

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

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

In the Matter of the failure of Tailwater, Inc., )  
to comply with K.A.R. 82-3-407 ) **Docket No. 20-CONS-3234-CPEN**  
at the Finkenbinder #6-IW Well )  
in Anderson County, Kansas ) CONSERVATION DIVISION  
\_\_\_\_\_) License No. 32461

**Pre-filed Direct Testimony**

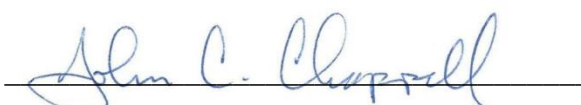
**of**

**Christian L. Martin**

on behalf of

**Tailwater, Inc.**

Operator - Respondent



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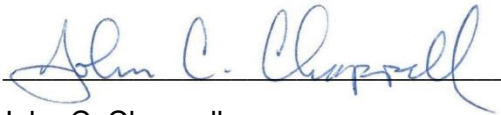
**CERTIFICATE OF SERVICE**

I certify that on 07/24/2020 a copy of the foregoing or annexed pleading was served by electronic service to the following:

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\_\_\_\_\_  
John C. Chappell

**20-CONS-3234-CPEN**

**Pre-filed Testimony**

**Christian L. Martin**

Q: What is your name and address?

A: Christian Martin, 5405 Brookhaven Place, Oklahoma City, Oklahoma.

Q: What is your occupation?

A: I am in the business of finding and producing crude oil. I'm the president of Tailwater, Inc. which operates oil and gas leases in Anderson County, Kansas.

Q: Is that the Tailwater, Inc. that is the respondent in this proceeding?

A: Yes.

Q: What is the business address of Tailwater, Inc.?

A: 6421 Avondale Drive, Suite 212, Oklahoma City, Oklahoma.

Q: Does Tailwater, Inc. hold an operator license from the KCC?

A: Yes.

Q: Is one of the leases Tailwater operates known as the Finkenbinder lease?

A: Yes.

Q: How long have you operated that lease?

A: I leased that land in 2008 and we started drilling the same year, so, about 12 years.

Q: Was this your first lease in Kansas?

A: No, I started operating my own leases back in 1984. The first was in Douglas County and then I had leases in Johnson County, Miami County, Franklin County, and finally Anderson County. I sold the other leases over time and all my leases are in Anderson County now.

Q: Is the Finkenbinder lease on a waterflood, or secondary recovery?

A: Yes.

Q: Is one of the wells on the lease referred to as Well Number 6- IW?

A: Yes.

Q: What was the purpose of that well?

1 A: It was a water injection well for the waterflood.

2 Q: Was it permitted as such by the KCC?

3 A: Yes.

4 Q: Are such injection wells required to be tested periodically in some fashion?

5 A: We're required to do a mechanical integrity test every five years.

6 Q: When was the last mechanical integrity test done on this well?

7 A: We did a test on November 8, 2019, and it failed the test.

8 Q: Had this well ever been tested previously?

9 A: Yes, it passed its previous test five years before.

10 Q: What did you do with the well as a result of this test failure?

11 A: We shut it in.

12 Q: What did you plan to do with the well as a result of the test failure?

13 A: I wasn't really sure at the time. We'd have to either repair the pipe and re-do the test or plug  
14 it. Tailwater had been having difficulties with certain working interest owners not paying their  
15 joint interest billings. I was having to cover all the lease operating expenses without the other  
16 working interest owners paying in their share, so money was kind of tight. I was going to need  
17 to figure out whether to go after them to collect on their delinquent accounts plus get money  
18 out them to repair the well, or just let it go and plug it. It was going to a tough call, either way.

19 Q: So what did you end up deciding to do about the #6-IW?

20 A: You have 90 days after a well fails the test to either fix or plug it. That gave us until February.  
21 I decided to try to shake money loose from the delinquent working interest owners. That didn't  
22 do me any good, and it became clear we should just go ahead and plug it. And then it started  
23 raining just before Thanksgiving, near an inch, as I recall; and before that could dry out we got  
24 another half inch. December was freezing and, of course, nobody wants to line up new jobs  
25 around Christmas, but I figured we still had plenty of time. And then three or four days after  
26 Christmas we got drenched with an inch and a half of rain. I'm thinking, okay, there's still  
27 January but I couldn't get a rig lined up for the first week or so; and then here came the rain  
28 and snow adding an inch of water to the ground. At this point, I was getting concerned and  
29 around the middle of January I started calling the Chanute KCC office about postponing the

1 deadline until the ground conditions improved. But all I could get from them was, "you better  
2 get it plugged by the 6<sup>th</sup> or we'll fine you \$1,000.00". They didn't want to hear anything about  
3 the ground conditions or the amount of damage it would cause.

4 Q: Was anybody checking the well in the meantime?

5 A: Dan Hutchinson is my field supervisor and he and a pumper check the leases daily. The well  
6 wasn't showing any problems.

7 Q: Did you try to make any arrangements to plug the well?

8 A: Yes, of course. I was in touch with Hurricane in December but they didn't want to talk about  
9 doing a job until after Christmas. So I was going to call them the week after Christmas and try  
10 to get them in after New Year's, but it rained nearly two inches out there a couple of days  
11 before New Year's eve. You get that much water on that lease and there's no way to get a rig  
12 in unless you drag it in with a bulldozer, but you do that and the surface damage to the field  
13 would be substantial, not to mention the damage to my relationship with the farmer. And,  
14 when you try to do something like plug a well under those conditions, it just increases the  
15 odds of an accident or something going wrong, possibly somebody getting hurt.

16 Q: And so what happened in January?

17 A: Well, first, before the ground could dry it froze, which might have helped if it would've lasted,  
18 but it thawed, and then before it could dry it rained again. From January 10 to 12 it rained two  
19 more inches, and a week later it's raining again. I was getting nervous because it was starting  
20 to look like we really weren't going to get in before the deadline.

21 Q: Did the ground conditions ever improve to the point where you could have got a rig in to plug  
22 the well before the February 6 deadline?

23 A: As I said, you could drag it in with a dozer but not without causing the serious sort of ruts and  
24 damages that make farmers crazy, and the repairs to the field would've cost a lot of money  
25 we didn't have on top of the cost of plugging the well. So, as it got past the middle of January  
26 I called the Chanute KCC office to ask for an extension. They didn't want to hear about the  
27 rain or snow or ground conditions, just kept telling me my deadline was February 6 and I'd  
28 better get it done or I'd be fined.

29 Q: Did you talk to John Almond during that time?

30 A: Yes, on the phone. I tried to explain I wasn't trying to get out of anything, but I didn't want to  
31 cause a lot of damage to the field which would not only anger the farmer but cost a lot of

1 money to fix, on top of the plugging cost. It costs \$450.00 an hour for a 'dozer and fixing the  
2 surface damages caused by dragging the rig in with a bulldozer would likely cost around  
3 \$3,500.00.

4 Q: What was his response?

5 A: He just went on about how I shouldn't have waited until the last minute and he didn't care if  
6 the ground was wet and I'd better hire a 'dozer and drag the rig in because if I didn't do it by  
7 the deadline they'd fine me a thousand dollars. It was like all the rain and mud the last six  
8 weeks was all my fault and they expected me to go ahead and trash the field.

9 Q: What did you do after that?

10 A: Well, the thing was, they had already threatened me with a fine less than two weeks after the  
11 test in November and I could see where this was going so I called my lawyer and asked him  
12 what I should do. He said I should send a request for an extension in writing such as a letter  
13 or email. So I sent an email to Mr. Almond at the Chanute office to explain the problem and  
14 ask for more time.

15 Q: When was that?

16 A: I believe that email was January 26, a little under two weeks before the deadline.

17 Q: Did you ever get an answer to your January 26 email?

18 A: Not until February 13 when I received a phone message from Mr. Almond that just said he  
19 had no authority to grant an extension of time. I also got an email that day from Troy Russell. I  
20 always thought John Almond was the one in charge down there. I sent an email back to Mr.  
21 Russell saying I apparently had asked the wrong person for an extension. He never told me  
22 any different whenever I talked to him.

23 Q: So, when the February 6 deadline arrived, had you gotten any response to your January 26  
24 email asking for more time?

25 A: No.

26 Q: What happened, then, when February 6 arrived and you had gotten no extension of time?

27 A: The deadline passed and the well wasn't plugged yet. The field was just too wet to get in. I  
28 tried to call Chanute a few more times but they weren't willing to discuss it. They'd tell me  
29 other operators were getting wells plugged and there was no reason I couldn't do the same.  
30 But not everybody has leases that are being farmed and have been tilled and the soil soaks

1 up the water and gets saturated to near plow depth. Maybe other operators don't mind tearing  
2 up the ground or they have lots of money to pay for surface repairs. I don't know, we weren't  
3 driving around the county to see if anybody else was plugging wells. All I knew was if I went  
4 forward with it just to make the February 6 deadline we were going to cause a lot of damage  
5 and it would cost a lot money which I really didn't have to repair the ground and I'd also have  
6 an upset farmer to deal with.

7 Q: What happened after February 6 came and went?

8 A: We got something like four inches of snow in February, to make matters worse, and then the  
9 rains came back in March and April and by then the pandemic had sent the price of oil  
10 through the basement and I had no income, didn't even sell oil a couple of months in there  
11 thanks to that. It was like, how could things get any worse?

12 Q: Did you ever get the well plugged?

13 A: Yes, we finally got in and plugged it on May 20. We notified the Chanute office in advance as  
14 we're required to do, but they didn't show up to observe.

15 Q: During the time between November 8, 2019 and May 20, 2020 what was the condition of the  
16 well?

17 A: It was turned off and shut in the entire time.

18 Q: Were you aware that when a well fails an MIT, that in addition to either repairing the well or  
19 plugging it, K.A.R. 82-3-407 provides, alternatively, that the operator isolate the leak to  
20 demonstrate that the well won't pose a threat to fresh or usable water resources or endanger  
21 correlative rights?

22 A: Actually, I wasn't aware that there was an alternative to repairing or plugging, but that just  
23 makes sense, anyway. When Midwest Survey did the MIT in November, they pressured the  
24 well up to 500 pounds, and it wouldn't maintain that pressure, it slowly bled off, meaning there  
25 was a leak in the casing somewhere. It wasn't a big leak, but enough to fail the test. Midwest  
26 Survey put the leak at between 60 and 100 feet below surface. That's well below the fresh  
27 water zone, which was also protected by surface casing. When we turned the well off and  
28 shut it in, there was no pressure in it, and no water or any other fluids were being injected into  
29 it. It wouldn't be possible for the well to leak anything into any water zones or any other  
30 zones. Any fluids that could possibly leak into the well couldn't go anywhere since the well

1 couldn't hold pressure to push anything back out. Fluid from outside the well might  
2 conceivably leak into it, but not the reverse.

3 Q: Was there ever any indication that the well posed a threat to fresh or usable water resources  
4 or endangered correlative rights or was causing any pollution or leaking any fluids into any  
5 fresh water zones?

6 A: No. If there had been anything like that, I would have gone ahead and had them drag a rig  
7 through the mud to plug it. But there was no danger of the well causing any pollution or doing  
8 any harm to anything.

9 Q: Did anyone at the KCC ever tell you that they thought the well was causing any sort of  
10 pollution or damage to anything?

11 A: No.

12 Q: Why do you feel you shouldn't be penalized for not getting the well plugged within 90 days of  
13 the test failure?

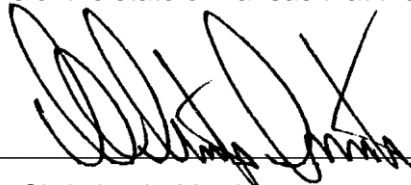
14 A: I've been operating wells and waterfloods for more than forty years in Kansas and so I'm  
15 pretty familiar with operating leases and the legal requirements. I know when you have an  
16 injection well that fails an MIT you need to get on it one way or another. Some laws and  
17 regulations do impose pretty strict requirements, but in my experience, the KCC didn't strictly  
18 enforce certain things unless they thought you were jerking them around. I guess that's what  
19 they thought with this well. But that wasn't the case. Usually, 90 days would be enough time  
20 to weigh the alternatives, make a decision, and get it done. On this well, maybe I could have  
21 got in there and plugged it in the first two weeks after it failed the test, if I had known that was  
22 what I was going to have to do. But, I needed to use some of that time to weigh my options,  
23 figure out where the money would come from, and decide whether to repair the well or plug it.  
24 After the point when I made the decision to plug it, which was about three weeks into the 90  
25 days, the weather turned against us. With some leases, that might not be so much of a  
26 problem, but this lease was being farmed and had been farmed a long time. The soil just  
27 didn't want to give up the water it soaked in, and it wouldn't support moving heavy machinery  
28 without causing serious ruts and surface damage. When a dry spell would start to give us  
29 some hope, it would rain or snow again. When it started to look like I wouldn't be able to meet  
30 the February 6 deadline, I started communicating with the Chanute KCC field office to ask for  
31 more time and to explain why. I tried to talk to Mr. Almond by phone. His response was  
32 basically to order me to go in and tear up the field, do whatever it took to plug the well



1 regardless of the consequences. I sent in the email request on January 26, but as the  
2 deadline got imminent with no reply, I had to make a tough call. My lawyer always likes to tell  
3 me that a lease operator is supposed to do what's reasonable and prudent. Be a "reasonable  
4 and prudent operator", he says. The well was shut in and it wasn't causing any harm. The  
5 way I saw it, I could either do a lot of harm and plug the well before February 6, or wait until I  
6 could do it without causing a lot of damage to the ground. It seemed pretty clear to me the  
7 right thing to do was wait, even at the risk of a penalty. I went with what I felt was reasonable  
8 and prudent under the circumstances, based on my years of experience. The well has been  
9 plugged and no damage resulted from the delay; in fact, damage was avoided by the delay. I  
10 think this was a more desirable result than plugging to beat the deadline and causing  
11 substantial damage. I hope the penalty will be waived under the circumstances.

12  
13 I declare under penalty of perjury under the laws of the state of Kansas that the foregoing is true  
14 and correct.

15  
16  
17 Executed on July 23, 2020



18

Christian L. Martin