

COMMENTS OF DAVID W. NICKEL
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HOUSE BILL 2750

Good Morning,

My name is David W. Nickel. I am the Chairman of the State Legislative Committee of the Kansas Independent Oil & Gas Association (KIOGA). Thank you for the opportunity to present testimony before you concerning House Bill 2750.

I began my career as a lawyer as an Administrative Assistant for Commissioner Phillip R. Dick at the Kansas Corporation Commission (KCC) back in August 1982. I learned much about the KCC's responsibilities under Commissioner Dick, and in 1984, became an Assistant General Counsel in the Conservation Division in Wichita, Kansas, under Brian Moline who was serving as General Counsel for the KCC. My very first case involved a problematic well known as the Witt sink hole in Ellis County, Kansas. That well had been plugged by a large oil company in the 1950s, and the plug in the well proved to be inadequate. As a result, water from shallow zones was running down the wellbore and dissolving the Wellington Salt in the near vicinity of the well, causing the land to subside in the near vicinity of the well. It obviously needed to be re-plugged. It took a long time to resolve the matter, but with contributions from several operators who had operated and produced the well, the Kansas Department of Transportation (due to the fact that traffic over the I-70 corridor was so heavy that it was a causal link in the subsidence of the land) and the KCC conservation fee fund, the well was reworked and re-plugged.

Throughout this matter, I learned that, when the Kansas industry members who produced and operated the Witt well were brought into the KCC proceeding, those Kansas industry members were willing to cooperate with the Commission in a reasonable manner. I learned that the abandoned well issue in Kansas was a very important one to the industry and the general public, although I had no real concept of how many wells there were in need of plugging. Most importantly, the issue of unplugged and abandoned wells became an issue very near to my heart.

Since my days with the Commission, I have learned that abandoned wells have been a big issue for over 60 years. I have learned that there are several thousand wells in need of plugging and those wells have been in existence for a long time. I have learned that there is no easy solution to this matter. It is not merely a matter of authority or the availability of funds.

Indeed, I learned that the KCC has always had ample authority to bring those who may be responsible for plugging an abandoned and unplugged well before it for a hearing to determine whether or not those parties should be required to plug the well. Consider the language employed in K.S.A. 55-179. Subparagraph C of that statute provides:

(c) Whenever the commission determines that a well has been abandoned and is causing or is likely to cause pollution of any usable water strata or supply or loss of usable water, and whenever the commission has reason to believe that a particular person is legally responsible for the proper care and control of such well, 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 to show cause why the requisite care and control has not been exercised with respect to such well.

Who could be determined under the pertinent statute to be party responsible for plugging an abandoned and unplugged well? The answer to that question is found in subparagraph B of K.S.A. 55-179. It provides:

(b) For the purposes of this section, a person who is legally responsible for the proper care and control of an abandoned well shall include, but is not limited to, one or more of the following: Any operator of a waterflood or other pressure maintenance program deemed to be causing pollution or loss of usable water; the current or last operator of the lease upon which such well is located, irrespective of whether such operator plugged or abandoned such well; the original operator who plugged or abandoned such well; and any person who without authorization tampers with or removes surface equipment or downhole equipment from an abandoned well.

It is important to note that the list of those who could be found to be legally responsible for the proper care and control of an abandoned well are not limited to the list contained in K.S.A. 55-179(b). It could be any person who has a sufficient nexus to the abandoned and unplugged well that the KCC could lawfully and reasonably require that person to plug the abandoned well.

In these regards, there is no doubt that the statute, as it is currently written, could form the basis of the KCC requiring any person who is or was responsible for the physical control of a well to plug the same, regardless of whether or not that person is or was the operator of the well. In these regards, it is possible that a Kansas court could determine that the changes to the statute which are proposed in House Bill 2750 to be superfluous or even vague and ambiguous.

Consider that K.S.A. 55-150 defines operator as follows:

(e) "Operator" means a person who is responsible for the physical operation and control of a well, gas gathering system or underground porosity storage of natural gas.

Person is defined as follows:

(f) "Person" means any natural person, partnership, governmental or political subdivision, firm, association, corporation or other legal entity.

Thus, the proposed changes to K.S.A. 55-179 could be argued to create a circular reference to the term "Operator." I am not sure what a Kansas court would say about K.S.A. 55-179, if it were amended as proposed in House Bill 2750.

I was involved in Dkt. No. 07-CONS-155-CSHO before the KCC, popularly known as the Quest case. I represented KIOGA, as an *Amicus Curae* (friend of the court). The case was held before

the KCC in 2008. In the Quest docket, the KCC staff attempted to impose liability upon Quest Cherokee, LLC, for plugging 22 wells which were abandoned under a lease contract that expired in 1982. Quest operated a well which was drilled under another lease contract (granted in 2001), which covered the lands where these 22 wells were located. KCC staff asserted that under K.S.A. 55-179(b), Quest Cherokee, LLC was the responsible party.

In the Quest docket, the KCC Commissioners, by a unanimous vote, rejected the KCC staff's position. The Commission's interpretation of K.S.A. 55-179(b) as requiring more than the mere existence of an abandoned well on an oil and gas lease operated by a Kansas oil and gas operator to justify the Commission requiring the operator to plug such an abandoned well clearly certainly could be seen to be reasonable and fair. It is essentially a determination that a particular operator should not be required to be forever responsible and pay for some other person's mess. There is nothing wrong with the notion that the industry in general may be required to resolve the issues of the plugged wells; that is why Kansas has a conservation fee fund to plug abandoned wells. However, to impose significant cost upon one person to plug abandoned and unplugged wells by legal fiat, when that person has had never produced, operated or otherwise been involved with the wells (and perhaps even had no knowledge of the existence of the wells) may have an ill effect upon the Kansas economy. Such a legal posture may send a clear message to those who want to conduct oil and gas business in Kansas that there is substantial risk that the cost of plugging abandoned wells for which they had no responsibility may make any venture in Kansas to be severely uneconomic.

If the Quest case had been determined differently than it was, would that cause the abandoned and unplugged well problem in Kansas go away? Kansas has a significant number of wells which need to be plugged. But it always has. Clearly the statutes which provide plenary power to the KCC to cause abandoned and unplugged wells to be plugged have not resolved the problem. Something more is needed.

In October 2008, I presented a paper before the Kansas Bar Association and KIOGA. In that paper, I urged that this issue be studied in depth. I urged the adoption of a methodology suggested in the Book, "Strategies for Planned Change" by Gerald Zaltman and Robert Duncan. When I took the courses required to obtain a Masters of Public Administration from the University of Kansas, I found that book to be one of the most compelling books I had ever read. The thesis of the book is that it is essential to make a thorough study of the causes of a societal problem in order to cause an effective and efficient change. In short, haste makes waste.

I believed, when I presented my paper, and I continue to believe that the thesis presented in "Strategies for Planned Change" may allow a good resolution of the issue of unplugged and abandoned wells to be accomplished. Yet, that strategy is not the only strategy that could be employed to resolve the issue of unplugged and abandoned wells in Kansas. However, no matter what strategy is employed, the unplugged and abandoned wells in Kansas did not come into existence yesterday, and the issue cannot be resolved as quickly as tomorrow. Study and effective strategies are the key to resolving this issue effectively and finally.

The problem that Kansas has with unplugged and abandoned wells is not a short-lived one. It is a problem that is shared by many oil and gas producing states. Not surprisingly, no state has managed to resolve the issue, no matter the statutory authority in existence. Indeed, it is a problem that cannot be reasonably resolved tomorrow, the next day, the next month, the next year or even the next few years.

However, with careful study and with cooperation between the State of Kansas, the oil and gas industry and others who may be affected, substantial progress can be made in resolving the problem every year, so that one day, unplugged and abandoned wells will no longer exist. I would urge that the Kansas legislature allow the oil and gas industry and the KCC to work together to resolve this issue, complete with proposed time frames, costs and other details. The KCC has already been involved in a study of the issue. The KCC, through the Conservation Fee fund and the Kansas statutes in existence, continues to make progress in the resolution of this important issue. My Mother taught me, and I've learned through experience, that patience often leads to a better result than impatience.

To those of the Kansas legislature who continue to pay attention to the importance of plugging abandoned and unplugged wells in Kansas, I believe they should be commended. The importance of a good environment relative to our agrarian industry cannot be overstated. Would it not be wonderful if we can be a model to other states in resolving the issue of unplugged and abandoned wells in a timely and economically efficient manner? But to do so, I believe takes

time and study. I would urge that no changes be made to the KCC's authority to plug wells under K.S.A. 55-179 until such a study can be completed and evaluated.