

**1st Quarter 2021**



***In this Edition:***

**Message from President  
Executive Director's Report  
Regulatory Update  
Kansas Strong Warren Martin  
Mid Year Registration and Sponsorship  
Keith's Corner  
Eastern Kansas Exploration**

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# 1st Quarter 2021

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## Table of Contents

<b>Message from President.....</b>	<b>4</b>
<b>Executive Director's Report.....</b>	<b>6</b>
<b>Regulatory Update.....</b>	<b>8</b>
<b>Mid Year Registration and Sponsorship.....</b>	<b>10</b>
<b>Kansas Strong Warren Martin.....</b>	<b>12</b>
<b>Keith's Corner.....</b>	<b>14</b>
<b>Eastern Kansas Exploration.....</b>	<b>18</b>
<b>Save the Dates.....</b>	<b>20</b>

### Advertisers' Index

Assured Partners.....	2
CVR.....	15
Drill Baby Drill.....	19
Maclaskey Oilfield Services, Inc.....	2
Oil Patch Pump & Supply.....	9

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Michael Gillispie**

*The Eastern Kansas Oil and Gas Association is a unified voice representing the unique interests of Eastern Kansas oil and gas producers, service companies, suppliers and royalty owners before the state government in Topeka on matters involving oil and gas regulations, taxes, safety standards, environmental concerns and other energy related issues.*



## Message from the President

*Chris McGown*

*McGown Drilling, Inc.*

---

I had a college teammate who was warming up for our golf tournament when he was suddenly overcome with a terrible disease – he got the shanks! Unfortunately, there's no penicillin to cure you and you can't go back to bed to sleep it off, with only minutes before his tee time his expectations were low and his goal for the day was to avoid complete embarrassment. Inexplicably, his shanks disappeared on the short walk to the first tee and he played the best round of his life! From then on, we cautiously cheered a warm-up shank as an omen for a good day.

Golfers are known for their optimism, but oil & gas producers can't be far behind. We can even be irrational in our belief that the next shot, the next well, tomorrow will be better. We can't hide or sub ourselves out – the show must go on so to speak. In activities with such regular disappointment, optimism is a necessary trait to sustain the periods of difficulty. Difficulty and challenges have been easy to find the past 12 months, and it's been a challenge to muster much pragmatic optimism.

Many of us started out the year with low expectations, but things are looking up. I am not forecasting such a dramatic turnaround as the story above, but it looks like we can start to look forward to the next few months – currently I'm optimistic about several things:

Recently the EIA revised their 2021 & 2022 WTI average price forecasts up significantly, \$57.24 for 2021;

- The KCC's Abandoned Wells and Plugging bill is making its way through the legislature and should pass this session; as Tom may expand on, this will significantly increase operational certainty for our operators and increase flexibility for plugging abandoned wells; I testified in favor of this bill;
- The Kansas Energy Choice Act looks like it's on track to pass – this would prohibit cities and counties from passing laws limiting what energy sources can be used, i.e., natural gas. Any laws limiting consumer choice is a defacto tax increase – the EIA data shows that homes that are solely electric powered spend 2.4X more than homes on natural gas; I testified in favor of this bill;
- We will hold both of our large meetings this year! The Mid-Year Meeting will be at Flint Oaks; the Annual Meeting will return to Prairie Band; I know our membership is excited to get together and decompress after a year of frustration; thanks to our Meetings Committee for their work on these events;
- Personally, I'm looking forward to in-person meetings again – Zoom / Skype / Teams all need to die a slow and painful death!
- Better pricing means more revenues for everyone – it's immeasurable to our local economies the impact our industry has on families, small businesses, and our state.
  - Increased revenues are also important to our organization and we appreciate the generosity of our members and their financial support!

*Chris McGown, McGown Drilling, Inc.*  
620.224.7406 [chris.mcgown@gmail.com](mailto:chris.mcgown@gmail.com)

- Greater production revenue will also increase revenues for Kansas Strong – and as evidenced by the necessity of the Kansas Energy Choice Act, it's more important than ever the benefits of our industry to the public. Please share Kansas Strong's social media posts to spread a positive message about our industry; we must do it ourselves, no one is going to do it for us.

PS: We're working to add content to our newsletter – included in this publication is an article by new contributor – Greg Bratton, Geologist. Greg is a friend of mine who spent his formative years sitting shallow wells in Eastern Kansas. We appreciate everyone who is willing to write for our newsletter, if you have anything you'd like to contribute, please let us know.

We had to withstand a few bad shots recently, even a few shanks, but we have reasons to be optimistic about our near-term operations. Thank you to all of our members for their continued support through our tough times, please encourage other operators to join – we're Stronger Together.

***Thank you to Chris McGown, McGown Drilling for testifying on behalf of EKOGA for HB 2021 in House Appropriations Committee.***



As with most meetings this year, Chris McGown testified virtually at the House Appropriations Committee meeting.



# Executive Director's Report

## Tom Palace

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### **Legislative Update**

On Wednesday, March 10, the Legislature returned, and committees started working bills from the other chamber. For the first time since Feb. 13, the Kansas Senate is back to 40 members. Senator Bud Estes, R- Dodge City passed away earlier in the session from COVID. He has been replaced by Ron Ryckman Sr., father of the current Speaker of the House.

The conference committee on the Kansas Emergency Management Act met several times with little progress. However, on March 15 lawmakers reached an agreement on a new emergency management bill that puts new checks on the governor and local public health officials while giving Kansans explicit legal recourse to challenge emergency directives.

A House-Senate conference committee worked throughout the day Monday, trading proposals during several rounds of negotiations as they sought to forge a deal before the state's current emergency declaration expires March 31.

The compromise bill brings accountability and local control to handling public emergencies. The latest version of the bill would extend the existing emergency declaration to May 28 although the governor's executive orders issued related to the COVID-19 pandemic would be revoked on March 31.

Any new executive orders issued during the ongoing emergency would be subject to being

revoked by the Legislature or the Legislative Coordinating Council, which is currently made up of seven members of House and Senate leadership. The law would prohibit the governor from declaring a new emergency related to COVID-19 this year without the approval of five members of the LCC, which the bill expands to eight members by adding the Senate vice president.

The proposal would allow the governor to call a state of emergency for 15 days, which could be extended by the Legislature – or the LCC when not in session – for periods not to exceed 30 days.

Bubbling under the surface of the 2021 Legislature has been speculation and informal discussions about the 2022 Governor's race. Differences over the handling of the pandemic between Gov. Kelly and Republican legislative leaders surfaced during legislative discussions on COVID-related legislation. Recently, former Gov. Jeff Colyer announced his treasurer for his potential 2022 bid for governor and a week later Attorney General Derek Schmidt formally announced he was running for governor next year. Other Republicans are considering making a run as well.

### **Reapportionment**

The 2022 reapportionment process for the House, Senate, Congressional, and State Board of Education districts started on Wednesday. The Legislative Coordinating Council approved a Redistricting Advisory Group. The six-member group will create guidelines for reapportionment.

*Tom Palace, EKOGA Executive Director  
620.431.1020 tom@ekoga.org*

There are three members from each chamber. The Advisory Group is authorized to meet four days during the interim. The group will, among other matters, utilize the federal census figures for Kansas in developing its recommendations. The federal census should be available by early summer.

### ***Session Drawing to a Close***

As of this writing there are only 8 days to get bills worked in committee and on the floor for debate before first adjournment April 2.

**HB 2022** – KCC well plugging bill passed out of both the House and Senate Committees. The Senate made a few technical changes in the House bill that requires the bill to be put in a conference committee for further debate. The conference committee includes the Chairman, Vice Chairman and Ranking Minority Leader from both the House Appropriations Committee and Senate Ways and Means Committee. The committee met on March 11. In a meeting that lasted less than five minutes the bill was approved by the committee that includes the technical change and effective date to be when the bill is enrolled in the statute book, July 1, 2021. The bill now goes to both the House and Senate floor for a vote to concur.

**SB 24** – This bill would amend the Kansas Energy Choice Act and prohibit municipalities from imposing restrictions on customer's use of energy based upon source of energy.

The bill passed the Senate 27-10 with several amendments. The House Utilities Committee held a hearing on March 16. The bill has several opponents.

**HB 2155** – would replace and update current law regarding soil and water pollutant releases and cleanup. The bill would also make technical amendments. The bill would exclude from the definition of "pollutant" any animal or crop waste or manure on an agricultural operation or in an agricultural facility. The bill would also exclude

from the definition of "release" the releases that occur as part of normal agricultural activities or when done in compliance with the conditions of a federal or state permit or in accordance with the product label.

### ***Pollution Release and Cleanup***

The bill would require, for the purpose of preventing water and soil pollution detrimental to the public health or environment, the Secretary of Health and Environment (Secretary) to:

- Adopt rules and regulations that, in the Secretary's judgment, are necessary to respond to and report the release of a pollutant (release);
- Designate a 24-hour statewide telephone number for individuals to provide notice of any release;
- Provide minimum reportable quantities;
- Order a person who is responsible for a release to clean up such release; and
- Provide for cleanup of a release if the individual responsible cannot be identified within a reasonable period of time.

### ***Cleanup Responsibilities***

The bill would require an individual responsible for a release to be responsible for the cleanup of the release. The individual would be required to provide notice to the Kansas Department of Health and Environment (KDHE) if the release exceeds the minimum reportable quantities set by the Secretary. The individual would be required to repay cleanup costs incurred by the KDHE upon reasonably detailed notice by the Secretary or the Secretary's designee.

### ***Costs and Penalties***

The bill would require the Attorney General, in the district court of the county where the costs were incurred, to bring action for repayment of costs for a cleanup against individuals responsible for a release who fail to submit payments to KDHE promptly after giving notice.



## **Regulatory Update**

**Rob Eberhart**  
***Bobcat Oilfield Service, Inc.***

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### **Staffing News from the KCC**

- Hiring of new ECRS, Thad Triboulet. Primary responsibilities will be in South 1/3 of Greenwood, Elk and Chautauqua counties.
- Hiring of new ECRS, Levi Burnett. Primary responsibilities will be in Montgomery, Wilson and Neosho counties.
- Transfer of primary responsibilities of ECRS Dallas Logan to Allen, Bourbon and Woodson counties.
- Transfer of primary responsibilities of ECRS Ryan Duling to the District Abandoned Well Fee Fund Plugging Program.

### **Years of Service Recognition**

- 20 year recognition of ECRS Ryan Duling and Program Manager, ECRS Russell Hine.
- 15 year recognition of UIC Coordinator, ECRS Duane Sims.

### **Abandoned Well Plugging**

- District 3 is currently in the transitional phase of implementing the “Task Order” plugging contract currently utilized in Districts 1, 2 & 4.
- Developing and implementation for the replacement of current CATIV contract (Non-plugging activities) with 55-180b Contract.
- Conservations continued preparation for the utilization of “OpenText Content Server” migration. (Improve retention and workflow processes of Conservation Division activities)

- Field trip to Kansas River plugging project (Hurricane Plugging Contractor) by District Fee Fund Plugging Staff, Commissioner Susan Duffy, and Dawn Buehler Kansas Riverkeeper & Executive Director.

**The following websites contain useful information concerning industry and the Conservation Divisions activity.**

Kansas Corporation Commission -Oil & Gas Home Page<https://kcc.ks.gov/oil-gas>

Rules and Regulations

[https://kcc.ks.gov/images/PDFs/oil-gas/conservation/cons\\_rr\\_091615.pdf](https://kcc.ks.gov/images/PDFs/oil-gas/conservation/cons_rr_091615.pdf)

Recent Commission Orders

<https://estar.kcc.ks.gov/estar/portal/ksccl/page/recentOrders/portal.aspx>

Upcoming Hearing Schedule

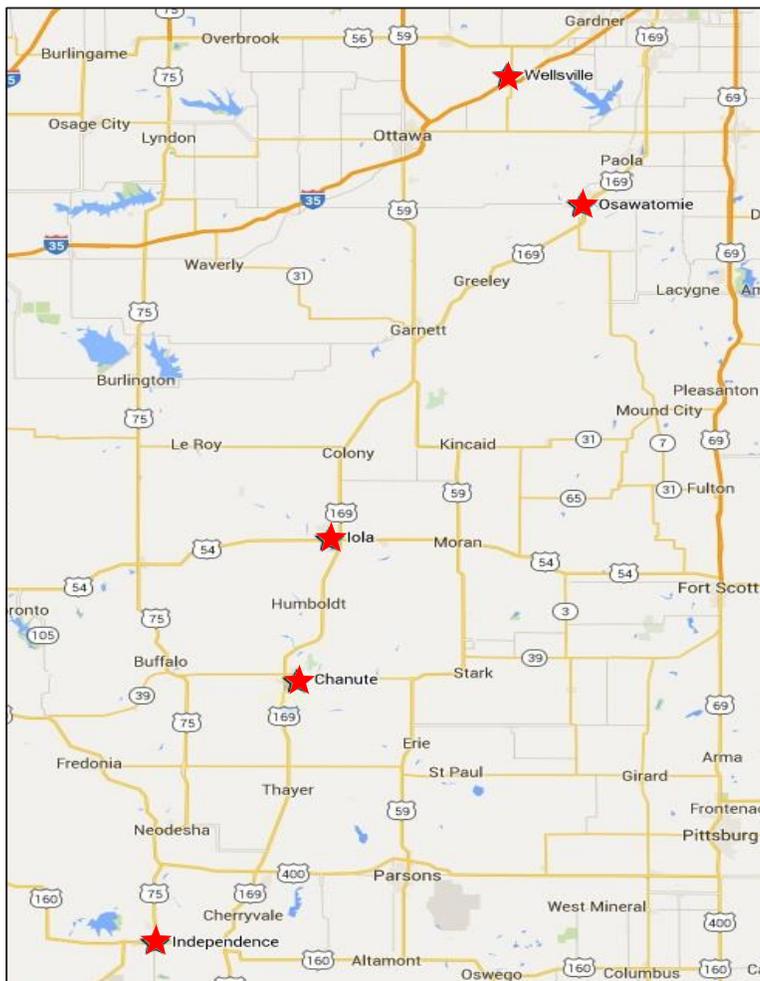
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**This is a one day conference, however Flint Oak does have hotel rooms Wednesday night.  
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**No rooms will be available Tuesday, May 18.**

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**For more information on the 2021 EKOGA Mid Year Meeting  
call (620-431-1020) or email (ekoga@ekoga.org) the EKOGA office.**



## Oh Snap! How Media Undermined the Industry

*Warren Martin, Executive Director  
Kansas Strong*

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The recent cold snap that gripped much of the United States led to rolling blackouts, a little truth and a lot of media coverup unfairly laying the blame at the feet of the natural gas industry. As reported by NBC in regards to Texas, “Natural gas, the state’s dominant energy source, has provided drastically less energy than expected, according to experts and industry data.” While initially the drop in electricity production from wind turbines was reported, it didn’t last long. “All forms of electricity sources failed” quickly become the mantra of those who advocate for a renewable ONLY stance.

It is a half-truth to say (both in Texas and Kansas) “all forms of electricity sources failed”. The purpose of the power grid is to provide enough electricity for consumers, and that failed. So, yes, all energy sources on the power grid together failed to provide enough electricity.

However, not all energy sources failed in the same way. During the depths of the crisis in Texas (where approximately 23% of electricity comes from wind turbines), wind generation dropped by 93%. At the same time, electricity produced by natural gas ramped up and increased by more than 450%. So, while together with all the other energy sources they failed to produce enough electricity, they failed in very different ways.

Here in Kansas, on the windy day when I’m writing this, over 60% of the electricity on the grid is coming from wind turbines. However, when the temperatures were below zero here in Wichita, wind generation dropped to below 3%. Natural gas ramped up and together with coal was providing

more than 80% of our electricity during those times in the Southwest Power Pool (SPP).

However, the narrative that is being disseminated across media platforms is that natural gas failed and “renewables performed better than forecasted.” Again, a half-truth bordering on a lie.

It is no secret that renewables (wind and solar) tend to perform very poorly during extreme heat and extreme cold. The SPP provides a forecast of what it expects wind turbines to provide a week in advance. Wind turbines “performed better than forecasted” because they weren’t forecasted to perform well. Their performance was not measured by how they assisted in providing electricity to consumers, but how they matched the forecast which forecasted they wouldn’t be available to help.

We cannot have an honest conversation on the future of electricity and power grids unless we start using the same metrics to judge all energy sources — did they produce power for the consumer? How much? And when? On that metric, natural gas was the lifeline during the cold snap that saved even millions more additional consumers from experiencing prolonged blackouts. Had there been a larger investment in natural gas, it could have prevented them from ever happening.

*Warren Martin, Kansas Strong Executive Director  
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**Keith's Corner**  
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**Plugging Liability Doesn't Always End  
When a Lease is Assigned**

As oil prices climb I am beginning to see more lease transfers occurring. However, low oil prices together with the pandemic have created some unique considerations for operators in terms of plugging liability for wells after they are transferred.

In my experience most operators believe that once a lease is assigned to another operator and the T-1 is filed, their liability for plugging the transferred wells ends completely. When a lease is assigned and T-1's are filed the new operator becomes legally responsible for the wells that were transferred, as the "current or last operator of the lease upon which such well is located." K.S.A. 55-179(b). However such statute also lists ". . . the original operator who plugged or abandoned such well . . ." as one of four categories of operators expressly designated to be legally responsible for the care and control of an abandoned well. *Id.* The four categories of operators expressly designated to be legally responsible for the care and control of an abandoned well by K.S.A. 55-179 are not mutually exclusive. Thus, multiple operators can be legally responsible for a well under such statute and such responsibility has been defined by Kansas Courts to be joint and several (meaning the KCC can hold all operators responsible for the well and collect the entire cost of plugging a well from the operator who is the easiest to collect from). Therefore, if an operator allows a well to be abandoned during its operatorship of the lease and production from such well is not later resumed, such operator continues to be "the original operator who . . . abandoned such well"

even after the wells are transferred to another operator. For these wells, both the assignor and the assignee would be legally responsible for such wells that were abandoned at the time of the assignment.

As most of you know, HB 2022 is working its way through the Kansas legislature and if passed would add much needed clarity to the definition of legally responsible parties as set forth in K.S.A. 55-179. HB 2022 as currently drafted lists "the most recent operator to produce from or inject or dispose into the well" as one of the categories of persons legally responsible for an abandoned well. However, HB 2022 clarifies that an operator is not legally responsible for such well if they can demonstrate that, 1) the well was physically operating, or was in compliance with Temporary Abandonment ("TA") regulations immediately before the transfer, and 2) a proper T-1 was completed to an operator with an active operator's license.

What all of this means is that under current, K.S.A. 55-179 all wells which were abandoned during an operator's ten-year as operator, need to be re-activated at the time of transfer in order for the transferring operator to be relieved of legal responsibility for such wells. Under HB 2022, all wells which ceased operating during an operator's ten-year as operator, must be either re-activated or properly TA'd at the time of transfer in order for the transferring operator to be relieved of legal responsibility for such wells.

*Continued on page 19*

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***Executive Director's Report continued from page 7***

The bill would allow the Secretary to impose a penalty, not to exceed \$5,000, on an individual who violates any provision of the bill or any regulations adopted by the Secretary. For continuing violations, the maximum penalty would not exceed \$15,000.

The bill would permit the Secretary to impose a penalty only after notice of the violation and an opportunity for a hearing has been issued in writing to the individual who committed the violation. The bill would require any request for a hearing to be in writing and directed to and filed with the Secretary within 15 days after service of the order. Any hearing would be conducted in accordance with the Kansas Administrative Procedure Act.

The bill advanced out the House 85-36. The bill is now in the Senate Agriculture Committee.

**SB 172** - Creating the crimes of trespassing on a critical infrastructure facility and criminal damage to a critical infrastructure facility and eliminating the crime of tampering with a pipeline.

The bill as amended, would amend the Kansas Criminal Code regarding crimes involving property by eliminating the crime of tampering with a pipeline and establishing four new crimes: trespassing on a critical infrastructure facility (CIF), aggravated trespassing on a CIF, criminal damage to a CIF, and aggravated criminal damage to a CIF. The bill would also amend the definition of "racketeering activity" in the Kansas Racketeer Influenced and Corrupt Organization Act (Kansas RICO Act) to include the four new crimes and would allow a judge to order restitution for property damage to any victim of the four new crimes. The Senate amended the bill and passed it out 29-9. The House Judiciary Committee have scheduled a hearing on March 17.

***Energy Bill Creating Energy Task Force Dies For 2021***

**HB 2381** – a bill created the Energy Task Force passed out of committee Feb. 25, was not among

the approximately two dozen bills "blessed" by Republican leadership to remain in play this year after the midpoint of the legislative session. It still could be considered next year.

The legislation called for creating a 25-person task force — 17 voting members and eight nonvoting members — to develop a comprehensive state energy plan by January 2023. The bill would have directed the task force to assess strategies for current and future energy technologies as well as enhance energy efficiency. It also called on the committee to craft a plan for electric vehicle infrastructure as part of an effort to develop options for biofuels, alternative fuels and petroleum fuels.

While the bill moved out of committee, there was some skepticism that the legislation was a back-door attempt to adopt Green New Deal policies.

**HB 2329** - would amend existing law which authorizes the Kansas Corporation Commission to adopt rules and regulations necessary to align state jurisdiction with the jurisdiction of the U.S. Department of Transportation Pipeline and Hazardous Material Safety Administration (PHMSA) over intrastate natural gas pipelines. The bill would also amend the maximum civil penalty that can be imposed for violations of pipeline safety regulations and for violations of the Kansas Underground Utility Damage Prevention Act to more closely represent PHMSA maximum civil penalty levels. According to the Kansas Corporation Commission, enactment of HB 2329 would result in increased revenue to the agency of approximately \$15,000 per year by aligning its penalty levels for violations of the Kansas Underground Utility Prevention Act more closely with PHMSA maximum civil penalties. The bill has a hearing in the House Utilities Committee on March 18.

***Unemployment Fraud***

Unemployment fraud continues to be a major topic in the commerce committee of each chamber. Weeks of hearings to develop a plan to figure out

“how to fix the problem” were scheduled. The bill, after many heart wrenching stories from Kansas consumers, an effort to fix a number of problems. The bill brief is below:

**HB 2196** - would hold employers harmless for fraudulent claims of unemployment benefits. Additionally, employers would not be charged for any benefits paid beginning March 12, 2020, through December 31, 2021. Employers would not be required to reimburse the state for claims identified as fraudulent by the employer. The time limitation on disputed claims or appeals in current law would not apply to cases of fraud or benefits paid from March 15, 2020 through December 31, 2022. The Department of Labor would be required to immediately and fully credit an employer’s account for any benefits that were determined to be fraudulent or provided in error. The Department of Labor would be required to review all reimbursing employer accounts for the 20 years preceding July 1, 2021 and credit any employer for benefits paid by fraud or in error that were charged to the employer’s account and not recovered through normal recovery efforts. The bill would require the Department of Labor to review all available information regarding improper unemployment benefit payments for the state for the time period of March 15, 2020, through December 31, 2022. Within 60 days of the information becoming available, the Department of Labor would be required to certify to the Department of Administration any amounts for improper payments. The bill would require the Department of Administration to transfer amounts identified in the certification from the State General

Fund to the Unemployment Trust Fund. The bill would authorize the Governor to transfer the certified amounts from a fund other than the State General Fund, if approved by the State Finance Council.

The Kansas Department of Labor is currently unable to estimate the total amount of fraudulent or improper unemployment payments in the state. As a result, the amount from State General Fund or other funds that would be transferred to the Unemployment Trust Fund because of fraudulent or improper payments is unknown. The Department anticipates having a working figure in the coming weeks. A revised fiscal note will be issued once the information is available. The agency notes that, according to the U.S. Department of Labor’s Office of Inspector General, the national total of fraudulent unemployment payments could be \$36.0 billion or more. The Kansas Department of Labor estimates the fiscal effect on the State General Fund could be sizeable.

This issue is now being debated in the Senate.

So far EKOGA has faired well in 2021. A lot of work went into gaining support for the well plugging bill, the main legislative initiative by the KCC and supported by EKOGA. The bill is close to becoming reality and having passed their own version of the legislation in both chambers, we feel confident the conference committee report will pass.

**Thank You to all EKOGA Members  
who have renewed their memberships for 2021.**

**We appreciate your continued support of EKOGA and look  
forwarding to serving you in 2021.**



# Eastern Kansas Exploration

*Guest Contributor - Greg Bratton, Consulting Geologist*

In 2021 it may seem that most of the productive oil within the Cherokee Basin has already been discovered, but there is more to be explored. Due to the constraints of the market oil price, inherent difficulties of the shallow nature of the reservoirs, and the exploration techniques available due to those factors, true wildcatting does not take place that often. If done sensibly and carefully there remains virgin reservoirs for those willing to take the risk.

The large majority of the drilling in the past in southeastern Kansas has consisted of chasing the subaerial marine sea channels that were deposited during the Pennsylvanian period within the Marmaton and Cherokee Formations. Find a sand with good porosity and permeability, a sufficient show with a light enough oil to produce, and then figure out what direction it's headed. Drill it up until the shows stop or the sand disappears. Finding new channels is still possible, however, there are more lenticular beds that are not associated with the channels that were deposited during the transitional times as the sea level was changing across the basin that tend to be overlooked. These sea level changes are thought to be associated with several ancient ice ages. To see these lenticular sands on logs, they have different characteristics than channels and the buildup of sand is typically much thinner. To have a productive well only a few feet of sand are needed and they usually don't exceed twelve to fifteen feet, whereas the channels in the region can be upwards to over one hundred feet. The issue with these types of sandbar or shoal deposits is that they tend to be more erratic and consequently harder to find. Their isolation deters drilling specifically to find them, but their isolation is a big part as to why they can be so attractive for exploration purposes. Confined and separated, they make solid targets for waterflooding to maintain the longevity and the life of a field. The main drawback is the difficulty in finding them. A little luck is always needed. The omnipresent issue of whether the reservoir that is discovered contains oil that is a high enough

quality to achieve economic production cannot be determined during the exploration phase. The mystery as to why certain reservoirs have different types of oil has yet to be conclusively solved. From a depositional standpoint, the classic methods of stratigraphic/sedimentary and structural analyses remain the tried and true ways to ascertain where the oil may be trapped.

Closely mapping areas can reveal certain common characteristics typical of where these ancient sandstone bodies have developed. In order to map the geology, accurate well data is essential and in some places it is hard to come by. However, the CBM (Coal Bed Methane) boom of the early 2000s has been useful to understand the overall geometry of the Cherokee Basin in the areas where that took place. They ran higher quality open hole logs with the primary purpose to help see the coals. In doing so, some of the operators were able to see oil shows that may have been missed while drilling and a few new lucrative fields were discovered by the increased drilling. They also drilled all the way to the Mississippian Lime which benefitted geologists to be able to see all the sands in the area, productive or not. In addition, the extensive aspect of the drilling allowed for more detailed mapping so that while most of the wells did not encounter new oil fields, it has made exploration easier so that operators can at least know where not to drill, which is half the battle. An ancillary positive aspect of this drilling and running good logs was that fresh water zones in the channel sands were obvious, which may be of municipal, commercial, and residential importance in the future.

It is the opinion of this geologist that there is more to be explored in southeastern Kansas. Keeping well costs down, running good open hole logs when merited, and pump testing wells before drilling more are all things to keep in mind when attempting to find new potential reservoirs. Needless to say, mapping out areas to better understand where the sands might appear and

**Eastern Kansas Exploration continued from page 18**

whether or not they are likely to contain oil or gas is essential. Accomplishing that is the first step in reducing the amount of dry holes drilled, which is just a reality of life during the exploration process in the Cherokee Basin. There is no guaranteed

method of success but doing those things can help identify prospective targets that could economically produce oil for decades to come.

**Keith's Corner continued from page 14**

Low oil prices and the COVID-19 pandemic have forced operators to shut down several wells. If an operator decides to transfer these wells before reactivating them, they should be mindful of the potential for continuing legal responsibility for such wells after transfer and should structure these transactions in a manner than contemplates and addresses this potential responsibility.

**DISCLAIMER:** This article does not constitute legal advice and no attorney client relationship is intended or implied.

*Lesli has been an invaluable resource to my company by finding ways to reduce costs and helping us stay current with ever-changing regulations.*  
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