

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

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Dwight D. Keen

In the Matter the Application of Utah Oil,) Docket No: 18-CONS-3349-CUIC
LLC (Operator) to authorize injection of)
saltwater into the Squirrel formation at the) CONSERVATION DIVISION
Cox #9 well, located in Section 5,)
Township 17 South, Range 21 East,) License No: 34332
Franklin County, Kansas.)

ORDER DISMISSING PROTESTS

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being fully advised in the premises, the Commission finds and concludes as follows:

Background:

1. On March 9, 2018, Utah Oil, LLC (Operator) filed an Application seeking authorization for the injection of saltwater into the Squirrel formation at the Cox #9, API #15-059-21985-00-00 (subject well), located in Section 5, Township 17 South, Range 21 East, Franklin County, Kansas.¹

2. The Commission has received numerous protests and requests for hearing on the Application.²

¹ Application (Mar. 9, 2018).

² Letter of Protest/Requesting Hearing: Susan Petersen; Ken Petersen; Lori Lawrence; Scott Yeargain; Polly Shteamer; Roxanne Mettenburg; Paul and Elizabeth Jewell; Jessica Skyfield; Laurel Gimzo, Debby Duncan and Tracy Brock.

3. On April 13, 2018, the Operator filed a Motion to Dismiss Protests alleging that no Protestant had established a direct and substantial interest in the Application demonstrated by a showing that the Protestant had a cognizable injury connected to the granting of the Application.³

4. On April 22, 2018, Protestant Scott Yeargain filed a Motion to Accept Protests and Schedule Hearing (Motion to Accept Protests).

5. On May 15, 2018, Protestant Jessica Skyfield filed a Request for Regulation Stating Prehearing Phone Call Participation Requirement.

Findings and Conclusions:

6. K.A.R. 82-3-135a(e) requires a protestant to file a “valid protest.” According to K.A.R. 82-3-135b(a), a valid protest is one that “include[s] a clear and concise statement of the direct and substantial interest of the protester in the proceeding, including specific allegations as to the manner in which the grant of the application will cause waste, violate correlative rights, or pollute the water resources of the state of Kansas.” A protestant can only show a “direct and substantial interest” in the Application where the protestant demonstrates that, “[1] he or she suffered a cognizable injury and [2] that there is a causal connection between the injury and the challenged conduct.”⁴ “A cognizable injury is established by showing . . . that [an individual] personally suffers some actual or threatened injury as a result of the challenged conduct . . . [and] . . . [t]he injury must be particularized, *i.e.*, it must affect the plaintiff in a personal and individual way.”⁵ “Mere allegations of possible future injury do not meet the requirements of standing and

³ Utah Oil, LLC Motion to Dismiss Protests at 1-2 (Apr. 13, 2018).

⁴ See *Kansas Bldg. Indus. Workers Comp. Fund v. State*, 302 Kan. 656, 678, 359 P.3d 33, 49 (2015) (citations and internal quotations omitted). See also Docket No. 17-CONS-3689-CUIC, *Final Precedential Order*, ¶ 3 (Apr. 5, 2018).

⁵ See *FV-I, Inc. for Morgan Stanley Mortg. Capital Holdings, LLC v. Kallevig*, 306 Kan. 204, 212, 392 P.3d 1248, 1255–56 (2017) (internal citations and quotations omitted). See also Docket No. 17-CONS-3689-CUIC, Written Findings and Recommendations, ¶ 29 (Mar. 29, 2018).

instead, any threatened injury must be certainly impending.”⁶ Moreover, “an injury must be more than a generalized grievance common to all members of the public.”⁷

7. The majority of the Protests filed in this matter are identical and those that are not identical raise the same general issue. All of the Protests reference unplugged and abandoned wells in the vicinity of the subject well as the primary concern. Therefore, the Commission analyzes the Protests together.

8. The Protestants’ concerns about unplugged wells do not articulate a direct and substantial interest of the Protestants in the matter, nor do they make specific allegations regarding any cognizable injury that can be attributed to granting the Application. The Protests in this matter only raise generalized concerns common to all members of the public. The Protests do not meet the requirements of K.A.R. 82-3-135b.

9. Mr. Yeargain’s Motion to Accept Protests adds little to the generalized nature of the Protests except to allege that the Applicant has failed to comply with Commission regulations. This alone does nothing to establish Mr. Yeargain’s direct and substantial interest and cognizable injury. Therefore, Mr. Yeargains’ request is denied.

10. Based on the above, the Commission finds that all Protests should be dismissed. There are no other protests of record in this matter. As such, Ms. Skyfield’s request is denied as moot.

11. Staff is directed to process the Application accordingly and advise the Commission if, in Staff’s opinion, a hearing is necessary. Otherwise, the docket shall be closed, and there shall be no further proceedings.

⁶ See also *Labette Cty. Med. Ctr. v. Kansas Dep’t of Health & Env’t*, 2017 WL 3203383 at *8 (unpublished), 399 P.3d 292 (Kan. Ct. App. 2017). See also Docket No. 17-CONS-3689-CUIC, Written Findings and Recommendations, ¶ 29.

⁷ *Labette Cty. Med. Ctr.* 2017 WL 3203383 at *10 (internal citations and quotations omitted).

THEREFORE, THE COMMISSION ORDERS:

A. Utah Oil, LLC's Motion to Dismiss the Protests is granted. Staff shall process the Application accordingly.

B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).⁸

C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 05/24/2018 _____

05/25/2018

Date Mailed: _____



Lynn M. Retz
Secretary to the Commission

DLK/sc

⁸ K.S.A. 55-162; K.S.A. 55-606; K.S.A. 55-707; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

18-CONS-3349-CUIC

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail and electronic service on 05/24/2018.

KEITH A. BROCK, ATTORNEY
ANDERSON & BYRD, L.L.P.
216 S HICKORY
PO BOX 17
OTTAWA, KS 66067
Fax: 785-242-1279
kbrock@andersonbyrd.com

DEBBY DUNCAN
3709 W 24th ST
LAWRENCE, KS 66047
debbyjduncan@yahoo.com

DUSTIN KIRK, DEPUTY GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
d.kirk@kcc.ks.gov

LAUREN WRIGHT, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
Conservation Division
266 N. Main St. Ste. 220
WICHITA, KS 67202-1513
Fax: 316-337-6211
l.wright@kcc.ks.gov

JESSICA SKYFIELD
KANSAS WATER
2400 W 76th ST
PRAIRIE VILLAGE, KS 66208
fieldsky@gmail.com

KENNETH PETERSEN
309 S. Elm Street
Ottawa, KS 66067

LAUREL GIMZO
118 E. Park Street
Ottawa, KS 66067

LORI LAWRENCE
321 N. Lorraine
Wichita, KS 67214
lawrencelori@gmail.com

PAUL JEWELL
PAUL AND ELIZABETH JEWELL
3910 Labette Terrace
Ottawa, KS 66067

POLLY SHTEAMER
2263 NEVADA RD
OTTAWA, KS 66067
pshteamer@gmail.com

CERTIFICATE OF SERVICE

18-CONS-3349-CUIC

ROXANNE METTENBURG
1824 NEVADA RD
PRINCETON, KS 66078
citizenmett@gmail.com

SCOTT YEARGAIN
2263 NEVADA RD
OTTAWA, KS 66067
j201942@yahoo.com

SUE PETERSEN
309 S. Elm Street
Ottawa, KS 66067

TRACY BROCK
3751 Rockcreek Terrace
Rantoul, KS 66079

BRAD LEACH
UTAH OIL LLC
2394 Utah Rd.
Rantoul, KS 66079

/S/ DeeAnn Shupe

DeeAnn Shupe