

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

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

In the Matter of the Application of RJM) Docket No: 18-CONS-3305-CUIC
Company to authorize injection of)
saltwater into the Lansing-Kansas City) CONSERVATION DIVISION
formation at the Doll#3 well located in the)
SW/4 of Section 27, Township 18 South,) License No: 30458
Range 11 West, Barton County, Kansas.)

ORDER ON MOTION TO DISMISS

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

Background:

1. On January 31, 2018, RJM Company (Applicant) filed an Application seeking authorization for injection of saltwater into the Lansing-Kansas City formation at the Doll#3 well located in the SW/4 of Section 27, Township 18 South, Range 11 West, Barton County, Kansas.
2. The Commission received numerous protests and requests for hearing on the application.¹

¹ Protests and/or requests for hearing filed by: Jessica Skyfield, Julie Stielstra, Debby Duncan, Susan Royd-Sykes, Joyce Teubner, Lynne S. Hunter, Cindy Hoedel, Adam Stuart, Forest A. Ormes, Sarah Feyerherm, Margy Stewart, Vera Wallace, Samatha Stopple, Lindsay Metcalf, Susan Warren, Alexa Dawson, Kathy Carroll, Rachel Allai, Barbara L. Watkins, Michael L. Schmidt, Janet Hanson, Annette Talbot, Rep. Annie Kuether, Rep. Nancy Lusk, Daniel Copp, Lori Torres, Royceann Mather, Melanie Terrill, Andy Prosser, Brett Meyer, Melinda Graham, Kevin Ireland, Diane L. Kehres, Dr. Lee Anne Coester, Dawn Hawkins. Be it noted for the record that two Protestants, Elizabeth Fischer and Cynthia Evans, provided no contact information and therefore the Commission is without sufficient means to serve them with Commission Orders.

3. On June 1, 2018, the Applicant filed a Motion to Dismiss all Protests alleging that no Protestant had established a direct and substantial interest in the Application demonstrated by a showing that the Protestant had a cognizable injury connected to the granting of the Application.²

4. Between June 5 and June 11, 2018, Protestants Kathy Carroll, Andy Prosser, Royceann Mather, Cindy Hoedel, Charles and Lynne Hunter filed motions to deny the Applicant's Motion to Dismiss.

5. On June 21, 2018, the Applicant moved to strike the Protestants' responses for failure to comply with Commission regulations.³

6. Between June 29 and July 2, 2018, Protestants Cindy Hoedel, Royceann Mather, and Lynne Hunter filed responses to the Applicant's Motion to Strike.

7. On July 2, 2018, Protestant Cindy Hoedel filed an Objection to Notice by Applicant.

8. On July 5, 2018, Protestant Royceann Mather filed a Motion to Close Docket and Deny Permit.

Findings and Conclusions:

9. K.A.R. 82-3-135a(e) requires a protestant to file a "valid protest." According to K.A.R. 82-3-135b(a), a valid protest is one that "include[s] a clear and concise statement of the direct and substantial interest of the protester in the proceeding, including specific allegations as to the manner in which the grant of the application will cause waste, violate correlative rights, or pollute the water resources of the state of Kansas." A protestant can only show a "direct and substantial interest" in the Application where the protestant demonstrates that, "[1] he or she

² Applicant's Motion to Dismiss the Protests Filed Herein at 3-5 (Apr. 13, 2018).

³ Applicant's Motion to Strike and Response to Protestants' Motions to Deny Applicant's Motion to Dismiss the Protests Filed Herein at 2 (June 21, 2018).

suffered a cognizable injury and [2] that there is a causal connection between the injury and the challenged conduct.”⁴ “A cognizable injury is established by showing . . . that [an individual] personally suffers some actual or threatened injury as a result of the challenged conduct . . . [and] . . . [t]he injury must be particularized, *i.e.*, it must affect the plaintiff in a personal and individual way.”⁵ “Mere allegations of possible future injury do not meet the requirements of standing and instead, any threatened injury must be certainly impending.”⁶ Moreover, “an injury must be more than a generalized grievance common to all members of the public.”⁷

10. All of the Protests filed in this matter raise the same general issues. All of the Protests reference concern for the Cheyenne Bottoms Refuge and concern that injection activity will pollute or damage the nature preserve. Therefore, the Commission analyzes the Protests together.

11. The Protests do not articulate a direct and substantial interest of the Protestant in the matter nor do they make specific allegations regarding any cognizable injury that can be attributed to granting the Application. The Protests in this matter only raise generalized concerns common to all members of the public. The Protests do not meet the requirements of K.A.R. 82-3-135b. Furthermore, no response pleading adds anything substantially different from the Protests.

12. Based on the above, the Commission finds that all Protests should be dismissed. There are no other protests of record in this matter. Therefore, the Applicant’s motion to strike,

⁴ See *Kansas Bldg. Indus. Workers Comp. Fund v. State*, 302 Kan. 656, 678, 359 P.3d 33, 49 (2015) (citations and internal quotations omitted). See also Docket No. 17-CONS-3689-CUIC, *Final Precedential Order*, ¶ 3 (Apr. 5, 2018).

⁵ See *FV-I, Inc. for Morgan Stanley Mortg. Capital Holdings, LLC v. Kallevig*, 306 Kan. 204, 212, 392 P.3d 1248, 1255–56 (2017) (internal citations and quotations omitted). See also Docket No. 17-CONS-3689-CUIC, *Written Findings and Recommendations*, ¶ 29 (Mar. 29, 2018).

⁶ See also *Labette Cty. Med. Ctr. v. Kansas Dep’t of Health & Env’t*, 2017 WL 3203383 at *8 (unpublished), 399 P.3d 292 (Kan. Ct. App. 2017). See also Docket No. 17-CONS-3689-CUIC, *Written Findings and Recommendations*, ¶ 29.

⁷ *Labette Cty. Med. Ctr.* 2017 WL 3203383 at *10 (internal citations and quotations omitted).

Ms. Hoedel's objection to notice and Ms. Mather's motion to deny the application are denied as moot.

13. Staff is directed to process the Application accordingly and advise the Commission if, in Staff's opinion, a hearing is necessary. Otherwise, the docket shall be closed, and there shall be no further proceedings.

THEREFORE, THE COMMISSION ORDERS:

- A. The Applicant's Motion to Dismiss the Protests Filed Herein is granted.
- B. The Applicant's, Ms. Hoedel's and Ms. Mather's motions are denied as moot.
- C. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).⁸
- D. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 07/10/2018



Lynn M. Retz
Secretary to the Commission

Date Mailed: 07/11/2018

DLK/sc

⁸ K.S.A. 55-162; K.S.A. 55-606; K.S.A. 55-707; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

18-CONS-3305-CUIC

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail and electronic service on 07/10/2018.

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