

Before the House Appropriations Committee
Presented by Zack Pistora, Kansas Sierra Club
Opponent to HB 2022
January 20, 2021



Chairman Waymaster and Honorable Members of the Committee,

Thank you for the opportunity to submit oppositional testimony on HB 2022, which would amend existing law concerning responsibility for abandoned well plugging. Specifically, the bill would include an exclusive listing of parties that could be considered responsible for plugging abandoned wells, as well as grant authority to the Kansas Corporation Commission (KCC) to adopt regulations to establish a program to reimburse non-responsible parties for plugging abandoned wells.

The Sierra Club understands that part of the legislative intent of HB 2022 is to help expand and expedite the plugging of the abandoned oil and gas wells in Kansas. We understand that the State seemingly has ‘its hands full’ in terms of having a long list – thousands – of outstanding abandoned oil and gas wells to plug. Conceptually, if we can ultimately get more abandoned wells plugged, then that compels the Sierra Club’s favor of the bill, as these abandoned wells left unplugged continually pose a threat to our environment.

Last year, the Sierra Club worked in good faith with Committee members and stakeholders to improve HB 2536 and make compromises to put the Sierra Club at a neutral position.

Unfortunately, HB 2022 leaves out a key statutory provision that would reduce the necessity and urgency for the State to continue to plug abandoned wells. With this subsection language, HB 2022 reduces the KCC’s mission to safeguard Kansans against pollution or the threat of pollution of abandoned wells.

Former Section 3, K.S.A. 55-179(d) [stricken lines 34-38 on page 6 of the proposed bill] is spelled out below:

34 ~~(d) For the purpose of this section, any well which has been~~
35 ~~abandoned, in fact, and has not been plugged pursuant to the rules and~~
36 ~~regulations in effect at the time of plugging such well shall be and is~~
37 ~~hereby deemed likely to cause pollution of any usable water strata or~~
38 ~~supply.~~

Last year, this language was amended back into the bill, courtesy of Chairman Waymaster and unanimously approved by the Committee. However, this language is seemingly absent in this year’s HB 2022. The Sierra Club has consistently emphasized that this provision is essential to upholding the longstanding position of the Kansas Legislature that abandoned wells pose an ongoing and serious risk of polluting the waters of Kansas, our most precious natural resource. This subsection must be inserted back into this bill, likely at line 18 on page 8.

Realize that HB 2022 overrides judicial precedent and identifies an exclusive responsible party for well-plugging, rather than potentially assigning multiple parties to be ‘jointly and severally liable’.

The Legislature ought to recognize that HB 2022 comes as a response to a recent Kansas Court of Appeals ruling in John M. Denman Oil Co. v. State Corporation Commission (2015). The Denman Oil case clarified the accountability of abandoned oil and gas wells relating to leases and liability, so that *multiple* parties could be held accountable of well-plugging. The case was based upon Denman Oil contesting that it was no longer

responsible for plugging the wells it had leased and operated for at least 60 years, because it had inevitably transferred the lease to other parties, despite not plugging over 40 wells that were inactive for 19 years. Note: KCC regulations require operators to plug wells within 90 days after operations cease unless a temporary-abandonment application is submitted. In the case, the Court ruled that allowing more than one party to be legally responsible “*further the purpose of getting wells plugged and preventing further pollution. The legislature clearly adopted serious tools to get wells plugged.*”

HB 2022 instead helps assign exclusive responsibility, which may ultimately have the effect of socializing the cost of well-plugging to the industry collectively, instead of those individual actors responsible for that specific well lease.

Finally, does this bill go far enough in addressing the root cause and total costs of abandoned oil and gas wells?

The Sierra Club agrees that adding a reimbursement program for non-priority wells to get plugged more quickly can help expand and expedite the plugging of outstanding abandoned wells, which is good for Kansas. However, looking ahead, it appears the KCC is still far behind the necessary funding and capacity to responsibly ensure the plugging of abandoned wells needing action. Even with merging the ‘Legacy’ and ‘Assurance’ plugging funds, the ~\$7.9 million balance and the roughly \$1.3 million annual balance renewal in funds still puts the objective of plugging the more than 5,000 abandoned wells that require action very far out into the future. These abandoned wells (including newly added/found abandoned wells) pose an increasing risk to the state’s waters and associated impacts of heavier costs and threatened public safety the longer these abandoned wells go unplugged. This is a great concern, especially when the State experiences flooding.

Perhaps increasing the bonding amounts, liability, or fees may better prevent abandoned oil and gas wells going forward. With more abandoned oil and gas wells added to the total abandoned list and the risk that oil and gas companies can declare bankruptcy to avoid the costs of plugging, shouldn’t we have increased assurance up front or better accountability on those bad actors involved?

For those reasons, the Kansas Sierra Club respectfully asks the committee to oppose HB 2022 until improvements can be added. We hope we can work together with the Committee leaders, KCC, and industry to improve this bill so that the legislative intent of plugging more abandoned wells gets accomplished.

Sincerely,

Zack Pistora | Legislative Director and State Lobbyist, Kansas Chapter of Sierra Club

zackpistora@gmail.com | 785-865-6503

The Sierra Club is the largest grassroots environmental organization dedicated to enjoying, exploring, and protecting our great outdoors. The Kansas Chapter represents our state's strongest grassroots voice on environmental matters for more than forty years.