

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-3043-CUIC
Enhanced Recovery of Saltwater)
into the Moldenhauer W-42 Well,) CONSERVATION DIVISION
located in Franklin County, Kansas)
Sec. 29, Twp. 15S, Range 21E.)

RESPONSE TO MOTION TO DISMISS AND MOTION TO RESCHEDULE
PRECONFERENCE HEARING

Come now Protestants Polly Shteamer and Scott Yeargain who respectfully
move that the Kansas Corporation Commission reschedule a prehearing
conference for this docket and that such preconference hearing be combined
with a preconference hearing for a separate protest which is before the
Commission in the matter wells 30 and 45 in the Moldenhauer lease identified
above and for which permits are sought by the same operator, TDR Construction,
Inc. In support of motions protestants state:

1. Keith Brock, counsel for TDR, states in his Motion to Dismiss Protests,
dated 9 September, 2019 that “none of said individuals [protestants] appeared at
the aforesaid Prehearing Conference.” This statement is true. We protestants

mistakenly noted the date of September 10th at 1:00 pm as the date of such conference. For this we apologize to all parties. This is our error and we own it.

2. Precedent exists for nonattendance at such conferences without dismissal. In 18-CONS-3262-CMSC the operator failed to attend and the Commission ruled based on the operator's "prima face allegations" that he had failed to receive notice of the hearing. In 18-CONS-3356-CPEN the operator missed the prehearing conference and was not defaulted from the docket. In this last docket the operator stated that "health reasons" had prevented him from attending the conference. In the present docket we claim neither reason proffered by operators in the cited dockets. In our case we left Kansas on August 6th and returned on August 24th. We two had a private boat charter off the coast of Maine. Coming back to the mainland one day I found, via electronic access, that a prehearing conference had been scheduled for the subject well. I mistakenly wrote a date of September 10, at 1:00 pm into my notes. On return to Kansas we had stacks of mail; neither of us opened the envelopes from the Commission until the morning of September 6th. At that time I emailed an apology to all parties. My wife, Polly, had returned from several days in Chicago, where she visited our daughter, Casey. I picket her up at Union Station in Kansas City at 10:00 pm on September 4th. On the 6th we opened the remainder of our

mail which had collected during our Maine trip; this is when I discovered that I had noted the date of the prehearing conference incorrectly.

3. Both protestants have filed protests related to two injection permits in the same lease sought by the same operator, TDR Construction, Inc. This legal notice was published August 8th, in the Ottawa Herald, and our protest letter was filed with the Commission on September 5th. 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 the August 8th legal notice: 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 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 demonstrated 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 move that a prehearing conference be rescheduled for well W-42 and that such conference be combined with a prehearing conference for wells 30 and 45, all of which wells are in the Moldenhauer lease in Franklin county and all of which wells have the same operator.

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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 10th day of September, 2019 to:

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