

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

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

In the Matter of the Application of Phillips) Docket No: 18-CONS-3204-CUIC
Exploration Company L.C., to authorize)
injection of saltwater into the Cedar Hill) CONSERVATION DIVISION
formation at the Gaither #2-21 well, located in)
Section 21, Township 14 South, Range 24) License No. 31160
West, Trego County, Kansas.)

RESPONSE TO MOTION TO DISMISS PROTEST

Protestants, Cassandra Gaither Hutchinson, Christine Garten, and Gaither Family Ranch, LLC (“Protestants”) file this Response to the Motion to Dismiss Protest filed by Phillips Exploration Company L.C. (“Phillips”) and request that the Motion be summarily denied. In support of this Response, Protestants state as follows:

1. Protestants mailed their objection to this Application to Mr. Rene Stucky, UIC Director, Production Supervisor at the Kansas Corporation Commission (“Commission”), a copy of which is attached hereto as Exhibit A and hereinafter referred to as the “Protest”. The Protest was received by the Commission on November 1, 2017.

2. Before mailing the Protest, Tom Hutchinson, husband to Protestant Cassandra Gaither Hutchinson, visited with Mr. Stucky concerning how to file the Protest. Based on his conversation with Mr. Stucky, Tom Hutchinson had the understanding that if the Protest was mailed in to the Commission, the Commission would assign a docket number and provide the Applicant, Phillips, with a copy of the Protest.

3. Based on conversation that Tom Hutchinson had with Mr. Stucky, Protestants believe that they had complied with the required procedure by mailing in their Protest to Mr. Stucky.

4. Phillips admits that it received a copy of the actual Protest after receiving the Order Designating Prehearing Officer and Setting Prehearing Conference (Phillips Motion to Dismiss Protest, p. 2 ¶ 6).

5. Phillips can hardly claim that it has been prejudiced in any way because Protestants had placed Phillips on notice on repeated occasions that it objected to any saltwater disposal well that would be located in the NE/4 of Section 21, T14S, R24W, Trego County, Kansas. Specifically, Protestants, through their attorney, Tim Keenan, so advised Mr. Phillips on February 6, 2017, and again on March 14, 2017. (See emails attached as Exhibit B).

6. Phillips' lease covers only the NE/4 of Section 21, T14S, R24W, Trego County, Kansas, a copy of which is attached as Exhibit C, hereinafter referred to as the "Gaither Lease."

7. Phillips' objective has always been to bring in saltwater located outside of the NE/4 Section 21, T14S, R24W, Trego County, Kansas, for disposal of saltwater into the Gaither #2-21 well. (See emails attached as Exhibit B). Phillips has continued in its efforts to bring in saltwater located outside of the Gaither Lease.

8. In its Application, Phillips refers to the Gaither Lease as covering 640 acres as shown on the plat attached to the Application, a copy of which plat is attached hereto as Exhibit D. The acreage shown on the plat covers the NE/4 of Section 21, the SE/4 of Section 21, the NW/4 of Section 22, and the SW/4 of Section 22, T14S, R24W, Trego County, Kansas. The Gaither Lease covers only the NE/ 4 Section 21, T14S, R24W, Trego County, Kansas. Based on Phillips

misrepresentation of the acreage that is part of the “Gaither Lease” the Application actually seeks approval to dispose of saltwater brought in from outside of the NE/4 of Section 21.

Based on the foregoing, Protestants request that Phillips’ Motion to Dismiss Protest be summarily denied.

Submitted by:

WITHERS, GOUGH, PIKE & PFAFF, LLC
200 West Douglas, Suite 1010
Wichita, KS 67202
Phone: (316) 267-1562
Fax: (316) 303-1018
Email: sgough@withersgough.com

By: /s/ Steven D. Gough
Steven D. Gough, #09016
***Attorneys for Protestants
Gaither Family Ranch, LLC;
Cassandra Gather Hutchinson; and
Christine Gaither Garten***

CERTIFICATE OF SERVICE

The undersigned hereby certifies that February 12, 2018, a copy of the foregoing was served by electronic mail to:

David E. Bengtson
STINSON LEONARD STREET LLP
1625 N. Waterfront Parkway, Suite 300
Wichita, Kansas 67206-6620
David.bengtson@stinson.com
Attorneys for Phillips Exploration Company, L.C.

Jonathan R. Myers, Litigation Counsel
j.myers@kcc.ks.gov

Michael J. Duenes, Deputy General Counsel
KCC Topeka Office
m.duenes@kcc.ks.gov

/s/Steven D. Gough
Steven D. Gough

Date: October 30, 2017

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To: Mr. Rene Stucky, UIC Director
Production Supervisor at Kansas Corporation Commission
266 Main Street, Suite 220
Wichita, Kansas 67202-1513

From: Tom and Cassandra Gaither Hutchinson
Gaither Family Ranch LLC
680 Briarcliff Road
Salina, Kansas 67401
785.643.4611

Carl and Christine Gaither Garten
Gaither Family Ranch LLC
116 Aspen Road
Salina, Kansas 67401
785.643.1148

2017-11-06 11:41:05

Kansas Corporation Commission
/s/ Lynn M. Retz

Dear Mr. Stucky,

18-CONS-3204-CUIC

We are Cassandra Gaither Hutchinson and Christine Gaither Garten. We both now reside in Salina but were born and raised in Trego County. We are the owners of the Gaither Family Ranch, LLC, in rural Trego County, the site of the salt water disposal well application. We are the third generation of the Gaither family to live on and manage the Gaither Ranch.

We strongly protest and request a hearing in the matter of the Application for a Salt Water Disposal Well in the Cedar Hill Formation at the Gaither Lease Well 2-21, 660 FNL, 990 FEL, located in Section 21, Township 14, Range 24-West, in Trego County.

The permit number is D32569. The API number is 15-195-23016-00-00.

It has always been of the utmost importance to our family to preserve the land on and below the ground, protect the environment, and safeguard the property for our future lineage. We are concerned about the installation and usage of a salt water disposal well on our land. Research has shown that problems can often occur at the site, as well as impairments to surrounding property despite the best of intentions and precautions taken by the operator's field personnel.

Acreage was sacrificed at the construction site of drilling. A large area of farm ground was surrendered for the drilling of the well, the salt water pit, and roads. The pad consumes a very large expanse of our tenant's crop.

A second concern includes the risk of possible spillage on the ground's surface and the cleanup of those spills. This wastage is costly, time consuming, and can render the space useless.

Leakage from shallow casings and pipeline breaks and leaks are a third concern. Once again, this space could be contaminated and ruined for future usage.

Gun barrel, pipe leaks, and overflows and leakage from storage tanks on the surface cause even more uncertainties. Treatment with chemical options, such as acid washing in the anti-scaling process, is worrisome.

Increased truck traffic on country roads to and from the disposal site is another significant point. This can cause the breakdown of road materials producing more maintenance and costs to the county and to the ranch. The issue of dust from the gravel roads, and its effects on crops and grass, is also a concern.

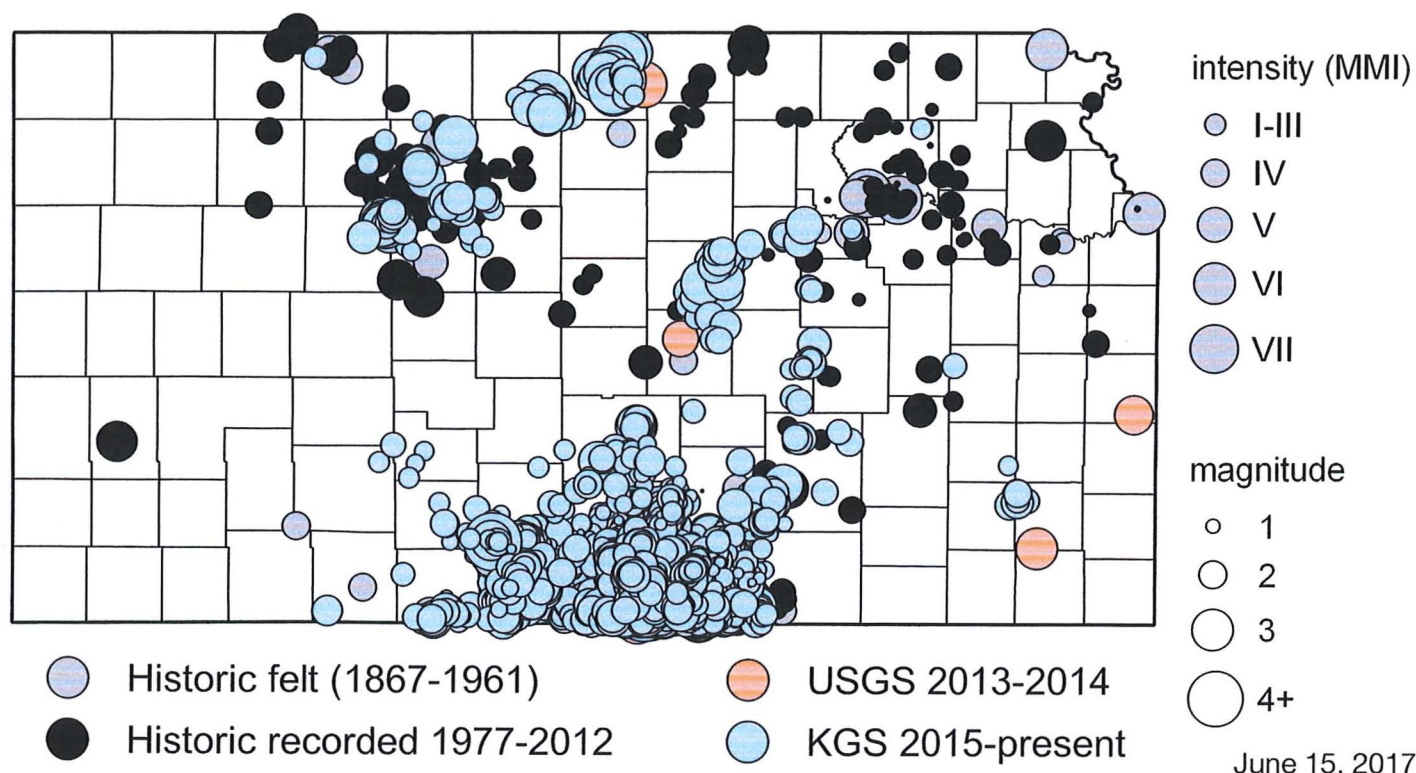
Potential ground water pollution is a major concern. Several families live in close proximity to the disposal site. Conceivable concerns are heightened with the possible poisoning of rural resident's well water. Well water is also used for livestock consumption and irrigation wells can be compromised for future crops. Downer Creek, very close to the disposal site, flows into the Smoky Hill River, which in turn flows into Cedar Bluff Reservoir. Cattle utilize both Downer Creek and the Smoky Hill River.

Preventing corrosion is vital, so another possible source of surface contamination is the use of lubricants and anti-rust agents necessary for the operation of pumps, tanks, and valves for the injection facility. The aesthetics of having to view rusting spare and broken equipment is an unwelcome display. This is not a criticism specifically directed to our operator, but one only has to casually drive through oil-field country and see many irksome examples of sloppy and trashy well sites.

EXHIBIT

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The eighth major area of apprehension is the possibility of existing fault lines. The presence of the disposal brine could cause a fault line, known or unknown, to slip and produce seismic activity. This is a disturbing earthquake concern. Less than 70 miles northeast of the disposal site, a 4.0 M documented earthquake was recorded near Palco in Rooks County. According to the Armbruster et al. (1989)¹, as quoted in Buchanan et al. (2015)², "Several injection wells used for the disposal of wastewater—were located nearby, and one well in particular may have been close to a deeply buried fault zone. Based on a disposal well's injection history, local geology, and low level of prior earthquake activity in the area, scientists speculated that the seismicity could have been induced." Please see the map below of Kansas's seismic activity (from <http://www.kgs.ku.edu/Geophysics/Earthquakes/index.html>). Seismic activity, possibly aided by disposal water, is common in northwestern Kansas near our ranch, and has expanded from earlier maps presented in Buchanan et al. (2015).



Last, but not least, because of the remoteness of the disposal facility, no one is near the site to monitor the possible disposal of saltwater from wells other than the one in that same quarter. Nobody is available to check for activities at the site. Possible equipment malfunctions and leaks could continue for days until they are discovered.

We are aware that the wells producing oil on our property may not continue to be profitable for our operator if this saltwater disposal well is not permitted. We accept the possibility these producing wells, as a result of a permit denial, may therefore be plugged and abandoned, but the additional risk to the ranch with the establishment of a disposal well is simply not acceptable to us. We do not want to possibly jeopardize our land, crops, the near-subsurface, and aesthetics of our ranch for now and for the future.

Please note our list of concerns and consider erring on the side of caution and protect the land and water in the southwestern part of Trego County. Our sons and their children will be the fourth and fifth generations to continue the Gaither ranching tradition. Since the 1930's our family has practiced being good stewards of the land. We would like to ensure the safety of that land for our future generations.

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Respectfully,

Cassandra Gaither Hutchinson
Cassandra Gaither Hutchinson

NOV 01 2017

RECEIVED

Christine Gaither Garten
Christine Gaither Garten

¹Armbruster, J. G., Steeples, D.W., and Seeber, L., 1989, The 1989 earthquake sequence near Palco, Kansas: A possible example of induced seismicity (abstract): Seismological Research Letters, v. 60, no. 4, p. 141.

²Buchanan, R.C., Newell, K.D., Evans, C.S., Miller, R.D. and Peterie, S.L., 2014 (revised, 2015), Induced Seismicity: The Potential for Triggered Earthquakes: Kansas Geological Survey, Public Information Circular 36. 6p.

Subject: NE4 OF SECTION 21-14-24 TREGO COUNTY, KANSAS

From: Tim Keenan - To: tomandcassandra@gmail.com - Date: February 6, 2017 at 4:39 PM

Tom:

Please review the proposed email below:

Dear Mr. Phillips

Our office represents Cassandra G. Hutchinson and Christine G. Garten, the owners of the above described property.

We are aware that you have filed an Intent to Drill for a well located within the above-described property. We also are aware that you sent a proposed Disposal Well Agreement to our clients prepared in the name of their late mother.

The disposal well agreement which you proposed is not acceptable to our clients. Our clients have no intention of entering into any form of salt water disposal agreement with you which would grant you any rights in the property other than those that you may hold under any existing oil and gas lease on the property. We are aware that the Intent to Drill which you filed does not state the well is to be drilled for purposes of a salt water disposal well, however, we wish to make it clear to you that should you decide to try to convert the well into a salt water disposal well, our clients will not cooperate in that effort or the use of the planned well for that purpose.

If you wish to discuss this matter further, you may contact our office at the address indicated above.

Timothy R. Keenan

KEENAN LAW FIRM, PA
PO Drawer 459, 2200 Lakin Ave.
Great Bend, KS 67530
Phone: (620) 793-7811
Fax: (620) 793-9762
timkeenanklf@kscoxmail.com
www.keenanlawyers.com

EXHIBIT

B

Subject: FW: NE4 of Section 21-14-24 Trego County, Kansas

From: Tim Keenan - To: tomandcassandra@gmail.com - Date: March 14, 2017 at 3:16 PM

Tom:

See attached e-mail we received today.

Timothy R. Keenan

KEENAN LAW FIRM, PA

PO Box 459

2200 Lakin Ave.

Great Bend, KS 67530

Phone: (620) 793-7811

Fax: (620) 793-9762

Email: timkeen@klf.kscoxmail.com

From: James B. Phillips [<mailto:phillipsx@cox.net>]

Sent: Tuesday, March 14, 2017 1:55 PM

To: 'Tim Keenan'

Subject: RE: NE4 of Section 21-14-24 Trego County, Kansas

May 14

03/14/2017

We would like to change our offer on outside water coming into the Gaither lease we want to drill on.

Please let me know if you can send this to them.

We have no formal form because we don't have the right owners to correct our last offer.

Our offer is \$200/ month for outside water.

Thanks You

Jim

Phillips Exploration Company L.C.

James B. Phillips

P.O. Box 850

211 Cedar Ridge Ct.

Andover, Kansas 67002

(316)636-2256

phillipsx@cox.net

From: James B. Phillips [<mailto:phillipsx@cox.net>]

Sent: Tuesday, February 7, 2017 10:15 AM

To: 'Tim Keenan' <timkeen@klf.kscoxmail.com>

Subject: RE: NE4 of Section 21-14-24 Trego County, Kansas

Feb. 6

Tim,

We need the paperwork that shows CK Gaither transferred owners ship to the two ladies.

Thanks.

Also the paperwork from the Reg of deeds on both properties we have oil wells on.

Jim

Phillips Exploration Company L.C.

James B. Phillips

AGREEMENT, Made and entered into the 13th day of February, 2013

by and between Carola K. Gaither, a single person, and Carola K. Gaither,
Trustee of the John W. Gaither, Jr, Family Trust, Dated August 15,
1987

whose mailing address is 700 Easter Avenue, Wakeney, KS 67672 hereinafter called Lessor (whether one or more),
and Phillips Exploration Company, LC, Wichita, KS 67230

Lessor, in consideration of One and No/100 Dollars (\$ 1.00) in hand paid, receipt of which is hereby acknowledged and of the royalties herein provided and of the agreements of the lessee herein contained, hereby grants, leases and lets exclusively unto lessee for the purpose of investigating, exploring by geophysical and other means, and operating for and producing oil, liquid hydrocarbons, all gases, and their respective constituent products, including gas, water, other fluids, and all into subsurface strata, laying pipe lines, storing oil, power stations, telephonic lines, and other structures and things thereon to produce, save, take care of, treat, manufacture, process, store and transport said oil, liquid hydrocarbons, gases and their respective constituent products and other products manufactured therefrom, and housing and otherwise caring for its employees, the following described land, together with any reversionary rights and after-acquired interest, herein situated in County of Trego State of Kansas described as follows to-wit:

Northeast Quarter (NE/4)

In Section 21 Township 14S Range 24W and containing Three (3) acres, more or less, and all accretions thereto.

Subject to the provisions herein contained, this lease shall remain in force for a term of 1111 Years from this date (called "primary term"), and as long thereafter as oil, liquid hydrocarbons, gas or other respective constituent products, or any of them, is produced from said land or land with which said land is pooled.

In consideration of the premises the said lessee covenants and agrees:
1st. To deliver to the credit of lessor, free of cost, in the pipe line to which lessee may connect wells on said land, the equal one-eighth (1/8) part of all oil produced and saved from the leased premises.

2nd. To pay lessor for gas of whatsoever nature or kind produced and sold, or used off the premises, or used in the manufacture of any products therefrom, one-eighth (1/8) of the market price at the well (but, as to gas sold by lessee, in no event more than one-eighth (1/8) of the proceeds received by lessee from such sales) for the gas sold, used off the premises, or in the manufacture of products therefrom, said payments to be made monthly. Where gas from a well producing gas only is not sold or used, lessee may pay or tender as royalty One Dollar (\$1.00) per year per net mineral acre retained hereunder, and if such payment or tender is made it will be considered that gas is being produced within the meaning of the preceding paragraph.

This lease may be maintained during the primary term hereof without further payment or drilling operations. If the lease shall commence to drill a well within the term of this lease or any extension thereof, the lessee shall have the right to drill such well to completion with reasonable diligence and dispatch, and if oil or gas, or either of them, be found in paying quantities, this lease shall continue and be in force with like effect as if such well had been completed within the term of years first mentioned.

If said lessor owns a less interest in the above described land than the entire and undivided fee simple estate therein, then the royalties herein provided for shall be paid to said lessor only in the proportion which lessor's interest bears to the whole and undivided fee.

Lessees shall have the right to use, free of cost, gas, oil and water produced on said land for lessee's operation thereon, except water from the wells of lessor. When requested by lessor, lessee shall bury lessee's pipe lines below plow depth.

When requested by lessor, lessee shall bury lessee's pipe lines below plow depth. No well shall be drilled nearer than 200 feet to the house or barn now on said premises without written consent of lessor. Lessee shall pay for damages caused by lessee's operations to growing crops on said land.

Lessee shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

If the estate of either party hereto is assigned, and the privilege of assigning in whole or in part is expressly allowed, the covenants hereof shall extend to their heirs, executors, administrators, successors or assigns, but no change in the ownership of the land or assignment of rentals or royalties shall be binding on the lessee until after the lease has been furnished with a written transfer or assignment of the land or assignment of rentals or royalties shall be binding on the lessee until after the lease has been furnished with a written transfer or assignment of the land or assignment of rentals or royalties.

In case lessor assigns this lease, in whole or in part, lessor shall be relieved of all obligations with respect to the assigned portion or portions arising subsequent to the date of assignment.

Lessee may at any time execute and deliver to lessor or place of record a release or releases covering any portion or portions of the above described premises and thereby let this lease as to such portion or portions and be relieved of all obligations as to the acreage surrendered.

All express or implied covenants of this lease shall be subject to all Federal and State Laws, Executive Orders, Rules or Regulations, and this lease shall not be terminated, modified, or annulled by any such Law, Order, Rule or Regulation. In whole or in part, nor lessee held liable in damages, for failure to comply therewith, if compliance is prevented by, or if such failure is the result of, any such Law, Order, Rule or Regulation.

Lessor hereby warrants and agrees to defend the title to the lands herein described, and agrees that the lessee shall have the right at any time to redeem for lessor, by payment of mortgages, taxes or other liens on the above described lands, in the event of default of payment by lessor, and be subrogated to the rights of the holder thereof, and the undersigned lessors, for themselves and their heirs, successors and assigns, hereby surrender and release all right of dower and homestead may in any way affect the purposes for which this lease is made, as recited herein, as said right of dower and homestead and their heirs, successors and assigns, in the premises described herein, in so far as

Lessee, at its option, is hereby given the right and power to pool or combine the acreage covered by this lease or any portion thereof with other land, lease or leases in the immediate vicinity thereof, when in lessee's judgment it is necessary or advisable to do so in order to properly develop and operate said lease premises so as to promote the conservation of oil, gas or other minerals in and under and that may be produced from said premises, such pooling to be of tracts contiguous to one another and to be into a unit or units not exceeding 40 acres each in the event of an oil well, or into a unit or units not exceeding 640 acres each in the event of a gas well, leases shall execute in writing and record in the conveyance records of the county in which the land herein leased is situated an instrument identifying and describing the pooled acreage. The entire acreage so pooled into a tract or unit shall be treated, for all purposes except the payment of royalties on production from the pooled unit, as if it were included in this lease. If production is found on the pooled acreage, it shall be treated as if production is had from this lease, whether the well or wells be located on the premises covered by this lease or not. In lieu of the findings elsewhere herein specified, lessor shall receive on production from a unit so pooled only such portion of the royalty stipulated herein as the amount of this acreage so placed in the unit or its royalty interest therein on an acreage basis bears to the total acreage so pooled in the particular unit involved.

IN WITNESS WHEREOF, the undersigned execute this instrument as of the day and year first above written

Carola K. Gaitner, Trustee

Carola K. Gather

STATE OF Kansas
COUNTY OF Trego

ACKNOWLEDGMENT FOR INDIVIDUAL (KsOKCoNe)

The foregoing instrument was acknowledged before me this 8th day of February - March, 2013
by Carole K. Gather, a single person and Carole K. Gather,
Trustee of the John W. Gather, Jr., Family Trust, Dated August 15,
1987

My commission expires 3-10-2017



Candace L. Langley
Notary Public
Candace L. Langley

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____
by _____ and _____

My commission expires _____

Notary Public

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____
by _____ and _____

My commission expires _____

Notary Public

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____
by _____ and _____

My commission expires _____

Notary Public

OIL AND GAS LEASE

FROM

TO

Date _____
Section _____ Twp. _____ Rge. _____
No. of Acres _____ Term _____
County _____
STATE OF _____
County _____

This instrument was filed for record on the _____

Trego County Register of Deeds

Book: 188 Page: 87

Receipt #: 10512

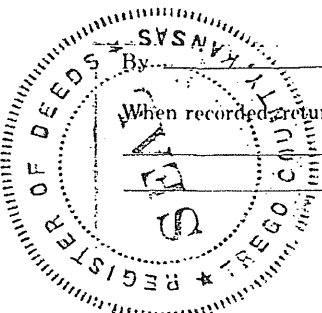
Pages Recorded: 2

Total Fees: \$12.00

Evea M. Rumpel
Evea M. Rumpel:

Date Recorded: 4/10/2013 8:30:00 AM

When recorded, return to _____



STATE OF _____
COUNTY OF _____

ACKNOWLEDGMENT FOR CORPORATION (KsOKCoNe)

The foregoing instrument was acknowledged before me this _____ day of _____
by _____ a _____
corporation, on behalf of the corporation.
My commission expires _____

Notary Public

Gaither Lease



September 21, 17

EXHIBIT
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