

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

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

In the Matter of the Application of Brian L. Birk, dba Birk Petroleum to Authorize Injection of Saltwater into the Kansas City Formation at the Merritt #10, located in Section 7, Township 23 South, Range 15 East, Coffey County, Kansas.	)	Docket No. 19-CONS-3106-CUIC
	)	CONSERVATION DIVISION
	)	License No. 31280

**APPLICANT'S RESPONSE TO PROTESTANT'S MOTION TO  
DENY THE PERMITS TO AUTHORIZE THE DISPOSAL OF  
SALTWATER IN DOCKETS NO. 19-CONS-3106-CUIC  
(MERRITT#10) AND NO. 19-CONS-3107-CUIC (MERRITT #5)  
LOCATED IN COFFEY COUNTY, KANSAS, AND CLOSE THE  
DOCKET IN BOTH MATTERS**

COMES NOW, the Applicant, Brian L. Birk, dba Birk Petroleum, and respectfully responds as follows to the Protestant's Motion to Dismiss:

1.      On August 31, 2018, Applicant filed its application to authorize the injection of saltwater into the Kansas City formation at its Merritt #10 well in Coffey County, Kansas. Notice of the Application was published in The Coffey County Republican newspaper on August 23, 2018.

2.      On August 28, 2018, Susan Royd-Sykes filed a letter of protest, and on September 13, 2018, Ms. Royd-Sykes filed a letter requesting a hearing.

3.      On October 2, 2018, the Commission issued an Order Designating Prehearing Officer and Setting Prehearing Conference, scheduling a Prehearing Conference for October 25, 2018.

4. On October 15, 2018, Applicant sent a letter to the prehearing officer in this matter, Michael Duenes, enclosing documents which Applicant believed were relevant to its Application and Ms. Royd-Sykes' Protest, and which Applicant believed would be helpful for the prehearing officer to have for the upcoming Prehearing Conference. Applicant admits he did not send a copy of this letter or these documents to Ms. Royd-Sykes, or Commission Staff attorney Lauren Wright, because Applicant was unaware of any requirement to do so. Applicant did send a copy of his letter and enclosed documents to Commission Staff member Rene Stucky.

5. Applicant's letter and the enclosed documents were filed of record in this matter on October 23, 2018. Protestant admits she has received copies of these documents. The prehearing officer's response email to Applicant, although not substantive, has apparently also been provided to Protestant.

6. When Applicant submitted his letter and documents, he was unaware that such ex parte communications were improper, and he was unaware that he was required to submit copies of his letter and documents to KCC Staff Counsel and Protestant. Applicant apologizes for his mistake.

7. Applicant does not object to Protestant's request that, pursuant to K.S.A. 77-545(d), the deposit of his letter and enclosed documents in the file in this matter shall not make them a part of the official record of the case. As noted above, Applicant intends to formally make the topics addressed in his letter and the enclosed documents a part of the official record of the case through his prefiled testimony.

8. While Applicant does not believe it necessary, Applicant does not object to the appointment of a replacement prehearing officer in this matter.

9. Applicant's mistaken ex parte communications will not have a substantive impact on the final regulatory action in this matter, since all necessary curative actions required by K.S.A. 77-545 have been taken. Further, Applicant intended (and still intends) to address the topics from his letter in his prefiled testimony and also incorporate and attach the documents he submitted with the letter along with that testimony. Thus, Protestant will be given an opportunity to respond to the content of Applicant's letter and attached documents in her prefiled testimony. While she has already had an opportunity to respond to the substance of these documents and has not yet done so, Applicant has no objection to Protestant receiving an additional opportunity to respond, at or before the deadline for the filing of her prefiled testimony.

10. Applicant respectfully submits that his mistake was harmless to this proceeding, since he did not communicate with the Commissioners, who are the decision-makers in this matter. While his mistake has not denied Protestant the ability to proceed with her protest, dismissal of his Application on this basis would substantially and unjustifiably prejudice Applicant. The procedural safeguards in K.S.A. 77-545 have cured any potential prejudice Protestant may have suffered by the mistaken improper communication.

WHEREFORE, Applicant respectfully requests that Protestant's Motion to Dismiss be denied, that the Application be allowed to proceed with administrative review and approval; and for such other and further relief as the Commission determines is just and equitable under the circumstances.

TRIPLETT WOOLF GARRETSON, LLC

By /s/ Amy Fellows Cline  
Amy Fellows Cline, #19995  
2959 N. Rock Road, Suite 300  
Wichita, Kansas 67226  
*Attorneys for Brian L. Birk, dba Birk Petroleum*

VERIFICATION

STATE OF KANSAS           )  
  ) ss:  
COUNTY OF COFFEY       )

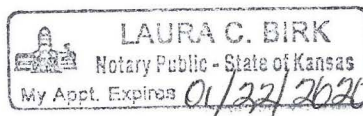
Brian L. Birk, of lawful age, being first duly sworn upon my oath, state that I am the Applicant Brian L. Birk, dba Birk Petroleum; that I have read the above Response; that I know the contents thereof and declare that the statements made therein are true and correct to the best of my knowledge and belief.

  
BRIAN L. BIRK

SUBSCRIBED AND SWORN to before me this 27<sup>th</sup> day of November, 2018.

  
Notary Public

My Appointment Expires: January 22, 2020



### **CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of November, 2018, the above **Applicant's Response to Protestant's Motion to Deny** was sent via electronic mail and/or United States Mail, postage prepaid, addressed to the following:

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*/s/ Amy Fellows Cline*  
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