

**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 Vulcan Resources, LLC, for an) Docket No. 19-CONS-3206-CUIC
application for a permit for salt -)
water disposal in the Hatch I-1,) CONSERVATION DIVISION
located at NE SE NW NE of Section 2) License No. 35061 Permit No. E-32,766
Township 23S, Range 13E in Coffey) County, Kansas)

In the Matter of Vulcan Resources, LLC for an application for a permit for the disposal of salt water into the Squirrel Formation at the Hatch I-1 well, located at the NE SE NW NE of Section 2, Township 23S, Range 13E in Coffey County, Kansas, with a maximum operating pressure of 600 PSI and a maximum injection rate of 500 bbls. per day. Docket Number 19-CON-3206-CUIC.

PROTESTANT'S RESPONSE TO APPLICANT'S MOTION TO DISMISS PROTEST

Comes now Protestant Susan Royd-Sykes with her Response to Applicant's Motion to Dismiss the Protest, and moves Commission to grant her standing and DENY Applicant's Motion.

In support of this request, the Protestant states that in the Applicant's Motion, Applicant has reinterpreted statements in her protest letter and has determined that Protestant has not met the legal criteria needed to create a valid protest and standing in the matter of this Application.

To wit, Protestant replies:

RE: reinterpretation of Protestant's statements:

1) That the Applicant's Motion has reinterpreted statements from Protestant's December 13, 2018 protest letter regarding the creek and river confluence location she provided, and by doing so, Applicant also shifted the confluence location point to between 10-13 miles to the east and to a location near a town that she did not mention or refer to.

(a) To the point, Applicant's Motion quotes paragraph 2 of Protestant's protest letter "The Hatch I-1 well is located on local farmland within a stone's throw of several creeks and waterways that feed into North Big Creek which then feeds into the Neosho River about 10 miles to the southeast" (photo 1). It is clear from this statement that Protestant's beginning reference point for measuring the distance to the confluence point was the Hatch I-1 well, and that Protestant said exactly what she meant: that beginning with the Hatch I-1 well as the starting reference point

and measuring “about 10 miles to the southeast” in a line as the crow flies, the confluence point of the creek and river is located just off to the east of Highway 75 near Burlington ⁽¹⁾, not at a point another 10 miles to the southeast from Burlington near Leroy, Kansas as the Applicant claims; Leroy is between another 10-13 miles further southeast of Burlington and is clearly a reinterpretation and misstatement on the part of the Applicant.

(b) After reinterpreting the confluence location, Applicant goes on to state that “Applicant agrees, and notes that the point where North Big Creek drains into the Neosho River is near Leroy, Kansas, downstream of water plant of the city of Burlington, Kansas”⁽²⁾. In response, Protestant begs to differ - since Applicant reinterpreted and relocated the point of confluence from the point near Burlington which Protestant indicated to a point near Leroy, Applicant cannot possibly be agreeing with Protestant.

RE: validity of protest

1) In paragraphs 1 through 3 of Applicant’s Motion, Applicant alleges that the Protestant has not met any of the legal criteria needed to create a valid protest. To that, Protestant replies:

(a) First off, while Applicant’s Motion challenges the issue of Protestant alleging facts as to how the granting of this Application would cause waste, violate correlative rights, or pollute water resources of the state of Kansas, Protestant cannot locate the statutory citation of K.S.A. 82-3-135b(a) ^{*3} that Applicant claims to use as the basis of Applicant’s definition of a valid protest. Protestant can, however, find the Commission’s regulation of **K.A.R. 82-3-135b(a)** which states “...The protest shall include 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.” To that definition of a valid protest, Protestant states, that the “**or**” in the definition gives protester the option to choose between waste, correlative rights **or** pollution of the water resources of the state of Kansas, and in her protest letter, Protestant chose to address the issue of pollution of those water resources of the state of Kansas, specifically, North Big Creek and the Neosho River by potential saltwater spills at the Hatch I-1

1 Paragraph 2, Protestant’s Protest Letter

2 Applicant’s Motion to Dismiss the Protest pg. 3, lines 4-6

*3 Paragraph 1 Applicant’s Motion to Dismiss

well and/or tank battery site ⁽⁴⁾:

“...This site is located at an elevation that is about 100’ higher in elevation than those surrounding creeks that feed into the Neosho River – the very River which is the source of the water I depend on for daily sustenance (my home’s water service is via the city of Burlington and their water plant...by the Neosho on the east edge of town.

Due to the higher elevation of the Hatch I-1 site, any brine leakage or spillage from the well site or its tank battery that results in pollution of those Neosho tributaries and the Neosho itself would violate water my personal right to clean and safe drinking water.”

Protestant felt that it was inherent, universally implied and understood in the reading of K.A.R. 82-3-135b(a) that “water resources of the state of Kansas” includes *all* surface and ground water in Kansas which would automatically include North Big Creek and the Neosho River in Coffey County, Kansas; and that because the understanding is inherent and universal in implication, she need not reiterate the point. She did, however, explain how the Neosho River provides the source of all of her life sustaining water via the Burlington water plant which draws its water from the Neosho River, and how any potential saltwater spillage and run-off at the Hatch I-1 site would create a direct pollution threat to the surrounding creek, in turn, the Neosho River, in turn, the water drawn from the Neosho River at the Burlington water plant, and in turn, her life sustaining water source - all of which logically creates a very clear flow of pollution cause-and-effect damage to the “water resources of the state of Kansas”, and, therefore, also clearly lays out the manner in which Protestant’s life sustaining water source would be under threat of pollution; which does, indeed, describe the manner in which the granting of this Application for a saltwater disposal well at the Hatch I-1 creates the threat of pollution-related harm and does, therefore, creates a *valid protest* for Protestant in this Application matter.

(2) Applicant’s Motion to Dismiss also alleges that Protestant has not demonstrated a *valid interest*. The definition of cognizable injury that the Commission applies in these protest cases states requires that an individual establish cognizable injury by showing personal harm from “actual **or** threatened injury as a result of the challenged conduct” and “the injury must be particularized, it must affect the plaintiff in a personal and individual way” ⁽⁵⁾. The Commission also holds that “specific allegations **or** a statement of the direct and substantial interest of the Protestant” must be stated to create a valid interest.

⁴ Paragraphs 3, 4 Protestant’s Protest Letter

⁵ Final Precedential Order 17-CONS-3689-CUIC

(a) Because the Application sought by Vulcan Resources LLC in this matter has not yet been granted by the Commission and saltwater disposal has not yet begun, it is not possible for the Protestant to show “actual” damages; however, because the test for proving cognizable injury still contains an “**or** threatened injury” clause as well as an “**or** a statement of the direct and substantial interest of the Protestant”, legally speaking, the Protestant is given the choice of either proving “actual” injury **or** “threatened injury”, and providing a statement of the direct and substantial interest the protestant has related to any threatened injury. In that regard, Protestant feels that she has laid out the arguments of her *direct and substantial interest* clearly, logically, and concisely in the narrative response paragraphs she provided above in section 1. To summarize, Protestant must ask what could possibly provide a more direct and substantial interest than living under the continual threat of saltwater spillage and related run-off pollution at the Hatch I-1 well site, a threat that feels so menacing that it resulted in the filing this protest in an effort to ensure that her life sustaining water is protected with all possible effort? What could be a more particularized, cognizable injury than the pollution of one’s source of life sustaining water? Would not the Protestant be remiss if she did not respond to this Application by taking protest action to protect her portion of the life-sustaining water resources of Kansas?

(3) The Applicant’s Motion also goes on to quote the Commission’s previously referenced precedential finding that “under the requirement of standing, any threatened injury must certainly be impending”⁽⁶⁾. Protestant reiterates that because the Application sought by Vulcan Resources LLC in this matter has not yet been approved, Protestant cannot prove that the threat of saltwater spillage and resultant pollution is *immediately* impending. Protestant can, however, provide a definition of impending in a broader sense that includes: near, approaching, in the offing, on the horizon, brewing, looming, threatening, and menacing.

(a) Additionally, in searching out records on the existing saltwater disposal wells in Coffey County, the Protestant filed an August 28, 2018 KORA⁽⁷⁾. Commission records supplied in answer indicate that, as of August 2018, there were already 149 saltwater disposal wells in the county, five of which are located and in use on the Hatch I-1 well site lease. The ShaleXP map of this particular Hatch lease related to this Application shows the lease to be an estimated one-half

⁶ Final Precedential Order 17-CONS-3689-CUIC

⁷ KORA request # 1535460098

square mile in size and currently houses five producing oil wells (green circles), five dry holes (black circles), six cancelled or expired wells (orange circles), three new intents to drill (blue arrows) and five saltwater disposal wells (yellow triangles) (photo 2 Hatch lease map by Shale XP). If the Applicant's Application for the Hatch I-1 is granted, this would bring the total number of saltwater disposal wells for this lease to six. It should also be noted that one of the producing oil well jacks on this particular Hatch lease is situated within fencing atop a pond dam where cattle freely roam and water themselves at the pond and the saltwater disposal wells scattered among the trees near the creek which leaves the Protestant with additional concerns about water protections for the lease. (photo 3 Hatch lease pond)

(b) Further, 27 square miles of Coffey County's total 654 square miles are taken up in surface water with most of the surface water located within a 20-mile radius of the Hatch I-1 well site, and which includes all main sources of surface water in the County - the Neosho River Watershed/Basin, the John Redmond Reservoir, the Wolf Creek Nuclear Generating Station Cooling Lake (also known as Coffey County Fishing Lake) and all of the related tributary creeks that feed these bodies of water. In addition, this area of the County also sits atop the County's dominant source of groundwater - a segment of the Neosho River Alluvial Aquifer. Suffice it to say, that none of these aforementioned sources of surface water or ground water need further introduction to prove that they all have standing as water resources of Kansas or to understand how integrally and inseparably all of those small tributary creeks that run near the Hatch I-1 well site are intertwined with the feeding of the Neosho River or the Alluvial Aquifer.

(c) While protestant has requested information on any and all related saltwater spills in Coffey County related to Vulcan Resources LLC and the Hatch lease and expected amounts of produced water slated for disposal at the Hatch I-1, Protestant's KORA requests put to the Commission have not yet been honored, nor has Protestant's request for information from Vulcan Resources LLC. In addition, Protestant's motion to compel discovery from Vulcan Resources LLC remains unacted upon by the Commission and during the prehearing conference call, her motion to compel was stayed by the prehearing officer-elect Jon Myers until such time the Applicant's Motion to Dismiss is decided upon by the Commission.

(d) To continue, combining information from items 3(a) and 3(b), concerning the Hatch

lease cluster of 23 bore holes, wells, or disposals it is very easy to see that the Hatch lease has already been swiss-cheesed. If the Hatch I-1 Application is granted, it will bring the total bores on this half-square mile of land on the Hatch lease to number 24 which adds yet another hole to the already existing swiss-cheesed effect. To the Protestant, with the lease location of the tributary creeks that feed the Neosho, this swiss-cheesed effect exponentially increases the menacing threat for the potential of saltwater spillage pollution to those waters on which she depends for her life sustenance. In following, Protestant can then most certainly apply the broader definition of “impending” - near, approaching, in the offing, on the horizon, brewing, looming, threatening, and menacing - threat to the approval of the Application for a Hatch I-1 saltwater disposal well. Protestant also states that she sees this threat as truly impending and not just as a “generalized grievance common to all members of the public”.

The statutorily charged mission and responsibility of the Kansas Corporation Commission and its Conservation Division is to protect correlative rights and the environmental resources of Kansas, including the protection of fresh and useable water from pollution.

In keeping with the mission and responsibility of the Commission, Protestant comes again before the Commission with her Response to Applicant’s Motion to Dismiss the Protest to assert that she has met the criteria for standing and provided proof of a valid protest to the best of her ability and now prays for the Commission to grant her standing in this Application matter and deny Applicant’s Motion to Dismiss the Protest.

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GOVERNOR JEFF COLYER, M.D.

SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT EMLER, COMMISSIONER | DWIGHT D. KEEN, COMMISSIONER

August 30, 2018

Susan Royd-Sykes
504 S 6th St
Burlington, KS 66839
moondrummer88@gmail.com

Re: 08/28/2018 Kansas Open Records Act Request #1535460098

Ms. Royd-Sykes,

Please find enclosed the documents you requested pursuant to the Kansas Open Records Act, K.S.A. 45-215 *et seq.* This constitutes the completion of your request. Any additional request received within one calendar year from the date of this request may be billed at the cost of complying with such request.

Please feel free to contact me if you have any questions at 785-271-3170 or l.retz@kcc.ks.gov.

Respectfully,

A handwritten signature in blue ink, appearing to read "Lynn M. Retz".

Lynn M. Retz
Official Custodian of Records
Secretary to the Commission

Enclosure

KORA pg. 1

| API_WellNo | LEASE_NM | WELL_NO | WELL_TYP | NAME_ |
|----------------|---------------------------------|---------|----------|--------|
| 15031200470000 | TURKEY CREEK UNIT (GLEN ROGERS) | 3 | SWD | COFFEY |
| 15031208860000 | FREEMAN BADE | 3 | SWD | COFFEY |
| 15031201860001 | PHILLIPS 6 | SWDW | SWD | COFFEY |
| 15031201890000 | FLAHERT | 1 DW | SWD | COFFEY |
| 15031201900000 | MCCULLOUGH | 1 | SWD | COFFEY |
| 15031202620001 | ALLEN | 2 | SWD | COFFEY |
| 15031204740001 | SHOTWELL | 2 | SWD | COFFEY |
| 15031204930000 | THOMSEN B | 8 | SWD | COFFEY |
| 15031204980000 | CONRAD | 1 SWD | SWD | COFFEY |
| 15031190390001 | HATCH | 1 | SWD | COFFEY |
| 15031207000001 | FLAKE | 4 SWD | SWD | COFFEY |
| 15031216320000 | PAXSON | 2 | SWD | COFFEY |
| 15031216330000 | OLINGER B | 2 D | SWD | COFFEY |
| 15031216610001 | WINN 3&4 (WINN UNIT 4) | 1 (SWD) | SWD | COFFEY |
| 15031224960000 | RICH | SWD | SWD | COFFEY |
| 15031216960000 | STROUD A | 2-D | SWD | COFFEY |
| 15031225850000 | WILSON | D-1 | SWD | COFFEY |
| 15031225960001 | HOYT | D-1 | SWD | COFFEY |
| 15031217900000 | WINN | W 1 | SWD | COFFEY |
| 15031219900000 | OSAGE | 5 | SWD | COFFEY |
| 15031220020000 | MURRAY | WDW 1 | SWD | COFFEY |
| 15031212070000 | TROSTLE | 1 | SWD | COFFEY |
| 15031212210001 | SKILLMAN | 1 | SWD | COFFEY |
| 15031212320000 | HOPE | 3 | SWD | COFFEY |
| 15031212370001 | MERRITT | 5 | SWD | COFFEY |
| 15031220560000 | OSAGE | 21 SWD | SWD | COFFEY |
| 15031221010000 | JOHNSON | 2 | SWD | COFFEY |
| 15031229950000 | HODGES | 2 | SWD | COFFEY |
| 15031221510000 | TRUELOVE SWD | 1 | SWD | COFFEY |
| 15031213750000 | SMITH TOM | 1 (9) | SWD | COFFEY |
| 15031214530000 | BAHR | 5 D | SWD | COFFEY |
| 15031222330000 | SCHIF | SWD 1 | SWD | COFFEY |
| 15031240810000 | BODEN | 2-B | SWD | COFFEY |
| 15031214690000 | GILBERT | 1 | SWD | COFFEY |
| 15031214870000 | BODEN | 16 | SWD | COFFEY |
| 15031215080001 | MEATS | 16 | SWD | COFFEY |
| 15031216200001 | WILSON | 1 | SWD | COFFEY |
| 15031207250000 | MURRAY | W-1 | SWD | COFFEY |
| 15031207370000 | LUTHI DALE | 2 | SWD | COFFEY |
| 15031207550001 | WILLIAMSON | W 4 | SWD | COFFEY |
| 15031207630000 | BREWER | 1 SWD | SWD | COFFEY |
| 15031191600001 | VANNOCKER | 1 | SWD | COFFEY |
| 15031191620001 | NAURETC | 3 | SWD | COFFEY |
| 15031191640000 | KUFHAL (D LUTHI) | 2 | SWD | COFFEY |
| 15031208290000 | KELLY | 1-SWD | SWD | COFFEY |
| 15031192200000 | MORRIS B | 1 SWD | SWD | COFFEY |
| 15031192220000 | BIRKBECK #2 | 1 | SWD | COFFEY |
| 15031208350001 | CRAIG | 8 | SWD | COFFEY |
| 15031209490001 | WRIGHT JUANITA | W 6 | SWD | COFFEY |



Photo 1 – Looking south
into Hatch lease at tree
line and creek

Hatch Oil & Gas Property in Coffey County, KS

[Home](#) / [Kansas](#) / [Coffey County, KS](#) / [Oil & Gas Properties in Coffey County, KS](#) / Hatch Oil & Gas Property

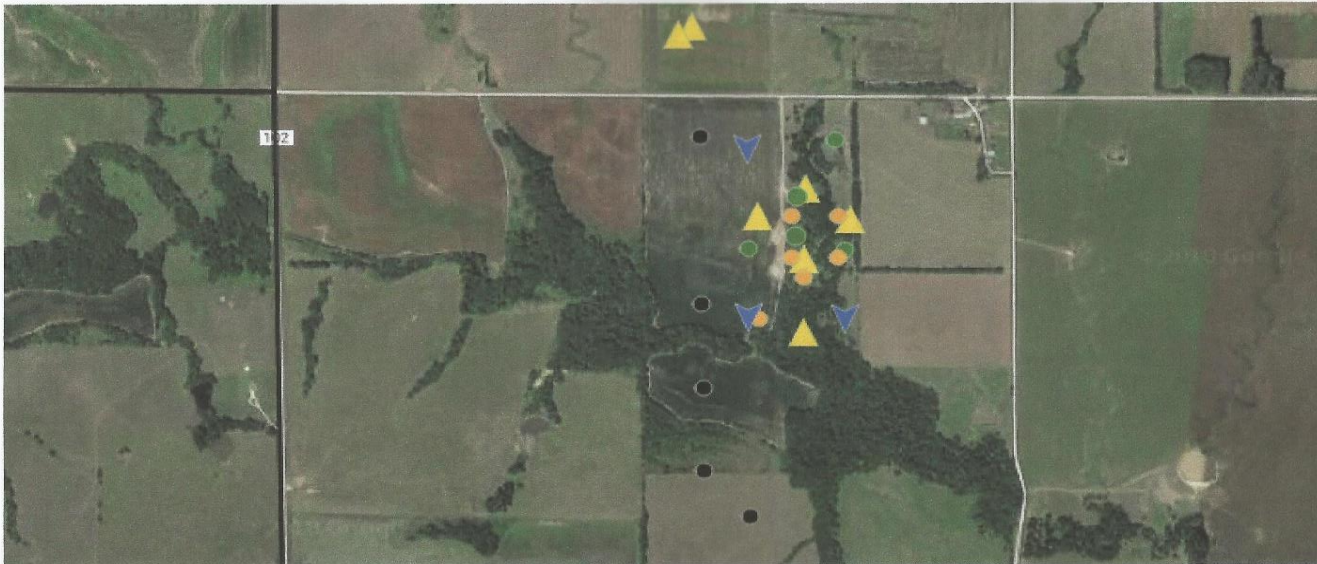
Map of Wells



Full Screen Map



3-D Map



Google

Map data ©2019 Google Imagery ©2019 , DigitalGlobe, USDA F& Report a map error

Property Summary

Key data points for Hatch

| | |
|----------------------|---------------------|
| County | Coffey County, KS |
| Production Dates | Apr 1980 - May 2009 |
| Total Oil Production | 978 BBLs |

Photo 2 – ShaleXP map
of Hatch lease related to
Hatch I-1 well site

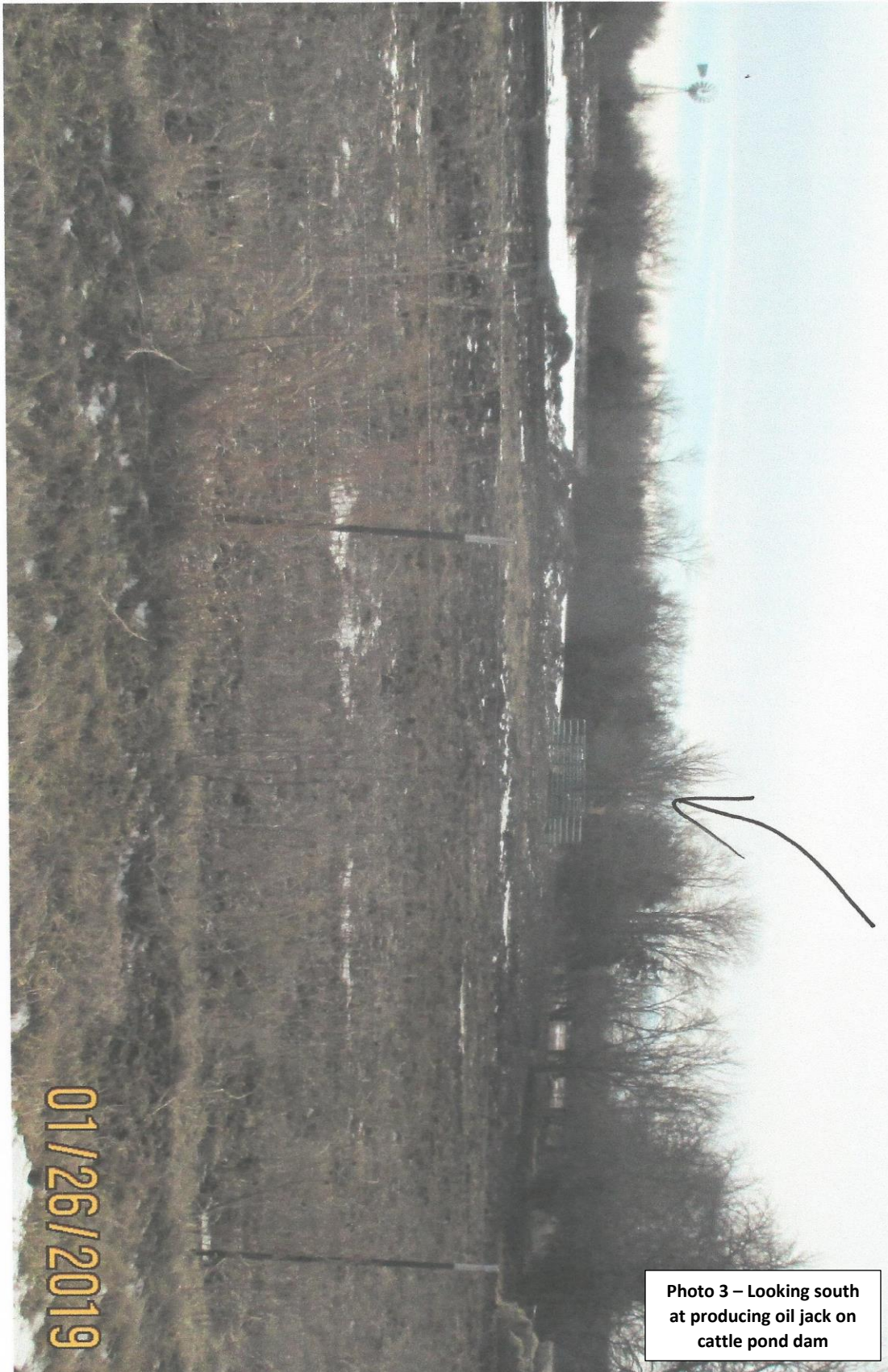


Photo 3 – Looking south
at producing oil jack on
cattle pond dam

VERIFICATION

STATE OF KANSAS)
)
County of Coffey)

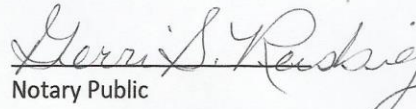
ss.

Susan Royd-Sykes, of lawful age, being first duly sworn upon oath, deposes and states: that she is responsible for the response to which this verification is attached, that she has read the above and foregoing and that the statements therein contained are true and correct according to her knowledge, information and belief.


Susan Royd-Sykes

Subscribed and sworn to before me this 30th day of January, 2019.

My appointment expires: 4/15/2020


Notary Public



CERTIFICATE OF SERVICE

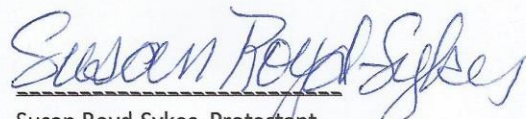
I hereby certify that on this 30th day of January, 2019, the above Protestant's Response to Applicant's Motion to Dismiss was electronically served (with hard copies following in the US Mail) on:

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Susan Royd-Sykes, Protestant