



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

PROPOSAL FOR DECISION

OIL AND GAS DOCKET NO. 01-0300509

APPLICATION OF BLUE WATER DISPOSAL PURSUANT TO STATEWIDE RULE 9 FOR A COMMERCIAL PERMIT TO DISPOSE OF OIL OR GAS WASTE BY INJECTION INTO A POROUS FORMATION NOT PRODUCTIVE OF OIL OR GAS FOR THE ROCK FARMER LEASE, WELL NO. 1, EAGLEVILLE (EAGLEFORD-2) FIELD, GONZALES COUNTY, TEXAS

APPEARANCES

FOR BLUE WATER DISPOSAL:

Mr. David Nelson, Attorney at Law
Steve Towns, Consultant
Nguyen Ngoc, Consultant

FOR NGL WATER SOLUTIONS EAGLE FORD, LLC:

George C. Neale, Attorney at Law
Tim Jurco, Vice President
Joseph Vargo, Regulatory Manager

PROCEDURAL HISTORY:

Notice of Hearing:	May 27, 2016
Corrected Notice of Hearing:	July 19, 2016
Hearing on the Merits:	August 10, 2016
Record Closed:	August 26, 2016
Proposal for Decision Issued:	October 27, 2016
Heard by:	Ryan M. Lammert, Administrative Law Judge Paul D. Dubois, Technical Examiner

SUMMARY

In Docket No. 01-0300509, Blue Water Disposal (“BWD”) submitted to the Commission an application, pursuant to Statewide Rule 9, for a commercial permit to inject oil or gas waste into a porous formation not productive of oil or gas for the Rock Farmer Lease, Well No. 1, Eagleville (Eagleford-2) Field, located in Gonzales County, Texas (“Application”). The Application was timely protested by NGL Water Solutions Eagle Ford, LLC (“NGL”). A hearing on the merits was held on August 10, 2016.

At the hearing, BWD challenged NGL’s standing to protest the Application, and stated that NGL is not an “affected person” entitled to protest, as that term is defined in Statewide Rule 9 (“SWR 9”). BWD maintains that NGL protested the application solely as a competitor, and therefore is not permitted to claim party status. BWD asserts that the Application is administratively complete and may be administratively approved but for NGL’s protest.

NGL states that its protest was not entered solely as a competitor, but that it has evidence relevant to the determination of whether the subject well is in the “public interest”—as required by the Texas Water Code. NGL asserts that it is uniquely situated to provide information germane to the need for additional disposal capacity in the area surrounding the proposed well.

The Administrative Law Judge and Technical Examiner (collectively, “Examiners”) are of the opinion that NGL’s protest of the Application is solely that of a competitor and, therefore, NGL is not an “affected person”, as defined in SWR 9. Accordingly, the Examiners recommend that the Commission find that NGL is not an “affected person” and remand the Application to Technical Permitting for further administrative review and consideration.

APPLICABLE AUTHORITY

SWR 9(5)(E), titled *Protested applications*, states that:

If a protest from an affected person or local government is made to the [C]ommission within 15 days of receipt of the application or of publication, whichever is later, or if the [C]ommission or its delegates determines that a hearing is in the public interest, then a hearing will be held on the application after the [C]ommission provides notice of hearing to all affected persons, local governments, or other persons, who express an interest, in writing, in the application.¹

¹ 16 TEX. ADMIN. CODE § 3.9(5)(E)(i).

SWR 9(5)(E) further states that:

For purposes of this section, “affected person” means a person who has suffered or will suffer actual injury or economic damage other than that of the general public or as a competitor, and includes surface owners of property on which the well is located and [C]ommission-designated operators of wells within one-half mile of the proposed disposal well.²

EVIDENCE PRESENTED

BLUE WATER DISPOSAL

In addition to evidence in support of its application, BWD offered exhibits and testimony relevant to its challenge of NGL’s status as an “affected person”, as defined in SWR 9. BWD submitted into evidence an “Examiner’s Ruling on Standing”³ dated November 16, 2015, for the purposes of demonstrating Commission precedent in other factually similar dockets.⁴

Further, BWD offered into evidence an “Oil and Gas Proration Schedule Listed by Operator” for the purposes of showing that NGL solely operates commercial disposal wells—four of which are operated within the Eagleville (Eagle Ford-2) Field.⁵ BWD asserts that NGL is “one of the largest” operators of commercial disposal wells in Texas.⁶

BWD also demonstrated that all necessary parties received notice pursuant to the requirements of SWR 9.⁷ BWD additionally offered into evidence an area of review map detailing operators of wells within a one-quarter mile radius and a one-half mile radius of the proposed well location.⁸ The area of review map shows no operators of wells within the one-quarter mile radius, and two operators (Devon Energy Prod. Co, L.P. and EOG Resources, Inc.) of wells within the one-half mile radius.⁹ The record reflects that, besides NGL, no party appeared in protest of the Application. BWD asserted that it “spoke to EOG and Devon, and they have no problem with this application, hence they’re not here protesting it.”¹⁰

² *Id.* at § 3.9(5)(E)(ii).

³ BWD’s Ex. 8.

⁴ Examiner’s Ruling on Standing issued on November 16, 2015, in Oil and Gas Docket Nos. 08-0297741 & 08-0297738, *Applications of High Roller Wells, LLC Pursuant to Statewide Rule for a Permit to Dispose of Oil and Gas Waste by Injection for the Highway 285 SWD Lease, Well Nos. 1 & 2, Sandbar (Bone Spring) Field, Reeves County, Texas*, wherein the presiding Hearings Examiner found that Protestants Mesquite SWD, Inc. and Rustler Hills II were not “affected persons” entitled to standing as protestants of the applications.

⁵ BWD’s Ex. 2.

⁶ Tr., pg. 17, ln. 15.

⁷ See Applicant’s Exs. 16 & 18.

⁸ BWD’s Ex. 14.

⁹ *Id.*

¹⁰ Tr., pg. 40, lns. 9 - 11.

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In its opening, NGL stated that, “We’re here, not because of the issues [BWD] raised relating to economics [but] simply because of the issues raised in the Texas Water Code that the Railroad Commission can only approve [an application] if it finds that the [application] is in the public interest.”¹¹ NGL sought to offer “opinions about whether or not there exists a current need for additional disposal capacity in the area of the proposed well.”¹² NGL—as an operator of saltwater disposal wells in the geographic area of the proposed well location—unequivocally stated that, “[It does] not believe [the proposed well] is in the public interest” based upon its observations and personal knowledge of demand for saltwater disposal services in the area.¹³

In support of that position, NGL offered testimony that it had “idled” facilities in the Eagle Ford area based in part because of each facility’s financial viability in current economic conditions.¹⁴ NGL also testified that, at least, one other saltwater disposal well in the area of the proposed well location could be configured to accept more waste, negating the need for BWD’s proposed well.¹⁵ To that end, NGL identified 17 “active commercial disposal wells” within a 15 mile radius of the proposed well location¹⁶, an area of review that it contends is appropriate for a determination of additional disposal need¹⁷.

NGL additionally submitted into evidence a chart and graph showing actual disposal amounts compared to permitted disposal capacity at its Shiner Water Disposal Facility (API # 42-177-33458), located approximately 5 miles from the proposed well location, for the time period between August 2015 and July 2016.¹⁸ NGL contends that it has roughly “775,000 barrels per month that we can . . . dispose of”, but that the maximum and minimum amounts disposed of was 424,000 barrels of waste per month and 89,000 barrels of waste per month, respectively, for the same period of time.

Similarly, NGL also submitted into evidence a chart and graph showing actual disposal amounts compared to permitted disposal capacity at its Cheapside Water Disposal Facility (API # 42-177-32342), located approximately 10 miles from the proposed well location, for the time period between August 2015 and July 2016.¹⁹ NGL states that, similar to the Shiner Facility, the Cheapside Facility is permitted to accept a maximum of 775,000 barrels of waste per month, but that the maximum and minimum amounts disposed of was 572,000 barrels

¹¹ Tr., pg. 12, lns. 13 - 17.

¹² Tr., pg. 12, lns. 18 - 23.

¹³ Tr., pg. 93, ln. 6.

¹⁴ Tr., pgs. 92 -93, lns. 21 - 25, & lns. 1 - 14.

¹⁵ Tr., pg. 98, lns. 3 -7.

¹⁶ NGL’s Exs. 1 & 2.

¹⁷ Tr., pg. 99, lns. 11 - 17.

¹⁸ NGL’s Ex. 3.

¹⁹ NGL’s Ex. 4.

of waste per month and 277,000 barrels of waste per month, respectively, for the same period of time.²⁰

NGL further offered into evidence two more charts and graphs detailing information for its Westhoff Water Disposal Facility (API# 42-123-33363)²¹ and its Moulton Water Disposal Facility (API# 42-285-33809)²² showing that those facilities have additional permitted disposal capacity in excess of actual amounts disposed.²³

NGL summarily argues that BWD cannot show that its proposed well is in the “public interest” because additional disposal capacity exists at its own facilities.²⁴

EXAMINERS’ OPINION

As drafted, SWR 9 defines—but does not absolutely limit—who an “affected person” is that is entitled to party status as a protestant of a SWR 9 application.²⁵ The rule makes clear that surface owners of property on which the proposed well is located are entitled to party status, as are Commission-designated operators of wells located within one-half mile of the proposed disposal well.²⁶

Conversely, SWR 9 excludes certain classes of persons entitled to protest an application.²⁷ For instance, a person who has suffered or will suffer actual injury or economic damage *other than as a member of the general public* is entitled to standing as a protestant; the logical conclusion being that the person must have suffered or will suffer actual injury or economic damage *specific* to that individual—otherwise, the person would not meet the definition of an “affected person”, as defined in SWR 9.

SWR 9 similarly excludes persons protesting an application *solely* as a competitor to an applicant.²⁸ That is not to say that a competitor is forbidden from protesting an application, but that a competitor must identify a harm *specific* to it separate and apart from injury or damage that it has (or, would) experience as an entity engaged in the same service in the same market, if challenged on its status as an “affected person”.

At the hearing, BWD challenged NGL’s standing to protest the Application, and stated that NGL is not an “affected person” entitled to party status as a protestant. In its direct case, BWD successfully established that: 1) NGL does not operate a well within one-half mile of

²⁰ Tr., pg. 106, lns. 19 - 24.

²¹ NGL’s Ex. 5.

²² NGL’s Ex. 6.

²³ Neither the Westhoff Water Disposal Facility nor the Moulton Water Disposal Facility are identified on NGL’s Ex. 1 as being located within the 15 mile radius area of the proposed well location.

²⁴ See TEX. WATER CODE § 27.051(b)(1).

²⁵ See 16 TEX. ADMIN. CODE § 3.9(E)(ii).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

the proposed well location; and 2) NGL does not own the surface estate of the proposed well location. NGL does not dispute either of those facts.

It was therefore incumbent upon NGL to establish that it is a person who has suffered or will suffer actual injury or economic damage other than that of the general public *or as a competitor*. However, the Examiners conclude that NGL did not demonstrate that it is an “affected person”, as defined in SWR 9.

First, NGL did not demonstrate that it operates a well within one-half mile of the proposed well location. Second, NGL did not show that it owns the surface estate of the proposed well location. Showing either of those criteria would have—*ipso facto*—conferred standing upon it to protest the Application as an “affected person”.

Lastly, rather than identifying actual injury or economic damage specific to it separate and apart than that as a competitor, NGL challenged the merits of the Application on the grounds that the proposed well is not in the “public interest”, as required by the Texas Water Code. NGL opines that additional disposal capacity is not needed in the area, without identifying harm or injury that the proposed well would cause to it if permitted. In a sense, NGL placed the cart before the horse.

Evidence relevant to the “public interest” element of a SWR 9 application will always be considered by the Examiners when offered by an applicant or protestant; the caveat being that a protestant must first establish its status as an “affected person”, if challenged, prior to the presentation and consideration of such evidence. NGL did not identify any actual injury or economic damage other than that of the general public or as a competitor it has or would sustain if the Application were to be granted.

CONCLUSION

The Examiners recommend that the Commission find that NGL is not an “affected person”, as defined by SWR 9, for purposes of protesting the Application, and remand the Application to Technical Permitting for further administrative review and consideration. Accordingly, the Examiners make the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Notice of Blue Water Disposal’s application for a commercial permit to dispose of oil or gas waste by injection into a porous formation not productive of oil or gas for the Rock Farmer Lease, Well No. 1, Eagleville (Eagleford-2) Field, Gonzales County, Texas, was published in the *Gonzales Inquirer*, a newspaper of general circulation in Gonzales County, Texas, on March 11, 2016.
2. On or before its application was filed with the Commission, Blue Water Disposal notified the owner of the surface tract, owners of adjacent surface tracts, the Gonzales County Clerk, and operators of wells within one-half mile of its application

for a commercial permit to dispose of oil or gas waste by injection into a porous formation not productive of oil or gas for the Rock Farmer Lease, Well No. 1, Eagleville (Eagleford-2) Field, Gonzales County, Texas.

3. NGL Water Solutions Eagle Ford, LLC timely protested Blue Water Disposal's application for a commercial permit to dispose of oil or gas waste by injection into a porous formation not productive of oil or gas for the Rock Farmer Lease, Well No. 1, Eagleville (Eagleford-2) Field, Gonzales County, Texas.
4. Notice of hearing was issued by the Commission to Blue Water Disposal and NGL Water Solutions Eagle Ford, LLC on July 19, 2016.
5. A hearing on the merits was held on August 10, 2016.
6. NGL Water Solutions Eagle Ford, LLC is not a Commission-designated operator of a well within one-half mile of the proposed disposal well location.
7. NGL Water Solutions Eagle Ford, LLC is not a surface owner of property on which the proposed well is located.
8. NGL Water Solutions Eagle Ford, LLC did not present evidence sufficient to demonstrate that it is a person who has suffered or will suffer actual injury or economic damage other than that of the general public or as a competitor.
9. Blue Water Disposal's application for a commercial permit to dispose of oil or gas waste by injection into a porous formation not productive of oil or gas for the Rock Farmer Lease, Well No. 1, Eagleville (Eagleford-2) Field, Gonzales County, Texas, should be remanded to Technical Permitting for further administrative review and consideration.

CONCLUSIONS OF LAW

1. Resolution of the subject application is a matter committed to the jurisdiction of the Railroad Commission of Texas. TEX. NAT. RES. CODE § 81.051.
2. All notice requirements have been satisfied. 16 TEX. ADMIN. CODE § 3.9.
3. NGL Water Solutions Eagle Ford, LLC is not an "affected person", as that term is defined in 16 TEX. ADMIN. CODE § 3.9.
4. NGL Water Solutions Eagle Ford, LLC is not entitled to party status to protest Blue Water Disposal's application for a commercial permit to dispose of oil or gas waste by injection into a porous formation not productive of oil or gas for the Rock Farmer Lease, Well No. 1, Eagleville (Eagleford-2) Field, Gonzales County, Texas.

RECOMMENDATIONS

The Examiners recommend that the above Findings of Fact and Conclusions of Law be adopted. The Examiners also recommend that the Commission find that NGL Water Solutions Eagle Ford, LLC an “affected person”, as defined in 16 TEX. ADMIN. CODE § 3.9, for purposes of protesting the Application, and remand the Application to Technical Permitting for further administrative review and consideration.

RESPECTFULLY SUBMITTED,

A handwritten signature in blue ink, appearing to read "Ryan Lammert", written over a horizontal line.

RYAN M. LAMMERT
Administrative Law Judge

A handwritten signature in blue ink, appearing to read "Paul Dubois", written over a horizontal line.

PAUL D. DUBOIS
Technical Examiner