

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Application of )  
TDR Construction Inc., for a Permit )  
for a Permit to Authorize the ) Docket No. 20-CONS-3079-CUIC  
Enhanced Recovery of Saltwater )  
into the Moldenhauer wells #30 and ) CONSERVATION DIVISION  
#45 located in Franklin County, )  
Kansas, Sec. 29, Twp. 15S, Range 21E. )

RESPONSE TO MOTION TO DISMISS

Come now Protestants Polly Shteamer and Scott Yeargain who respectfully respond to the Motion to Dismiss filed September 27, 2019 by counsel for TDR Construction, Inc. Protestants Shteamer and Yeargain state:

1. Counsel for the applicant, TDR Construction, Inc. sets out many claims for the conclusion that protesters have no valid interest in this application. One of the things he does not do is address the points we make in section 11 of our protest letter. There we claim than this entire lease, the North Moldenhauer lease, cannot generate sufficient income to pay for plugging costs. We claim that the Franklin county assessor's office has estimated the gross reserve value of the remaining pool of oil in this lease and that this valuation will not pay for plugging

the 50 known wells in the lease. We'll explain this better here. This lease's operator reported production of 945 bbls. of oil on this lease in 2018; the 2017 production was 932 bbls.; 2016, 1942 bbls.; 2015, 2556 bbls.; 2014, 2317 bbls. So, from 2014 to 2015 the lease increased production 10.3%; 2015 to 2016 production decreased 24.0%; 2016 to 2017 production decreased 52.0%; 2017 to 2018 production increased 1.4%. Doing easy math over this time-spread, production decreased at a yearly average of 16.075%. (This is just adding the production percentages for each year and dividing by 5, the number of years over which production was measured, i.e., 2014, 2015, 2016, 2017, and 2018.) So we just do mathematical progression math to calculate production in any given year in the future and we can easily sum the production numbers over any span we choose. This obviously is a geometrical progression, not an arithmetical progression. This simple formula is:

$$\sum_{k=0}^{n-1} (ar^k) = a \left( \frac{1 - r^n}{1 - r} \right)$$

. "a" is the first term, which we'll designate as the 945

bbls. of oil produced from Moldenhauer in 2018. "r" designates the "common ratio," which is simply the ratio by which "a" changes in each succeeding term.

Our term will be years. Now, we found that over the last 5 years for which production numbers are available this lease's succeeding year's production was

reduced by 16.075%. Another way of saying the same thing is to say that each succeeding year production was, on average, 83.925% of the preceding year's production. So 0.83925 is our "common ratio." Now we just plug the numbers into our formula and it's easy. We'll do this two ways. We'll calculate bbls. of oil produced over 10 years and 20 years into the future. We'll also calculate income produced by this lease using the operator's own figures submitted to the county assessor. So, starting with production, we have reasonably good evidence that this lease will produce a total of 4,859.65 bbls. over the years 2019-2018. In fact in 2028 our formula predicts this lease will produce 195.19 bbls. Over the next twenty years of production the geometric progression formula says the lease will produce 5,702.05 bbls. of oil and in 2038 it will produce only 33.84 bbls. What's more interesting than the raw oil numbers is to use the formula for gross revenue. To do that we'll use the producer's reported price of \$37.74 on his rendition report submitted to the Franklin county assessor. "a" in the formula will now be in dollar units and is the product of \$37.74 and bbls. of oil produced in a year, starting in 2018. So "a" is  $945 \times \$37.74 = \$35,664.30$ . And, in fact, \$35,664 is the estimated gross income stream reported on his 2019 Assessment Rendition for the year 2018. We'll drop the 30 cents and use \$35,664. Now, using our progression formula we find that between 2019 and 2028 this lease will generate

\$183,401.51; and in the next twenty years, ending in 2038 the lease will generate \$215,193.41. This lease has 50 known wells in it and if the average cost of plugging a well is \$4,500, which is close to the average current cost, then the plugging costs on this lease will total \$225,000 in today's dollars. Hence, by this reasoning 20 years of production will not pay for plugging these wells and this 20 years of production prediction is based on gross revenues, not operator's net revenues. If we assume the mineral rights owner takes 1/8 part of all oil produced as royalty then our formula reveals that the next 50 years of production will generate gross revenues for the operator of \$194,097.14. This number is not sufficient to plug these 50 wells and this number does not include the operator's costs for operating the lease, which costs will be labor, transportation, electricity, and so on. Our conclusion is that this lease does not satisfy the covenants of the "held by production clause" in the original lease signed 18 March, 1959. The "held by production clause" has been consistently interpreted by Kansas courts as an "habendum clause" and so by doing our simple math exercise we conclude, in the language of habendum clauses that, this lease does not produce in paying quantities. The court cases which are relevant here are, of course, *Texaco, Inc. v. Fox* (Kan., 1980) and *Wrestler v. Colt*, Kan. App. (1982). We are aware that habendum lease issues have traditionally been litigated by lessee and lessor. Our

thinking is that when we approach the court with the data we have produced above we will be in a position to affirm that stakeholders beyond lessor and lessee have and hold certain rights to be protected from liability dumping by oil operators. Such dumping occurs when operators exhaust the pool of assets in the lease and dump the liability of plugging the lease's unplugged wells onto the citizens of the state in which lease is located. And such liability dumping is also sponsored by the KCC which does not currently contemplate "waste" as a lease operator bleeding out the resources of a lease and then dumping the liability of such exhausted lease and its associated wells on the citizens of the state. We make note that our analysis of the potential of new production from the proposed wells is not sufficient to realize a net profit on this lease. Unrealistic assumptions regarding new production are required for a geometric progression calculation to show that this lease can cover the expenses to plug its wells.

2. Both protestants have filed protests related to an injection permit in the same lease sought by the same operator, TDR Construction, Inc. This permit is the subject of docket 20-CONS-3043-CUIC. Protestors suggest that a prehearing conference for well W-42 be merged with a prehearing conference for the wells for which injection permit is sought in this docket: wells 30 and 45 in the Moldenhauer lease. From our perspective the groundwater issues are the same

issues; the lease cannot pay its plugging liability based on the Kansas Geological Survey's predicted production decline and based on our analysis above; and our real estate and personal lives are affected similarly with all three wells. If one prehearing conference were held for all three wells an economy of time and resources is realized relative to two such conferences.

4. Mr. Brock, in his motion to dismiss, makes this statement: "The likelihood of any water which is injected into the wells which are the subject of this Docket having any real possibility of reaching the Marais des Cygnes River is extremely remote and quite probably even impossible." (Section 6 of his Motion)

We reply: the only possible means of a contamination threat by any injection well is by means of groundwater. Nature does not operate in closed, compartmentalized systems which Mr. Brock is suggesting. Rain falls on the soil, it seeps deep into the earth, filling cracks and pores, and eventually ends by becoming a deep underground sea. Or, it becomes streams, rivers, and returns to the ocean. It is not possible to contaminate water in one place without contaminating water everywhere. This is because groundwater always moves and it moves in unforeseen ways as demonstrated by the Rocky Mountain Arsenal of the Army Chemical Corps. This sad chapter in our environmental history demonstrates a gap between the cocky assurances of safety and understanding of

groundwater and the reality of groundwater movement. (Graham Walton, “Public Health Aspects of the Contamination of Ground Water in South Platte River Basin in Vicinity of Henderson, Colorado, August, 1959.” U.S Public Health Service, Nov. 2, 1959.) We have calculated that in one 40 acre area of the Moldenhauer lease that, if the permits for W-42, 30, and 45 are granted then 11,760 gallons of brine solution a day can be injected into the ground. We do not believe Mr. Brock’s claim that there is no “real possibility” of any of this solution reaching the Marais des Cygnes river. We think that we can put a metric to this possibility in a hearing.

5. Our 1920’s era oil and gas map does in fact show the presence of an abandoned well just north of the south section line of section 29. The Commission has a copy of this map and will see this well. In a recent Memorandum Opinion and Entry of Judgment issued by Division 7 of the Shawnee County District Court, Judge Franklin Theis wrote “Further, this prospect [of enhanced threat to usable water] might suggest the KCC has the cart before the horse in terms of the priority of its proceedings, given an unplugged well, by itself, is deemed to be a threat to usable water. K.S.A. 55-179(d)” This is our partial response to Mr. Brock’s remarks in his section 12.

Wherefore, protestants request that the Commission proceed with the scheduled prehearing conferences, the relevant dockets be combined, and that a hearing be held.

/s/ Polly Shteamer

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## CERTIFICATE OF SERVICE

We hereby certify that a copy of the above and foregoing was sent via U.S. Mail, postage prepaid, hand-delivery, or electronically, this 10<sup>th</sup> day of October, 2019 to:

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