

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

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

In the matter of the application of Midstates Energy) Docket No: 18-CONS-3195-CUIC
Operating, LLC to authorize injection of saltwater into)
the Squirrel formation at the Hadl #I-1 and Hadl #I-2) CONSERVATION DIVISION
enhanced recovery wells, located in Section 36,)
Township 13 South, Range 20 East, Douglas County,) License No. 35503
Kansas.)

ORDER ON MIDSTATES' APPLICATION

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 makes the following findings and conclusions:

BACKGROUND:

1. On October 12, 2017, Midstates Energy Operating, LLC (Midstates) filed an Application with the Commission seeking a permit to authorize the injection of saltwater into the Squirrel formation at the Hadl Lease, well numbers I-1 and I-2, located in Section 36, Township 13 South, Range 20 East, Douglas County, Kansas.¹ Midstates published notice of its Application in the Lawrence Daily Journal-World newspaper on October 26, 2017, providing a protest period of thirty (30) days.²
2. Between October 16, 2017, and December 19, 2017, numerous protests and requests for hearing were filed in this docket.³
3. On January 18, 2018, the Commission issued its *Order Designating Prehearing Officer and Setting Prehearing Conference*, scheduling a Prehearing Conference for February 22,

¹ Midstates Energy Operating, LLC, Application for Injection Well, p. 1 (Oct. 12, 2017) (Application).

² Affidavit of Publication (Jan. 9, 2018).

³ See *Order Designating Prehearing Officer and Setting Prehearing Conference*, ¶ 2 (Jan. 18, 2018).

2018.⁴ Due to inclement weather, the Prehearing Conference was subsequently rescheduled for, and held on, March 9, 2018.⁵

4. On March 20, 2018, Midstates filed a Motion to Dismiss Protests (Motion to Dismiss).

5. On March 21, 2018, Midstates filed a Motion for Order Requiring the Use of Prefiled Testimony in Lieu of Oral Examination.

6. On March 26, 2018, Commission Conservation Staff (Staff) filed its Response to Operator's Motion to Dismiss Protests & Operator's Motion to Require Use of Prefiled Testimony (Staff's Response).

7. On March 26, 2018, G.M. Zemansky filed a Motion Opposing Midstates' Motion to Dismiss (Zemansky Motion Opposing Dismissal).

8. On March 26, 2018, Karin Pagel-Meiners filed a Motion to Deny Applicant's Motion to Dismiss Protests (Karin Pagel-Meiners Motion).

9. On March 26, 2018, Candice Meiners filed a Motion to Deny Applicant's Motion to Dismiss Protests (Candice Meiners Motion).

10. On March 26, 2018, Allison G. Kort of Kort Law Firm, LLC, entered her appearance as attorney of record for Judith L. Wells as Manager of Wells Partners, LP.⁶

11. On March 27, 2018, the Commission issued its *Order Setting Procedural Schedule, Protective Order, and Discovery Order*, setting an evidentiary hearing for June 26, 2018.⁷

⁴ *Id.* at Ordering Clause B.

⁵ *Prehearing Officer Order Rescheduling Prehearing Conference*, ¶ 3 (Feb. 23, 2018).

⁶ Amended Entry of Appearance, p. 1 (Mar. 26, 2018).

⁷ *Order Setting Procedural Schedule, Protective Order, and Discovery Order*, ¶ 15 (Mar. 27, 2018).

12. On March 27, 2018, Jessica Skyfield, “on behalf of Kansas Water,” filed a response to the Motion to Dismiss entitled Protestant’s Response to Staff’s Motion to Dismiss Protests (Skyfield Response).

13. On March 28, 2018, Susan Iversen filed a Corrected Motion Opposing Midstate’s Motion to Dismiss and Responding to Staff’s Response to Operator’s Motion to Dismiss Protests (Iversen Corrected Motion).

14. On March 28, 2018, G.M. Zemansky and Thad Holcombe for WAT filed Information Request No. 1.

15. On March 29, 2018, Judith L. Wells filed a Response to Applicant’s Motion to Dismiss Protests (Wells Response).

16. On March 29, 2018, Douglas County, Kansas, filed a Response in Opposition to Midstates Energy Operating, LLC’s Motion to Dismiss Protests and Motion Requiring the Use of Prefiled Testimony in Lieu of Oral Examination (Douglas County Response).

17. On March 29, 2018, Marianne Carter and Scott Dixon filed a Countermotion to Midstates’ Motion to Dismiss Protests (Countermotion).

18. On April 19, 2018, the Commission issued its *Order on Midstates’ Motion to Dismiss Protests*, granting Midstates’ Motion to Dismiss all protests filed in this docket except those filed by Douglas County, Kansas, and James and Patricia Bondurant.⁸

19. On April 20, 2018, G.M. Zemansky filed a Motion to Compel Midstates, asking the Commission to “compel MidState’s to provide accurate, complete, and substantial answers” to Dr. Zemansky’s Information Request No. 1.⁹ Midstates subsequently moved to strike Dr. Zemansky’s Motion to Compel.¹⁰

⁸ *Order on Midstates’ Motion to Dismiss Protests*, ¶ 43 (Apr. 19, 2018).

⁹ Motion to Compel Midstates, p. 2 (Apr. 20, 2018).

¹⁰ Motion to Strike Motion to Compel filed by G.M. Zemansky, Ph.D., p. 1 (Apr. 20, 2018).

20. On April 23, 2018, the Bondurants filed Information Request No. 1.
21. On April 24, 2018, Terry Ballou and R L Hilbun pre-filed direct testimony on behalf of Midstates.¹¹
22. On May 3, 2018, the Commission issued its *Order on Midstates' Motion for Order Requiring the Use of Prefiled Testimony in Lieu of Oral Examination*, reaffirming its holding that failure to pre-file testimony may restrict a party's right to testify and present evidence at the evidentiary hearing.¹²
23. On May 10, 2018, the Commission issued its *Order on Midstates' Motion to Strike Motion to Compel Filed by G.M. Zemansky, Ph.D.*, finding that "Midstates has no duty to respond to any discovery requests within Dr. Zemansky's Motion to Compel Midstates."¹³
24. On May 14, 2018, the Bondurants filed a Motion to Compel Midstates and to Provide Additional Time for Direct Written Testimony.
25. On May 21, 2018, Midstates published notice of the June 26, 2018 evidentiary hearing in both the Lawrence Daily Journal-World¹⁴ newspaper and the Wichita Eagle newspaper.¹⁵
26. On May 25, 2018, Jerry Knobel and Rene Stucky pre-filed direct testimony on behalf of Staff.¹⁶
27. On May 31, 2018, Staff, counsel for Midstates, and the Bondurants held a Discovery Conference.¹⁷ At the Discovery Conference, Midstates, the Bondurants and Staff agreed that: (1)

¹¹ Pre-Filed Direct Testimony of Terry Ballou (Apr. 24, 2018) (Ballou Direct); Pre-Filed Direct Testimony of R L Hilbun (Apr. 24, 2018) (Hilbun Direct).

¹² *Order on Midstates' Motion for Order Requiring the Use of Prefiled Testimony in Lieu of Oral Examination*, ¶ 12 (May 3, 2018).

¹³ *Order on Midstates' Motion to Strike Motion to Compel Filed by G.M. Zemansky, Ph.D.*, Ordering Clause B (May 10, 2018).

¹⁴ Affidavit in Proof of Publication (May 22, 2018).

¹⁵ Affidavit of Publication (June 4, 2018).

¹⁶ Pre-filed Testimony of Jerry Knobel (May 25, 2018) (Knobel Direct); Pre-filed Testimony of Rene Stucky (May 25, 2018) (Stucky Direct).

¹⁷ See *Order Amending Procedural Schedule*, ¶ 8 (June 7, 2018).

Midstates would provide renewed responses to the Bondurants' Information Request No. 1; (2) the Bondurants would have until June 18, 2018, to pre-file direct testimony; (3) Midstates and Staff would waive pre-filed rebuttal testimony, but would be allowed to address new information at the evidentiary hearing; and (4) the June 26, 2018, evidentiary hearing would remain in place as scheduled.¹⁸

28. On June 18, 2018, James Bondurant and G.M. Zemansky pre-filed direct testimony in opposition to Midstates' Application.¹⁹

29. Pursuant to the Kansas Administrative Procedure Act (KAPA), an evidentiary hearing was held in this proceeding on June 26, 2018, in the First Floor Hearing Room at the Commission's Topeka office.²⁰ The Commission heard live testimony from a total of six witnesses, two on behalf of Midstates, two on behalf of the Protestants, and two on behalf of Staff.²¹ The parties had the opportunity to cross-examine the witnesses, as well as redirect their own witnesses.

30. On July 23, 2018, Staff filed a Motion to Open Record and File Late-Filed Exhibit. Staff stated: "At the evidentiary hearing in this docket, Staff Witness Jerry Knobel, referred to a test conducted on a water sample taken from the Thrasher lease. The report outlining these test results was not previously part of this docket. Staff believes admitting this report as a late-filed exhibit will help provide clarity to the record."²²

31. On July 27, 2018, Mr. Bondurant filed an Objection to Motion to Open Record and File Late-Filed Exhibit, asking the Commission to deny Staff's Motion and strike it from the record.²³

¹⁸ *Order Amending Procedural Schedule*, ¶ 13.

¹⁹ Testimony of James Bondurant in Opposition to the Application of Midstates Energy's Application to Authorize Injection of Saltwater into the Squirrel Formation (June 18, 2018) (Bondurant Direct); Prefiled Testimony of G.M. Zemansky (June 18, 2018) (Zemansky Direct).

²⁰ Transcript, p. 1, lines 12-20 (June 26, 2018) (Tr.).

²¹ Tr., p. 3, lines 2-24.

²² Motion to Open the Record and File Late-Filed Exhibit, ¶ 5 (July 23, 2018).

²³ Objection to Motion to Open the Record and File Late-Filed Exhibit, p. 1 (July 27, 2018).

32. On August 9, 2018, the Commission issued its *Order on Staff's Motion to Open the Record and File Late-Filed Exhibit*, granting Staff's Motion to open the record and late-file "Staff Hrg. Exhibit 1."²⁴

LEGAL STANDARDS:

33. K.A.R. 82-3-400(a) states that "[i]njection shall be permitted only after both of the following conditions are met: (1) The operator has filed an application for injection authority with the conservation division in accordance with K.A.R. 82-3-401 and provided notice in accordance with K.A.R. 82-3-402. (2) The conservation division has issued a written permit granting the application."

34. K.A.R. 82-3-401(a) lists the information an Operator must provide the Conservation Division on an injection well application, and K.A.R. 82-3-402 provides notice requirements for such an application.

35. K.A.R. 82-3-403 states the factors the Conservation Division must consider when issuing a permit authorizing injection.

36. K.A.R. 82-3-405 through 82-3-407 provide the requirements an applicant must meet for injection well casing and cement, tubing and packer, and mechanical integrity.

DISCUSSION:

37. The Commission has jurisdiction and authority to make and enforce rules, regulations and orders for the prevention of waste.²⁵ Indeed, "prevention of waste [is] of primary importance" in oil and gas conservation.²⁶ The Commission is also tasked with the protection of fresh and usable water²⁷ and the protection of correlative rights.²⁸ In light of its duty to prevent waste

²⁴ *Order on Staff's Motion to Open the Record and File Late-Filed Exhibit*, ¶ 9 and Ordering Clause A (Aug. 9, 2018). "Staff Hrg. Exhibit 1" was attached to Staff's Motion to Open the Record and File Late-Filed Exhibit.

²⁵ K.S.A. 55-604(a)(2).

²⁶ *Trees Oil Co. v. State Corp. Comm'n*, 279 Kan. 209, 225 (2005).

²⁷ K.A.R. 82-3-403(a). See K.S.A. 55-602; K.S.A. 55-704.

²⁸ K.S.A. 55-603.

and protect both correlative rights and fresh and usable water, the Commission requires an injection well applicant to furnish the Commission with certain information.²⁹

38. Both Protestant witnesses alleged that Midstates' Application failed to provide the necessary information pursuant to K.A.R. 82-3-401(a). Mr. Bondurant asserted that Staff "accepted an application from Midstates . . . that is incomplete and fails to provide material information including, but not limited to, the absence of the depth of the producing formation and the quantification of total dissolved solids in the producing formation."³⁰ In his closing argument at hearing, Mr. Bondurant stated that his "[b]iggest concern" is that public persons should be provided with injection well applications that are entirely complete so that such persons can become familiar with the relevant information.³¹

39. Dr. Zemansky alleged that "the quality of groundwater intercepted by any of the oil or water supply wells in Township 13S, Range 20E, Sections 25 or 36" is unknown.³² Dr. Zemansky alleged that Midstates' Application lacked a proper plat.³³ Dr. Zemansky further alleged that numerous other blanks on Midstates' Application contained no information.³⁴ Dr. Zemansky also questioned Staff's testimony regarding the depth of fresh and usable water,³⁵ as well as Midstates' and Staff's testimony on induced seismicity.³⁶ Dr. Zemansky asserted that Midstates' Application should be rejected as incomplete, allegedly foreclosing the possibility of "a reasoned judgment that granting [the Application] will result in the protection of fresh and usable groundwaters."³⁷

²⁹ See K.A.R. 82-3-401(a).

³⁰ Bondurant Direct, p. 3, lines 12-15.

³¹ Tr., p. 92, line 8 through p. 93, line 2.

³² Zemansky Direct, p. 4, lines 6-8.

³³ Zemansky Direct, p. 5, lines 9-13.

³⁴ See Zemansky Direct, pp. 7-13 (e.g., no alleged information on well surface elevation, plug back depth, top of injection formation, strata depth, total dissolved solids, static fluid levels, elevation reference on an electric log, average daily rate of injection, and injection fluid; allegedly incomplete ACO-1 form).

³⁵ Zemansky Direct, p. 18, lines 13-20.

³⁶ Zemansky Direct, pp. 18-21.

³⁷ Zemansky Direct, p. 22, lines 6-8.

40. In support of the Application, Midstates' witness R L Hilbun stated that "Midstates['] Application seeks authority to inject water through the Hadl I-1 and Hadl I-2 wells into the Squirrel Formation through the present completions at a maximum volume of 100 barrels of water per day and at maximum injection pressure of 600 PSI for each of said wells."³⁸ Regarding containment of injection fluids to the Squirrel Formation, Mr. Hilbun testified:

The Well Completion Reports for the subject wells indicate that when the wells were drilled the operator drilled down approximately 40 feet, and set that length of seven inch surface casing, and cemented it to the surface. Then they drilled down to the total depth of 829 feet and 825 feet respectively, using 2.875" casing and cemented it to the surface. The casing was then perforated from 750' to 760' in the Squirrel formation which is the producing formation. After the wells were completed Mechanical Integrity Tests ("MIT") were performed upon each of these wells to ensure the integrity of the well construction. Both of the subject wells passed the MIT tests with no issues. All freshwater strata above the Squirrel formation is protected by the surface and producing casing strings which are both cemented to the surface and also by the presence of a number of shale layers above the perforations. Thus, in my opinion the integrity of the well completions for the subject wells is sound and the integrity of the well construction is sufficient to confine the injected water to the Squirrel formation.³⁹

41. Regarding induced seismicity, Mr. Hilbun testified that, in light of the low injection rates and pressures requested for the subject wells and the fact that "the natural geology precludes the subject wells from communicating with the crystalline granite basement," Midstates' Application does not pose a significant risk for induced seismicity.⁴⁰ At the hearing, Mr. Hilbun asserted that in his expert opinion the subject wells will likely not communicate with other injection wells located two or three miles away.⁴¹ Mr. Hilbun further asserted that large above-ground storage of salt water is more hazardous than the immediate injection of such water back into the formation.⁴²

³⁸ Hilbun Direct, p. 4, lines 15-17.

³⁹ Hilbun Direct, p. 6, lines 5-17.

⁴⁰ Hilbun Direct, p. 7, lines 2-13.

⁴¹ Tr., p. 34, lines 15-19.

⁴² Tr., p. 37, line 19 through p. 20, line 5.

42. Midstates' witness Terry Ballou testified that "[d]ue to the extremely thick and impermeable Hertha limestone formation present in this area the only way injection or formation fluid could migrate up and enter fresh and usable water strata would [be] through casing failure."⁴³ Mr. Ballou also testified that without Midstates' requested water flood, "a portion of the recoverable oil would be left unrecovered and waste will occur."⁴⁴ At the hearing, Mr. Ballou testified that the makeup water that will be injected into the subject wells "is fresh water," comprised of no other chemicals or additives, and agreed that "the water that is injected will consist entirely of water produced from the same formation once it's being injected plus rural water."⁴⁵

43. Staff witness Jerry Knobel testified at hearing that, contrary to Dr. Zemansky's assertion, the quality of the groundwater intercepted by any of the oil or water supply wells in Sections 25 or 36 is known.⁴⁶ Mr. Knobel explained the basis for his assertion:

On November 29th, 2017, the staff of KDHE, Pam Chaffee(sp) and two, three personnel met on the Thrasher lease and examined a water well that was located there. This well is located at 259 feet from the south line, 4,607 from the east line. They took two samples of water from this well. This well is 110 feet deep. The static fluid level, 59 feet. They took two samples from the top at 59 feet. These two samples were examined in the laboratory in Chanute. They tested 20,000 parts per million and 70,000 parts per million.⁴⁷ This was very fresh water.⁴⁸

44. Regarding "the deepest usable water of the Squirrel Sand," Mr. Knobel agreed that it is unknown. He elaborated:

I agree the deepest usable water of the Squirrel Sand is unknown. . . . Mr. Zemansky states the depth of usable groundwater probably exceeds or at least

⁴³ Ballou Direct, p. 4, lines 3-5.

⁴⁴ Ballou Direct, p. 4, lines 15-16.

⁴⁵ Tr., p. 19, lines 4-11.

⁴⁶ Tr., p. 67, lines 2-8.

⁴⁷ See *Order on Staff's Motion to Open the Record and File Late-Filed Exhibit*, Ordering Clause A (Aug. 9, 2018). See also Staff Hrg. Exhibit 1, p. 1. This Exhibit corrects Mr. Knobel's misstatement of "20,000" and "70,000" with the accurate statement: "The first water sample had a chloride concentration of 20 ppm chloride and the second water sample had a chloride concentration of 70 ppm chloride. These concentrations are well within the fresh and usable water limits and it does not appear that oil and gas activities on the Thrasher lease have impacted the local ground water resources." (Emphasis added). The Thrasher and Hadl leases are on adjacent sections in Douglas County.

⁴⁸ The entire block quote is from Tr., p. 67, lines 10-19.

extends to the top of the Squirrel Formation. This is not a true statement. If you penetrate below the Squirrel Sand top, you encounter a potential oil zone which may contain potential formation water which may prove to be unusable. Below the base of the Squirrel Sand, I don't have test data to dispute Mr. Zemansky's claim, possible presence of usable water which might be found in the formations in the Thrasher field.⁴⁹

45. Mr. Knobel disagreed with Dr. Zemansky's pre-filed testimony on the lithologic logs⁵⁰ by asserting that "[t]he perforations in each well are made in the top of the Squirrel Sand."⁵¹ Mr. Knobel also disagreed with Dr. Zemansky's claim that "the deepest depth of fresh water in the aquifers exceeds the depth of 500 feet and that the depth of usable groundwater would likely be hundreds of feet deeper"⁵² because, according to Mr. Knobel:

On June 20 of this year, Terry Ballou and Taylor Herman met on the Thrasher lease and took a sample of water from the water tank. It was examined in our Chanute office. This water tested 10,500 parts per million. This is non usable water. The same day they went to the Hadl lease. He took a sample from the bottom of the gun barrel tank. This is on 6-20-2018. . . On 6-22-2018, this sample was tested in the Chanute office. This sample tested 21,100 parts per million chlorides. This is non usable water.⁵³

46. Regarding notice of Midstates' Application,⁵⁴ Mr. Knobel testified that Midstates "published notice on October 26, 2017, in the proper county newspaper and listed the proper 30-day protest period."⁵⁵ Moreover, Mr. Knobel testified that the "surrounding parties within one-half mile" were served with the Application,⁵⁶ and minor discrepancies in the location of the Hadl #I-1 well "did not affect one-half mile notice requirements."⁵⁷

⁴⁹ Tr., p. 69, line 17 through p. 70, line 2.

⁵⁰ See Zemansky Direct, p. 8, lines 11-13.

⁵¹ Tr., p. 68, lines 4-5.

⁵² Tr., p. 68, lines 7-11.

⁵³ Tr., p. 68, lines 13-22. Mr. Knobel stated that the limit of usable water (per KCC regulation) is 500 parts per million chlorides. Tr., p. 68, lines 23-25.

⁵⁴ See K.A.R. 82-3-402.

⁵⁵ Knobel Direct, p. 6, lines 13-14. See Affidavit of Publication (Jan. 9, 2018).

⁵⁶ Knobel Direct, p. 6, lines 14-15.

⁵⁷ Knobel Direct, p. 6, lines 16-19.

47. Based on his review of both surface and production casing cemented to surface, Mr. Knobel stated that the subject wells are “properly constructed and fresh water zones are protected.”⁵⁸ Mr. Knobel testified that the confining layers between the deepest known fresh water in the area and the top of the Squirrel Sand oil producing zone will “adequately contain” any injection water that might happen to migrate from the subject wells.⁵⁹ Further, according to Mr. Knobel, the casing on the subject wells was cemented from the proper depth to surface and circulated.⁶⁰ Therefore, he concluded that “[t]he injection zone is adequately isolated and in compliance with KCC regulations.”⁶¹

48. Multiple witnesses verified the mechanical integrity of the subject wells.⁶² Moreover, Mr. Knobel “conducted an Area of Review (“AOR”) to check for possible environmental concerns due to nearby wells,”⁶³ stating that his “AOR did not show any concerns with [Midstates’] application; fresh water resources are protected.”⁶⁴ Regarding the requested rate and pressure for the subject wells, Mr. Knobel testified that “[t]he requested rate of 100 barrels of water per day at a pressure of 600 pounds per square inch is consistent with the rate and pressure that is being used in the surrounding area for this formation.”⁶⁵ Mr. Ballou agreed with Mr. Knobel’s assessment on rate and pressure.⁶⁶

49. Although none of the Commission’s underground injection well permitting factors pertain to induced seismicity, Mr. Stucky testified that “[t]he Conservation Division has been very active in working on this problem with Kansas Geological Survey, Kansas Department of Health

⁵⁸ Knobel Direct, p. 3, lines 13-21 and p. 7, lines 10-13.

⁵⁹ Knobel Direct, p. 4, lines 1-6 (corrected by Tr., p. 65, line 25 through p. 66, line 1) and p. 7, lines 14-19 (corrected by Tr., p. 66, lines 2-3).

⁶⁰ Knobel Direct, p. 4, lines 7-14 and pp. 7, line 20 through p. 8, line 2.

⁶¹ Knobel Direct, p. 4, lines 13-14.

⁶² See Knobel Direct, p. 4, lines 15-16 and p. 8, lines 3-4; Ballou Direct, p. 4, lines 5-7; Hilbun Direct, p. 6, lines 10-12.

⁶³ Knobel Direct, p. 4, line 17 through p. 6, line 11.

⁶⁴ Knobel Direct, p. 6, lines 1-2.

⁶⁵ Knobel Direct, p. 7, lines 3-5.

⁶⁶ Ballou Direct, p. 4, lines 20-22.

and Environment, and various Oklahoma agencies.”⁶⁷ Mr. Stucky testified that induced seismicity concerns have been concentrated mainly in Harper and Sumner Counties on Kansas’ southern border where significant volumes of saltwater have been disposed.⁶⁸ Mr. Stucky stated that, in contrast to the activity in Kansas’ southern counties, Midstates’ Application “does not contain any factors implicated in recent studies regarding induced seismicity in or near Kansas.”⁶⁹ Mr. Stucky concluded:

This application is for injecting a maximum of 100 barrels of water back into the formation from which it came, the idea being to maintain the pressure in the reservoir to keep the oil moving into the producing wellbores. Pre-injection pore pressure is likely to rarely be surpassed. As Rex Buchanan et al. of the Kansas Geological Survey state in their Public Information Circular 36, Revised in August 2015 (Exhibit A), earthquakes are much more likely to be associated with disposal wells drilled into deep formations than those used for enhanced oil recovery. Therefore, there are some significant differences between [Midstates’] application and situations in Kansas suspected of being linked to induced seismicity.⁷⁰

50. Mr. Knobel asserted that he used the same review process on Midstates’ Application that he utilizes on virtually all injection well applications with the Commission,⁷¹ and expressed his opinion that granting Midstates’ Application will not cause waste, nor violate any of the Protestants’ correlative rights, nor pollute Kansas’ water resources.⁷²

51. Mr. Stucky likewise affirmed that he has no concerns about the mechanical integrity of the subject wells,⁷³ no concerns that the subject wells will pollute water resources,⁷⁴ and no concerns about violation of correlative rights.⁷⁵ Moreover, Mr. Stucky agreed that an operator may leave certain questions on the injection well application form unanswered because answers to such

⁶⁷ Stucky Direct, p. 3, lines 8-10.

⁶⁸ Stucky Direct, p. 3, lines 15-24.

⁶⁹ Stucky Direct, p. 3, lines 27-28.

⁷⁰ Stucky Direct, p. 3, line 29 through p. 4, line 6.

⁷¹ Tr., p. 74, lines 7-18.

⁷² Tr., p. 78, lines 14-22.

⁷³ Tr., p. 81, lines 19-22.

⁷⁴ Tr., p. 81, lines 23-25.

⁷⁵ Tr., p. 82, lines 7-9.

questions will not, in the specific case, contribute relevant material for Staff's final determination regarding waste, protection of correlative rights and protection of fresh water.⁷⁶

FINDINGS AND CONCLUSIONS:

52. The Commission finds that the record in this proceeding, as explained above, provides substantial competent evidence that the Hadl #I-1 and #I-2 wells meet the Commission's permitting factors, well construction requirements, mechanical integrity test requirements, and notice requirements, pursuant to K.A.R. 82-3-400 *et seq.* The Protestants in this matter have had the opportunity to file testimony and other pleadings, as well as testify and cross-examine witnesses at an evidentiary hearing. Having done so, the Commission finds the Protestants have not refuted the evidence that approval of Midstates' Application will prevent waste, protect correlative rights, and protect fresh and usable water.

53. The Commission finds that the lack of a notation or answer on every line or blank in Midstates' Application does not provide a basis for denial. Indeed, this would not be a basis for denial in *any* particular case. The injection well application forms anticipate a wide range of facts and circumstances regarding individual wells, and therefore, it is improbable and most unlikely that every line of the form would need a response for the application to be complete. As Mr. Stucky testified, answers to some questions on an application would not provide relevant information to aid Staff in its review.⁷⁷ Further, Staff verifies all necessary information by its own independent research.⁷⁸ In addition, "material information"⁷⁹ pertaining to the adequacy and safety of the subject wells is available to the public through the record of extensive pre-filed and hearing testimony in this proceeding. The Commission has the authority to determine whether an application is properly

⁷⁶ Tr., p. 88, line 20 through p. 89, line 1.

⁷⁷ Tr., p. 88, line 20 through p. 89, line 1.

⁷⁸ Tr., p. 80, lines 19-20; p. 81, lines 11-13.

⁷⁹ See Bondurant Direct, p. 3, line 19.

complete,⁸⁰ and reasoned judgment does not require the Commission to put form over substance when reviewing applications.⁸¹ Based upon its review of the record as a whole, the Commission finds there is substantial, competent evidence that approval of Midstates' Application comports with the Commission's duty to prevent waste, protect correlative rights and protect fresh and usable water.

54. The Protestant witnesses, Dr. Zemansky and Mr. Bondurant, provided no evidence of any danger the subject wells might pose to water supplies, nor did they provide any testimony on alleged structural unreliability or lack of integrity of the subject wells. Thus, the Commission finds there is no basis for denial on these points.

55. The Commission also finds the Protestants have not provided evidence that the subject wells present an unreasonable or increased risk of inducing earthquakes. Dr. Zemansky's testimony on induced seismicity and injection well fluid amounts constitutes speculative generalization regarding earthquake causation, which provides no evidence that Midstates' proposed wells are likely to induce earthquakes. Simply pointing out the possible causes of induced seismicity in general does not demonstrate that the Hadl #I-1 and #I-2 will present an unreasonable or increased risk of such seismicity. The Commission finds that unless there is demonstrable historical, statistical or seismological evidence of a causal link showing that injection wells in Douglas County, at the rate and pressure requested by Midstates, will cause movement of faults underlying Douglas County, Dr. Zemansky's general concerns about induced seismicity do not provide a basis for denial of Midstates' Application.

⁸⁰ See K.S.A. 74-623. See also K.S.A. 55-901(a) (providing that the owner or operator of an oil well that produces salt water or mineral waters may return such waters to certain horizons "if the owner or operator of such well makes a written application to the state corporation commission for authority to do so, and written approval has been granted to the owner or operator *after investigation by the state corporation commission*") (emphasis added); K.A.R. 82-3-401(a) (noting that the Commission approves the form on which an application is filed).

⁸¹ See e.g. *Craig v. FedEx Ground Package Sys., Inc.*, 300 Kan. 788, 806 (2014) (stating the principle that "form should not be elevated over substance").

CONCLUSION:

56. The Commission finds that Midstates' Application fulfills the requirements of Kansas law. The Protestants have failed to make a reasonable and supported case for denying Midstates' Application based on any possibility of waste, any risk of induced seismicity, or any threat to the protection of correlative rights and fresh and usable water. Therefore, the Commission approves Midstates' Application with a 100 barrels per-day maximum injection rate and a 600 psig maximum injection pressure for both the Hadl #I-1 well and the Hadl #I-2 well.

THEREFORE, THE COMMISSION ORDERS:

A. Midstates' Application for injection authority at its Hadl #I-1 and Hadl #I-2 wells, each individually with a maximum injection rate of 100 barrels per-day and a maximum injection pressure of 600 psig, is approved. Staff is directed to take any final steps necessary to process Midstates' Application administratively.


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).⁸²

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

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 08/16/2018



Lynn M. Retz
Secretary to the Commission

Mailed Date: 08/17/2018

MJD

⁸² 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-3195-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 08/16/2018.

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/S/ DeeAnn Shupe

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