

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

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht, Commissioner
Jay Scott Emler, Commissioner

In the matter of the Notice of Denial of)	
Operator License Renewal Application of)	Docket No. 17-CONS-3685-CMSC
Tailwater, Inc.)	CONSERVATION DIVISION
_____)	License No. 32461

MOTION TO JOIN NECESSARY PARTY

Applicant moves for an order to join Poverty Knob Production, LLC, KCC License No. 35117, as a necessary party and co-respondent in this proceeding. In support hereof, Applicant alleges:

1. The underlying contention for denial of Applicant's operator license is that a former operator, Westside Energy, LLC, is responsible for four abandoned wells located on the Flinsbaugh lease in Miami County, Kansas and that there is a relationship between such former operator and Applicant that justifies denial of Applicant's operator license renewal application.

2. The four wells are the Flinsbaugh 1A, 2A, 4A and 5A described in Exhibit A of the Show Cause Order made in Docket No. 17-CONS-3237-CSHO on January 12, 2017 against Westside Energy, LLC.

3. Although Westside Energy, LLC was at one time the operator of the Flinsbaugh lease, it assigned the lease to Martin Oil Properties (KCC License #3113) in 1993. Westside's operator license expired December 30, 1993 and Westside went out of business at about the same time. Martin Oil Properties surrendered and released the lease to the landowner pursuant to a written and signed Assignment of Wells and Equipment dated July 7, 1998. In accordance with K.S.A. 55-179(e), the landowner expressly assumed, in writing, all responsibility for the maintenance and plugging of the wells, and further agreed to indemnify and hold lessee harmless from any claim,

cause of action, penalty or liability for such wells. A copy of said Assignment of Wells and Equipment is attached hereto as Exhibit 1.

4. At the time of such assignment the Commission did not require the filing of a Form T-1 Change of Operator form upon assignment of a lease and transfer of wells unless it involved an injection well, disposal well or water supply well which would have been approved by application to the Commission and with reference to the docket number of such application and order approving same. If there were a question about responsibility for production wells, the Commission at that time accepted copies of the assignments whereby title had been assigned and transferred. There were no injection, disposal or supply wells on the Flinsbaugh lease at the time of the Assignment of Wells and Equipment from Martin Oil Properties to the landowner.

5. On April 22, 1999 the landowners, James L. Rickerson and Norma M. Rickerson, leased the premises to themselves d/b/a Rickerson Oil. Another party, Robert Kitchen, KCC operator license #8281, operated the lease and the wells located thereon. On November 30, 2001 the Rickersons d/b/a Rickerson Oil assigned the lease to Randy R. Kitchen and Misty H. Kitchen. A copy of the Assignment of Oil and Gas Lease is attached hereto as Exhibit 2. Thereafter, the lease was operated by Robert Kitchen license #8281.

6. On September 10, 2014 a Form T-1 Request for Change of Operator was filed with the Commission, to change the operator from Robert Kitchen, license #8281 to Poverty Knob Production, LLC, license #35117. The change was approved by the Commission on September 19, 2014. A copy of the Form T-1 Request for Change of Operator is attached hereto as Exhibit 3.

7. Although the four Flinsbaugh wells 1A, 2A, 4A and 5A were located on the leased premises, they were omitted from the well inventory that was filed with the Form T-1.

8. K.S.A. 55-179(b) determines responsibility for an abandoned well as follows: "the current or last operator of the lease upon which such well is located...; the original operator who plugged or abandoned such well..." Clearly, all of the documentation, as well as the records of the

Commission, establish that Poverty Knob Production, LLC is the current as well as the last operator..

9. Westside Energy, LLC does not fall within any provision of K.S.A. 55-179(b) as a responsible party. It clearly was not and is not the current or last operator; nor is it or was it the original operator which plugged or abandoned the wells. Although the lease was surrendered in 1998 the wells were not abandoned but were turned over to the landowner who expressly took responsibility for them. Further, it was not Westside Energy, LLC but, rather, Martin Oil Properties that surrendered the lease and assigned the wells to the landowner.

10. Poverty Knob Production, LLC is a Kansas limited liability company formed on August 4, 2014. Its resident agent is Randy Kitchen and the registered office is 39395 W. 351st, Osawatomie, KS 66064. It is the holder of a KCC operator license, number 35117. It is the current and last operator of the lease upon which the subject Flinsbaugh wells 1A, 2A, 4A and 5A are located and is clearly responsible for the wells under K.S.A. 55-179(b).

11. To disregard the obvious responsible party, that is, the current operator and, instead, seek responsibility by means of a relationship that has not existed for more than 20 years (that a principal of Tailwater, Inc. is or was related to Westside Energy) defies logic.

12. Whether Robert Kitchen and Poverty Knob Production, LLC accidentally overlooked wells 1A, 2A, 4A and 5A when they prepared the T-1 well inventory (Exhibit 3), or intentionally excluded them for some reason (maybe they don't exist or were re-numbered?) is unknown, but should be determined. To deprive Tailwater, Inc. of its ability to conduct its business by means of jumping back in time more than 20 years to show relationship to a company that hasn't existed more than two decades, when there is a current operator that is responsible for the wells under clear application of the law, is unjust.

WHEREFORE, Applicant moves for an order joining Poverty Knob Production, LLC, license #35117, as an additional party (respondent) in this proceeding; that an order be issued to Poverty

Knob Production, LLC to show cause why it should not be held responsible for the Flinsbaugh wells including 1A, 2A, 4A and 5A and, further, that appropriate findings and order be entered that Poverty Knob Production, LLC is the party responsible for the Flinsbaugh wells including 1A, 2A, 4A and 5A; and, upon such findings, further finding and ordering that Tailwater, Inc.'s application for renewal of its operator license be granted.

Date: 12/06/2017



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P.O. Box 602
Lawrence, KS 66044
(785) 841-2110 – Phone
(785) 841-0483 – Fax
jchappell@jchap.com – Email
Attorney for Tailwater, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on 12/06/2017, I mailed the original hereof to: Executive Director, State Corporation Commission, Conservation Division, 266 N. Main St., Ste. 220, Wichita, KS 67202; and faxed a copy to the Conservation Division at (316) 337-6211, and ☐ transmitted by fax, ☐ mailed by first class mail, ☒ transmitted by email, a copy to Jon Myers, Kansas Corporation Commission, Conservation Division, 266 N. Main, Ste. 220, Wichita, KS 67202; facsimile: (316) 337-6211; email: j.myers@kcc.ks.gov; and ☐ transmitted by fax, ☐ mailed by first class mail, ☒ transmitted by email, a copy to Michael Duenes, Assistant General Counsel, 1500 SW Arrowhead Rd., Topeka, KS 66604-4027, phone: (785) 271-3100, fax: (785) 271-3354, email: m.duenes@kcc.ks.gov.



COPY

ASSIGNMENT OF WELLS AND EQUIPMENT

This agreement is made this 7 day of July, 1998 between James Riekerson, a/k/a Jim Riekerson, referred to as Lessor, and Christian L. Martin, d/b/a Martin Oil Properties, referred to as Lessee.

Whereas, Lessee has previously operated oil and gas wells and other wells associated with oil and gas production, located upon the following oil and gas lease:

Flinsbaugh Lease: Oil and gas lease dated June 4, 1986, from George W. Flinsbaugh and Elaine Flinsbaugh, husband and wife, and Ross Emery Brewer, a single man, lessors, to Robert W. Howell, lessee, recorded June 10, 1986 at Book 317, Page 62; as amended by instrument dated October 25, 1990, recorded October 30, 1990 at Book 345, Page 446; insofar as said lease covers the following land in Miami County, Kansas:

The Southwest Quarter (SW/4) of Section Six (6), Township Eighteen (18) South, Range Twenty-two (22) East of the 6th P.M.

which oil and gas lease has previously been released by Lessee; and

Whereas, Lessor desires to acquire from Lessee all right, title and interest in and to the wells, casing, lines, and equipment located thereon;

Now, therefore, in consideration of the mutual promises and agreements each made to the other, Lessor and Lessee agree as follows:

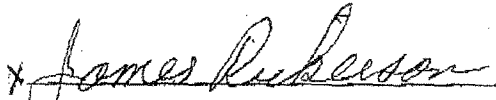
Lessee does hereby release, relinquish, surrender and quitclaim to the Lessor, their heirs, successors and assigns, as their interest may appear, any and all right, title and interest whatsoever owned by the Lessee, including any reversionary or contingent rights or interests in and to the lands described hereinabove by virtue of said oil and gas lease and/or any assignment(s) thereof, and does hereby sell, assign, transfer and convey to Lessor all the wells, casing, lines, and equipment located thereon, all of which are hereby sold, assigned, conveyed and transferred to Lessor in "as is" condition. Lessee makes no representations or warranties whatsoever, express or implied, concerning same, including merchantability, fitness for a particular purpose, or any other purpose.

Lessor accepts all of said wells, casing, lines and equipment in their present condition and location, and forever releases and discharges the Lessee from any duty or liability for the maintenance or plugging of said wells or further restoration of said premises, Lessor hereby expressly assuming all responsibility for such maintenance, plugging and restoration and agreeing to forever indemnify and hold Lessee harmless from any claim, cause of action, penalty or liability therefor.

Martin Oil Properties

by: 

Christian L. Martin, Owner


James Riekerson

ACKNOWLEDGMENTS

STATE OF Kansas, COUNTY OF Franklin, ss:

This instrument was acknowledged before me on July 16, 1998 by James Riekerson.

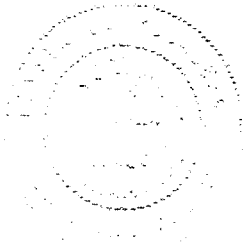


Terry Chartier
Notary Public
Appointment Expires:

STATE OF Oklahoma, COUNTY OF Oklahoma, ss:

This instrument was acknowledged before me on 07/07, 1998 by Christian L. Martin, d/b/a Martin Oil Properties.

Chystal Dunsberg
Notary Public
Appointment Expires:



STATE OF KANSAS, MIAMI COUNTY ss.
I certify that this is a true and correct copy
of the original as the same remains of record
in my office.

James L. Rickerson
Register of Deeds

Dated: June 20, 2002

Flinsbaugh # 124983

Deputy

Form 23—(Non-Contract)—Burkhead Printing & Stationery Co., Tulsa, Okla.

ASSIGNMENT OF OIL AND GAS LEASE

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, James L Rickerson and Norma M Rickerson

dba Rickerson Oil

hereinafter called Assignor (whether one or more), for and in consideration of One Dollar
(\$1.00) receipt of which is hereby acknowledged, does hereby sell, assign, transfer and set over unto

Randy R Kitchen and Misty M Kitchen

39395 W. 35th

Osawatomie KS 66004

STATE OF KANSAS ss. No. 81
MIAMI COUNTY
THIS INSTRUMENT WAS FILED FOR RECORD
ON THE 20th DAY OF JUNE A.D. 2002
AT 2:00 P.M. AT THE CLERK'S OFFICE
RECORDED IN BOOK 81 PAGE 111
Katie Dyck
REGISTER OF DEEDS
James L. Rickerson
Deputy

hereinafter called Assignee,

all working

interest in and to the oil and gas lease dated April 22nd

1999

between James L Rickerson and Norma M Rickerson

lessor.

to James L Rickerson and Norma M Rickerson dba Rickerson oil

lessee.

recorded in book 453 page 4-5, in so far as said lease covers the following described land in

Miami County, State of Kansas
The Southwest fractional quarter of section 6 township 18, Range 22, excepting the
former right of the Missouri Pacific Railroad, excepting there from that part of
that part of the Southwest quarter of said section 6 lying North of the former
Missouri Pacific Railroad right of way.

Received
KANSAS CORPORATION COMMISSION

SEP 10 2014

CONSERVATION DIVISION
WICHITA, KS

together with the rights incident thereto and the personal property thereon, appurtenant thereto, or used or obtained in connection
therewith.

And for the same consideration the Assignor covenants with the Assignee, its or his heirs, successors or assigns: That the Assignor
is the lawful owner of and has good title to the interest above assigned in and to said lease, estate, rights and property, free and clear
from all liens, encumbrances or adverse claims; that said lease is a valid and subsisting lease on the lands above described, and all rentals
and royalties due thereunder have been paid and all conditions necessary to keep the same in full force have been duly performed; and
that the Assignor will warrant and forever defend the same against all persons whomsoever, lawfully claiming or to claim the same.

EXECUTED, This 30th day of May, 192002

WITNESSETH:

James L. Rickerson (SEAL)
Norma M. Rickerson (SEAL)

STATE OF Kansas
County of Osawatomie

(Individual Acknowledgment)

EXHIBIT 2

KANSAS CORPORATION COMMISSION
OIL & GAS CONSERVATION DIVISION

Form T-1

July 2014

Form must be Typed

Form must be Signed

All blanks must be Filled

REQUEST FOR CHANGE OF OPERATOR
TRANSFER OF INJECTION OR SURFACE PIT PERMITForm KSONA-1, Certification of Compliance with the Kansas Surface Owner Notification Act,
MUST be submitted with this form.

Check Applicable Boxes:

☒ Oil Lease: No. of Oil Wells 9

☐ Gas Lease: No. of Gas Wells 0

☐ Gas Gathering System: 0

☐ Saltwater Disposal Well - Permit No.: 0

Spot Location: 0 feet from ☐ N / ☐ S Line
0 feet from ☐ E / ☐ W Line

☐ Enhanced Recovery Project Permit No.: 0

Entire Project: ☐ Yes ☐ No

Number of Injection Wells 0

Field Name: Paoia-Rantoul

Effective Date of Transfer: 08/18/2014

KS Dept of Revenue Lease No.: 124983

Lease Name: Flinsbaugh

Sec. 6 Twp. 18S R. 22E ☒ E ☐ W

Legal Description of Lease: attached

County: Miami Received
KANSAS CORPORATION COMMISSION

Production Zone(s): Squirrel SEP 10 2014

Injection Zone(s): CONSERVATION DIVISION
WICHITA, KS

** Side Two Must Be Completed.

Surface Pit Permit No.: 0 feet from ☐ N / ☐ S Line of Section
(API No. if Drill Pit, WFO or Haul)

Type of Pit: ☐ Emergency ☐ Burn ☐ Settling ☐ Haul-Off ☐ Workover ☐ Drilling

Past Operator's License No. 8281- Deceased-death certificate attached

Past Operator's Name & Address: Robert Kitchen
37370 John Brown Hwy Osawatomie, KS 66064

Title: 0

Contact Person: death certificate attached

Phone: 0

Date: 0

Signature: Assignment Attached
Doc On File

New Operator's License No. 35117

New Operator's Name & Address: Poverty Knob Production, LLC
39395 W 351st St Osawatomie, KS 66064

Title: Owners, Managing Partners

Contact Person: Misty/ Randy Kitchen

Phone: 913-755-3753

Oil / Gas Purchaser: Plains Marketing

Date: 8/28/14

Signature: Misty M. Kitchen

Acknowledgment of Transfer: The above request for transfer of injection authorization, surface pit permit # 0 has been noted, approved and duly recorded in the records of the Kansas Corporation Commission. This acknowledgment of transfer pertains to Kansas Corporation Commission records only and does not convey any ownership interest in the above injection well(s) or pit permit.

0 is acknowledged as
the new operator and may continue to inject fluids as authorized by
Permit No.: 0. Recommended action:
0

Date: 0

0 is acknowledged as
the new operator of the above named lease containing the surface pit
permitted by No.: 0

Date: 0

DISTRICT 0 EPR 9/18/14 PRODUCTION SEP 19 2014 UIC 9-19-14

Mail to: Past Operator 0 New Operator 0 District 0

KCC - Conservation Division, 268 N Main St, Ste 220, Wichita, KS 67202-1613

EXHIBIT 3

Must Be Filed For All Wells

* Lease Name: Flinsbaugh

* Location: SW1/4, S-18s-21e

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SEP 10 2014
CONSERVATION DIVISION
WICHITA, KS

* When transferring a unit which consists of more than one lease please file a separate side two for each lease. If a lease covers more than one section please indicate which section each well is located.

KANSAS CORPORATION COMMISSION
OIL & GAS CONSERVATION DIVISION
**CERTIFICATION OF COMPLIANCE WITH THE
KANSAS SURFACE OWNER NOTIFICATION ACT**

Form KSONA-1
July 2014
Form Must Be Typed
Form must be Signed
All blanks must be Filled

This form must be submitted with all Forms C-1 (Notice of Intent to Drill); CB-1 (Cathodic Protection Borehole Intent); T-1 (Request for Change of Operator Transfer of Injection or Surface Pit Permit); and CP-1 (Well Plugging Application). Any such form submitted without an accompanying Form KSONA-1 will be returned.

Select the corresponding form being filed: ☐ C-1 (Intent) ☐ CB-1 (Cathodic Protection Borehole Intent) ☒ T-1 (Transfer) ☐ CP-1 (Plugging Application)

OPERATOR: License # 35117
Name: Poverty Knob Production, LLC
Address 1: 39395 W 351st St
Address 2: _____
City: Osawatomie State: KS Zip: 66084 + _____
Contact Person: Misty/Randy Kitchen
Phone: (913) 755-3763 Fax: (_____) same
Email Address: _____

Well Location:
SW/4 _____ Sec. 6 Twp. 18 S. R. 22 ☒ East ☐ West
County: Miami
Lease Name: Flinsbaugh Well #: _____
If filing a Form T-1 for multiple wells on a lease, enter the legal description of the lease below:
legal attached

Surface Owner Information:

Name: Randy and Misty Kitchen
Address 1: 39395 W 351st St
Address 2: _____
City: Osawatomie State: KS Zip: 66084 + _____

When filing a Form T-1 involving multiple surface owners, attach an additional sheet listing all of the information to the left for each surface owner. Surface owner information can be found in the records of the register of deeds for the county, and in the real estate property tax records of the county treasurer.

If this form is being submitted with a Form C-1 (Intent) or CB-1 (Cathodic Protection Borehole Intent), you must supply the surface owners and the KCC with a plat showing the predicted locations of lease roads, tank batteries, pipelines, and electrical lines. The locations shown on the plat are preliminary non-binding estimates. The locations may be entered on the Form C-1 plat, Form CB-1 plat, or a separate plat may be submitted.

Select one of the following:

☒ I certify that, pursuant to the Kansas Surface Owner Notice Act (House Bill 2032), I have provided the following to the surface owner(s) of the land upon which the subject well is or will be located: 1) a copy of the Form C-1, Form CB-1, Form T-1, or Form CP-1 that I am filing in connection with this form; 2) if the form being filed is a Form C-1 or Form CB-1, the plat(s) required by this form; and 3) my operator name, address, phone number, fax, and email address.

☐ I have not provided this information to the surface owner(s). I acknowledge that, because I have not provided this information, the KCC will be required to send this information to the surface owner(s). To mitigate the additional cost of the KCC performing this task, I acknowledge that I must provide the name and address of the surface owner by filling out the top section of this form and that I am being charged a \$30.00 handling fee, payable to the KCC, which is enclosed with this form.

If choosing the second option, submit payment of the \$30.00 handling fee with this form. If the fee is not received with this form, the KSONA-1 form and the associated Form C-1, Form CB-1, Form T-1, or Form CP-1 will be returned.

I hereby certify that the statements made herein are true and correct to the best of my knowledge and belief.

Date: 8/28/14 Signature of Operator or Agent: Misty M. Kitchen Title: owner, managing partner
KANSAS CORPORATION COMMISSION

Received
KANSAS CORPORATION COMMISSION

SEP 10 2014

CONSERVATION DIVISION
WICHITA, KS