

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Before Commissioners: Shari Feist Albrecht, Chair  
Jay Scott Emler  
Dwight D. Keen

In the matter of the Application of Vulcan ) Docket No.: 19-CONS-3206-CUIC  
Resources, LLC to Authorize Injection of )  
Saltwater into the Squirrel formation at the ) CONSERVATION DIVISION  
Hatch #I-1 well, located in Section 2, )  
Township 22 South, Range 13 East, Coffey ) License No.: 35601  
County, Kansas. )

**APPLICANT'S MOTION TO DISMISS PROTEST**

COMES NOW the Applicant, Vulcan Resources, LLC, and moves the Commission for an Order dismissing the protest of Susan Royd-Sykes filed in this Docket. In support of said motion, Applicant shows to the Commission as follows:

1. K.S.A. 82-3-135b(a) requires that a valid protest of an injection application must specifically allege facts as to how granting the application will cause waste, violate correlative rights, or pollute water resources of the state of Kansas.

2. In it's Final Precedential Order issued on April 5, 2018, in Docket 17-CONS-3689-CUIC, the Commission held that "without specific allegations or a statement of the direct and substantial interest of the Protestant, the Protestant has not demonstrated a valid interest."<sup>1</sup>

3. As noted in the Final Precedential Order "in order to satisfy standing requirements in Kansas, a person must demonstrate that [1] he or she suffered a

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<sup>1</sup> Final Precedential Order in 17-CONS-3689-CUIC, ¶28

cognizable injury, and [2] that there is a causal connection between the injury and the challenged conduct.” “A cognizable injury is established by showing ...[an individual] personally suffers some actual or threatened injury as a result of the challenged conduct... [and] ...[t]he injury must be particularized, *i.e.*, it must affect the plaintiff in a personal and individual way.” “Mere allegations of possible future injury do not meet the requirements of standing and instead, any threatened injury must be certainly impending.” Additionally, “it is a well-recognized rule that [individuals] must assert his [or her] own legal rights and interests, and ...*an injury must be more than a generalized grievance common to all members of the public.*”<sup>2</sup>

4. At the pre-evidentiary stage of the proceeding, a party need only demonstrate a *prima facie* case for standing. In other words, the Commission must determine if the facts alleged in the protest, and inferences to be made therefrom, demonstrate standing.<sup>3</sup>

5. The Protestant, Susan Royd-Sykes, filed her protest to Vulcan’s injection application by letter dated December 13, 2018. The essence of the protest is that brine leakage or spillage would violate the protestant’s personal right to clean and safe drinking water.<sup>4</sup>

6. The protest filed fails to demonstrate standing, even by a *prima facie*

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<sup>2</sup> ID 1129

<sup>3</sup> ID 1130

<sup>4</sup> Letter of Susan Royd-Sykes, dated December 13, 2018

showing. As noted in the Protestant's letter of December 13, 2018, "The Hatch I-1 well is located on local farmland within a stone's throw of several creeks and waterways that feed into North Big Creek which then feeds into the Neosho River about 10 miles to the southeast." Applicant agrees, and notes that the point where North Big Creek drains into the Neosho River is near Leroy, Kansas, downstream of water plant of the city of Burlington, Kansas. Beyond the physical impossibility of the feared injury, pollution of the raw water source is no more than a generalized grievance which is common to all members of the public who consume water produced by the city of Burlington. No present injury to the Protestant is alleged. Nor is a "future threatened injury which is certainly impending" asserted. The future threatened injury is not only speculative and conjectural, it is physically impossible.

WHEREFORE, Applicant respectfully requests that the protest in this Docket be dismissed for the reasons above set forth, and that the Application be approved.

SUBMITTED BY:

JOHN R. HORST, P.A.

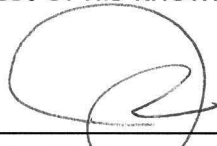
By /s/ John R. Horst

JOHN R. HORST  
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Our File #2944  
S. Ct. #09412


STATE OF KANSAS                     )  
  )SS:  
COUNTY OF MONTGOMERY        )

John R. Horst, being first duly sworn upon his oath, deposes and states:

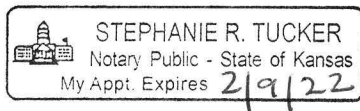
That he is counsel for Vulcan Resources, LLC; that he has read and is familiar with the foregoing Applicant's Motion to Dismiss Protest filed herein, and that the statements therein are true and correct to the best of his knowledge, information, and belief.

  
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John R. Horst

Subscribed and sworn to before me this 23<sup>rd</sup> day of January, 2019.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Appointment Expires:



CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of January, 2019, the above and foregoing Applicant's Motion to Dismiss was served by electronic mail addressed to the following:

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/s/ John R. Horst

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