

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

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

In the matter of a general investigation into ) Docket No.: 17-CONS-3362-CINV  
potential Commission rulemaking regarding )  
responsibility for abandoned wells. ) CONSERVATION DIVISION  
)  
\_\_\_\_\_ ) License No.: N/A

**REPORT AND RECOMMENDATION OF COMMISSION STAFF**

Commission Staff believes it would be appropriate to submit the attached Report and Recommendation in this docket and therefore does so via this filing.


Respectfully submitted,

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

Sam Brownback, Governor

**To:** Pat Apple, Chairman  
Shari Feist Albrecht, Commissioner  
Jay Scott Emler, Commissioner

**From:** Ryan A. Hoffman, Director, Conservation Division 

**Date:** May 30, 2017

**Re:** Staff's Analysis of Written Comments in Docket No. 17-CONS-3362-CINV

Introduction

The Office of General Counsel has directed Conservation Staff to provide an analysis and response to the written comments pertaining to Docket No. 17-CONS-3362-CINV to assist in developing the record for the Commission.

As a preliminary matter, Staff believes it prudent to provide some background on the known universe of unplugged wells in Kansas and how those wells may fit into the existing statutory funds used to plug abandoned wells. Currently, funding to plug abandoned wells is provided by two separate statutory funds. K.S.A. § 55-192 established the Abandoned Oil and Gas Well Fund, which may be used to plug abandoned wells that were drilled prior to July 1, 1996. K.S.A. § 55-166 established the Well Plugging Assurance Fund, which may be used to plug abandoned wells drilled on or after July 1, 1996.

The Conservation Division's well database, RBDMS, currently has 42,108 unplugged well records with a spud date prior to July 1, 1996, and 42,958 unplugged well records with a spud date after July 1, 1996, all which would qualify for plugging under the appropriate funds if the wells were to become abandoned. Staff's internal database for tracking wells was created in 1990, so any well receiving an approved Intent-to-Drill subsequent to 1990 which was actually drilled should have a verified spud date in RBDMS. In addition to the known 85,066 unplugged well records, Staff believes there are approximately 47,028 well records in RBDMS without a verified spud date. These wells were most likely drilled prior to July 1, 1996.

Staff believes the ten written comments submitted in this docket, filed on behalf of multiple entities, share a number of broad themes. Rather than provide a detailed response to each comment, Staff will provide analysis and feedback regarding three broad themes found in the comments: Quest v. Denman, Landman Responsibility, and Regulatory Certainty/Need for Regulations.

## Quest v. Denman

Various written comments expressed the belief that the Commission should implement what has come to be known as the *Quest* interpretation of K.S.A. 55-179(b), as implemented by the Commission from 2008 to 2013. The *Quest* interpretation essentially states any party who takes a new lease on a property does not become responsible for pre-existing wells on the property unless the party takes some other affirmative action to claim responsibility. Professor Pierce advocates that a “culpability” requirement should be read into K.S.A. 55-179(b), which more or less would result in a *Quest* interpretation of the statute.

Staff reiterates this course of action is not allowed due to the actual language of the statute and the recent court decisions. In *Denman*, the District Court found error in the Commission’s implementation of K.S.A. 55-179 in both the *New Donna Lee* and *Quest* cases. The Court of Appeals did not identify any error in the District Court’s *Denman* reasoning, and specifically affirmed the District Court’s ruling. The court decisions in *Denman* explicitly disallow the Commission’s rulings and rationales from *New Donna Lee* and *Quest*. Finally, as indicated by Staff in written comments, the plain language of K.S.A. 55-179(b) does not allow for a *Quest* interpretation.

In short, the *Quest* interpretation of K.S.A. 55-179(b) is not supported by the law. *Quest* is not supported by statute and was not supported by the District or Appellate Courts. If the Commission wishes to adhere to the *Quest* interpretation, a change in statute would be necessary.

## Landman Responsibility

The Wichita Association of Petroleum Landmen, HOP Energies, and Professor Pierce each opine that K.S.A. 55-179(b) does not, or that the Commission’s interpretation of K.S.A. 55-179(b) should not, reflect the possibility that landmen may be responsible for abandoned wells. Staff indicated it would be open to exploring a way to exclude landmen at the Roundtable on this matter; however, Staff notes that such an exclusion would likely require statutory changes beyond the realm of enacting Staff’s proposed regulations.

There were many questions regarding the role of a landman at the Roundtable. The *Illustrated Petroleum Reference Dictionary, Third Edition*, defines a landman as “A person whose primary duties are managing an oil company’s relations with landowners. Such duties include securing oil and gas leases, lease amendments, and other agreements. A lease hound.” Other dictionaries have similar definitions.

Staff notes that a landman, having secured a lease on his own or another’s behalf, has secured the exclusive right to enter upon a property to drill wells, operate wells, and simultaneously prohibit others from doing the same. Essentially, they have obtained the exclusive right to exercise physical control over the wells on the lease, even if they do not have a license issued by the KCC. It is a reasonable interpretation that such facts statutorily obligate the Commission to find a landman responsible under K.S.A. 55-179(b) as the current or last operator of the lease upon which an abandoned well is located. The Commission could also appropriately find a landman

responsible for a well, independent of being the current or last operator of the lease, due to the list of responsible parties under K.S.A. 55-179(b) being non-exclusive.

A landman's intentions regarding operations are not statutorily relevant as to responsibility for the existing wells on a lease. The District Court and Court of Appeals in *Denman* stated that abandoned wells should be plugged with state funds only as a last resort. The right to the exercise physical control over the wells on a lease, which a landman obtains, is very relevant to the determination of responsibility for the wells on the lease.

#### Regulatory Certainty/Need for Regulations

Tim McKee, Jeff Kennedy, and Dart Cherokee all express a desire for regulatory certainty when it comes to determining responsibility for abandoned wells. This desire is shared by most participants in this matter including Staff. Regulatory certainty could result in significant decision-making efficiencies throughout the oil and gas industry, and would also result in significant efficiencies within the Commission's Conservation Division.

Mr. McKee suggested that no regulations be adopted until such time as the Commission has ruled on multiple cases with different fact patterns. Staff does not share Mr. McKee's belief that these matters should be handled on a case-by-case basis to the exclusion of enacting regulations. As noted by the courts in *Denman*, Commission rulings are not binding on future Commissions and are not binding on the courts. A host of Commission decisions regarding abandoned well responsibility under K.S.A. 55-179 could result in a slew of new rulings subject to appeal at the District and Appellate courts, with the accompanying delays that come with such litigation. The uncertainty created by such a process would be as infinite as the potential fact patterns. Staff believes regulations provide the best path for certainty.

Mr. Kennedy believes K.S.A. 55-179 is so significantly flawed that it is impossible to draft a regulation that captures its meaning. Staff has submitted a draft regulation that it believes conforms to the statute as currently written and interpreted by the courts. If the Commission desires regulations significantly different than those contained in Staff's draft, then Staff would recommend following the suggestion to pursue changing the statute. Staff would note that any change to the statute, no matter how clearly written at the time, would still be subject to future judicial interpretation and potential uncertainty.

#### Conclusion

Staff recommends the Commission provide feedback regarding the draft regulations, including guidance as to whether Staff should initiate the standard administrative procedures for promulgating new regulations in line with the draft submitted in this docket. This will involve consultation with the Oil & Gas Advisory Committee and submission of the regulations to the Department of Administration and Attorney General's office.

If the Commission does not support Staff's proposed regulations, Staff recommends closing this docket and allowing the parties to pursue legislative remedies. Staff remains available for supplementation of the record if any additional data is needed by the Commission.

## CERTIFICATE OF SERVICE

I certify that on May 31, 2017, I caused a complete, accurate copy of this Report and Recommendation of Commission Staff to be served via U.S. mail, postage prepaid and properly addressed to the following:

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