commission field staff informed Denman that the lease was not in compliance.

II. BRIDWELL

10. Bridwell cites four (4) reasons why the Commission should reconsider its decision with regard to them:

a. The commission makes inconsistent legal conclusions in assigning responsibility to Bridwell.

b. The Commission erroneously applies the Quest Case in concluding the wells in question are not located upon the 2009 leases.

c. The Commission's decision that TSCH, LLC, is not the current or last operator of the lease upon which the wells are located erroneously applies K.S.A. 55-150 (e) 55-179 and K.A.R. 82-3-136.

d. The Commission disregarded its primary duty, which is to prevent waste.

11. The Commission disagrees with Bridwell that it made inconsistent conclusions in assigning responsibility to Bridwell. Bridwell accepted an assignment of the 1903 lease from Denman. All the wells were drilled or operated under that lease. Bridwell never assigned the 1903 lease to TSCH: instead, it assigned new leases that it took in 2009 to TSCH. Bridwell was the last operator of the 1903 lease and is therefore responsible for all of the wells drilled or operated under that lease. Such a conclusion is consistent with the Commissions decision in the Quest Case.

12. The Commission disagrees that its decision erroneously applies the Quest Case by concluding that the wells are not located upon the 2009 leases. The commission did not make a finding that the wells were not located upon the 2009 leases. In fact the Commission found that TSCH was the current operator of 33 wells under the 2009 leases. The Commission also found that Bridwell was the last operator of

the 1903 lease, which was the lease that all the wells were drilled or operated under. The Commission also disagrees with Bridwell's argument that only one lease can be considered under K.S.A. 55-179 to determine plugging responsibility. The Quest Case did not address that issue. The Quest Case only found that Quest was not the current operator of wells that were drilled or operated under prior leases since Quest had a new lease on the property.

13. The Commission disagrees with the arguments set out in Bridwell's brief to support its position that the Commission erroneously applied K.S.A. 55-150(e), K.S.A. 55-179 and K.A.R. 82-3-136. Bridwell argues that he had no legal right to control or operate the wells because such legal rights had been assigned to TSCH by the 2010 assignment of the 2009 leases. That is essentially the same argument the Commission rejected in the Quest Case.

14. Bridwell argues that the Commission failed to consider that waste would occur if the wells are required to be plugged. This docket was to determine who is responsible to plug the wells under K.S.A. 55-179, not necessarily if they should be plugged. These wells are required to be plugged because they have not produced for over 10 years and are no longer eligible for temporary abandonment. The Commission, in fact, denied TSCH's application for an exception to the 10 year limit on temporary abandonment pursuant to K.A.R. 82-3-111.

15. Bridwell argues that there was not enough evidence to prove that the wells pose a risk to usable water. Bridwell fails; however,

> to point out that K.S.A. 55-179 contains a presumption that abandoned wells will pose a threat to usable water. That presumption shifts the burden of proof to Bridwell to show there is no usable water to protect. Bridwell did not present any evidence in that regard."

Order on Reconsideration: ROA at pps. 506-509.

CONCLUSIONS OF LAW

The Court's review of the Kansas Corporation Commission's decision here is restrained by the Kansas Judicial Review Act, as amended, K.S.A. (2009) 77-601 *et seq.* It is also constrained by K.S.A. 66-118b in that issues not succintly raised in the required petition for reconsideration are barred from review. *Grindsted Products, Inc. v. Kansas Corporation Comm'n*, 262 Kan. 294, 303 (1997). Here, the Commission's summary of the issues raised by such petitions for reconsideration is accurate. Thus, the facts underlying the Commission's respective conclusions as to each Petitioner are not truly in dispute, hence, the Commission's lack of reference to underlying facts, documents, or Commission records in support of its

original findings can not be a point of dispute. This includes the fact that Denman has never challenged the fact that it operated at one time, then abandoned, without plugging, the 44 abandoned wells found on the entire M. A. Alexander lease, hence, the Commission's assignment of Denman as the "original operator" of that lease who abandoned the wells must stand, notwithstanding the M. A. Alexander lease was first originated in 1903, some 36 years before Denman was the assignee of it. Further, while the Denman party obliquely challenges whether the wells at issue have been abandoned, it seems that, but for actions occurring in regard to those wells by individuals or the Commission subsequent to 1989 in regard to whether all these wells should, in fact, be plugged, each one of those wells may be considered "abandoned" for the legal purposes here after 1989 (K.A.R. 82-3-111), even though a heretofore abandoned well could be re-entered and re-energized subsequent with Commission approval (K.S.A. 55-151(b) ("No

change in the use of a well shall be made without express approval of the Commission"); K.A.R. 82-3-103(a)(1)(B)), which, particularly, might be more frequently anticipated given the advance in recovery technologies. In fact, three of these 44 wells were re-entered and re-energized by Bridwell, which, because of that fact, the Commission excluded Denman from plugging responsibility. Such re-entry was ostensibly authorized by the tendering and acceptance by Bridwell of the Commission's staff compliance proposal. *Order on Show Cause* at Fact j. Although TSCH ran pipe in two wells and equipped another for injection (*Id.* at Fact m), the Commission gave no recognition to this activity in respect to Denman. Ostensibly, this must be based on the fact that no Commission authority for this activity is evidenced in the record. However, Denman's petition for reconsideration does not succinctly raise objection to this implied omission of finding, hence, is not relevant here.

The Court has read the past opinions of the

Commission in regard to the *Donna Lee* proceeding (Docket No. 04-CONS-074-CSHO) and the *Quest Cherokee* proceeding (Docket No. 07-CONS-155-CSHO) as advanced and proffered by the Commission as part of its *Brief on Appeal* as an aid to the Court in determining the parameters of the Commission's view of the requirements it believes are imposed by K.S.A. 55-179.

In essence, the *Donna Lee* proceeding concluded that some evidence of actual *physical* operation on, or actual steps toward *physical* control over, a particular lease is required as a precedent to a finding of legal responsibility to plug abandoned, yet unplugged, wells on it. As relevant here, the Commission's *Order* in the *Donna Lee* proceeding stated:

> "13. K.S.A. 55-179(b) must be read and interpreted with the definition of operator at K.S.A. 55-150(e). That definition requires physical operation or control of a well before a party becomes an operator. The concept of physical control requires more than merely owning a lease as Staff contends. Some type of physical activity on the lease or assumption of control of the lease, is required in order

to be considered the lease operator under K.S.A. 55-179(b). Physical activity on a lease would include such things as producing a well, plugging a well, working on a well, testing a well, setting tankage or providing for power to run the lease. Assumption of control includes such things as signing a transfer of operator or taking a lease assignment or new lease agreement that provides for assumption of plugging responsibility.

14. Once a party has undertaken any physical activity on a lease or has assumed control by agreement that party becomes the operator of the entire leased acreage and is responsible under K.S.A. 55-179(b) for all abandoned wells on the leased acreage.

15. Under the above interpretation of K.S.A. 55-179(b) and K.S.A. 55-150(e) neither Devon nor Explorer Resources is the current or last operator of the Newman Lease for the purpose of plugging responsibility under K.S.A. 55-179. Although both held a lease on the acreage, neither conducted any physical operations on the leased acreage or agreed to assume control of wells on the lease."

In essence, the *Donna Lee* proceeding and the *Quest Cherokee* proceeding both concurred in finding that the responsibility for a well or wells, if abandoned, must first be looked at and tied to the particular oil and gas leasehold under which it, or they, came into existence as an abandoned well and then and only then could responsibility for them be extended to new

lessees or new, in fact, leases if, in fact, the new operator of that newly assigned or new lease expressly agreed to be responsible or otherwise exercised some physical activity on the lease. In *Donna Lee,* such physical activity bound the lessee as responsible for all such wells. Seemingly, *Quest* made liability for such a well well-specific only, that is, physical activity on one well did not extend liability for all absent an agreement otherwise. A caveat to this narrower "well-specific" view, however, is the fact the "activity" on the lease at issue involved a gas well drilled under a separate "gas only" lease held by that party.

While the *Donna Lee* proceeding's majority never relied on reached the sitused issue, its result was the same as the *Quest Cherokee* proceeding. It was not until the *Quest Cherokee* proceeding that the Commission ostensibly based its determination that the word "located" in K.S.A. 55-179(b) ("the current or last operator of the lease upon which such well is located") *referred to a specific lease* and tied a well to that

lease not necessarily and solely the geographic location of the offending well, which might still fall within the geographic description of any *new* lease. The latter grounds was first articulated only in a dissenting view in the *Donna Lee* proceeding. The *Quest Cherokee* proceeding, as relevant here, stated in its *Order* as follows:

> "11. Definitions of terms used in K.S.A. 55-179 are contained in K.S.A. 55-150 'unless the context requires a different meaning.' 'Operator' is defined in K.S.A. 55-150(e) as a 'person who is responsible for the physical operation and control of a well, gas gathering system or underground porosity storage of natural gas.' If this definition of operator is inserted into the language of K.S.A. 55-179(b), the result would read that 'a person who is legally responsible for the proper care and control of an abandoned well shall include . . . the current or last [person who is responsible for the physical operation and control of a well] of the lease upon which such [abandoned] well is located. . . .' In the oil and gas industry, the term 'operator' is used to describe the party 'that has control over the day-to-day operation of an oil and gas well, or operation to drill and complete a well.'
>
> . . .
>
> 14. K.S.A. 55-150 does not define 'lease' or 'located.' Furthermore, the legislative history gives little insight into the Legislature's intent behind the meaning of

'the current or last operator of the lease upon which such well is located, irrespective of whether such operator plugged or abandoned such well,' as used in K.S.A. 55-179(b). Applying the rules of statutory construction, the question is whether 'lease' and 'located' should be given their ordinary, everyday meanings, whatever those meanings may be, or whether 'the lease' and 'located' have 'acquired a peculiar and appropriate meaning in law' that must be used in construing K.S.A. 55-179(b).

15. The Commission concludes that the term 'lease' has acquired a peculiar and appropriate meaning in law as used in K.S.A. 55-179(b). The Commission finds the term 'lease' refers to a particular oil and gas lease agreement, i.e., specific contract or legal document, by which the owner of minerals underlying a parcel of property grants another party the exclusive right to produce oil and gas from such property. As used in K.S.A. 55-179(b), the term 'lease' does not refer to the actual land or parcel of property from under which the oil or gas may be produced. This meaning is consistent with at least one lay and one legal definition of 'lease' when referring to a lease agreement or contract. Furthermore, K.S.A. 55-179(b) (emphasis added) states 'the lease upon which such well is located.' which further qualifies the meaning of 'lease' in the statute.

16. The Commission finds that the term 'located' as used in K.S.A. 55-179(b) has also acquired a peculiar and appropriate meaning in law. The Commission determines that 'located' here refers not to the place of physical location of an abandoned well, but rather to whether such well was drilled,

operated, or plugged, or whether any paperwork was filed with the Commission, regarding such well under the terms of the particular lease contract. By such conduct, the operator has demonstrated responsibility for the physical operation and control of such well to qualify as an operator of the well under K.S.A. 55-150(e). The Commission believes that this is the most reasonable interpretation of 'located' in the context of K.S.A. 55-179(b) and that it should be employed in interpreting this statute.

17. Applying this interpretation to the undisputed facts of this case, the Commission concludes that Quest Cherokee is not the current or last operator of the lease upon which the abandoned wells are located under K.S.A. 55-179(b). Quest Cherokee is the operator of the Mary Douglas Lease, a 2001 gas lease covering the Northwest Quarter of Section 16, Township 29 South, Range 17 East, Wilson County, Kansas. The subject wells were drilled, operated, and abandoned pursuant to oil and gas leases which expired, at the latest, in 1982. This was nearly 20 years before legal existence of the current lease, under which Quest Cherokee operates one well. Furthermore, Quest Cherokee did not operate or file any paperwork with the Commission, or take any other action impacting the status quo, regarding any of the abandoned wells under the authority of the Mary Douglas Lease. As such, the Commission finds and concludes that no legal basis exists for finding Quest Cherokee to be 'a person legally responsible for the proper care and control of' these abandoned wells under K.S.A. 55-179(b)."

In the current case, the Commission determined that

TSCH was "legally responsible" for certain wells, one injection well which it actually physically equipped and for 32 others for which it took actual steps to attempt to implement Commission authority to operate by applying to the Commission to put them in a status that could lead to reactivating them, notwithstanding permission to do so was denied, which 32 wells implicitly also include the two others in which pipe had been run and, perhaps, a few others by TSCH. For the 12 additional wells the Commission staff found in November 2010 to also be present on the property (ROA: *Order on Show Cause* at *f*), it assigned no liability to TSCH, apparently implicitedly affirming the broader *Quest Cherokee* precedent, hence, more in line with its *Donna Lee* opinion, to the extent it found no actual knowledge of or attempt at physical control of these belately discovered abandoned wells, but an assumption of control, or the attempt, in regard to others. Thus, the Commission's view overall, as expressed in the *Quest Cherokee* proceeding, was maintained, yet, by this proceeding in regard to TSCH, it essentially affirmed

its earlier *Donna Lee* expressed intent to also include within the parameters of *"physical control"* a lessee's overt expression of an intent or desire to exercise authority over such abandoned wells by filing paperwork relating to them, but additionally concluded that the same result would follow whether or not it was actually granted authority by the Commission to do as requested.

Thus, though the prior proceedings rulings were followed in this present case, the Commission did not do in either the *Donna Lee* proceeding or the *Quest Cherokee* proceeding what it did here, that is, also go on and proceed to declare liability additionally to another it thought liable such as here, "the original operator "who ... abandoned the well" (K.S.A. 55-179(b)). The *Donna Lee* proceeding, as reported, does not reflect whether or not it was known who the original operator was as to the wells at issue there. The *Quest Cherokee* proceeding reflects that it was, in fact, unknown who originally drilled or abandoned the other 22 other wells known to have been abandoned on the property in that proceeding. Rather, the

Commission in the *Quest Cherokee* proceeding could only identify one heretofore abandoned well's origination with two of the parties before it, one designated the "last" operator and another designated the "current" operator. However, the current operator was operating under a *new* "gas only" lease given long after the 22 abandoned wells (as described in the *Order*) had been drilled and abandoned. Neither party named was the original leaseholder of this *new* lease. As a result, in the *Quest Cherokee* proceeding, the Commission found the 22 wells noted were not the responsibility of either of the two parties, but rather the Commission assigned the plugging obligation to the Commission and its costs for doing so were to be drawn from its industry generated special funds, *i.e.*, K.S.A. 55-166 and K.S.A. 55-167(b) (well plug assistance fund); K.S.A. 55-192 (abandoned well fund)). The intervenors in that case, the Kansas Independent Oil and Gas Association (KIOGA) and the Eastern Kansas Oil and Gas Association (EKOGA), and the named parties, as well, had urged the position adopted by the Commission.

Essentially, the Commission concluded the new "gas only" lease did not include the 22 abandoned wells and that, further, by virtue of the Commission's construction of the word "located" as being limited to an abandoned well's being brought into existence under a certain identifiable lease, those abandoned wells were not "located" on the current new lease nor had the parties attempted, or demonstrated an intent, to exercise control over these 22 other wells.

The latter recitations of these earlier Commission rulings are made by the Court in order to reflect that the decision in the present case before the Court may be seen to expand, but not conflict, with the Commission's opinion in the *Quest Cherokee* proceeding and its construction of K.S.A. 55-179(b) there expressed as applied here to TSCH's and the Bridwells' concurrent liability for all but twelve wells as found here by the Commission. Further, in its holding of concurrent liability, it can be said on the facts to also expand, but not conflict, with its *Donna Lee* proceeding's opinion.

The question raised in the present proceeding, of course, is whether the Kansas Corporation Commission has correctly interpreted K.S.A. 55-179(b), not whether its followed its own precedents or not. There is technically no rule of *stare decisis* in administrative proceedings (*Warburton v. Warkentin,* 185 Kan. 468, 477 (1959)), but agency rule making powers can be a substitute. Here, the first question involved is one of law, that is, what is the proper interpretation of K.S.A. 55-179(b) and then, and only then, whether it was applied properly by the Commission. *Ft. Hays St. Univ. v. University Ch., Am. Ass'n of Univ. Profs.* 290 Kan. 446, 457 (2010).

In matters of legislation, legislators, when acting in their capacity as such, and within the confines of the legislative process, are deemed all knowing and well versed. Hence, legislative acts are inherently presumed to be founded on reason. Here, the participating parties in their presentations in regard to the Commission's decision, and even the Commission itself by its non-expression, seem to have overlooked

certain legal premises that might aid the interpretation of the term "legally responsible". Prior to the time that the language of K.S.A. 55-179(b) came into existence, a Kansas statute enacted in 1891 first identified the duty to plug a well to rest with its "owner" (R.S. (1923) 55-116), yet sought also to penalize the well's operator. R.S. (1923) 55-117. The Kansas Supreme Court determined that K.S.A. 55-116 did not encompass an "operator" within the duty to plug the well, hence, prosecution of an operator would not lie. *State v. Foster,* 106 Kan. 852 (1920). In 1935, the governing statutes were recodified and amended to extend the plugging duty to the well's owner *or* operator. *See* G.S. (1949) 55-128. The Commission could assess the costs of plugging supervision "equitably" and require a bond. G.S. (1949) 55-131. Further, criminal penalties were extended to "any person, owner or operator" in non-compliance with G.S. (1949) 55-128. See G.S. (1949) 55-132. In 1949, G.S. (1949) 55-139 and G.S. (1949) 55-140 were enacted, which textually were substantively as now exist in K.S.A. 55-178 and

K.S.A. 55-179(a)(1), respectively. The phrase "legally responsible" as used in G.S. (1949) 55-140, as it equally does now in K.S.A. 55-179(a)(1), was not there defined or descriptive. However, as noted, G.S. (1949) 55-128 set the plugging duty on the owner or operator of the offending well and punished equally "any person" violating the section. It should be noted that the corresponding statute today assigning a duty to plug a well is now only in its operator (K.S.A. 55-156; K.S.A. 55-157) as are other duties, including any required notifications, *i.e.*, K.S.A. 55-151, K.S.A. 55-158, K.S.A. 55-160, K.S.A. 55-173. Further operators are subject to costs of compliance (K.S.A. 55-176), the cost of any enforcement proceedings (K.S.A. 55-162(a)(3)), and, as well, subject to criminal penalties (K.S.A. 55-156, K.S.A. 55-157, K.S.A. 55-159).

Clearly, the emphasis and purpose for K.S.A. 55-179 is to address abandoned wells. Clearly, and, as well, by the other statutes noted, K.S.A. 55-179(b) identifies operators as the ones duty bound to compliance. Certainly, an abandoned well, not plugged or not

properly permanently plugged, would be, from any perspective, a present, or an imminent, public, as well as a private, nuisance. As a threat to potable water or other threat to the environment, which obviously underpins the historical legislative mandate that such wells be plugged in approved fashion, such a well's categorization as a specie of nuisance is undeniable. In fact, K.S.A. 55-177(a) identifies failing to restore the land to its prior condition after it had been subjected to oil and gas activities as a public nuisance. Further, the failure to plug a well by the operator who abandoned it, as noted, has historically been designated a crime. Hence, in viewing K.S.A. 55-179 in *para materia* against the statutory backdrop of concern it seems eminently logical that the Kansas legislature not only understood and identified this particular status for an abandoned well as an actual, or, certainly, a potential public nuisance even without K.S.A. 55-177(a)'s declaration. A good discussion of the attributes of a public nuisance is had in *The State v. Rabinowitz*, 85 Kan. 841 (1911). Thus, the

legislature passed K.S.A. 55-179(b), most probably, with the nuisance status of an abandoned, but unplugged, well in mind, which principles would seemingly guide enforcement of the naked phrase "legally responsible".

If the law of nuisance, without regard to statute, had heretofore underpinned, at least in part, the civil parameters for "legal responsibility", then it seems truly not arguable in the least that the legislative mandate given to the Commission to select a "legally responsible" party need not be limited, either by its limited expression of potential suspects in default of a duty to plug a well or, as well, by any artificial barriers, private agreements, or the maneuverings of private parties. Here, the Denman party's argument in its petition for reconsideration that the Commission should recognize the affect of any indemnity provision found in any assigned lease among the parties was rightly rejected by the Commission as an issue reserved for private enforcement in the courts by those protected by such a contract clause. *See Cities*

Service Gas Co. v. State Corporation Commission, 197 Kan. 338, 342 (1966) ("it is not intended to settle private controversy".)

Further, the legislature's statutory directives setting up, yet modestly funding, certain state administered funds to aid in accomplishing the purpose of plugging wells where liability could not otherwise be assigned, speaks to the legislature's intent, first, that all such wells so identified *are* to be plugged as the nuisances they are or likely to become by those creating or maintaining the nuisance and only lastly to be plugged at state administered expense when no person can be said to be, or held to be, legally responsible. Specifically, K.S.A. 55-179(a)(2)(A) and (a)(2)(B) reflect that it is only when a person legally responsible can not be found or identified or has otherwise passed beyond the reach of relief either physically or financially that the State should assume the burden of remediation of a well site. As noted, the modest means established to gather funds as a backup funding measure would indicate that the legislature

perceived and intended for the latter circumstances to be remote and clearly secondary. While criminal penalties might rightly be held for non-compliance with the oil and gas laws as those duties are there assigned, they, being fairly necessary of contemporaneous enforcement because of statute of limitation issues, would not necessarily restrict the reach of civil enforcement. *Rabinowitz,* 85 Kan. at pps. 849-851. Neither statutes of limitation nor laches are generally perceived to apply to Sate entities acting in a public capacity. *KPERS v. Reimer & Koger Assoc, Inc.,* 262 Kan. 635, 653 (1997). Clearly, K.S.A. 55-179(b) by its range of possible selection and the continuing threat posed by an unplugged well does not demand a recent violation or a contemporaneous reaction to the violation.

An examination of Kansas law long pertaining to a nuisance would reveal that the party creating the nuisance would be liable for the consequences of it. *Rush v. Concrete Materials & Construction Co.,* 172 Kan. 70, 73 (1951); *Union Trust Co. v. Cuppy,* 26 Kan. 754

(1882). Hence, identifying the party originally abandoning a well and avoiding a statutory mandate to plug it seems consistent with the law of nuisance and is certainly reasonable as a proposition to be recognized by K.S.A. 55-179(b). By example, an oil and gas well located in violation of the law would be deemed a nuisance. *Winkler Oil Co. v. Anderson,* 104 Kan. 1 (1919).

Further, nuisance law provides, equally, that a lessee of lands upon which a nuisance exists, if the lessee has knowledge of the nuisance, remains under an obligation to abate the nuisance as well and equally shares any risk of liability with its originator. *Rush, id.; Missouri Pac. Ry. Co. v. Webster,* 3 Kan App. 106 (1895). Hence, to join those mutually responsible in the same proceeding poses less risk to any estoppel claims that might arise by pursuing separate proceedings. *Marshall v. M. V. R. Co.,* 96 Kan. 470 (1915). Thus, it seems clear that, absent a statute to the contrary, an assignee of an oil and gas lease with advance knowledge of unplugged wells on the assigned

leasehold or who otherwise has the means of reasonable advance discovery of the existence of such abandoned and unplugged wells on the leasehold property under his control could not escape liability. In fact, statutory provisions - K.S.A. 55-151, K.S.A. 55-154, K.S.A. 55-158, K.S.A. 55-159, and K.S.A. 55-160 - require a public record of well locations and a record of whether a well has been plugged. The laws noted requiring such notifications, at least notification of wells to be plugged, and providing for the records to enable oversight by the Commission have been in the statute books for a long period of time (L. 1913, ch. 201, §§ 2,3; R.S. (1923) 55-124, 55-125). This latter statute was enacted only ten years after the beginning of the M.A. Alexander lease in 1903. *See* R.O.A. at p. 167: lease #5. The duty to report beforehand the drilling of a well began only in 1955. *See* G.S. (1955 Supp. G.S. (1949) 55-128, now at K.S.A. 55-151. This duty arose thirty-four years before Denman, the holder of the M.A. Alexander lease since 1939, quit production of oil on the lease in 1989. Accordingly, a system

administered through the auspices of the State, though not perfect by its early omission of notice of the drilling of a well, if notice was, in fact, given, has provided some means for identification and enforcement. Of course, a renegade or unreported well or activity could escape undetected by the Commission until complaint was made.

Other legal principles pertaining to oil and gas leases also apply. An oil and gas lease is a contract and each lease carries its own independent rights and obligations. *Stamper v. Jones,* 188 Kan. 626, 640-641 (1961). A lease, unless otherwise expressed by its terms, carries with it the burdens of the lease as well as its benefits. *Hale v. Oil Co.,* 113 Kan. 176 (1923). By example, an oil and gas lease assigning the right to explore and produce oil and gas would include all the assignor's interest, including any interest in an *existing* well. It has been held that even if a particular gas well provided a source of fuel for a lessor's, or an assignor's, own premises, nevertheless, *absent words of exclusion in the lease,* that interest

passed by the lease to the control of the lessee. *Kemp v. Gas Co.*, 103 Kan. 595 (1918). This legal principle seems to be one well recognized by those long in the oil and gas business, such as Wayne Bright, the representative of John M. Denman Oil Co., Inc.:

> "Q. There is testimony in this docket that the interest in the M.A. Alexander Lease assigned by Denman to the Bridwells included only 32 of the 44 unplugged wells the Commission has identified. Is this your understanding?
>
> A. No. This interpretation is apparently based on the Change of Operator form (T-1) filed with the Commission in connection with the transfer of operating rights by Denman to the Bridwells, which listed 32 wells. At the time this form was filed, a GPS survey conducted by Commission staff showed only 32 abandoned wells on the lease. Denman was not aware of additional abandoned wells until advised of their existence by letter from Ryan Hoffman, Litigation Counsel for the Commission, after enforcement proceedings were commenced. However, the assignment from Denman conveyed to the Bridwells all of Denman's right, title and working interest in and to the lease, including all wells and other personal property thereon, whether known or unknown at the time of assignment. Denman withheld nothing from its assignment to the Bridwells, other than a small nonoperating overriding royalty interest, and did not retain any responsibility for unplugged wells."

See ROA at p. 249, l. 2 - l. 16.

While an oil and gas lease stands more as a license than a true lease in Kansas (*Connell v. Kanwa Oil, Inc.*, 161 Kan. 649, 653 (1946)), its characterization would not estop any of the principles noted above and of which it may be presumed the legislature was aware in the passage of applicable oil and gas legislation, including K.S.A. 55-179, which facially purports to be, by the absence of any Revisor's notes, an enactment arising first in 1986, nevertheless, it, first, in part, and later in full, merely repeated or reordered prior statutes. By example, the language now under scrutiny in the section denominated "(b)" of K.S.A. 55-179 first appeared in 1971 by L. 1971, ch. 187, § 3, which amended then existing, K.S.A. 55-140, which heretofore, as earlier noted, had substantially only reflected what now is reflected by K.S.A. 55-179(a).

Here, the Court believes those legal principles and underpinnings noted concerning both nuisances and the construction to be given oil and gas leases should aid the construction of K.S.A. 55-179(b). It seems significant in viewing the range of options named, yet

non-exclusive listing of parties that could be named, for determining a person or entity "legally responsible" that the statute omits the many possible assignees of a lease that might have existed between the original lessor and the current operator of that lease or the number of times a lease of certain acreage for oil and gas exploration may have been cancelled or expired and a new lease issued. This is consistent with the law of nuisance. On the other hand, it also adds an interloper who might tamper with such a well as responsible, which the law of nuisance would not reach.

Certainly, nothing in the statutory history of K.S.A. 55-179(b) of which, as the Commission noted, there is nothing to be found, controverts the legal principles noted above that underpin the law of nuisance and oil and gas leasing. However, reviewing other statutes governing the duties concerning the drilling, operation, and plugging of wells in *para materia* with K.S.A. 55-179(b) evidences some arguable alteration of the noted legal principles underlying nuisances or the construction to be given oil and gas

leases. By example, the exemption of the surface owner of the land subject to an oil and gas lease who otherwise does not operate the well or interfere in it from the duty to plug an abandoned well on the property that is, or was, subject to an oil and gas leasehold, as is provided for by K.S.A. 55-179(e), was not always the case. *State v. Foster, supra,* 106 Kan. 852 (1920). Under general nuisance law, as noted, a party maintaining a public or private nuisance could be charged with its abatement. Further, designating the "original" operator, that is, the person originating the nuisance, designating a "last" operator, most likely in lieu of the landowner, given the landowner exemption, as the last person remaining who had landowner authority over the unplugged well on an otherwise expired or forfeited lease, but who did not abate it, or, alternatively, designating the "current" operator, that is, the person *still* maintaining the nuisance, are all rationally consistent with the law of nuisance. What this means then is that no person first abandoning a well without plugging it properly can

avert a finding that he, she, or it would be "legally responsible" as the original creator of a public nuisance as liability under nuisance law can not be avoided merely by assignment of the lease, its expiration, or by the fact a new lease, which encompasses without limitation the geographic location of such an offending well, has been obtained whether by that same operator in lieu of the old leasehold or by way of a new lease provided to a new and subsequent operator. What this further means is that, absent some intervening statute, no *current* assignee of an original oil and gas lease or the holder of an in lieu of, or a new, lease, can shed the continuing duty to abate that pre-existing nuisance even if he, she, or it does nothing on the lease but hold the legal power over an existing abandoned, but unplugged well, which is, thus, still a nuisance. The only exception under the law of nuisance might rest in true ignorance of its presence on the leasehold. Here, in the absence of other evidence to the contrary, that ignorance might, in certain circumstances, be met by the absence of

Commission records:

> "Q. Okay. were you aware of the wells mentioned in Mr. Hoffman's letter prior to the time you receive this letter?
>
> A. Absolutely not.
>
> Q. So you weren't aware of these additional wells until after the Alexander oil and gas lease had already been assigned first to the Bridwell's and then to - - the new leases were obtained and then those new leases were assigned to TSCH, correct?
>
> A. That is correct.
>
> Q. Okay. And why weren't they included, why weren't these wells included on the T-1 form that you filed with the Commission when you transferred operations to the Bridwells?
>
> A. Well, I hate to admit it, but I guess it was ignorance on my part to assume that if you can't rely on KCC's records, what can you rely on. So it was ignorance on my part."

TR: W. Bright at ROA, p. 384, l. 23 - l. 25 p. 385, l. 1 - l. 16.

Of course, as earlier noted, prior to 1955 no notice was required as to the drilling of a well so wells drilled prior to 1955 on the M. A. Alexander lease would not be reflected in the Commission's records and it was only plugging activities that needed

to be reported from 1913 forward. Thus, if no plugging was done, no report would be due. If no drilling was done, no report would be due. If one did not observe the duty to report drilling, then, equally, no record would exist. To Mr. Bright's inquiry above, the answer would be for him to rely on his company's own records, but for the Commission, it would be to rely on the common knowledge assumption that an owner would know of the extent, reach, value, and liabilities in regard to its own property. It would seem, accordingly, in the face of this assumption, that once abandoned, but unplugged, wells were discovered on a leasehold that the proof of a disclaimer of liability would inure to those whose tenure it encompassed, particularly, if a duty of reporting was shown to have been omitted. Here, Mr. Bright had not been with Denman that long and, in fact, did not even know the company owned the M.A. Alexander lease. ROA at pps. 390-391: M. Bright TR at p. 125, l. 3 - p. 126, l. 25. Here, Denman was found to be the entity that originally abandoned all the wells. Significantly, it offered no evidence that

this was not true. Ideally, it would seem just for the law to recognize that a failure to report *all* wells on a T-1 transfer form, whatever their status, would then not allow that transferor to escape plugging liability altogether even though not in a K.S.A. 55-179(b) named category, however, neither statute nor rule implements this as a direct result. This would eliminate any "blind eye" defense and potentially expand the pool of operators that could be held accountable. Further, a successor lessee might then arguably have a cause of action for fraud or negligent misrepresentation against its transferor.

What about the fact a heretofore abandoned well was re-opened, then re-abandoned, again unplugged? This fact has not changed, but temporarily, at least from a regulatory perspective, the character of that well as a nuisance. It was a nuisance, or a potential nuisance, when it originally became so abandoned for which liability then became fixed, the responsibility for which fell to Denman. If later authoritatively reopened, then abandoned, still unplugged, then

liability again attached. Here, the Commission by its *Order* exempted Denman from the responsibility for the three wells the petitioners Bridwell operated, notwithstanding Denman was the original operator who had first abandoned these three wells and not plugged them. While the Commission findings are silent as to how these three wells became authoritatively slated to be brought back into production, it must be presumed public officials, such as the Commission and its staff, had approved the positioning of these wells from abandoned to active (K.S.A. 55-151; K.A.R. 82-3-103(a)(1)(B)) as an exception under K.A.R. 82-3-100, most likely by virtue of the Commission and Bridwells' compliance agreement.

It seems reasonable to the Court that the *authoritative* reopening of a well would absolve an existing duty to plug it by a predecessor lessor or lessee who had heretofore been liable for doing so since the well or wells would then no longer be deemed, in fact, abandoned. Thus, as to such wells, since the wells' history was altered, the petitioners Bridwell

could seemingly be seen to be in the position of an original operator who then abandoned the well. However, the Commission found the Bridwells to be responsible as the "last operator" of the M.A. Alexander lease, making no distinction as to the characterization to be given them as the operator of the three wells brought back into production. Notwithstanding the fact that K.S.A. 55-179(b)'s list of persons potentially "legally responsible" is non-exclusive, the Commission apparently never considered if Bridwell could also be "legally responsible" through breach of his compliance agreement.

Under nuisance law, for a nuisance not created in fact and law by an assignee during his tenure, the reassignment of the lease by that assignee operator to another should free that operator of liability, just as K.S.A. 55-179(b) would excuse assignees existing, if any, operating between the first, last, or current operator under the, or a, lease. Thus, for any nuisance reanimated during that lessee's tenure, that operator could fairly then be deemed an "original

operator ... who abandoned the well". Otherwise, absent something extrinsic binding that operator to the plugging obligation, the law of nuisance would dictate that duty would devolve and rest upon his successor lessee, if any, whether that be by way of an original lease or by way of a new lease encompassing the same well sites. *Missouri Pac. Ry. Co. v. Webster, supra; Union Trust Co. v. Cuppy, supra.* However, as earlier noted, if that something extrinsic is an indemnity clause contained in the lease assigned, it is a private matter between the assignor and assignee and one for which the governing laws, as previously noted, empower no public enforcement duty nor would its presence in a lease operate as a shield for the assignee from what would otherwise be a liability to the public to plug the offending well.

Viewing the Commission's line of thinking in relation to the application of K.S.A. 55-179(b) from the period from the *Donna Lee* proceeding through the current case, and while the Court might differ with some of the reasoning or resulting characterization of

the basis for liability, it, nevertheless, agrees with the Commission's belief that multiple parties can be found to be "legally responsible" to plug an abandoned well either by the terms of K.S.A. 55-179(b) itself or from the legal perspectives noted were K.S.A. 55-179(b) not in force. While K.S.A. 55-180(c) creates a public or private cause of action for reimbursement for plugging an abandoned well that threatens to pollute, obviously acting in support of K.S.A. 55-179, nevertheless, and certainly, a cause of action would exist independently under the law of nuisance to abate it. *Rabinowitz*, 85 Kan. at p. 841.

This current proceeding is merely declaratory of liability. What remedy and any final financial obligation that may result will arise through other proceedings, if necessary (K.S.A. 55-180(c)). Here, as none of the parties appear to have requisite authority, except perhaps TSCH, to enter upon the property subject of this leasehold, therefore, it would be under the Commission's authority and auspices that entry and remediation would necessarily be had. (K.S.A. 55-182),

then charged back pursuant to K.S.A. 55-180(c) to the legally responsible party or parties declared in this proceeding. This power given the Commission is consistent with, and in recognition of, the law relating to both trespass and the power to abate nuisances. *K. P. Rly. Co. v. Mihlman*, 17 Kan. 224, 231-232 (1876).

Here, the Plaintiff, Denman, as an operator under the M.A. Alexander lease, if it created the nuisances by abandoning and not plugging the wells on this lease when it ceased production in 1989, would be the "original operator" who abandoned those wells within the meaning of K.S.A 55-179(b). However, as to any wells transferred by its assignment of the leasehold to the Bridwell d/b/a, which were reactivated, *e.g.*, the three wells re-equipped and operated by the Bridwell d/b/a for a short period, Denman could reasonably be found to have shed its liability because these wells had ceased to be abandoned wells by consent of the Commission, however, temporarily.

The Commission made findings as to TSCH's

liability, though TSCH is not an active party, however, nevertheless, it would be subject to the Commission's relevant findings and its liability or non-liability, or the extent thereof, may affect other parties. The Commission's Order in regard to TSCH was not appealed by TSCH, hence, it is only reviewable here to the extent it affects the obligation of another party now before the Court. That review is further limited, as noted earlier, only to an issue raised by an appellant here in its *Petition for Reconsideration.* In the Court's view, the findings of the Commission as to TSCH's liability are correct as to the legal result in terms of its effect on any other party. Under the law applying to the construction of oil and gas leases as previously discussed, a person or entity such as TSCH had authority over an abandoned, but unplugged, well because the entire leasehold premises are subject to the oil and gas lease by existing Kansas law *unless excluded. Kemp v. Gas Co., supra.* Thus, the lease would have provided, in the absence of such an exclusion, all the requisite authority to operate the

lease.

Reference to the Commission orders in this case, relying as it does on both the *Donna Lee* proceeding and the *Quest Cherokee* proceeding, adopt the position to one degree or another that the assigned lease or a new lease must either positively identify the wells transferred and/or that the lessee has otherwise recognized the wells at issue as its responsibility by agreement or by physically working the wells or overtly attempting to, or expressing an intent to, exercise physical authority over the wells, or a well, in order to be a person or entity that would be "legally responsible" under K.S.A. 55-179(b) by, hence, "locating" the well, or a well, on that operator's lease. The Commission phrases its position further by emphasis on the word "physical" in the definition of an "operator" (K.S.A. 55-150(e); K.A.R. 82-3-101(a)(48)), whereby, an "operator" is "a person who is responsible for the *physical* operation and control of a well....". It does not reference its belief as tied to any other statute, by example, K.S.A. 55-151, which requires an

operator to have Commission approval to actually drill or make alteration to an existing well. Further it adopts this position without reference to, and clearly in opposition to the longstanding construction of these leases that find the power of physical control over a well automatically flows from the operator's status as the leaseholder.

If the Commission is to take the position it does, it could not be derived merely from the Commission's T-1 form, which is derivative of merely a notification statute (K.S.A. 55-155(f)). Rather, it would have to rest on a prohibition on any active operation of the lease towards its purpose of oil and gas production without Commission approval. If so, then what an assignor or assignee intended, as might be represented by the T-1 form, or what a lessee may want, by example, to put wells heretofore declared abandoned by operation of law (K.A.R. 82-3-111) into a status whereby they may be made active, would be but preliminary steps aimed toward eventual K.S.A. 55-151 approval. Thus, in looking for some collateral statutory support for the

Commission's position, if K.S.A. 55-151 was it, then it would have to be in the approval of activity in regard to any proposed or existing well or wells that would be the fulcrum for being deemed an "operator" of it, or them, and, hence, the "physical operation and control of a well", as neither preliminary steps nor intent alone would grant physical control over a well under K.S.A. 55-151. However, under K.S.A. 55-151, one needs to be an operator of the lease as a prerequisite to filing such an application. Further, if K.S.A. 55-151 was relevant to the Commission's decision, it would yet stand as unexplained how mere activity on one well would somehow spark responsibility for all wells on the lease.

In the Court's view, the Commission has misplaced emphasis on the words "physical" and "located". When the legal principles underpinning construction of oil and gas leases and nuisances are considered, it is clear this emphasis placed on "physical" and "located" distorts K.S.A. 55-179(b), bending it from its intended operation. In the Court's view, the Commission's

respective *Donna Lee* and *Quest Cherokee* proceedings logic, however interpreted or applied, are fundamentally askew of the proper interpretation of K.S.A. 55-179(b). Neither K.S.A. 55-151 nor any other authority granted the Commission, including under K.S.A. 55-179(b), can be seen to require a leaseholder's activity on an oil and gas lease, the filing of paperwork in regard thereto, or Commission sanction of such activity, as a predicate to an operator being recognized as, in fact, its operator or somehow otherwise as a predicate to being declared legally responsible for an abandoned, unplugged well. By legal precedent an oil and gas lease empowers its holder to operate it. The fact the lease's operator must be licensed or its plans previewed before any activity is commenced on the lease to operate it are but reasonably regulatory predicates to the exercise of the exclusive power of operation and control over a well site that would be extended by an unrestricted oil and gas lease. Dangers lurk in unregulated drilling or well operation. By example, *See* ROA at p. 24: Pre-

filed testimony of John Almond. Equally, the Commission can not assert or derive such authority by a construction given K.S.A. 55-179(b). No legislative history supports such a clear affront to existing law.

Thus, applying the underlying law here, it is clear that nuisance law would, at best, only excuse an unknowing assumption of authority over a nuisance. Thus, as to TSCH, Bridwell, by his position as the agent of and for TSCH, fully knew of the three wells his d/b/a operated, but did not plug, and knew of all the wells listed on the T-1 form. Hence, TSCH can be assigned notice of those offending wells through Bridwell. Further, the oil and gas lease assigned by Bridwell to TSCH on March 31, 2010 (ROA at pps. 235-237), upon which these unplugged wells were located, had no words of restriction or limitation and did not exclude any of the existing wells from the operating authority granted. The T-1 form transferring these wells was but notification to the Commission and transferred no independent authority. Thus, as the "current operator" of a leasehold with power over these

wells, TSCH would have the liability to plug all of these noted wells. If TSCH re-entered any wells, but did so without Commission authority, it would, nevertheless, be additionally liable for them within the meaning of K.S.A. 55-179(b) as a "person who without authorization tampers with ... an abandoned well". However, the Commission made no such finding. However, such a finding would not be relevant here to any other party given the extent of TSCH's declared liability.

Finally, the question exists as to the extent of the liability of the petitioners Bridwell. As previously discussed, the three wells operated by them, perhaps ones first operated then first abandoned by Denman, were subsequently operated then re-abandoned for over ninety days by Bridwell. The other unplugged wells remained as they were received unplugged from Denman. Nothing the Commission did, or agreed to, with Bridwell, removed them from this status automatically, but only if, and as, any well was altered. The Commission seeks to hold the petitioners Bridwell to

the plugging duty by looking to the fact the Denman lease was assigned to Bridwell, but was never assigned to TSCH, but rather new leases were obtained by the Bridwells from the current mineral right owners after Bridwell obtained such rights as Denman still had, if any, under the M. A. Alexander lease. However, at the time of the Denman assignment to the Bridwells, the M. A. Alexander lease had seemingly expired by operation of law by lack of production of oil or gas. *Peatling v. Baird*, 168 Kan. 528, 536-538 (1950). Nevertheless, in 2007, Mr. Bright, when contacted by the Commission as Denman's man about the unplugged wells, searched out and then called the current mineral right owners who "ratified" the lease. Prior to that time, Mr. Bright was unaware Denman even "owned" the lease. TR: W. Bright at ROA, pps. 393-394. Denman took no steps to reactivate the wells through the Commission nor did it produce any oil or gas before its inactive M. A. Alexander lease was assigned to the Bridwells in 2008, whereby the Bridwells obtained new leases in 2009 covering the same acreage description as the M. A.

Alexander lease.

Given the law governing the expiration of oil and gas leases as a matter of law, it seems evident why the Bridwells moved to obtain new written authority for operation on this particular acreage heretofore covered by the M. A. Alexander lease held by Denman. Mr. Bright and Mr. Bridwell were friends and the current mineral rights owners were very willing to "ratify" authority to operate their mineral interests. Hence, to distinguish the M. A. Alexander lease held by Denman and assigned to the Bridwells from the new leases obtained by the Bridwells is to make a distinction without a difference. Of course, as the Court has discussed previously, there is no basis from any perspective to distinguish these leases in terms of liability under K.S.A. 55-179(b).

Notwithstanding, the questionable lack of legal viability of the M. A. Alexander lease at that time of assignment in 2008, or the fact that there was no difference in the terms of the leases, but from whom they emanated, the Commission found the petitioners

Bridwell were the "last operator" of the Denman lease and that it was under that lease that the unplugged wells were drilled and abandoned and that the Bridwells operated under that lease for a period of time and operated three wells before obtaining the new leases.

K.S.A. 55-179(b), in defining a particular category of "legal responsibility", uses the terms "current *or* last operator of the lease upon which the well is located". However, to so hold, even on the Commission's theory, it must be assumed the M. A. Alexander lease held by Denman, then transferred to Bridwell, was still legally valid and viable. If not, the only authority to explore for oil and gas would be derived from the new leases, irrespective of whether the new leases merely represented the formal "ratification" of the mineral rights owners verbal commitment to Mr. Bright. Notwithstanding, however, this obvious continuity of authority, it would seem to the Court that either there is a "current operator" of a lease covering certain acreage under which a lessee is fully empowered to physically operate and control a

well or, if no such current operator exists, by example, a lease had expired and no other presently issued, there is only a "last" operator. Thus, under the Commission's theory, here the "last operator" of these abandoned wells under the M. A. Alexander lease would have been Denman had Bridwell held no current valid lease by virtue of Denman's assignment.

The Court finds difficulty with the Commission's construction in limiting plugging responsibility to a particular lease without regard to the authority over the acreage encompassed by the lease's terms. Whether that authority was derived from an assigned lease, a reissued lease, or a new lease seems wholly irrelevant. If, as here, the same acreage upon which the abandoned wells are located are included in each lease, then, seemingly, the fact the permitted operation is under the auspices of a new, yet unrestricted or unlimited lease, *i.e.*, covering the same acreage with no limitations, should not somehow afront the responsibility to plug a well, which should have, and still needs to be, plugged. It would only be in the

circumstance where a new lease excluded some of the acreage upon which an offending unplugged well was situated or otherwise the new lease was limited, as was the case in the *Quest Cherokee* proceeding where only a new "gas only" lease existed, that a basis to distinguish between such leases might arise. If any offending wells existed on the limited acreage of the new lease, they would be the responsibility of that new lessee as the "current operator" of these wells. For the balance of the acreage neither assigned nor subject to the new lease, the responsibility for unplugged wells on it would fall to that lessee who would then either be the "last operator" if the partial leasehold remaining had expired or, if the partial lease was still active, that lessee would have liability as a "current operator" of that remaining, retained leasehold.

Thus, simply looking to the acreage covered and/or the terms of the lease would control the designation set out in K.S.A. 55-179(b), which, if done, would dovetail and conform with the existing declarations of

law concerning the construction to be given oil and gas leases. Further, it would dovetail and substantially conform with the law governing nuisances, particularly, when it is considered that K.S.A. 55-179(e) excludes the landowner from responsibility for plugging an abandoned well unless the landowner was operating the well or interfering with the well's structure. Tying the term "located" in reference to a well to a specific lease only rather than tying it further to the specific acreage or geographic location for the exercise of the authority given under it is an attempt at policy making not supported by any statute nor sustainable as an interpretation of the law, particularly, through quasi-judicial proceedings. There is no legislative history underlying K.S.A. 55-179(b) that would support a deviation from the established legal principles noted which would otherwise support a designation of "legally responsible" differently, except where the surface owner's liability for such a nuisance is substantially removed (K.S.A. 55-179(e)). In fact, the very language of K.S.A. 55-179(b) surely substitutes "last operator"

for the landowner, thus recognizing and assuring that the principles governing nuisance law can otherwise be applied in the situation where a lease has expired and no other lease has been issued and the nuisance represented by the unplugged well still exists. But for K.S.A. 55-179(b)and its identification of the "last operator" and K.S.A. 55-179(e)'s exclusion of the surface owner, the landowner, under general nuisance law, would have been the only avenue, short of the Commission, upon whom to have thrust that duty of abatement of an abandoned, unplugged well. Hence, nuisance law is conformed and fitted by K.S.A. 55-179(b) for application to oil and gas leaseholds and, further, recognizes the special, and often transitory, nature of these licenses and licensees by empowering the Commission to deal with any failures of responsibility, particularly, for past deeds or omissions which the law of nuisance or trespass might otherwise impede. See *K. P. Rly. Co. v. Mihlman, supra*.

Accordingly, the Commission's emphasis on the word

"located" or, as earlier discussed, its fixation on the word "physical" distort the construction away from its logical underpinnings resting in existing law. Here, all leases before the Commission in this proceeding encompassed the identical acreage and all included the unplugged wells at issue here. None of the leases imposed restrictions or limitations such as to impair the authority and control of the leaseholder whether the lease was received by assignment, was merely reissued, or was new. Thus, applying K.S.A. 55-179(b), the resulting allocation of liability, or those "legally responsible", should have been as follows:

Denman was the original operator of an unrestricted lease who leased acreage that encompassed the 44 wells at issue on this acreage and who abandoned them without plugging them. Its liability for these wells is consistent with the law of nuisance. As noted, Denman neither contested originally nor in its motion for reconsideration the factual basis for this finding. Denman ceased the operation of any of these wells no later than 1989. Hence, these wells, absent a

Commission ruling to change this status for any of these wells, were abandoned as a matter of law after 90 days. No Commission ruling to change or alter this legal status was sought by Denman. Denman became obligated as a matter of law to plug these wells and it has never done so. Denman is "legally responsible" for each well as the "original operator who ... abandoned such well". Under the law of nuisance, Denman created each of the nuisances as represented by the 44 wells. However, because three of these 44 wells were subsequently removed from a category of abandonment with the approval of the Commission, these three wells could then no longer be said to have been abandoned by Denman. Nothing the Commission did, or agreed to with Bridwell, changed the status of any well but the three wells noted. Nothing TSCH did with any well during its tenure has been shown to have been authorized by the Commission.

Thereafter, by assignment from Denman of the M. A. Alexander lease, if then viable, or by way of new leases from the mineral right owners subsequent, each

of which documentary entitlement covered the same acreage and were without restrictions as to the authority granted, the Bridwells received authority to act in regard to the unplugged wells on that described acreage. Bridwell opened and operated three, heretofore, abandoned, unplugged wells left so by Denman. The Bridwells are liable as an "original operator" of the three wells in which it opened, operated, and then abandoned. For the balance of the wells at issue found unplugged on this acreage, the Bridwells have not been shown to have known of the presence of twelve of the unplugged wells discovered by the Commission staff in November 2010 nor has it been shown they should likely have known of these twelve wells. Further, since the Bridwells assigned their leasehold covering the acreage encompassing all the wells at issue to TSCH prior to the institution of this action, the Bridwells are neither the "last operator" nor the "current operator" of any of these wells and are not "legally responsible" for any of such wells except as the "original operator" of the noted three

wells. This result is consistent with the law of nuisance.

TSCH is the "current operator" of the unrestricted leasehold encompassing the acreage upon which all wells at issue are situsued. As an assignee, there is no showing it had knowledge of the twelve wells discovered by Commission staff in November 2010 which was after it had obtained assignment of the lease from the Bridwells. It is "legally responsible" as the "current operator" of the leases that were received by assignment from the Bridwells and upon which such offending wells are located for the balance of all noted wells on such property, excluding the twelve wells noted, but including the three wells operated by the Bridwells, for which the Bridwells, too, as their creator, are also liable. TSCH's liability for all unplugged wells, but the twelve wells noted, is co-extensive with that of Denman, but for the three wells operated by Bridwell for which Denman is not liable.

Whether, Gary Bridwell, as an individual, and/or the Bridwells as a d/b/a are liable for any other

reason was not made an issue before the Commission nor raised by way of the petitions for reconsideration and, accordingly, has not been considered here.

All other rulings of the Commission as challenged by a party's respective *Petition for Reconsideration* are affirmed for the reasons stated by the Commission or otherwise, if discussed, affirmed for the reasons stated in this *Memorandum Opinion.* None of the reasons advanced in either of the respective petitions in regard to those rulings finds merit under the Kansas Judicial Review Act.

ENTRY OF JUDGMENT

Judgment is entered in Case No. 12C402 for the Respondent, the State Corporation Commission of the State of Kansas, and against the Petitioner, the John M. Denman Oil Co., Inc., by affirmance of the Commission's *Order on Reconsideration* for the reasons stated in the foregoing *Memorandum Opinion.* Costs are taxed to the Petitioner.

Judgment is entered in Case No. 12C407 for the Petitioners, Gary and Kayla Bridwell d/b/a Black Rain

Energy, and against the Respondent, the State Corporation Commission of the State of Kansas, as follows and to-wit: that portion of Respondent's *Order on Reconsideration* finding the Petitioners "legally responsible" for other than the three wells operated by the Petitioners, as identified in such *Order,* is vacated and reversed for the reasons stated in the foregoing *Memorandum Opinion*. Otherwise, Respondent's *Order on Reconsideration* is affirmed. Costs are taxed to the Respondent.

This entry of judgment shall be effective when filed with the Clerk of this Court and no further journal entry is required.

IT IS SO ORDERED this 10th day of October, 2013.

Franklin R. Theis
Judge of the District Court
Division Seven

cc: Thomas Rhoads
John McCannon
Keith Brock