

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

In the Matter of the Application of)	
TDR Construction, Inc. to Authorize)	Docket No. 19-CONS-3167-CUIC
Injection of Saltwater into the)	
Squirrel Formation at the McCoy)	CONSERVATION DIVISION
#4WA, #8W, and #9W Wells Located)	
in Section 32, Township 15 South,)	License No. 32218
Range 21 East, Franklin County,)	
Kansas.)	

Reply to Motion to Dismiss and Motion to Accept Protests

COME NOW, Polly Shteamer, Protestant, who replies to a Motion to Dismiss Protests and respectfully moves that all protests be accepted. In support of her motion, Polly Shteamer states:

1. Protestants in this docket have satisfied the standards for standing set forth in *Labette County Medical Center d/b/a Labette Health v. Kansas Department of Health and Environment* (Kan. App. July, 2017) (unpublished).
2. Here is what Protestants believe to be undeniable in this docket and in 19-CONS-3168-CUIC. A search for abandoned and orphaned wells in a $\frac{1}{4}$ mile radius of a well for which application is sought translates to a search of the area (per K.A.R. 82403(a)(5): $A = \text{Pi times the radius squared}$
 $= 3.1416 \times (1320 \times 1320) = 5,473,923.84 \text{ ft(squared)}$
 $5,473,923.84 / 43,560 = \text{acres in } \frac{1}{4} \text{ mile radius of a specific point} = 125.66$.
Translated, this is the area, 125.66 acres which needs be searched for abandoned and orphaned wells. Now, as of February 22 of this year the 3rd

district of the Conservation Division of the KCC has 1 Abandoned Well Coordinator. (The district has gone from 3 coordinators to 1 in just a few months.) Abandoned well coordinators search for such wells, in the field, by walking the field with a metal detector. The detectors currently used can detect metal, up to 3 feet deep in some instances, in a 15 ft. radius. If one divides 125.66 acres by 15 ft. bands one concludes that an abandoned well coordinator would need make 155.98 trips across a field and each "trip" would be 2,339.64 ft. in length. Protestants believe that their data indicate that the Conservation Division does not have the personnel, the financial resources to conclude with reasonable assurance that no unplugged abandoned or orphaned wells exist in the area of subject in this docket or in any docket, for that matter (see No. 110,861 In the Court of Appeals of the State of Kansas, John M. Denman Oil Co., Inc., Factual and Procedural Background, first paragraph: 27 of 44 abandoned wells were not found on first inspection "those wells had been covered by tall native grasses and missed on the first inspection." Who knows how many remain unfound after the second inspection). When considering the above claims with K.S.A. 55-179(d), no district court in Kansas will deny Protestants' standing on a Kansas Judicial Review appeal. According to protestants' 1920s and 1940s maps there are likely many more unplugged or leaking abandoned wells which are "deemed likely to cause pollution to any usable water strata or supply." K.S.A. 55-179(d).

3. In Mr. Brock's sections 7 and 8 he deploys vague, careless verbal expressions to assess risk to surface waters in the Marais des Cygnes watershed above Franklin County Rural Water #6's intake. "Real possibility," "extremely remote," "even impossible," "all but impossible," "quite literally," "preclude any possibility," are all instances of such language. This is not the language of analytical chemistry. I'll frame risk assessment into appropriate language here. To properly assess risk to Franklin County RWD #6 one needs the following sorts of data: 1) quantified volumes of produced water injected in 2) specific time-frames, over a 3) specific area, at 4) a specified pressure into 5) a geologically specific formation 6) the volume of fluids being leaked to the surface or discharging to the surface in unknown locations through seeps underground by abandoned wells. In addition, one needs data which

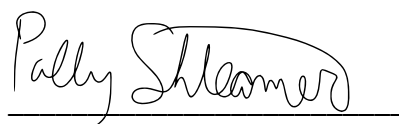
describes pH of injected solution, salt concentrations of same, ratio of volume of produced waters recycled to volume of produced waters introduced from new sources, volumes of stream flow in relevant stream segments. Then, of course, one would need a base-line standard of water quality in stream segments which drain the Superior lease. Such standard should be established prior to commencement of injection and include pH, concentration of total suspended solids, total dissolved solids, total petroleum hydrocarbons. All the above-mentioned data would need to be quantified into the appropriate units of measure referenced by the Kansas Department of Health and Environment's Article 16 "Surface Water Quality Standards." Mr. Brock provides none of the necessary data to support the conclusions he wishes the Commission to draw. Protestants, by the standard set forth in *Labette County Medical Center d/b/a Labette Health v. Kansas Department of Health and Environment* (Kan. App. July, 2017) (unpublished), have demonstrated a case for standing.

4. Mr. Brock, in section 6 of Motion to Dismiss Protests states: "The Protests filed by Scott Yeargain and Polly Shteamer allege that such Protesters own property that is leased to a tenant who has a child that attends a school which currently obtains water from RWD6." These protestants do not make this claim in their protests. Protestants Yeargain and Shteamer own a log home on a 10 acre lot in White Pines Acres Subdivision, Franklin County, Kansas. The address of such home is 3332 Rock Creek Road, Ottawa, Kansas 66067. The approximate value of this real estate is \$300,000. This property is currently leased at \$1450/month to tenants who have one child one year of age. Many tenants to whom we have leased said real estate in past years have chosen to have their school-age children attend USD 288, Central Heights rather than have their children attend USD 290, Ottawa Public Schools. Protestants' claim for standing in this instance rests on their assertion that the financial value of this holding and its attractiveness to potential leasees is affected by the quality of drinking water at USD 288 and USD 288 acquires its drinking water from Franklin County RWD #6.
5. Mr. Brock's section 10 is a trope familiar to protestants: "At the pre-evidentiary stage of a proceeding, a party need only demonstrate a

prima facie case for standing. In other words, the Commission must determine if the facts alleged in the protest and the inferences to be made therefrom, demonstrate standing.” This is *Cross Bar Energy, LLC* Precedential Order, page 16 at #38. The second sentence in the quote cannot reasonably be inferred from the first. The Appellate Court’s basic point in *Labette* is that this inference is legally incorrect. If Mr. Brock were to insert “prima facie” between “demonstrate” and “standing” in the last sentence of his quote, he then would correctly express what the Court held.

6. Counsel for Applicant in section 16 of his motion asserts that “...if the Marais des Cygnes River were contaminated by some event it would be RWD6 which would incur the responsibility of obtaining an alternate source of water.” And “Any pollution risk would fall to RWD6 and not to said Protesters.” These are remarkable assertions: the risk of pollution would fall to RWD6, not the people who drink the water of RWD6. Two points here: RWD6 is a legal and organizational entity. People drink water, not legal and organizational entities. Risk of health, illness accrue to people. Maybe Counsel is suggesting that the world would be safer if people were legal entities instead biological organisms. Just think, we wouldn’t need hospitals. Second, in Kansas the patrons of RWD6 purchase meters and thus are owners of the water district. RWD6 is a kind of mutual company. Hence, Counsel’s clean separation of purchaser of water and RWD6 is not so clean. And, well, another point: Counsel’s clean separation of risk from purchaser of water and supplier of water is not supported by federal case law (think Flint, Michigan here) or state case law.

WHEREFORE, I respectfully request the commission to deny applicant’s motion to dismiss protestants and move that this docket proceed to hearing by means of the scheduling order filed into this docket on February 15, 2019.



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CERTIFICATE OF SERVICE

I certify that a true copy of the above and foregoing was served to the following parties electronically on February 28th, 2019.

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