

**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 Kent A.)	Docket No.: 17-CONS-3026-CWLE
Deutsch, d/b/a Deutsch Oil Company and Globe)	
Operating, Inc., for a Well Location Exception)	CONSERVATION DIVISION
for the Morrison A, Morrison B, and Batman)	
Morrison #1 Wells in E/2 NE/4 of Section 28-)	License No.: 3130 (Deutsch)
<u>21-13, Stafford County, Kansas.)</u>	6170 (Globe)

PRE-FILED TESTIMONY

OF

RICK HESTERMANN

1 Q. What is your name and business address?
2 A. Rick Hestermann, 266 North Main Suite 220, Wichita, Kansas 67202.
3 Q. By whom are you employed and in what capacity?
4 A. I'm employed by the Conservation Division of the Kansas Corporation Commission, as
5 Professional Geologist in the Production Department.
6 Q. How long have you been employed by the KCC?
7 A. From 1983 until 1996, and again from 2004 to present. Prior to working for the KCC, I
8 was employed for a couple of years as a geologist for Cities Service Oil Company.
9 Between 1996 and 2004 I worked for IHS, tracking oil and gas drilling activity in and
10 around Texas.
11 Q. What is your educational background?
12 A. I have a Bachelor's degree in Geology from Fort Hays State University.
13 Q. Have you previously testified before this Commission?
14 A. Yes.
15 Q. What does your position with the Conservation Division involve?
16 A. I process intent-to-drill forms, plugging applications, and plugging reports, and I also
17 handle a lot of the various production department applications and issues that arise. In my
18 time at the Commission, I have worked as a geologist in the underground injection
19 control ("UIC") department reviewing injection applications, as the supervisor of the UIC
20 department, and have had various other duties.
21 Q. Are you familiar with this docket, 17-CONS-3026-CWLE?
22 A. Yes.
23 Q. How are you familiar with this docket?
24 A. I have reviewed the joint application of Deutsch and Globe (Operator) and the filings
25 associated with the docket, including the discovery documents.
26 Q. What has Operator applied for?
27 A. Operator seeks a well location exception for its Morrison A #2 well, API #15-185-23772,
28 and Batman-Morrison #1 well, API #15-185-23855, both located in the E/2 NE/4 of
29 Section 28, Township 21 South, Range 13 West, Stafford County.
30 I would note a few things.

1 First, all wells discussed in the application are on Deutsch's license, not Globe's
2 license, although it appears from the filings that Deutsch and Globe jointly operate the
3 Batman-Morrison #1, which probably explains why they have jointly filed their
4 application.

5 Second, in its filings Operator often but not always calls the Morrison A #2 well the
6 Morrison B, stating that its name has been changed. No records with the Commission,
7 including Operator's most recent well inventory, use the Morrison B name.

8 Third, Operator's application does not identify the API numbers for the wells, which
9 Staff uses to track wells. Staff has determined the API numbers based upon the footages
10 in the application.

11 Fourth, Operator says it also seeks a well location exception for its Morrison A #1
12 well, API #15-185-20252. From a regulatory standpoint, however, the Morrison A #1,
13 which was drilled in 1970, does not need a well location exception. Only the Morrison A
14 #2, drilled in 2013, and the Batman-Morrison #1, drilled in 2014, need well location
15 exceptions, because both of them impinge upon the unit boundary of the Morrison A #1
16 in violation of K.A.R. 82-3-108.

17 Q. Would you please explain the setback requirements of K.A.R. 82-3-108?

18 A. Yes. Under K.A.R. 82-3-108(a), oil wells such as the ones at issue must not be drilled
19 nearer than 330 feet from any lease or unit boundary line. This is called a setback
20 requirement. A lease line is the perimeter of the lease itself. So, no oil well may be
21 drilled within 330 feet of a lease line.

22 A unit boundary line is a little more complicated, because there are two types. First, a
23 unit boundary line is formed when more than one lease, or portions of more than one
24 lease, is by legal agreement operated as one unit. In such cases, there is no lease line for
25 purposes of K.A.R. 82-3-108, but instead there is a unit boundary line, which is the
26 perimeter of the unit. No oil well may be drilled within 330 feet of a unit boundary line
27 formed in this manner.

28 Second, a unit boundary line is automatically assigned to all oil wells, essentially by
29 drawing an imaginary square around each wellbore, out 330 feet in each of the cardinal
30 directions. To further explain, the square has 660-foot sides, which means it covers 10
31 acres, which is described under K.A.R. 82-3-207 as a standard drilling unit. Oil wells

1 producing from the same formation cannot have overlapping imaginary squares without
2 being in violation of K.A.R. 82-3-108.

3 Q. How specifically is the Morrison A #2 in violation of K.A.R. 82-3-108?

4 A. The Morrison A #1, drilled in 1970, is located at 4368' FSL, 979' FEL in Section 28. The
5 Morrison A #2, drilled in 2013, is located at 4937' FSL, 641' FEL in Section 28. Both
6 are perforated to produce from the Arbuckle formation. If you draw the 10-acre
7 imaginary square around each wellbore, a portion of the north/south boundaries of the
8 squares overlap by 91 feet. In other words, the Morrison A #2 was drilled only 239 feet
9 from the unit boundary line of the Morrison A #1, instead of the required 330 feet.

10 I would note that Operator and Protestant both state that the Morrison A #2 was drilled
11 only 325 feet from the unit boundary line of the Morrison A #1. A map demonstrating
12 what Operator and Protestant both believe the unit boundary line to be for the Morrison
13 A #1 is on Page 2 of Protestant's protest, where it is marked in red, with "encroached
14 acreage" written in blue. However, their belief is incorrect.

15 You can see from that map, which shows the NE/4 of Section 28, that the Morrison A
16 #1 is not located in the center of the SW/4 NE/4 NE/4, but rather a little to the north of it.
17 That means the imaginary 10-acre square drawn around the wellbore to determine the
18 unit boundary line does not fit right into the SW/4 NE/4 NE/4 quarter, but rather is a bit
19 to the north. So the Morrison A #2 is not 325 feet from the unit boundary line of the
20 Morrison A #1, but instead is only 239 feet from it.

21 Q. How specifically is the Batman-Morrison #1 in violation of K.A.R. 82-3-108?

22 A. The Batman-Morrison #1, drilled in 2014, is located at 3863' FSL, 1184' FEL in Section
23 28. It violates K.A.R. 82-3-108 in two ways.

24 First, if you draw the 10-acre imaginary square around the Morrison A #1 (1970) and
25 the Batman-Morrison #1, both of which are perforated to produce from the Arbuckle
26 formation, a portion of the north/south boundaries of the squares overlap by 155 feet. In
27 other words, the Batman-Morrison #1 was drilled only 175 feet from the unit boundary
28 line of the Morrison A #1, instead of the required 330 feet.

29 Operator and Protestant both believe the Batman-Morrison #1 was drilled only 110
30 feet from the unit boundary line, but they are wrong for the same reason they are wrong
31 regarding the Morrison A #2. Correctly identifying the unit boundary line of for the

1 Morrison A #1 results in the Morrison A #2 being a bit closer to the boundary line than
2 Operator and Protestant thought, and the Batman-Morrison #1 being a bit further away.
3 Still, they are both in violation of K.A.R. 82-3-108.

4 The second way the Batman-Morrison #1 violates K.A.R. 82-3-108 is a little more
5 complicated. Operator's application says that Deutsch has a lease on the E/2 NE/4 of
6 Section 28, and that Globe has a lease on the W/2 NE/4 of Section 28. Those are lease
7 lines, and the Batman-Morrison #1 appears to be only 136 feet from the lease line, in
8 violation of K.A.R. 82-3-108. But that is not actually the issue. Instead, while Operator's
9 application is silent on the matter, Protestant points out 10 acres on Deutsch's lease,
10 including the Batman-Morrison #1, and 10 acres on Globe's lease have apparently been
11 unitized. Those 20 acres are being operated as one unit. The map on Page 2 of
12 Protestant's protest shows the unit in yellow hatchmarks. Since those 20 acres have been
13 unitized, there is no lease line at issue. Instead, there is a unit boundary line formed by
14 the unit. The Batman-Morrison #1 is only 317 feet away from the unit boundary line,
15 instead of the required 330 feet, in violation of K.A.R. 82-3-108.

16 Q. Does Operator's application contain all that is required pursuant to K.A.R. 82-3-108(d)
17 and K.A.R. 82-3-108(e)?

18 A. Generally, although there are a few issues.

19 First, K.A.R. 82-3-108(d)(2) requires the application to include the distance to the
20 nearest lease or unit boundary line. As I have discussed, the application provides
21 incorrect distances, because it incorrectly identifies the unit boundary line for the
22 Morrison A #1. However, the application does provide enough data for the correct unit
23 boundary line to be readily determined.

24 Second, K.A.R. 82-3-108(d)(1) requires the application to have a brief explanation of
25 the exceptions requested. The application is silent regarding the more complicated
26 violation of K.A.R. 82-3-108 at the Batman-Morrison #1, which is that the well is only
27 317 from its own unit boundary line instead of the required 330. The application does not
28 identify or address that issue at all. However, Paragraph 11 of the application does state
29 that Operator seeks exception to the well location restrictions of K.A.R. 82-3-108 for the
30 wells, which generally covers the issue. Further, between Operator's application and

1 Protestant's filings, it is clear that an exception to that violation is necessary for the
2 Batman-Morrison #1 to be able to operate.

3 Third, K.A.R. 82-3-108(d)(4) requires the application to list the acreage attributable to
4 each well. In other words, wells are not allowed to have overlapping unit boundary lines
5 and right now they do, so the application is supposed to say how the imaginary squares
6 should be modified (what acreage should be attributed) by a Commission order so that
7 they are no longer overlapping. The application does not discuss the proposed acreage
8 attributable. The proposed acreage attributable theoretically matters for two reasons.

9 The first reason the proposed acreage attributable can matter is that it can inform how
10 the production allowable should be modified. A production allowable is the maximum
11 daily amount of oil a well should be allowed to produce. If the acreage attributable is
12 reduced, perhaps the production allowable should also be reduced. Operator asks for a
13 full allowable for its wells. Under K.A.R. 82-3-203, the full allowable for an oil well at
14 the depth of the wells at issue is 100 barrels of oil per day. The wells at issue do not
15 appear capable of more than a couple of barrels of oil per day. In other words, whatever
16 allowable is granted should not much matter, because the wells are not going to be able
17 to exceed it anyway. So, the acreage attributable is not going to be very informative in
18 determining the allowable.

19 The second reason the proposed acreage attributable matters is that it needs to be clear
20 how the imaginary shapes are drawn to determine the unit boundary lines, so that
21 theoretical future wells, when they have their imaginary 330-foot squares drawn around
22 them, do not result in overlapping unit boundary lines. Given the apparent production
23 capabilities of the wells at issue, this is not a particularly pressing issue. If the
24 Commission grants the application, it should just make clear that future wells should
25 abide by the general setback requirements of K.A.R. 82-3-108, as determined where
26 necessary by drawing 10-acre squares.

27 Fourth among the issues with the application, K.A.R. 82-3-108(e) requires the
28 application to be accompanied by the proposed notice of the intention to drill. Operator
29 did not attach the intent to drill forms for the wells, but the issue is essentially moot
30 because the wells have already been drilled. The intents and well completion reports are

1 already on file with the Commission. We know where the wells are located and how they
2 are completed.

3 Fifth, K.A.R. 82-3-108(e)(3) requires the application to include a map showing all
4 adjacent properties and wells drawn to a scale of one inch equaling 1,320 feet. The map
5 showing all adjacent properties and wells is incorrectly scaled. That map and the others
6 attached to the application, however, are more than sufficient to address the issues raised
7 by the application.

8 Q. Should these issues with the application result in the Commission denying it?

9 A. No. While I would not hold it up as a good example, there is enough in the record for any
10 interested party to know what is at stake, and enough for the Commission to rule on the
11 merits of the case.

12 Q. In making a recommendation to the Commission regarding well location exception
13 applications, what are the things Commission Staff considers?

14 A. Under K.S.A. 55-601 et seq. and other Commission statutes, the Commission should be
15 concerned about whether granting the application would cause waste, violate correlative
16 rights, or cause harm to fresh and usable water.

17 Q. Would granting the application cause harm to fresh and usable water?

18 A. No, the wells appear to be appropriately completed.

19 Q. What about waste?

20 A. Under K.A.R. 82-3-110, any well drilled in violation of a Commission rule is presumed
21 to constitute waste and violate correlative rights. The Morrison A #2 and Batman-
22 Morrison #1 were drilled in violation of K.A.R. 82-3-108. However, I think the
23 application overcomes the presumption of waste.

24 Q. Why?

25 A. Waste is a tricky thing. We sometimes see a well location exception application where an
26 operator proposes drilling a well too close to another well, to take advantage of favorable
27 seismic data. That is a potential waste issue. Under K.S.A. 55-602, there are a lot of types
28 of waste, but it basically boils down to the inefficient use of resources.

29 It is tough to measure one type of waste against another. It is presumed to be economic
30 waste to drill wells closer than necessary to drain a pool. Still, in situations similar to this,
31 where the wells have not been drilled yet, and absent a protest or any likely waste caused

1 by harm to the reservoir, generally that is just a business decision Staff is comfortable
2 letting an operator make.

3 Now that the wells in this case are drilled and may be capable of being marginal
4 producers, it would constitute economic waste for the wells to be prematurely plugged.
5 But then again, an operator should not be rewarded for violating setback requirements
6 and subsequently asking for relief.

7 I do not think, however, that Operator will wind up rewarded in this case. I have not
8 done any economic analysis, but taking the apparent production capabilities of the wells
9 into consideration, it is perhaps doubtful the decision to drill the wells will ever prove to
10 have been economical. At any rate, since the drilling has already occurred, I think the
11 waste of prematurely plugging the Morrison A #2 and Batman-Morrison #1 outweighs
12 the other aspects of waste.

13 Q. What about correlative rights?

14 A. I do not see a correlative rights issue in this application. We often see a well location
15 exception application where an operator proposes to drill a well too close to a lease line,
16 so an adjacent leaseholder may be concerned that the well will inappropriately drain oil
17 under their property. That is a potential correlative rights issue.

18 We do not have that situation here. All of the wells at issue are drilled on the same
19 lease. The rules regarding ownership of the oil and payments on that oil, best I can tell,
20 are all governed by the same lease-related documents between the same people. What the
21 Protestants have is not a correlative rights issue, but a royalty payment dispute. That is
22 outside the jurisdiction of the Commission, which is seemingly recognized by the parties
23 since, best I can tell based upon the documents provided in discovery, the matter is
24 already being litigated in Stafford County Case No. 2015-CV-06 and Federal Court Case
25 No. 6:15-cv-01092-JRM-GEB.

26 Q. Is it your recommendation that the Commission approve the application?

27 A. Yes. I think the application could have better explained things. I also think that Operator
28 should have taken care that the wells were not drilled in violation of K.A.R. 82-3-108.
29 But looking at the remedies at this point, Operator does not appear to have obtained
30 much of a net benefit, and it would be especially wasteful to order the wells plugged
31 since they are already drilled. I do not see any other obvious waste that has occurred, in

1 terms of underground waste, reservoir waste, etc., so on balance I think less waste will
2 occur if the application is granted than if it is denied.

3 There appears to be no issue with fresh and useable water. There also appears to be no
4 correlative rights issue. No party seems to have been harmed by the drilling, except to the
5 extent Operator may not be able to recoup its sunk costs.

6 I understand the Protestants have a concern regarding royalty payments on the lease,
7 and may have been harmed by the way Operator elected to distribute royalty payments,
8 but that is outside the jurisdiction of the Commission, and seems to currently be in
9 litigation elsewhere. No other entities have protested Operator's application. So I think
10 the application has overcome the necessary presumptions, and I think the application
11 should be granted.

12 Q. Does this conclude your testimony as of this date, May 26, 2017?

13 A. Yes.

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

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

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Operating, Inc., for a Well Location Exception)	CONSERVATION DIVISION
for the Morrison A, Morrison B, and Batman)	
Morrison #1 Wells in E/2 NE/4 of Section 28-)	License No.: 3130 (Deutsch)
<u>21-13, Stafford County, Kansas.)</u>	6170 (Globe)

CERTIFICATE OF SERVICE

I, Paula Murray, certify that on May 26, 2017, I did cause a true and correct copy of the Pre-Filed Testimony of Rick Hestermann to be served by United States mail, first class, postage prepaid to the following:

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And delivered by email to:

Sam Feather, KCC Deputy General Counsel/Prehearing Officer

/s/ Paula J. Murray
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