

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

In the Matter of the failure of Benjamin M.	)	Docket No.: 20-CONS-3082-CPEN
Giles (“Operator”) to comply with K.A.R.	)	
82-3-120.	)	CONSERVATION DIVISION
	)	
	)	License No.: 5446

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**REPLY TO JOINT REPLY TO STAFF’S RESPONSE**

Commission Staff (Staff) of the State Corporation Commission of the state of Kansas (Commission) files this Reply to the joint response filed by MWM Oil Co., Inc., RAG Oil Co., LLC, Community National Bank & Trust, and the Unsecured Creditors’ Committee (collectively, “Petitioners”), jointly with Charlene A. Giles, the Executor of the Estate of Operator (“Executor”). In support of its Reply, Staff states as follows:

**I. Staff’s Response to Allegation Petitioners Petition to Intervene Should be Granted**

For sake of brevity, Staff will not reargue its position on its objection to the intervention filed by Petitioner, but rather stands by its position as stated on November 4, 2019.<sup>1</sup> Petitioners’ joint reply still conclusively states they satisfy the statutory and regulatory requirements, but fail to articulate facts that specify which legal rights are being substantially affected by a penalty issued against Operator’s license. In their joint reply Petitioners make the statement that their legal interest in the expiration or continuation of the Operator’s license is one in the same with the Petitioner’s property and contract rights.<sup>2</sup> Petitioners have no right or standing before the Commission as pertains to Operator’s license. MWM could contract with another validly licensed operator and transfer the wells to that license in order to continuously produce those

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<sup>1</sup> See Response to Petitions for Intervention, Requests for Hearings, and Emergency Motions to Lift Shut-In Orders, ¶¶ 4-10 (Nov. 4, 2019).

<sup>2</sup> See Joint Reply to Staff’s Response, p. 2.

wells. That action is separate and apart from any discussion the Commission will have with regard to the status of Operator's license.

Petitioners also make the generalized statement that an oil and gas lease is an asset that expires absent continuous production from its wells.<sup>3</sup> Generally, there are many clauses and covenants that may specifically be included in an oil and gas lease to prevent a lease from being terminated, and Petitioners fail to state which, if any, of the leases on the expired license are set to expire if there is not production.

Regardless, Petitioners' arguments with regard to their non-operating interest in the leases and wells is an attempt to confuse the fact that the matter at issue in this docket is an expired and suspended license in which they have no interest – they are not co-operators on the license, and as such they are not in a position to address matters relating to the license, unlike Mrs. Giles, who is the Executor of Operator's trust.

With regard to Operator's license, Petitioners have the exact same legal rights that they had before the penalty order was issued in this matter. Petitioners state that Staff has failed to articulate any practical reason why Petitioners should not be permitted to participate in these proceedings.<sup>4</sup> However, Staff expressly articulated the reasons in its response to the petition for intervention originally filed by Petitioners.<sup>5</sup>

## **II. Allegations Contained in the Joint Response are Inaccurate**

Staff disputes Petitioners' recollection of events during the meeting in July as stated in their joint reply.<sup>6</sup> When representatives for MWM and RAG Oil visited the Commission's Conservation Central Division in July, Staff was informed that Executor was not interested in

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See Response to Petitions for Intervention, Requests for Hearings, and Emergency Motions to Lift Shut-In Orders, ¶¶ 4-10 (Nov. 4, 2019).

<sup>6</sup> Joint Reply at pg. 3-4.

pursuing renewal of Operator's license. Several options were discussed regarding how best to proceed. At the conclusion of the meeting, Staff opined that it preferred the option of pursuing the standard license expiration penalty. Petitioners were never instructed by Staff to not renew Operator's expired license.

In a mischaracterization, Petitioners allege that Staff has not cooperated in efforts to renew the license.<sup>7</sup> However, Staff is happy to discuss the renewal of Operator's license with Executor or her attorney.<sup>8</sup>

In fact, on November 12, 2019, for the first time since Operator's death, Executor reached out to the Commission's licensing department about renewing Operator's expired license. Staff walked Executor through each step that would need to occur for the license to be renewed. At no time during that conversation did Executor ask Staff to open the license account so that a renewal could be submitted.<sup>9</sup>

### **III. Documents substantiating the environmental issues have been provided.**

Petitioners state that Staff continues to reference unsubstantiated environmental issues without providing any detail as to what those issues are, or where they exist.<sup>10</sup> However, at the meeting in July, District Staff showed Petitioners' attorney a folder with pictures of the compliance issues. Those documents are attached hereto as **Attachment 2**.<sup>11</sup> Additionally, District Staff has had at least one phone call to the third party advising Petitioners and Executor with regard to these wells that lists some of the environmental issues. District Staff notified

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<sup>7</sup> *Id.* at pg. 4.

<sup>8</sup> After a license has been expired for 90 days all operators of the license are locked out and must request special permission to renew the license online. This fact is the reason why Executor may have been unable to access Kolar.

<sup>9</sup> As an observation, Petitioners and Executor attach a license application to their response as Exhibit A. This application, in addition to not being submitted through the proper channels, includes a multitude of deficiencies and inaccuracies and would not be acceptable to our licensing department.

<sup>10</sup> *Id.* at pg. 5.

<sup>11</sup> Attachment 1 is located after Staff's Response to Request for Hearing, Motion to Lift Shut-In Order, and Request to Renew License.

Litigation Counsel via email of the phone call and the issues described to the advisor. A copy of that email from Staff to Litigation Counsel is attached hereto as **Attachment 3**.

Petitioners state that Staff repeatedly refused to respond to inquiries, using Docket No. 20-CONS-3039-CPEN (20-3039 Docket) as an example. However, in that matter, the surface casing of the well is short, there was a failed Mechanical Integrity Test (MIT) and the well is now beyond the 180 days for plugging or repair (meaning it will be required to be reported to EPA), there are two packers stuck in the well itself which are required to be removed, and correlative rights are at issue. Staff listed some of those issues during the prehearing conference in that matter. In short, the 20-3039 Docket well needs to be plugged and Petitioners have stated they do not have the funds to remove the packers from the well and plug it to correct the environmental issues with the well

Docket No. 19-CONS-3399-CPEN resulted in license suspension because Operator was required by District Staff to perform a successful MIT before returning it to operation which has yet to be accomplished. At that point Operator's license was already suspended for other compliance issues so if the well was turned on, Executor would be openly admitting to operating wells on a suspended license. In Docket 20-CONS-3052-CPEN (20-3052 Docket) what Staff is aware of is that there are two wells that are still on Operator's license which are not in compliance with K.A.R. 82-3-111 and have not been brought into compliance.

#### **IV. Staff did not suggest immediately placing the wells on the State plugging list.**

Petitioner's state that Staff suggests the best course of action is to immediately place the wells on the State plugging list.<sup>12</sup> However, what Staff suggested was that the wells should be placed on the State plugging list as soon as possible, which takes the Penalty Order into account. Based on the Penalty Order in this docket Staff would be able to start placing wells on the state

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<sup>12</sup> *Id.* at pg. 7.

plugging list, according to their priority, 60 days after the Penalty Order issued.<sup>13</sup> This will only affect the wells which are not sold at auction on December 5, 2019. Wells such as the Paulsen #8B, which will likely not be sold at auction due to their environmental risks, and are considered to be a high priority to groundwater, correlative rights, and public safety, can be placed on state plugging list beginning approximately December 17, 2019.

**V. Staff argues the Shut-In Order was properly issued.**

Petitioners allege that Staff presents nothing that resembles a compelling argument as to what purpose the shut-in serves.<sup>14</sup> Petitioners state that Staff failed to address the Estate's legal argument that the Commission did not have statutory authority to shut in the wells without proper notice and a hearing.<sup>15</sup> Staff's authority to shut-in the wells is based on the fact that the wells were already subject to a shut-in order due to non-compliance with other Commission orders, and there is no validly licensed operator to operate the wells.<sup>16</sup> Petitioners want to look at this issue in isolation with disregard to the other issues of non-compliance affecting Operator's license.

Further, It could also be argued that this order falls under emergency proceedings pursuant to K.S.A. 77-536 which states that, "A state agency may use emergency proceedings: (1) In a situation involving an immediate danger to the public health, safety or welfare requiring immediate state agency action or (2) as otherwise provided by law." Here, the law under regulation K.A.R. 82-3-120(a)(1) states no operator shall drill, complete, service, plug, or operate any oil or gas well without first obtaining or renewing an operator license.<sup>17</sup> Each

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<sup>13</sup> Penalty Order, Ordering Clause D (Oct. 17, 2019).

<sup>14</sup> Joint Reply at pg. 3.

<sup>15</sup> *Id.* at pg. 8.


<sup>16</sup> See Response to Request for Hearing, Motion to Lift Shut-In Order, and Request to Renew License, Attachment 1 (Nov. 4, 2019).

<sup>17</sup> K.A.R. 82-3-120(a)(1).

operator in physical control of any such well shall maintain a current license even if the well is shut-in or idle.<sup>18</sup> By law it is improper for wells to be operated without a properly licensed operator. Therefore, based on the fact that there is no licensed operator for these wells and at least one documented environmental issue present due to the 20-3052 Docket, the shut-in order was properly issued.

WHEREFORE, for the reasons set forth above, Staff respectfully requests the Commission to deny Executor's Motion to Lift Shut-In Order and Request to Renew License and for any further relief as the Commission deems just and proper.

Respectfully submitted,



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Kelcey A. Marsh, #28300  
Litigation Counsel  
Kansas Corporation Commission  
266 N. Main, Suite 220  
Wichita, Kansas 67202-1513  
Phone: 316-337-6200; Fax: 316-337-6211

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<sup>18</sup> *Id.*







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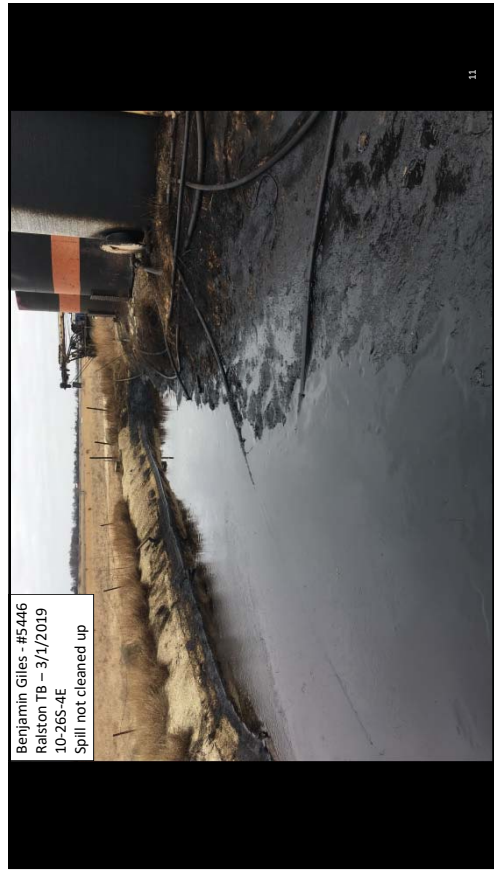


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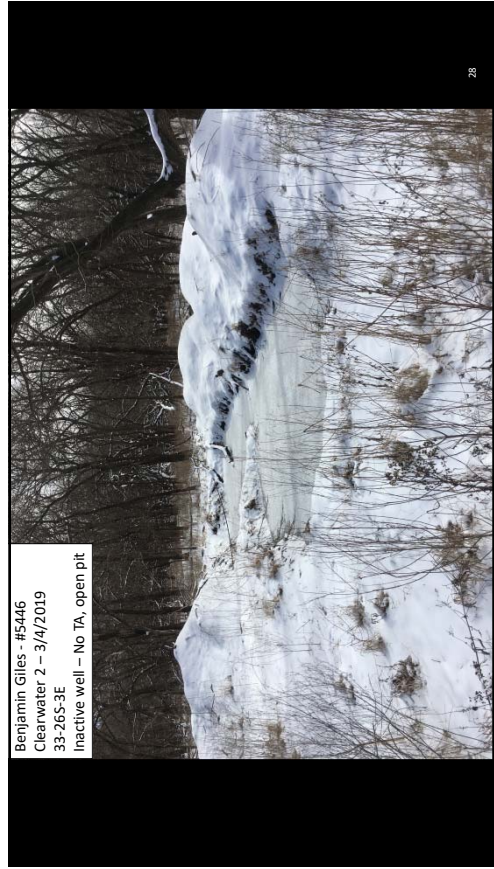
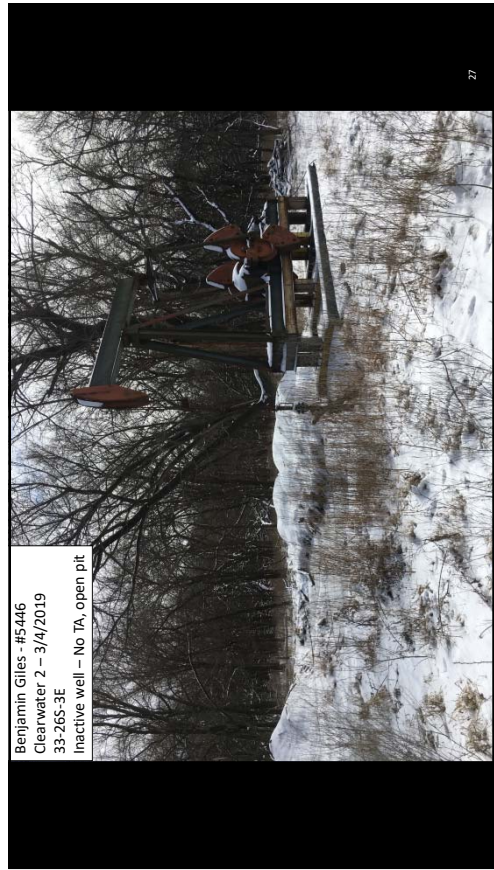
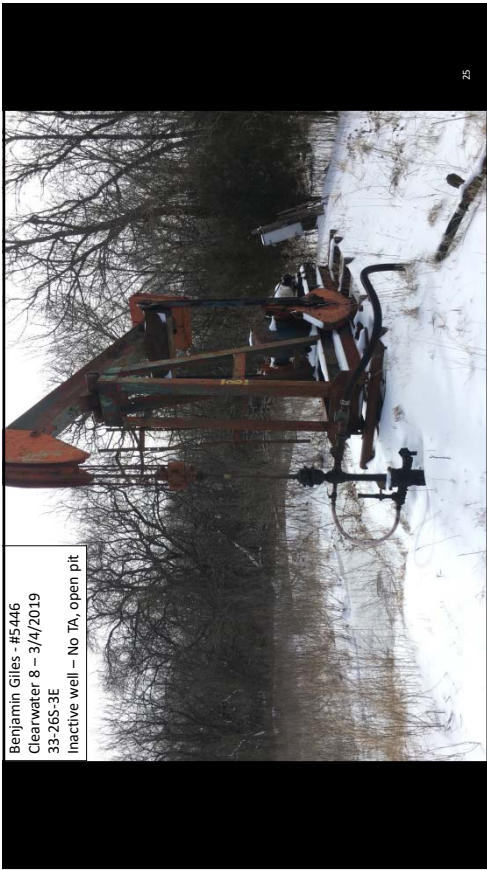


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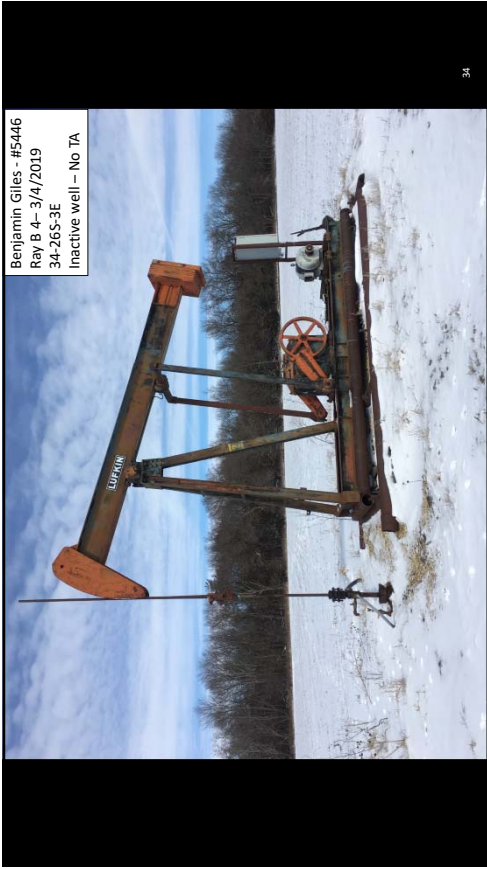


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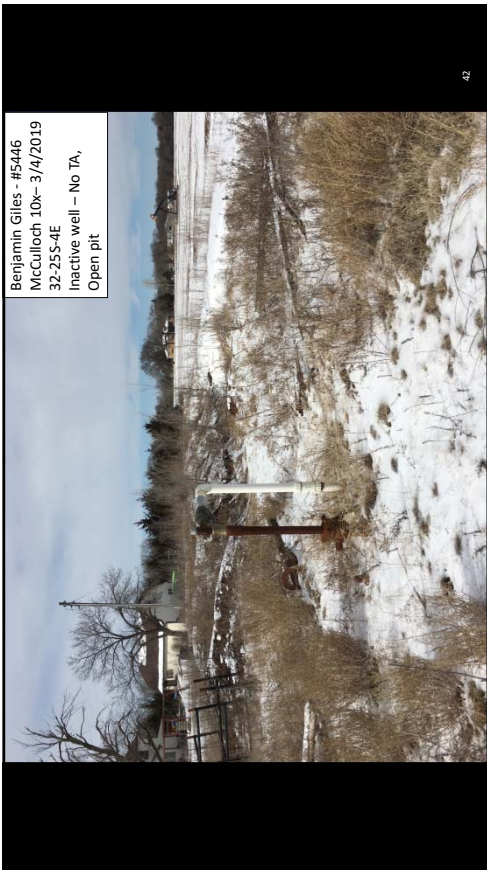








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Benjamin Giles - #5446  
Ablah 1A SW - 3/4/2019  
11-265-4E  
Open drilling pit used as  
Workover/emergency pit

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Benjamin Giles - #5446  
Hinnenkamp 2 - 3/4/2019  
7-265-3E  
Inactive well - No TA status

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## Kelcey Marsh

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**From:** Jeff Klock  
**Sent:** Tuesday, September 24, 2019 3:06 PM  
**To:** Ryan A. Hoffman  
**Cc:** Kelcey Marsh  
**Subject:** Ben Giles

Dan, Jon and I spoke with Will Darrah on speaker phone a while ago and discussed the Edson lease as well as the other environmental concerns that were not being addressed. Will was under the impression that Mr. Schlatter keeps in close contact with us regarding the work that Darrah is doing, and we informed Will that we do not have any contact with Mr. Schlatter. I told Will that we are requiring a Casing Integrity Test on the Edson #4 because it had a high fluid level, and putting a motor on it and turning it on was not bringing it into compliance. Will said they did gain access to the broken swd line under the gun club to the west and repaired the line, so they are able to dispose of the fluid. He said he would have a rig on the Edson #4 next week and would schedule that to be witnessed with Dan. I asked him to shut the Edson 4 down until it could be tested and demonstrated casing integrity. Before Labor Day I had asked Will to empty and close 2 pits on the Ralston, and empty the Paulson SWD tank as it was about to overflow with all the rain the area had received. He said he did forget about the Paulson tank which is still about to overflow (with an oil cap which will make a mess), but thought the Ralston pits had been emptied. Jon says they were not emptied, and the tank battery is a mess, which Will did agree was an oily mess. We gave him the following list of environmental issues to address.

- Empty and close pits on Ralston 4 & 9
- Clean up the mess at the Ralston tank battery
- Close pit on the Melville lease
- Remove the fluids from the Paulson SWD tank about to overflow
- Empty and close pits on the Clearwater #2 and #5
- Empty and close pit on the McCulloch #12 SWD
- Swage and close the Wright. Fluid is coming to surface and leaching back down around the well.

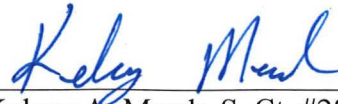
Dan asked who is watching these wells that they want to leave running in Sedgwick County and he said Leon Patterson.

Jeff

**VERIFICATION**

STATE OF KANSAS                     )  
  ) ss.  
COUNTY OF SEDGWICK            )

Kelcey A. Marsh, of lawful age, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas; that he has read and is familiar with the foregoing *Reply*, and attests that the statements therein are true to the best of his knowledge, information and belief.

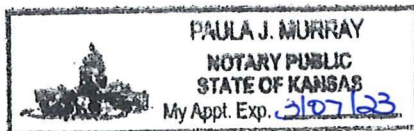


Kelcey A. Marsh, S. Ct. #28300  
Litigation Counsel  
State Corporation Commission  
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 18 day of Nov, 2019.

  
Notary Public

My Appointment Expires: 3/07/23



## **CERTIFICATE OF SERVICE**

20-CONS-3082-CPEN

I, the undersigned, certify that a true copy of the attached Reply to Joint Reply to Staff's Response has been served to the following by means of electronic service on November 18, 2019 with a courtesy hard copy mailed out to the following.

JAMES A. DURBIN  
SWANSON BERNARD, LLC  
4600 MADISON AVE STE 600  
KANSAS CITY, MO 64112  
jdurbin@swansonbernard.com

BENJAMIN M. GILES, CHARLENE A. GILES  
BENJAMIN J. GILES  
821 HIGH STREET  
TOWANDA, KS 67144-9047  
charlene121965@att.net

JONATHAN R. MYERS, ASSISTANT GENERAL COUNSEL  
KANSAS CORPORATION COMMISSION  
266 N. Main St., Ste. 220  
WICHITA, KS 67202-1513  
Fax: 316-337-6211  
j.myers@kcc.ks.gov

JONATHAN A. SCHLATTER, ATTORNEY  
MORRIS LAING EVANS BROCK & KENNEDY CHTD 300  
N MEAD STE 200  
WICHITA, KS 67202-2745  
Fax: 316-262-6226  
jschlatter@morrislaing.com

DAVID PRELLE ERON  
229 E. William Suite 100  
Wichita, KS 67202  
david@eronlaw.net

DANIEL V. HIATT, JR.  
SWANSON BERNARD, LLC  
4600 MADISON AVE STE 600  
KANSAS CITY, MO 64112  
dhiattjr@swansonbernard.com

KELCEY MARSH, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
CENTRAL OFFICE  
266 N. MAIN ST, STE 220  
WICHITA, KS 67202-1513  
Fax: 785-271-3354  
k.marsh@kcc.ks.gov

CREATH L. POLLAK  
MINTER & POLLAK, LC  
8080 E CENTRAL STE 300  
WICHITA, KS 67206  
creath@mp-firm.com

/s/ Paula J. Murray  
\_\_\_\_\_  
Paula J. Murray