

DATE: FEBRUARY 13, 2020

TO: CHAIRMAN TROY WAYMASTER
KANSAS HOUSE APPROPRIATIONS COMMITTEE
AND, COMMITTEE MEMBERS

Considerations against passage of HB 2536 (session of 2020)

1. The definition of “Abandoned Well” is changed from the current definition. The effect of the change is to allow a lease operator to “delist” wells so that he is no longer responsible for plugging wells which are a threat to water.
 - Current definition: “Any well that the Commission has authority to plug, replug or repair under K.S.A. 55-179 and amendments thereto.
 - K.S.A. 55-179(b), the current controlling language for abandoned wells states: the person who is legally responsible for such wells includes, but is not limited to, the current operator, last operator, or any person who tampers with such well. This means all operators of a lease, past and present, are jointly and severally responsible for plugging the wells which are a threat on the lease.¹
 - The proposed definition allows lease operators a loophole to escape paying plugging costs on a lease by not claiming the well.²
 - The proposed change in definition is industry-friendly, industry-sponsored, and since every well in Kansas will eventually be abandoned³ every well will eventually offer an operator an incentive to “not claim” such well on his license.
 - The oil and gas industry, in Kansas, is the only energy production sector in the state economy which is allowed to dump its decommissioning costs (plugging old wells) on the public; not coal-fired plants, not Wolf-Creek nuclear plant, not wind turbines, not solar installations. Passing the proposed bill makes the public more responsible for picking up such costs.

2. The Kansas Corporation Commission cannot be trusted to plug abandoned wells which fall under its purview. The proposed change in definition of “abandoned well” expands the purview of the Commission, shrinks the responsibility of lease operators.
 - Actively leaking wells remain on the Commission’s list of wells to be plugged for years without being plugged.⁴

¹ *John M. Denman v. State Corporation Commission*, Kansas Court of Appeals, No. 110,861, January 9, 2015.

² HB 2536, p. 5, lines 33-34.

³ Average well casing life is 50 years; *Environmental Aspects of Oil and Gas Production*, John O. Robertson and George V. Chilingar, John Wiley & Sons, Inc. 2017, p. 65, p. 71.

⁴ Blue Hill Reservoir lease, Labette county, well #1; Schellack lease, Sec. 28, Twp. 12, R. 21 E, Leavenworth county; well #1, Palister/Hauschild lease, Sec. 11, Twp. 21, R. 7 W, Rice county; Justus lease, Reno county.

- Commission allows wells to lie idle for years with no production, inactive, frequently in flood plains, in sensitive ground water areas, in violation of current regulations.⁵
 - The Commission does not actively exercise its current responsibility to plug wells.⁶
3. The proposed bill alters language which changes the mission of the Commission and which invites lawsuits from environmental groups.
- The Commission proposes changing the threshold for a protest or an investigation, regarding a well, from “is causing or is likely to cause pollution...” to “...is causing pollution...”⁷
 - The Commission proposes changing the current language (the threat of pollution) to “imminent” pollution; this is an unjustified raising-the-bar for an evidentiary hearing regarding a well since toxicity is frequently related to chronic exposure at low doses and cumulative exposure rather than to “imminence” of threat.⁸
 - The changes proposed above would make Kansas statute inconsistent with the Safe Drinking Water Act, and amendments thereto, since that Act’s provisions enjoin states to protect against “threats” to water as well as actual pollution.
 - The Commission proposes changing language from “...the Commission shall make an investigation...” to “...the Commission may make an investigation...”⁹ We believe such language moves Kansas out of compliance with the SDWA.
 - Two judges in the 3rd Judicial District have, in the last 8 months, ruled against an operator and the Commission in favor of a protestant of a well in Franklin county.¹⁰ The Commission is currently paying the legal defense costs of a former member of the commission’s legal staff who initiated an investigation of the protester who prevailed in these 3rd Judicial District law suits. The Commission’s Deputy General Counsel was fired or resigned and is now a defendant in a federal lawsuit and the Commission, i.e., the public, is paying for his defense.¹¹ This Commission does not look favorably on public oversight of its oil and gas regulation and enforcement activities. The courts

⁵ Blunk I-10, Blunk I-11, Blunk lease, Sec. 18, R. 21 E, Twp. 18 S, Franklin county; Gilliland lease, wells 4, 13, 15, Franklin county; McGinnis lease, Sec. 30, R 21 E, Twp. 17 S, Franklin county, 34 production wells and numerous injection wells, all pump jacks in place in the lease, last production was November, 2016;

⁶ In its 2020 report to the legislature on abandoned wells the number of wells requiring action increased from 5,530 to 5,653; in 2020 the Commission managed to plug only 28 wells in fiscal year 2020 by December 3, 2019.

⁷ Proposed HB 2536, p. 2, lines 23-24.

⁸ Proposed HB 2536, p. 2, line 16.

⁹ Proposed HB 2536, p. 2, lines 26-43.

¹⁰ 2018-CV-561, Judge Franklin Theis, Memorandum Decision and Order, July 3, 2019; Judge Teresa L. Watson, Order on Motion to Alter or Amend, 2018-CV-561, December 13, 2019.

¹¹ *Hoedel et al. v. Kirk*, 2019-CV-02443, Federal District Court of Kansas.

seem to agree. The proposed bill insulates the commission from the courts, from protestants, from public scrutiny.

Considerations against the passage of HB 2535 (session of 2020)

1. Both the KCC and KDHE monitor water, regulate water, and enforce water regulations and statutes. The KCC has no water expertise in its staff; the KDHE has water expertise on staff.
2. The KCC is charged by the Safe Drinking Water Act with protecting fresh and usable waters in the context to oil and gas production activities. The KCC does not have procedures in place for periodic or routine water sampling prior to issuance of an injection permit or posterior to such permit.
3. An interagency agreement which mandates water sampling of a lease watershed prior to an injection permit and periodically posterior to such permit would be a desirable development as a method of protecting fresh and usable waters.
4. According to Liz Dunn, Director of Legislative Affairs at KDHE, the Commission initiated this legislation, and the KDHE has a “neutral stance” regarding the proposed bill. This bill would be more deserving of support were both agencies to support the bill.

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