

NOT DESIGNATED FOR PUBLICATION

No. 124,743

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

JUDITH L. WELLS,
Appellant,

v.

KANSAS CORPORATION COMMISSION,
Appellee.

MEMORANDUM OPINION

Appeal from Douglas District Court; BARBARA KAY HUFF, judge. Opinion filed March 24, 2023.
Affirmed.

Judith L. Wells, appellant pro se.

Jonathan R. Myers, assistant general counsel, for appellee Kansas Corporation Commission.

Keith A. Brock, of Anderson & Byrd, LLP, of Ottawa, for appellee Midstates Energy Operating, LLC.

Before WARNER, P.J., HURST, J., and TIMOTHY G. LAHEY, S.J.

HURST, J.: Judith L. Wells brings this pro se appeal from the Douglas County District Court's denial of her numerous objections to Midstates Energy Operating, LLC's (Midstates) application for a permit to operate an enhanced oil recovery well in Douglas County. The Kansas Corporation Commission (KCC), over Wells' protests, issued Midstates a permit to operate the well at issue—the Thrasher #10 injection well—and Wells unsuccessfully sought judicial review to overturn that decision. This court agrees

with the district court's determination that Wells failed to establish any error by the KCC and thus affirms.

FACTUAL AND PROCEDURAL BACKGROUND

In 2017 Midstates took over operation of all the oil recovery wells on the Thrasher lease which included, among others, Thrasher #I-5 and Thrasher #10. Midstates filed an application with the KCC on October 12, 2017, for a permit to operate an enhanced oil recovery well—called the Thrasher #10—in Douglas County. The application sought permission to "inject water through the Thrasher #10 well into the Squirrel Formation . . . at a maximum volume of 100 barrels of water per day and at maximum injection pressure of 400 PSI." Although Thrasher #10 was built in 2015, the KCC had never authorized its operation and it remained inactive until Midstates took over and sought a permit for its use. Midstates contended that approval of injection at the Thrasher #10 well would enhance overall production from the Thrasher lease and thereby prevent waste. Two weeks after filing its application, Midstates published a required notice of publication in a local newspaper.

The KCC received numerous letters from concerned Douglas County citizens and the Douglas County Administrator protesting Midstates' application and requesting a hearing on the matter. The main concerns raised by the protestors were the potential for harm to groundwater resources and the possibility that injecting water at the well could induce seismic activity in the area. Wells, who owns property directly abutting the land where the Thrasher #10 well is located, filed a request for a hearing to protest the approval of the well.

Midstates filed a motion to dismiss many of the protests, arguing that they failed to comply with particular regulations. Midstates claimed that some of the protestors:

- failed to serve their protests in compliance with K.A.R. 82-3-135(d);

- failed to appear at the prehearing conference; and
- did not have a direct and substantial interest in the proceeding.

Midstates argued that Wells was required to be represented by an attorney because her protest was allegedly filed *on behalf* of Wells Partners LP—the actual owner of the land abutting the Thrasher lease. KCC Staff filed a motion in agreement with Midstates, concluding that Wells was required to be represented by an attorney to proceed with her protest, and Wells' counsel entered her appearance shortly thereafter. Ultimately, the KCC dismissed "all protests filed . . . except those filed by Douglas County, Kansas, James and Patricia Bondurant, and Judith L. Wells as Manager of Wells Partners, LP."

After dismissing many of the protestors, the KCC scheduled an evidentiary hearing on Midstates' application for June 26, 2018. In preparation for the hearing, seven witnesses provided prepared direct testimony: Terry Ballou and R.L. Hilbun on behalf of Midstates; Wells, G.M. Zemansky, and James Bondurant as protestors; and Jerry Knobel and Rene Stucky on behalf of KCC Staff. Each witness also testified in person at the evidentiary hearing. At the evidentiary hearing, Hilbun, an expert on "well completions, disposal, water flooding and the environmental impact of injection wells," testified on behalf of Midstates that injection at the Thrasher #10 well would "enhance the recovery of oil from the production wells located upon the [Thrasher] lease through water-flooding." Ballou, an operator of wells on the Thrasher lease before Midstates, and an engineer with experience in the field of eastern Kansas oil field operations and geological structures, testified consistent with Hilbun that granting Midstates' permit to operate Thrasher #10 would help to prevent the waste of oil. Ballou explained that

"[i]t is common practice to drill injection wells in eastern Kansas as part of the development process to maximize ultimate recovery of oil and to utilize produced water. Unless a proper water flood is implemented utilizing the subject injection well,

significantly less oil will be recovered from the production wells on the Thrasher Lease thereby wasting a portion of the recoverable oil beneath said lease."

Both Hilbun and Ballou opined that the Thrasher #10 well would be able to operate in compliance with all applicable rules and regulations. Ballou explained that injection of water at the rates and pressures proposed by Midstates were common in the area and both Ballou and Hilbun stated that the injected water would remain contained and thus not threaten usable groundwater. Hilbun stated that based on his review of Midstates' application, the well completion form, and various drill logs in the area, he believed that the possibility of pollution was "minor" and "very improbable." Moreover, Ballou and Hilbun also stated that the "[r]ural water and produced water" that would be used for the injection at Thrasher #10 would be more dangerous stored above ground than if it were injected. Finally, Ballou explained that the Thrasher #10 well had passed a mechanical integrity test and there was no risk of inducing seismic activity.

Two staff members of the KCC also testified in favor of granting Midstates' application. Stucky, supervisor of the Underground Injection Control Department and the Production Department at the KCC, explained that Midstates' proposed Thrasher #10 injection operation would not involve fracking, and outlined the Department's investigations into Midstates' application. Stucky explained that injection at Thrasher #10 was required to prevent waste because the "original reservoir pressure has been depleted" and the proposal did not risk inducing seismicity because the proposed injections involved a relatively small amount of water. Stucky also testified that the Thrasher #10 well was properly constructed, he did not have concerns regarding its mechanical integrity, all freshwater zones were protected, and the well complied with KCC regulations. Knobel, a professional geologist at the KCC's Underground Injection Control Department, also supported Midstates' application, although he recommended the KCC order a lease inspection and cement verification of another well—the Hadl #1—before issuing an injection permit for Thrasher #10. Knobel testified that after conducting a test

looking to possible environmental concerns, he concluded that operation of the Thrasher #10 well did not pose an environmental threat and would "protect all potential fresh water zones." The attorney representing KCC Staff at the hearing also recommended that Midstates' application be granted as it met all the "statutory and requisite requirements."

Wells testified in opposition to Midstates' application. She explained numerous concerns about the Thrasher #10 well, and other wells in the area and across the state, Midstates' business practices, and the KCC's alleged failures in performing its responsibilities. Wells' primary concern in opposition to Midstates' application for use of the Thrasher #10 well was the potential environmental risks of groundwater contamination and seismic activity. Her concerns appeared to relate to oil wells generally, and were not specific to issues with the Thrasher #10 well:

"Pollution is incremental, and we need to keep our waterways as clean and pure as possible. Safe drinking water for millions of people should not be jeopardized by the short-term gains of a few lease owners upstream who accept monies to dispose of produced water from unknown oil leases."

Not surprisingly, Wells disagreed with Hilbun, Ballou, and Stucky that the Thrasher #10 well posed no threat of causing groundwater pollution and stated that "oil and gas conservation seem[ed] to have priority over environmental concerns in [granting] injection permits." However, Wells also testified that "nothing is wrong with the science of water flooding . . . IF injection is simply to enhance oil production." Wells speculated that Midstates intended to use wastewater from other locations for the injection process and pointed out that it had been operating the Thrasher #I-5 well—located 669 feet from the Thrasher #10 well—without an operator's license for over a year. Wells also testified that she believed Hilbun had failed "to consider the cumulative effect of multiple injection wells in close proximity" when reaching his recommendation to approve the application. In Wells' opinion, no one could conclude that the Thrasher #10 well would

not pose an environmental risk without considering the water being injected through other wells in the area—this opinion did not appear to result from scientific expertise or experience in the field.

Wells was not the only protestor remaining; another Douglas County resident with land abutting the Thrasher lease, Bondurant, worried that Midstates' operation of the Thrasher #10 well would lead to contamination of the tributary on his property. An expert in groundwater hydrology and research analyst at Shook, Hardy, & Bacon LLC, Zemansky also testified against authorization of the Thrasher #10 well. Zemansky explained that Midstates' application lacked critical information and had "several significant errors," making it impossible to make any reasoned judgment about the Thrasher #10 well's potential impact on groundwater. He also pointed to discrepancies between the proposed rates of injection and the amount of oil to be produced, threats to local groundwater, and an increased risk of seismicity as reasons the KCC should deny Midstates' application for use of the Thrasher #10 well.

On August 16, 2018, the KCC approved Midstates' application for injection authority at the Thrasher #10 well "with a maximum injection rate of 100 barrels per-day and a maximum injection pressure of 400 psig." The KCC order explained that Midstates presented substantial competent evidence that the Thrasher #10 well met all of the requirements under Kansas law, including well construction requirements, mechanical integrity test requirements, and notice requirements pursuant to K.A.R. 82-3-400 et seq. The KCC also noted that there was no evidence that the Thrasher #10 well posed a danger to surrounding water supplies or an "unreasonable or increased risk of inducing earthquakes." The KCC found that Wells and the other protestors had failed to refute Midstates' evidence that the Thrasher #10 well would "prevent waste, protect correlative rights, and protect fresh and usable water." Finally, the KCC concluded that the fact the Thrasher #I-5 permit had previously been revoked and Midstates' failure to fill out every

line of its Thrasher #10 well application were not reasons to deny the Thrasher #10 well application.

Soon after the KCC granted Midstates' permit application for Thrasher #10, Wells filed a motion for reconsideration. Her motion primarily restated her original objections. She argued that the KCC lacked substantial competent evidence to support its determination that the Thrasher #10 well met all permitting factors, well construction requirements, injection would prevent waste, protect correlative rights, and protect usable water. Wells also contended that the unpermitted operation of the nearby Thrasher #I-5 well on the Thrasher lease should have precluded the KCC from granting the Thrasher #10 injection application. Finally, Wells again asserted that the KCC had failed to account for the cumulative effect of other enhanced oil recovery wells in the area when assessing the potential impact of injection at the Thrasher #10 well and that its order failed to protect water resources. The KCC denied Wells' motion for reconsideration, explaining that she had failed to properly challenge its decision, and its ruling was supported by substantial evidence.

Following the denial of her motion for reconsideration, Wells filed a pro se petition for judicial review in Douglas County District Court challenging the KCC's decision. The parties traded motions before the district court, each attempting to disqualify the other. Wells also asserted that Midstates was attempting to prevent her from exercising her right to free speech by claiming she was required to retain counsel to represent her interests, and requested the court to order sanctions in the amount of \$17,925—for her attorney fees—under K.S.A. 2021 Supp. 60-5320(d). Rather than continuing to try and disqualify Wells and strike her petition, Midstates filed a motion to intervene in the proceedings. Ultimately, the district court denied both parties' motions to strike, and Wells subsequently proceeded before the district court pro se.

Before the district court, Wells sought review of numerous issues, including whether the KCC

- (1) had unlawfully transferred the previously revoked Thrasher #I-5 permit to Thrasher #10;
- (2) erred by not considering other abandoned injection wells in Douglas County when considering Midstates' application to operate Thrasher #10;
- (3) erred by not considering that Midstates had been operating the Thrasher #I-5 well without a license;
- (4) erred in accepting Ballou as an expert witness regarding acceptable injection rates and pressures; and
- (5) failed to protect usable water from pollution by granting Midstates' permit application for the Thrasher #10 well.

Wells also asked the district court "to require the [KCC] to enforce its own regulations, statutes and orders" and to "set aside the unlawful transfer of a revoked permit to inject saltwater into the Thrasher lease in favor of a new application." In response, the KCC argued that most of Wells' arguments were not properly before the district court and the only issues in its order were the approval of the Thrasher #10 injection application and the determination to investigate the status of Thrasher #I-5. The KCC contended that substantial competent evidence supported its decision to approve the Thrasher #10 application, and Midstates agreed and contested each of Wells' arguments.

On November 9, 2021, the district court denied Wells' petition for judicial review but did not rule on Wells' request for sanctions under K.S.A. 2021 Supp. 60-5320(d) until after she filed the present appeal. The court summarized its findings as follows:

"[The KCC] did not fail to decide an issue requiring resolution, nor did it engage in an unlawful procedure or fail to follow prescribed procedure. . . . [The KCC's] Order granting Midstates' application for saltwater injection at the Thrasher 10 well was based

on substantial competent evidence and was in no way unreasonable, arbitrary, or capricious."

The district court found that Wells' argument regarding the allegedly unlawful transfer of the Thrasher #I-5 permit was moot because the KCC subsequently authorized the Thrasher #I-5 well on a separate docket. The district court also determined that Wells' arguments about the KCC not considering other injection wells in Douglas County, Midstates' alleged unlicensed operation of the Thrasher lease, and Ballou's designation as an expert lacked support in the record. Finally, the district court found that Wells had not shown that Midstates' permit application for Thrasher #10 failed to comply with regulatory hurdles to show that the Thrasher #10 well would not protect usable water or prevent waste, or that the prior problems with the Thrasher #I-5 permit should have prevented the authorization of the Thrasher #10 permit.

On November 29, 2021, Wells filed a pro se appeal of the district court's order denying her petition pursuant to K.S.A. 77-601 et seq. About one month after Wells filed this appeal, the district court issued a memorandum decision and order granting her motion under K.S.A. 2021 Supp. 60-5320(d), awarding her \$17,925 in sanctions against Midstates. That matter was separately appealed and decided by a separate panel of this court and will not be addressed in this opinion.

DISCUSSION

Wells now appeals the district court's denial of her petition for review after it found that she had failed to establish the KCC committed any errors in its approval of Midstates' permit application for the Thrasher #10 well. Although Wells' pro se briefs on appeal are not a model of clarity, she appears to argue that

- (1) the district court erroneously found that K.S.A. 55-606(a) limited its authority on review;

- (2) the KCC engaged in an unlawful procedure or failed to follow prescribed procedure by ignoring problems with another well on the same lease as the Thrasher #10 well;
- (3) the KCC failed to decide an issue requiring resolution by not considering other operating and abandoned wells located in the same area as the Thrasher #10 well; and
- (4) that the KCC erred in numerous respects when it required her to be represented by counsel.

Wells' fourth claim of error relates to her sanctions request to the district court for attorney fees and is addressed by a separate panel of this court and will not be addressed here. Additionally, Wells makes numerous other arguments in her brief on appeal, many of them unsupported by legal authority and several that were not brought before the KCC, and thus this court will not consider or address those arguments. This appeal is limited to Wells' claims regarding the KCC's decision to grant Midstates' injection permit for the Thrasher #10 well.

- I. *The district court properly applied K.S.A. 55-606(a) when determining Wells' objections to the KCC's decision to approve Midstates' permit to operate the Thrasher #10 well.*

Wells challenges the district court's application of or reference to K.S.A. 55-606(a) in its review of the KCC's order granting Midstates' permit application for injection authorization at the Thrasher #10 well. She contends that the statute "improperly limits the standard of review and the extent of relief available in K.S.A. 77-622 for the public seeking review of [KCC] orders on saltwater injection permits." Wells also argues that the district court erroneously relied on an opinion from a prior panel of this court—*Wells v. Kansas Corporation Comm'n*, No. 122,575, 2021 WL 137417 (Kan. App. 2021) (unpublished opinion)—in concluding that K.S.A. 55-606(a) limited its authority to either affirm or set aside the KCC's order.

This court exercises unlimited review of questions of statutory interpretation or constructions and does not defer to an administrative agency's statutory interpretation. *Ft. Hays St. Univ. v. University Ch., Am. Ass'n of Univ. Profs.*, 290 Kan. 446, 457, 228 P.3d 403 (2010). However, Wells is not challenging the KCC's statutory interpretation, but rather the district court's application of K.S.A. 55-606(a) to its review of the KCC's decision. Regardless, this court exercises unlimited review over questions of statutory interpretation, whether by the KCC or the district court. *In re Joint Application of Westar Energy and Kansas Gas and Electric Co.*, 311 Kan. 320, 328, 460 P.3d 821 (2020).

The Kansas Judicial Review Act (KJRA) governs all appeals from the KCC's decisions, except those decisions arising from a rate hearing. K.S.A. 77-601 et seq; see *Bartlett Grain Co. v. Kansas Corporation Comm'n*, 292 Kan. 723, 727, 256 P.3d 867 (2011). Administrative agency decisions, including the KCC's decision to approve Midstates' permit application for the Thrasher #10 well, carry a rebuttable presumption of validity. *Sierra Club v. Mosier*, 305 Kan. 1090, 1113, 391 P.3d 667 (2017). And on appeal the party challenging the administrative agency decision, in this case Wells, carries the burden to rebut that presumption by demonstrating error in the agency's decision. K.S.A. 77-621(a)(1).

A court reviewing an administrative agency's decision may grant the challenger relief if the challenger shows:

"(1) The agency action, or the statute or rule and regulation on which the agency action is based, is unconstitutional on its face or as applied;

"(2) the agency has acted beyond the jurisdiction conferred by any provision of law;

"(3) the agency has not decided an issue requiring resolution;

"(4) the agency has erroneously interpreted or applied the law;

"(5) the agency has engaged in an unlawful procedure or has failed to follow prescribed procedure;

"(6) the persons taking the agency action were improperly constituted as a decision-making body or subject to disqualification;

"(7) the agency action is based on a determination of fact, made or implied by the agency, that is not supported to the appropriate standard of proof by evidence that is substantial when viewed in light of the record as a whole, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this act; or

"(8) the agency action is otherwise unreasonable, arbitrary or capricious." K.S.A. 77-621(c).

In her petition for judicial review to the district court, Wells raised arguments under several of these grounds. She argued that the KCC engaged in unlawful procedure and failed to follow prescribed procedure; the KCC failed to decide issues requiring resolution; the grant of Midstates' application was not based on substantial competent evidence; and the KCC's decision was unreasonable, arbitrary, and capricious. But rather than challenge the district court's finding that she failed to carry her burden to demonstrate the KCC's error in any of these arguments, on appeal she claims the district court should not have considered K.S.A. 55-606(a).

K.S.A. 2021 Supp. 55-606(a) limits the types of judgments available to a court reviewing the KCC's decisions, and provides that:

"Any action of the commission pursuant to K.S.A. 55-601 through 55-609, and amendments thereto, is subject to review in accordance with the Kansas judicial review act. The action for review shall be brought in the district court having venue and first acquiring jurisdiction of the matter. Notwithstanding the provisions of K.S.A. 77-622, and amendments thereto, the authority of the court shall be limited to a judgment either affirming or setting aside in whole or in part the agency action." (Emphases added.)
K.S.A. 2021 Supp. 55-606(a).

The statute requires that any judicial review of the KCC's actions based on its responsibilities under K.S.A. 55-601 through 55-609—which, among other things, authorizes the KCC to make and enforce rules preventing waste and protecting fresh water resources in the production of crude oil and petroleum—is limited to affirming or setting aside, in whole or in part, that decision. Therefore, the applicability of K.S.A. 55-606(a) to the district court's review turns on whether the KCC's decision to grant or deny Midstates' permit application for a saltwater injection well was made pursuant to K.S.A. 55-601 through 55-609, and amendments thereto.

A. The KCC's decision was made pursuant to K.S.A. 55-601 through 55-609.

When considering a permit application for an injection well, the KCC must consider the administrative regulations governing such permit requests. See K.A.R. 82-3-401 et seq. Specifically, these regulations set forth the information the applicant is required to provide, the applicant's notice requirements, the factors the KCC must consider when authorizing an injection permit, and the mechanical integrity requirements of the well. K.A.R. 82-3-401 through 82-3-403; K.A.R. 82-3-405; K.A.R. 82-3-407. In addition, the KCC has jurisdiction and authority to make and enforce rules, regulations, and orders for the prevention of waste pursuant to K.S.A. 55-604(a) which provides that the KCC shall have jurisdiction and authority:

"(1) Over all matters involving the application and enforcement of this act;

"(2) to make and enforce rules, regulations and orders for the prevention of waste as defined by K.S.A. 55-602 and amendments thereto and for carrying out and enforcing each and all of the provisions of this act;

"(3) to employ or appoint such agent or agents as necessary to enforce and administer the provisions of this act and rules, regulations and orders adopted or issued under this act. Such agent or agents, with the exception of clerical help, shall be experienced in and conversant with the oil business; and

"(4) as otherwise provided, without limiting the generality of the foregoing authority in this section."

The Kansas Supreme Court has explained that the KCC has three responsibilities related to overseeing oil and gas operations: (1) It must first of all prevent waste of the natural resource; (2) It must allow sufficient production to meet the market demand if such can be done without waste; and (3) It must protect correlative rights. *Colorado Interstate Gas Co. v. State Corporation Comm'n*, 192 Kan. 1, 24, 386 P.2d 266 (1963). These KCC responsibilities are codified in the following manner:

1. "The state corporation commission shall have authority to make rules and regulations for the prevention of such waste and for the protection of all fresh-water strata, and oil- and gas-bearing strata encountered in any well drilled for, or producing, oil." K.S.A. 55-602.
2. "The state corporation commission is authorized, and it shall be its duty, to regulate the taking of crude oil from any pool within the state of Kansas as to prevent waste in the pool or, independently of waste[.]" K.S.A. 55-603.
3. "The commission shall have and is hereby given jurisdiction and authority . . . to make and enforce rules, regulations and orders for the prevention of waste . . . and for carrying out and enforcing each and all of the provisions of this act[.]" K.S.A. 55-604.

Wells argues that "K.S.A. 55-601 through 55-609 is not applicable to injection well permits." She contends that the regulations related to permit applications for injection wells, K.A.R. 82-3-400 through K.A.R. 82-3-407, are authorized solely by K.S.A. 55-152 and K.S.A. 55-901. These statutes grant the KCC authority to adopt rules and regulations regarding the construction, operation, and abandonment of wells and the disposal of saltwater by operators of oil and gas wells. Wells is correct that both statutes are identified throughout the credits section of K.A.R. 82-3-400 et seq. However, the administrative regulation setting forth the factors the conservation division of the KCC is required to consider when determining whether to authorize a permit for injection,

K.A.R. 82-3-403, indicates that it is implementing, and is authorized under, K.S.A. 55-605 (among other statutes). Additionally, K.S.A. 55-601 prohibits waste in the production of crude oil and petroleum, and enhanced recovery injection wells—such as Thrasher #10—are intended to prevent waste by increasing "the recovery of hydrocarbons." K.A.R. 82-3-101(a)(81)(D); see also K.S.A. 55-602 (defining "waste" and granting the KCC authority to make rules and regulations for its prevention).

The KCC's decision to grant Midstates' application clearly focused on considerations about whether the Thrasher #10 well would help prevent waste and whether it posed a threat to fresh groundwater—which the KCC is authorized and required to consider pursuant to K.S.A. 55-601 through K.S.A. 55-609. And the KCC's order ruling on Midstates' application specifically cited K.S.A. 55-602, K.S.A. 55-603, and K.S.A. 55-604(a)(2) in support of its jurisdiction and authority to prevent waste and protect usable water and correlative rights. Because the KCC relied on its authority in these statutes in determining whether to grant Midstates' permit application, its order was taken pursuant to these statutes, and thus any judicial review of the order is governed by the limitations in K.S.A. 55-606(a).

Although Wells is correct that K.S.A. 77-622 generally defines the type of relief a reviewing court *may* grant to someone seeking judicial review of an administrative agency action, it does not require those actions to be taken or prohibit the application of other statutes to the proceedings. And the plain language of K.S.A. 55-606(a) demonstrates its application to the KCC's decision regarding Midstates' application for an injection permit. Accordingly, in reviewing Wells' objections the district court was limited to either affirming or setting aside the KCC's decision granting Midstates' permit for the Thrasher #10 well.

B. Because Wells failed to establish that the KCC's decision to grant Midstates' permit application was made in error, the district court's application of K.S.A. 55-606(a) is immaterial to Wells' claims.

Having gone through that analysis, however—the district court's reliance on K.S.A. 55-606(a) is immaterial to Wells' claims on appeal because she failed to demonstrate a single error by the KCC. Wells' potential remedies were not limited by the district court's application of K.S.A. 55-606(a) because she was not entitled to any remedy through her petition for judicial review. The district court reviewed each of Wells' claims brought under K.S.A. 77-621(c) and found none to be availing—and thus the district court did not have to determine the potential relief to Wells pursuant to any statute. As explained below, on appeal Wells reraises two of the arguments made to the district court but neither claim is meritorious. Accordingly, even on appeal, Wells is not entitled to relief regardless of whether K.S.A. 55-606(a) limits the potential relief available to the court reviewing the KCC's decision to merely "affirming or setting aside in whole or in part the agency action." See K.S.A. 2021 Supp. 55-606(a).

II. *The KCC did not engage in an unlawful procedure or fail to follow its procedure concerning the Thrasher #I-5 well when it granted Midstates' permit application for the Thrasher #10 well.*

Wells argues the KCC failed to follow prescribed procedure when it granted Midstates injection authority for the Thrasher #10 well because the KCC did not address problems concerning the nearby Thrasher #I-5 well. She requests this court to "order the [KCC] to enforce its own penalty orders and require new operators to apply as required in K.S.A. 55-901 and K.A.R. 82-3-400 *et seq* for saltwater injection permits, specifically on the Thrasher lease, but on all penalty orders."

This court reviews a decision made by the KCC under the KJRA and will only grant relief from an administrative action if it determines that the administrative agency

violated one or more of the provisions listed in K.S.A. 77-621(c)(1)-(8). This court may only grant relief if it determines that "one or more of the following" occurred:

"(1) The agency action, or the statute or rule and regulation on which the agency action is based, is unconstitutional on its face or as applied;

"(2) the agency has acted beyond the jurisdiction conferred by any provision of law;

"(3) the agency has not decided an issue requiring resolution;

"(4) the agency has erroneously interpreted or applied the law;

"(5) the agency has engaged in an unlawful procedure or has failed to follow prescribed procedure;

"(6) the persons taking the agency action were improperly constituted as a decision-making body or subject to disqualification;

"(7) the agency action is based on a determination of fact, made or implied by the agency, that is not supported to the appropriate standard of proof by evidence that is substantial when viewed in light of the record as a whole, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this act; or

"(8) the agency action is otherwise unreasonable, arbitrary or capricious." K.S.A. 77-621(c)(1)-(8).

On appeal from the district court, this court employs the same statutorily limited review as did the district court and proceeds as if Wells had appealed the KCC decision at issue directly to it. *Bluestem Telephone Co. v. Kansas Corporation Comm'n*, 52 Kan. App. 2d 96, 107, 363 P.3d 1115 (2015).

While the lack of clarity in Wells' appeal makes it difficult to ascertain the specific grounds under which she contends the KCC's order was invalid, it appears she claims that the KCC engaged in unlawful procedure or failed to follow prescribed procedure under K.S.A. 77-621(c)(5). As the party asserting the KCC's action is invalid, Wells bears the burden of proving the invalidity. See K.S.A. 77-621(a)(1). Wells argues the KCC failed

to follow procedure because Midstates' permit application for the Thrasher #10 well was tainted and invalidated because the Thrasher #I-5 permit had been previously revoked and the KCC unlawfully "transferred" the Thrasher #I-5 permit to the Thrasher #10 well. In its order granting authorization to the Thrasher #10 well, the KCC noted that there was "no basis for Ms. Wells' contention that the Thrasher #10 Application must *necessarily* be denied because the Thrasher I-5 permit was revoked." Wells' suspicion regarding the handling of the Thrasher #I-5 permit is irrelevant because the KCC order at issue in this appeal only concerns Midstates' permit for injection authorization at the Thrasher #10 well. Moreover, Wells provides no legal citation for her argument regarding the Thrasher #I-5 well.

Wells' concerns regarding the Thrasher #I-5 permit are a classic red herring. The same permit number was used in the application for the Thrasher #10 well that had been given to the Thrasher #I-5 well, which the KCC considered the pilot well to which a separate permit application could be added. According to the KCC Staff, Midstates essentially added the Thrasher #10 well permit application to the docket for the Thrasher #I-5 well. And although a KCC employee testified that he had inadvertently and improperly reinstated the Thrasher #I-5 permit without the proper approval due to a computer error in the system, he explained that the application for a permit for the Thrasher #10 well had "no bearing on the [Thrasher] I-5." He explained that the only practical difference of adding the Thrasher #10 well permit on the Thrasher #I-5 docket—rather than on a new docket—was the addition of a single page called the U-8 form noting that the Thrasher #10 well was being added to an existing docket. Even if Midstates had filed the Thrasher #10 well in a new docket "all of the same people would have received notice who did receive it in this docket; and all of the information supplied would have been supplied in that instance with the only addition of the U-8, which . . . would not have been required." For this reason, after realizing the erroneous reinstatement of the Thrasher #I-5 permit, the KCC employee testified that he "felt like

there was no harm in seeing how the application [for the Thrasher #10 well] had already been made and added to the docket, we just kind of left it as is."

The KCC found Wells' argument that reusing the permit number for the Thrasher #I-5 well somehow invalidated the injection application for the Thrasher #10 well—without any supporting authority—unavailing, explaining that "[t]here is no need for an overly formalistic captivity to Staff's Form U-8 permit number, which is essentially just used for administrative ease." And despite the error in reinstating the Thrasher #I-5 permit, the KCC noted that "[t]he evidence demonstrates that the Thrasher #10 Application practically functions as a complete and original application, able to stand on its own merits, and thus, the Commission had evaluated it as such." Accordingly, the KCC evaluated the Thrasher #10 well application on its own merits, and it separately ordered an investigation into the problems with the Thrasher #I-5 permit.

Although Wells argues that a "transfer of a revoked injection authorization" is unlawful and against KCC procedure, she fails to show that the KCC transferred the Thrasher #I-5 permit to the Thrasher #10 well. And she similarly fails to address the KCC's evidence that it treated the Thrasher #10 well application as a new and separate application from the Thrasher #I-5 well. Other than Wells' allegations, there is no evidence in the record that the KCC "transferred" the revoked permit for Thrasher #I-5 to the Thrasher #10 well. Although the KCC concluded that "the Thrasher I-5 permit was not properly reinstated and cannot remain in its current status unaddressed," this decision was separate from the injection permit application for the Thrasher #10 well.

The KCC determined that the Thrasher #10 well injection permit application—which is the subject of the present appeal—met all of the permitting factors, construction and mechanical integrity requirements, notice requirements, and that it would prevent waste, and protect usable water and correlative rights. The KCC considered expert testimony and concluded that substantial evidence supported the approval of the Thrasher

#10 well permit and its decision comported with its "duty to prevent waste, protect correlative rights and protect fresh and usable water." Wells has failed to provide any factual or legal support for her allegation that the KCC failed to follow procedure in its handling of the revocation and erroneous repermitting of the Thrasher #I-5 well when it considered the merits of the Thrasher #10 well permit application.

Finally, Wells claims that the KCC failed to follow its mandate to protect the usable waters of the state and the environmental impact by wrongly reinstating the Thrasher #I-5 well permit have been addressed. As explained above, after the KCC ordered an investigation into the Thrasher #I-5 well, it concluded that Midstates had cured the defects with the Thrasher #I-5 permit. And as Wells requested, Midstates filed a new permit application for the Thrasher #I-5—and the KCC granted that new application following a full evidentiary hearing—which Wells protested.

Wells has failed to meet her burden to show that the KCC engaged in unlawful procedure or failed to follow prescribed procedure when it granted Midstates' application for injection authority at the Thrasher #10 well. The KCC did not transfer the previously revoked permit from the Thrasher #I-5 well to the Thrasher #10 well, but rather conducted a full hearing and investigated the Thrasher #10 permit application.

- III. *The KCC did not fail to consider an issue requiring resolution when it declined to consider other operating and abandoned wells near the Thrasher #10 well when it granted Midstates' permit application.*

Wells next argues that the KCC somehow acted in violation of the law when it declined to factor in the "operation and abandonment of injection wells in Douglas County" when it considered Midstates' permit application for injection authorization at the Thrasher #10 well. Wells believes the KCC should have considered the potential accumulation of injected water from other wells surrounding the Thrasher #10 well and the presence of numerous abandoned wells in the area when making its decision. Once

again, although her argument lacks clarity, it appears that Wells contends that the KCC failed to decide an issue requiring resolution under K.S.A. 77-621(c)(3). As a remedy for these alleged failures, Wells asks this court to order the KCC to "comply with . . . penalty orders [and] to place abandoned wells on the annual report to the governor and legislature as required by K.S.A. 55-194" and "to require the [KCC] to enforce K.A.R. 82-3-409 to collect annual injection reports."

As with her other arguments, the KJRA controls this court's review and Wells bears the burden to prove the invalidity of the KCC's order granting Midstates injection authority for the Thrasher #10 well. See *Bluestem Telephone Co.*, 52 Kan. App. 2d at 107. Wells raised both of these issues in her testimony before the KCC in numerous forms, testifying that the Commission was "not looking at the big picture" and failed to account for the totality of injection from other wells—whether operating or abandoned—in the area. Zemansky echoed these concerns, testifying that a well "cannot reasonably be considered in isolation." However, other witnesses discounted the necessity of studying the potential cumulative effect of other wells in the area. Ballou stated that based on his experience, the KCC did not need to consider the cumulative amount of injection from all of the other wells in the vicinity because the Thrasher #10 well would not leak or come in contact with water injected at other wells due to the "dry lines in between." Another expert, Hilbun, agreed with Ballou's assessment, and explained that the cumulative injection volume from other nearby wells was immaterial because the water injected by the Thrasher #10 well would be pumped in and out in a cycle and therefore would not accumulate.

In its order granting Midstates' injection application, the KCC addressed Wells' concerns about abandoned wells and the potential cumulative injection volume rates of other nearby wells. The KCC noted Wells' position "that approval of Midstates' Application might add to what she considers an already significant problem with abandoned wells in Kansas." While acknowledging the concern, the KCC explained that

only a fraction of those abandoned wells "require[d] action." The KCC then concluded that "Wells' assertions regarding abandoned wells and the [KCC's] alleged lack of enforcement of its own regulations do not demonstrate any causal connection or nexus with the regulatory requirements for the safety and integrity of the [Thrasher #10] well in this particular case." Basically, Wells' concerns about abandoned wells had no relation to the propriety of Midstates' injection application for the Thrasher #10 well. The KCC also addressed Wells' assertion that it was required to consider "the cumulative injection volume from injection wells within a 3-mile radius" by relying on the expert testimony of Hilbun and Ballou who both testified that there was a very low risk of injected water from the Thrasher #10 well accumulating with injections from other wells nearby.

The evidence in the record demonstrates that in ruling on Midstates' Thrasher #10 application, the KCC considered the issues that Wells claims it failed to address. Rather than failing to consider the issues, it appears that Wells is merely upset that the KCC disagreed with her position. Regardless of whether she agrees with the result, the KCC's decision to grant Midstates injection authorization for the Thrasher #10 well was based on the required factors and considerations, including: well construction requirements, mechanical integrity, Midstates' compliance with notice requirements, the prevention of waste, protection of correlative rights and fresh and usable water, and the risk of inducing seismic activity.

CONCLUSION

It is clear that Wells has a lot of experience with—and objections to—the use and abandonment of oil wells in the state. As permitted by law, she was afforded an opportunity to protest Midstates' permit application, and the KCC addressed many of her concerns in its order granting Midstates' application. Wells disagrees with the KCC's decision, but her wholehearted disagreement is not the basis for a meritorious appeal. She has failed to demonstrate that the KCC violated or failed to follow any applicable rules or

regulations in its order granting Midstates' injection application for the Thrasher #10 well. The district court is affirmed.

Affirmed.