

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Dwight D. Keen, Chair
 Susan K. Duffy
 Shari Feist Albrecht

In the Matter of the Notice of 3-D Oil) Docket No.: 20-CONS-3090-CMSC
Company to Plug and Abandon Wells)
located in Section 36, Township 33 South,) CONSERVATION DIVISION
Range 10 East, Chautauqua County, Kansas)
_____) License No.: 33472

MOTION TO STAY PLUGGING AUTHORITY

COME NOW Crossen Holdings, LLC, 1910 Winding Ridge Rd., Edmond, OK 73034, an Oklahoma Limited Liability Company, Mark W. McCann, 1613 W. 6th St., Bartlesville, OK 74003 and Eric A. McCann, 22902 W. 50th St., Shawnee, KS 66226 (hereafter collectively the "Movants") and submit their Motion to Stay Plugging Authority concerning the wells herein identified. In support of the Motion, the Movants would show to the State Corporation Commission of the State of Kansas ("Commission") as follows:

I. Procedure

1. 3-D Oil Company (hereafter "3-D") is an Oklahoma General Partnership. It has been issued Operator's License No. 33472.

2. Notice of Intention to Plug and Abandon a well (or in this case wells) is submitted pursuant to K.A.R. 82-3-113. Except for the notice required to be given to the surface owner under K.S.A. 55-173, the operator who intends to plug and abandon any well is not required to give notice to any other party.¹

3. Movants received no notice, actual or constructive, of the filing of 3-D's Notices of its intent to plug and abandon the wells hereafter identified.

4. K.A.R. 82-3-113 makes no provision for the assignment of a docket number for well plugging notices, and no docket has been assigned in this matter to any of said notices to date.

II. Background

5. Movants are the owners of all of the oil, gas and other minerals in and under the following described real estate, situated in Chautauqua County, Kansas, to wit:

The Northwest Quarter (NW/4) and the West Half of the Northeast Quarter (W/2 NE/4) of Section 36, T33S, R10E, Chautauqua County, Kansas.

6. On June 30, 2006, Movants' predecessors in interest executed and delivered to 3-D an Oil and Gas Lease upon the following described real estate, to wit:

The Southwest Quarter of the Northeast Quarter (SW/4 NE/4); the East Half of the Northwest Quarter of the Northeast Quarter (E/2 NW/4 NE/4); the Southwest Quarter of the Northwest Quarter of the Northeast Quarter (SW/4 NW/4 NE/4)

¹ The surface owner of the leasehold premises is Rut and Strut Farms, LLC. 3-D certified that notice was given to Steven Mittl as surface owner.

and the Southeast Quarter of the Southeast Quarter of the Northwest Quarter (SE/4 SE/4 NW/4) of Section 36, T33S, R10E, Chautauqua County, Kansas;

said oil and gas lease being recorded in Book 132, Records, Page 230 in the office of the Register of Deeds of Chautauqua County, Kansas.

7. There is presently pending in the District Court of Chautauqua County, Kansas, a civil action entitled Crossen Holdings, LLC, Mark W. McCann and Eric A. McCann, Plaintiffs v. 3-D Oil Company, Defendant, Case No. 2019 CV 08. The pending civil action involves, *inter alia*, issues concerning the continuing validity of the 3-D Lease, and ownership of the various wellbores situated thereon.

8. On April 24, 2019, 3-D filed Defendant's Motion for Temporary Injunction and Brief in Support in the above-entitled civil action seeking to temporarily enjoin Movants from interfering with 3-D's efforts to plug the oil wells and saltwater disposal well located on the Oil and Gas Lease described above. Movants opposed the Motion and, on May 3, 2019, filed their Reply to Defendant's Motion for Temporary Injunction in the above-entitled civil action. The Motion has been taken under advisement by the District Court of Chautauqua County, Kansas, and no decision has yet been rendered therein.

III. Present Plugging Applications

9. 3-D filed with the Commission its Well Plugging Applications on or about August 28, 2019, identifying the following wells which it intended to plug and abandon,

to wit:

Lease Name/Well #	API No.
McCann 1-A	15-019-26737
McCann 2	15-019-19248
McCann 2A	15-019-26738
McCann 3	15-019-19249-00-00
McCann 3A	15-019-26765
McCann 4	15-019-19250
McCann 4A	15-019-26965
McCann 5A	15-019-26986
McCann 7A	15-019-27004

In addition to the nine (9) wells above listed, the available on-line records of the Kansas Geological Survey indicate that there also exists an additional well - the "Graham A-1" Well; API No. 15-019-23706, situated upon the above leasehold premises. Movants do not know if 3-D is the designated operator of the Graham A-1 Well, or whether 3-D has filed a Notice of Intent to Plug the Graham A-1 Well.

10. The surface casing and additional production or long-string casing in McCann Well Nos. 1-A, 2, 2A, 3A, 4A, 5A, and 7A was cemented pursuant to Alternate II methods under K.A.R. 82-3-106. It is therefore economically impractical for 3-D to remove the surface casing and additional production or long-string casing. Movants have asserted in the pending civil action above-mentioned that the production casing became, by reason of becoming permanently affixed to the real property, a part of the real property. Movants have further asserted in the pending civil action that they are also the owners of the void space interior of the surface and production casing, subject

only to any rights which the separate surface owner might assert. As the holder of a fee simple absolute title holds any caverns, mine shafts or other void spaces from the surface of the property to the center of the earth, Movants, by analogy, assert ownership of the void spaces in the wellbores.

11. The Graham A-1, McCann 3 and McCann 4 Wells above identified, pre-existed the oil and gas lease identified in paragraph 3 above. Under the terms and provisions of said oil and gas lease:

“Lessee shall have the right at any time to remove all machinery and fixtures placed on said premises including the right to draw and remove casing.”

The surface casing and additional production or long-string casing was not placed upon the leasehold premises by 3-D with respect to the Graham A-1, McCann 3 and McCann 4 Wells, and as to the wells which pre-dated the oil and gas lease above-described, Plaintiffs assert that such casing was owned by a prior operator; that 3-D did not acquire ownership of such casing by virtue of the oil and gas lease above-described; that 3-D merely acquired a license and right to use such casing pursuant to the oil and gas lease above-described, and that as a non-owner of the casing, 3-D is not entitled to remove such casing. Movants further assert their ownership of the wellbores and void spaces in or outside of such casing in such wells, based upon the same theory as set forth in paragraph 10 above.

12. K.A.R. 82-3-113 (b) (2) provides that:

"The operator shall notify the appropriate district office of the operator's proposed plugging plan no later than five days before the plugging."
Movants are advised by District 3 staff that 3-D has not yet notified the District office of its proposed plugging plan.

IV. Legal Authorities

13. The state corporation commission is an administrative agency of limited jurisdiction, its jurisdiction being that conferred by state statute. Renner v. Monsanto Chemical Co., 187 Kan. 158, 354 P. 2d 326. The power is regulatory in nature, representative of the public interest, and is not intended to settle private controversy apart from the public interest. The corporation commission provides no forum for the litigation of purely private rights and liabilities. Cities Service Gas Co. v. State Corp. Com. 197 Kan 342, 416 P. 2d 740 (1966). As noted in discussing the issue of contribution between parties held jointly and severally liable for well plugging, the Court in John M. Denman Oil Co. v. State Corp. Comm'n of Kan., 51 Kan. App. 2d 98, 342 P. 3d 958 (2015) states:

"We note that the statute does not provide any authority for the KCC to apportion costs between various responsible parties. That's understandable; determining the respective duties of these parties might well require the determination of contractual relations between the parties to lease assignments, something that is not within the KCC's statutory jurisdiction."

As the Commission lacks jurisdiction over issues involving private contract or property rights, Movants submit that the District Court of Chautauqua County, Kansas is the proper forum in which to resolve the issue of ownership of the production casing and

wellbores. Acting out of an abundance of caution, Movants file their Motion to ensure they are not prejudiced by failing to notify the commission of the pending civil ligation between the parties. While it would appear that it is beyond the jurisdictional authority of the Commission to determine the issue of ownership of the casing and wellbores on 3-D's Lease, the Commission and its District Office should not approve the plugging plan of 3-D with respect to the Wells above-described pending resolution of the issue of ownership of the wellbores by the District Court of Chautauqua County, Kansas.

WHEREFORE, Movants pray the Kansas Corporation Commission and its District 3 office stay issuance of or otherwise decline to approve 3-D's well plugging plan pending resolution of the issue of ownership of the well bores by the District Court of Chautauqua County, Kansas.

SUBMITTED BY:

JOHN R. HORST, P.A.

By /s/ John R. Horst

JOHN R. HORST

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P.O. Box 560

Caney, KS 67333

Attorney for Movants

File #2901

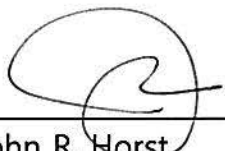
S.Ct. #09412

VERIFICATION

STATE OF KANSAS)
)SS:
COUNTY OF MONTGOMERY)

John R. Horst, of lawful age, being first duly sworn, upon his oath states:

That he is the attorney for Movants in the above-captioned action; that he has read and signed the foregoing Motion to Stay Plugging Authority; and that the statements therein contained are true and correct according to his knowledge, information, and belief.



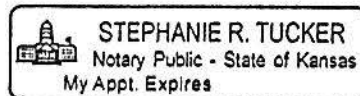
John R. Horst

Subscribed and sworn to before me this 19th day of September, 2019.



NOTARY PUBLIC

My Appointment Expires:



CERTIFICATE OF SERVICE

I hereby certify that on this 19 day of September, 2019, the above and foregoing Motion to Stay Plugging Authority was served by electronic mail addressed to the following:

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and by U.S. Mail, postage prepaid, to:

Rut and Strut Farms, LLC
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Flower Mound, TX 75022

/s/ John R. Horst

John R. Horst