

2. Operator has long operated the Subject Wells under agreement with Petitioners and the other working interest owners of the Leases upon which the Subject Wells are drilled. Operator was a member of RAG Oil Co., LLC, and a shareholder and officer of MWM Oil Co., Inc. Operator does not personally own any working interests in the Subject Wells or Leases.

3. Operator passed away in his home on September 23, 2018, with his operator's license set to expire on July 30, 2019. Since that time, Operator's widow has been managing the Subject Wells for the benefit of Operator's estate.

4. In June of 2019, Petitioners determined it was necessary to file for bankruptcy protection. At that time, Petitioners, through counsel, contacted Commission staff to advise it of the impending bankruptcy, and to seek guidance from Commission staff concerning the necessity of renewing Operator's license.

5. It was also around this time that Petitioners sought to identify and contract with a third-party ("Contractor") to advise and consult with Operator's widow as to the management and administration of the Subject Wells. An objective of entering into this agreement with Contractor was to improve and restore oil and gas production from the Subject Wells, and to reduce the operating expenses on the Leases, thereby improving the value of the Subject Wells and leases so that they could be sold and transferred to another operator, to satisfy creditor claims.

6. On July 22, 2019, Commission staff finally met with the attorney for the Petitioners and the attorney for the now identified Contractor to discuss the bankruptcy, the timeframe before the Subject Wells and leases would be liquidated, and, specifically, how Commission staff desired to address the now imminent expiration of the Operator's license. During the meeting, Petitioners expressed their concerns about the wells being operated on a soon to be inactive operator's license, noted a prior incident where wells were operated by a decedent's estate to allow for the estate's

orderly administration and the transfer of the wells to a responsible operator, and suggested that the Operator's estate be permitted to renew Operator's license on interim basis to allow for the orderly transfer of the Subject Wells. Petitioners also noted that it was in interest of nobody to allow the Subject Wells to be shut-in, the leases to expire, and the Subject Wells to become the responsibility of the Commission and the obligation of the abandoned well plugging fund. Petitioners further noted it was in everyone's best interest to allow the Subject Wells to be continuously operated to improve the likelihood they could be sold at auction and transferred to a responsible operator. For whatever reason, District 2 staff did not appear to share this view.

7. At that the conclusion of the July 22nd meeting, Commission staff indicated a preference to not renew the Operator's license, but rather to allow the license to lapse and then to address the issue through the administrative procedural process. Sometime in August, this preference was confirmed by Commission staff to Petitioners. Not then, or at any relevant time thereafter, did Commission staff indicate a shut-in order and fine would be issued to Operator for operating wells on an inactive license.

8. On July 26, 2019, Petitioners filed a petition for bankruptcy pursuant to chapter 11 of the bankruptcy code. At about that same time, Petitioners entered into a consulting agreement with Contractor, which agreement was approved by the bankruptcy court.

9. From the July 22nd meeting to date, oil production from the Subject Wells has drastically improved from 4-6 BOPD to 25-30 BOPD. Since July 22nd numerous regulatory compliance issues at the Subject Wells and the Leases have been cured. Petitioners have regularly communicated the progress to cure regulatory violations to Commission staff and have kept them generally apprised of the happenings in the bankruptcy case, including the schedule to liquidate the Subject Wells and Leases.

10. At all times Petitioners believed the Subject Wells were being operated in accordance with the directions they received from Commission staff, and at no time prior to the penalty order being entered in this docket did Commission staff communicate anything otherwise to Petitioners.

11. On October 17, 2019, Petitioners submitted their joint plan of liquidation to the bankruptcy court. The plan provides that the assets of Petitioners, including the Subject Wells, will be liquidated to satisfy the claims of creditors. The Subject Wells are scheduled to be sold at the Evenson Auction on Thursday, December 5, 2019, at 2:00 p.m.

12. On October 17, 2019, without notice or an opportunity to be heard, or any other communication from Commission staff to Petitioners, the Commission issued the penalty order in this docket, ordering, among other things, the immediate shut-in of Operators' wells.²

13. On or about October 18, 2019, Petitioners directed the Operator to shut-in the Subject Wells pending further order of the Commission.

14. Petitioners have consulted with counsel for Operator's estate regarding this matter. Petitioners advise the Commission that the estate is seeking authority from the probate court to file an application to renew Operator's license on an interim basis, and should be making that application in the immediate future.

LEGAL AUTHORITY AND ARGUMENT

I. Petition for Intervention

Petitioners meet all of the statutory requirements for intervention, and therefore should be allowed to participate in this proceeding. Intervention must be granted when the following conditions are met:

² See n. 1, *supra*.

1. The petition is submitted in writing to the presiding officer, with copies served upon all parties named in the presiding officer's notice of the hearing, at least three business days before the hearing.
2. The petition states facts demonstrating that the petitioner's legal rights may be substantially affected by the proceeding.
3. The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.³

The Commission entered the penalty order on October 17, 2019, just a few days ago, so there are no issues with timing. As stated in the Background, Petitioners are the owners of working interests and overriding royalty interest in the Subject Wells and Leases, a legal right that gives Petitioners a substantial interest in the outcome of this proceeding. Allowing Petitioners to participate in this proceeding not only does not impair the orderly and prompt conduct of the proceedings, but also actively assists the Commission to achieve an efficient and effective resolution. By granting this petition, the Commission will be able to work directly with the parties in the best position to address the causes of the penalty order, because Petitioners are the parties who control the resources to cure any such issues. A presiding officer may grant a petition for intervention at any time upon determining that the intervention is in the interests of justice and will not impair the orderly and prompt conduct of the proceeding.⁴

Moreover, as a debtor-in-possession in bankruptcy, Petitioners are charged with protecting and preserving the assets of the bankruptcy estate so that they may be sold to satisfy the claims of creditors. Because an oil and gas lease expires and ceases to have value absent production, it is absolutely imperative the Petitioners be allowed to intervene to protect and preserve the assets of the bankruptcy estate.

³ K.A.R. 82-1-225(a); *see also* K.S.A. § 77-521(a) (KAPA provision on intervention with identical requirements).

⁴ K.A.R. 82-1-225(b); *see also* K.S.A. § 77-521(b) (KAPA provision on intervention with identical language).

WHEREFORE, for these reasons, Petitioners have a substantial interest in the resolution of this proceeding, and justice dictates Petitioners be allowed to participate. As such, Petitioners respectfully request their petition in intervention be granted, and that the penalty order entered in the captioned docket be set for evidentiary hearing.

II. Emergency Motion to Lift Shut-In Order

The shut-in order is contrary to the mission of the Commission, because it creates and causes waste, violates correlative rights, and does not protect the pollution of freshwater. No logical end is being served through the shut-in order. The most probable outcome of the shut-in order is that a large number of wells will become the responsibility of the Commission and the obligation of the abandoned well plugging fund.

a. The Shut-in Order is Causing Waste and Violates Correlative Rights

An inordinate amount of waste, both physical and economic, has and will continue to occur as a result of the shut-in order. Since the July 22 meeting, oil production from the Subject Wells has increased from 4-6 BOPD to 25-30 BOPD—a 5-factor increase in production. As a result, tens of thousands of dollars of cash has been made available to bring additional of the Subject Wells into production and to address compliance issues on the leases. Plans were in place to bring even more of the Subject Wells back into production prior to the shut-in order being issued. The increased production from the Subject Wells also makes the Leases more marketable for sale at auction. This increases the likelihood that many, if not all, of the Subject Wells can be sold and transferred to a responsible operator, mitigating any liability to the State's abandoned well plugging fund. By maximizing the proceeds that can be recovered from the sale of the Leases at auction, more funds are available to satisfy the claims of the creditors in the bankruptcy estate, and

more funds are available to distribute to the Operator's estate to satisfy its creditors. It's worth noting that many of these creditors are members of the oil and gas industry.

The shut-in order completely undermines this process to no logical conclusion. Wells currently producing 25-30 BOPD are now producing zero, causing waste and violating correlative rights. Efforts to bring other wells back into production are now prohibited, causing waste and violating correlative rights. Revenues from the sale of oil have effectively been ordered to zero, leaving no working capital available to rework wells and address compliance issues, causing waste and violating correlative rights. Without production, the Leases are now in danger of being deemed expired and of no value, causing waste. Leases viewed as expired are unlikely to sell at auction, causing waste. The list goes on and on, and it cannot be said that the shut-in order prevents waste or protects correlative rights. What can be said is that the shut-in order actually creates and causes waste, and violates correlative rights.

In addition to harming the creditors of Petitioners, the shut-in order irreparably harms the pocket book and livelihood of the other working interest and overriding royalty interest owners of the Subject Wells and Leases, the royalty, mineral interest owners and landowners of the Subject Wells and Leases, and prevents taxes from being levied on oil production for the benefit of governmental bodies (e.g., the local School District, and the Commission). The harm caused by the shut-in order grossly exceeds any known benefit of it.

In that regard, the Commission is harming itself by ordering all of the Subject Wells to be shut-in. The shut-in order directly undermines the Petitioners' ability to sell the Subject Wells at auction and to transfer the Subject Wells to a responsible party. Any of the Subject Wells that do not sell at auction are very likely to become the responsibility of the State. Because the Operator is deceased, and the Petitioners have filed bankruptcy, there is no responsible party in existence—

let alone a responsible party with financial wherewithal—to plug and abandon the Subject Wells. This will result in waste of the Commission’s resources and time plugging wells that it otherwise would not have to plug. It will also result in the completely unnecessary waste of the abandoned well plugging fund the Commission is charged with preserving.

None of this makes any sense under the extraordinary circumstances precipitating the shut-in order in this case. For these reasons, and these reasons alone, the shut-in order can and should be lifted.

b. Pollution of Freshwater is not being prevented

Petitioners are unaware of any imminent environmental risks associated with the Subject Wells and Leases, and Commission staff has not articulated any known environmental risks to Petitioners. Petitioners are aware of a few compliance issues on the lease, and have been in communication with Commission staff regarding efforts to bring those issues into compliance. But none of the few compliance issues Petitioners are aware of could reasonably be characterized as presenting an imminent threat to fresh water.

Petitioners note that numerous regulatory compliance issues at the Subject Wells have actually been abated since the July 22nd meeting. The shut-in order, however, makes it impossible to continue to correct compliance issues. Compliance issues can only be corrected to the extent there are funds available to address them. By severing the only source of funds, the shut-in order operates to perpetuate, rather than facilitate, the abatement of compliance issues at the Subject Wells. Petitioners would also proffer that it is more likely that environmental harm will occur as a result of the wells being shut-in and unattended to, than if the Subject Wells were allowed to produce and funds were available to regularly check them.

In any event, if there are specific environmental issues on the leases, Petitioners suggest the Commission single out those particular wells to be addressed and lift the shut-in order as to the balance of the Subject wells so that Operator may continue to produce them. This will allow for additional funds to be available to correct compliance issues, and will substantially increase the probability that many, if not all, of the Subject Wells will be sold at auction and transferred to a responsible operator.

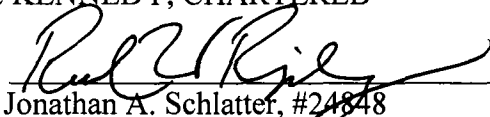
c. Petitioners believed that the directions of Commission staff were being followed

Since the July 22nd meeting, Petitioners believed the Subject Wells were being operated pursuant to directions of Commission staff. Petitioners had regularly updated Commission staff about the bankruptcy case and efforts to bring the Subject Wells into compliance. As such, the Petitioners were shocked upon hearing of the shut-in order, which was issued without notice to Petitioners or an opportunity to be heard. As had been communicated to Commission staff on multiple occasions and explained in detail above, the shut-in order comes to the extreme detriment of the creditors of the bankruptcy estate and the other stakeholders in the Subject Wells.

WHEREFORE, for the foregoing reasons, Petitioners respectfully request the shut-in order entered in the captioned docket be immediately lifted, and that the Commission enter an order allowing the Operator to continue operating the Subject Wells so that they may be sold and transferred to a responsible party.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 22nd day of October, 2019, I caused the original of this **Petition for Intervention and Motion to Lift Shut-In Order** to be electronically filed with the Conservation Division of the State Corporation Commission of the State of Kansas, and caused a true and correct copy of the same be electronically served to the following parties:

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