

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

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

**REQUEST FOR HEARING, MOTION TO LIFT
SHUT-IN ORDER, AND REQUEST TO RENEW LICENSE**

Charlene A. Giles, Executor of the Estate of Benjamin M. Giles, deceased, respectfully requests a hearing in the above-captioned docket, moves the State Corporation Commission of the State of Kansas ("Commission") to lift the shut-in order, and requests the Commission to renew License No. 5446 on an interim basis. In support of its requests and motion, Operator states and alleges as follows:

BACKGROUND

1. The Commission issued Benjamin M. Giles ("Operator") oil and gas operator's License No. 5446, which remained effective through July 30, 2019.
2. Benjamin M. Giles passed away on September 23, 2018.
3. Benjamin M. Giles and his wife, Charlene A. Giles, were equal shareholders of MWM Oil Co., Inc. ("MWM"), and RAG Oil Co., LLC ("RAG"). MWM and RAG own all or a substantial fraction interest in the working interest in the wells ("Subject Wells") listed on Exhibit A to the Commission's penalty order entered in this docket. Operator operated the Subject Wells under agreement with RAG and MWM and the other working interest owners thereof.
4. Charlene A. Giles was appointed as Executor of the Estate of Benjamin M. Giles on March 29, 2019 (the "Estate") and is empowered in her capacity as Executor to administer the Estate, including but not limited to marshaling assets and to the extent possible, satisfying creditor claims from the assets of the Estate. The proceeds of a potential sale of the MWM and RAG

leasehold interests at auction have the potential to comprise a substantial portion of the value of the assets of the Estate.

5. The other factual allegations set forth in the Petition for Intervention and Emergency Motion to Lift Shut-in Order filed by MWM and RAG are understood to be correct and are incorporated herein by this reference. Specifically, it has been the Estate's understanding that it was not necessary to attempt to renew the Operator's license to continue to operate the wells while the Estate was being administered and while MWM and RAG were in bankruptcy.

6. The Estate has sought authority from the Butler County, Kansas Probate Court to renew the Operator's license and tender the required financial assurance.

7. It is in the interest of the Estate to maximize the value of the assets owned by MWM and RAG so that when they are sold at auction, there can possibly be funds available to distribute to the Estate and potentially be available to claimants of the Estate.

LEGAL AUTHORITY AND ARGUMENT

I. Request for Hearing

The Estate, on behalf of Operator who is now deceased (collectively, "Operator"), hereby requests a hearing on the Penalty Order issued October 17, 2019 in the above-referenced docket. The Penalty Order violates Operator's correlative rights by restricting Operator's ability to produce from the wells under its license, constitutes waste through the forced shut-in of valuable, producing wells, and does nothing to prevent the pollution of freshwater.

II. Motion to Lift Shut-In Order

a. The Commission does not have the authority to shut-in wells without notice and a hearing.

Before executing a shut-in order, the Commission must follow one of two statutory procedures, both requiring notice and a hearing, and neither have been followed in this matter.

K.S.A. 55-162 provides the procedures for addressing an alleged violation of the act. There are two procedures:

- (a) Whenever the commission, from investigation or upon written complaint filed with the commission, finds reasonable cause to believe that a person has violated any provision of this act or any rules and regulations adopted pursuant to this act, the commission ***shall cause such person to come before it at a hearing held in accordance with the provisions of the Kansas administrative procedure act. After such hearing, if the commission finds that such person violated any provisions of this act or the rules and regulations adopted pursuant to this act, the commission shall take any appropriate action necessary to prevent pollution and protect water quality.***
- (b) If it appears to the commission that damage may result if immediate remedial action is not taken, the commission, ***on the basis of emergency adjudicative proceedings***, shall make such orders as provided in subsection (a), or may authorize its agents to enter upon the land where the well is located and take such remedial action necessary pending the giving of notice and hearing in accordance with the provisions of the Kansas administrative procedure act.¹

Further, the Commission may only resort to shut-ins under subsection e:

- (e) Whenever a person is in violation of subsection (a) or subsection (b) agents of the commission may enter upon the lease or any other leases under the control of such operator and seal any well operated by the offending party.²

In this matter, Operator never received notice of a hearing on the violations identified in the penalty order, nor has there been a hearing on the matter, and therefore the Commission and its agents do not have statutory authority to enter onto Operators' leases and shut-in the wells. Any well shut in is in direct violation of the procedures established through K.S.A. 55-162 and the Kansas Administrative Procedure Act, and therefore the shut-in order must be lifted until Operator has had the opportunity for a hearing.

¹ K.S.A. § 55-162(a)-(b) (1996) (emphasis added).

² K.S.A. § 55-162(e) (1996).

b. The Shut-in Order Causes Waste, Violates Correlative Rights, and Does Not Protect Freshwater.

The shut-in order operates to create and cause waste, violates the correlative rights of the interest owners of the Subject Wells, including working interest owners and royalty interest owners, and does not articulate how or why it prevents pollution of fresh water. Operator has reviewed the arguments and authorities set forth in the Petition For Intervention and Emergency Motion for Lift Shut-in Order filed by MWM and RAG, and agrees with those arguments. Those arguments and authorities are hereby incorporated and adopted by this reference herein.

Moreover, Operator adds that the shut-in order substantially impairs assets to the detriment of the Estate and its potential creditors, which if such assets are sold at auction could make up a substantial portion of the value of the assets of the Estate. The shut-in order is counterproductive and thus the Operator requests the shut-in order be immediately lifted.

III. Request to Renew License

Finally, it is requested that the Commission allow Operator's license to be renewed by the Estate on an interim basis so that the Subject Wells can be sold at auction on December 5, 2019, for the highest possible value. Operator's sole aim in operating the Subject Wells is to prepare the wells and leases for sale and transfer to other third-party licensed operators. The Estate is optimistic that it will obtain the authority from the Butler County, Kansas Probate Court to renew the Operator's license and tender the requisite financial assurance, which if accepted by the Commission would cure the sole violation set forth in the penalty order.

WHEREFORE, for the foregoing reasons, Charlene Giles, Executor of the Estate of Benjamin M. Giles, respectfully requests a hearing on the Penalty Order issued on October 17, 2019 in the captioned docket, that the Shut-In Order entered in the captioned docket be immediately lifted, that the Commission allow Operator's license to be renewed by the Estate on

an interim basis, and that the Commission enter an order allowing the Operator to continue operating the Subject Wells so that they may be sold and transferred to a responsible party.

Respectfully submitted,




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VERIFICATION

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

Daniel V. Hiatt, Jr., as attorney for Charlene Giles, Executor of the Estate of Benjamin M. Giles, of lawful age, being first duly sworn, upon oath, states he is the attorney for Charlene Giles, Executor of the Estate of Benjamin M. Giles; has read the above Request for Hearing, Motion to Lift Shut-In Order, and Request to Renew License; knows the contents thereof, and affirms that all factual statements made therein are true to the best of his knowledge and belief.



Daniel V. Hiatt, Jr.

Subscribed and sworn to before me this 25th day of October, 2019.



Notary Public

My Appointment Expires:

2/15/2020

DEBORAH K. RIEKHOF
NOTARY PUBLIC-NOTARY SEAL
STATE OF MISSOURI
JACKSON COUNTY
MY COMMISSION EXPIRES 2/15/2020
COMMISSION # 12493822

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 25th day of October, 2019, I caused the original of this **Request for Hearing, Motion to Lift Shut-In Order, and Request to Renew License** to be electronically filed with the Conservation Division of the State Corporation Commission of the State of Kansas, and caused a true and correct copy of the same be electronically served to the following parties:

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