

**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 R & D Oil, LLC) Docket No. 18-CONS-3324-CUIC
to authorize injection of saltwater into the Squirrel)
formation at the Roberson Lease, Wells # I-2 and I-) CONSERVATION DIVISION
3, located in Section 8, Township 18 South, Range)
21 East, Franklin County, Kansas.) License No. 35100

ORDER ON R & D OIL, LLC'S MOTION TO DISMISS PROTESTS

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being fully advised in the premises, the Commission finds and concludes as follows:

Background

1. On January 24, 2018, R & D Oil, LLC (R & D) filed an Application to authorize injection of saltwater into the Squirrel formation at the Roberson Lease, well numbers I-2 and I-3, Franklin County, Kansas.¹ R & D published notice of its Application in the Ottawa Herald newspaper on January 16, 2018.²
2. On February 13, 2018, Scott Yeargain and Polly Shteamer filed identical protest letters with the Conservation Division.
3. On February 14, 2018, Roxanne Mettenburg filed a protest letter, identical to Mr. Yeargain's and Ms. Shteamer's letters, with the Conservation Division.
4. On April 3, 2018, the Commission issued its *Order Designating Prehearing Officer and Setting Prehearing Conference*, setting a Prehearing Conference for April 30, 2018.³

¹ Application, p. 1 (Jan. 24, 2018).

² Affidavit of Publication (Jan. 16, 2018).

³ *Order Designating Prehearing Officer and Setting Prehearing Conference*, Ordering Clause B (Apr. 3, 2018).

5. On April 12, 2018, R & D filed a Motion to Dismiss Protests (Motion to Dismiss).
6. On April 23, 2018, Scott Yeargain filed a Motion to Accept Protests.
7. On April 30, 2018, a Prehearing Conference was held, wherein the Prehearing Officer requested, without objection, a continuance of the Prehearing Conference until May 31, 2018. Subsequently, on May 1, 2018, the Prehearing Officer ordered that the Prehearing Conference be rescheduled for May 31, 2018.⁴

Legal Standards

8. K.A.R. 82-3-135a(e) requires a protestant to file a “valid protest.” According to K.A.R. 82-3-135b(a), a valid protest is one that “include[s] a clear and concise statement of the direct and substantial interest of the protester in the proceeding, including specific allegations as to the manner in which the grant of the application will cause waste, violate correlative rights, or pollute the water resources of the state of Kansas.” A protestant can only show a “direct and substantial interest” in the Application where the protestant demonstrates that, “[1] he or she suffered a cognizable injury and [2] that there is a causal connection between the injury and the challenged conduct.”⁵ “A cognizable injury is established by showing . . . that [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.”⁶ “Mere allegations of possible future injury do not meet the requirements of standing and

⁴ *Prehearing Officer Order Rescheduling Prehearing Conference*, Ordering Clause A (May 1, 2018).

⁵ See *Kansas Bldg. Indus. Workers Comp. Fund v. State*, 302 Kan. 656, 678, 359 P.3d 33, 49 (2015) (citations and internal quotations omitted). See also Docket No. 17-CONS-3689-CUIC, *Final Precedential Order*, ¶ 3 (Apr. 5, 2018).

⁶ See *FV-I, Inc. for Morgan Stanley Mortg. Capital Holdings, LLC v. Kallevig*, 306 Kan. 204, 212, 392 P.3d 1248, 1255–56 (2017) (internal citations and quotations omitted). See also Docket No. 17-CONS-3689-CUIC, *Written Findings and Recommendations*, ¶ 29 (Mar. 29, 2018).

instead, any threatened injury must be certainly impending.”⁷ Moreover, “an injury must be more than a generalized grievance common to all members of the public.”⁸

Findings and Conclusions

9. In its Motion to Dismiss, R & D relied on K.A.R. 82-3-135b and the reasoning in the Commission’s *Final Precedential Order* in the 17-CONS-3689-CUIC Docket (17-3689 Docket).⁹ R & D noted the geographical distance between the Protestant residences and the subject wells.¹⁰ R & D argued that “[n]one of the three protests . . . contain any statement or allegation that the protesting parties have a direct and substantial interest in this Docket, nor do such protest[s] contain allegations sufficient to satisfy either portion of the two part test to establish standing as set forth by the Commission in the [17-3689] docket.”¹¹ R & D asserted that, based on lack of standing, “the Commission must dismiss such protests pursuant to” the *Final Precedential Order* in the 17-3689 Docket.¹² R & D claimed that none of the protests “demonstrate or even allege that such protestants would suffer a cognizable injury or that there is a causal connection between such injury and the application filed in this docket.”¹³

10. All three protest letters filed in this docket are identical, and therefore, the Commission analyzes them together. The letters did not articulate “a clear and concise statement of the direct and substantial interest of the protester in the proceeding,” nor did they include “specific allegations as to the manner in which the grant of the application will cause waste, violate

⁷ See also *Labette Cty. Med. Ctr. v. Kansas Dep’t of Health & Env’t*, 2017 WL 3203383 at *8 (unpublished), 399 P.3d 292 (Kan. Ct. App. 2017). See also Docket No. 17-CONS-3689-CUIC, Written Findings and Recommendations, ¶ 29.

⁸ *Labette Cty. Med. Ctr.* 2017 WL 3203383 at *10 (internal citations and quotations omitted).

⁹ Motion to Dismiss, ¶¶ 1-3. R & D’s Motion to Dismiss incorrectly referenced the Cross Bar Energy, LLC docket as 18-CONS-3689-CUIC. The Cross Bar Energy, LLC docket is the 17-3689 Docket.

¹⁰ Motion to Dismiss, ¶ 5.

¹¹ Motion to Dismiss, ¶ 5.

¹² Motion to Dismiss, ¶ 6.

¹³ Motion to Dismiss, ¶ 7.

correlative rights, or pollute the water resources of the state of Kansas,” as required by K.A.R. 82-3-135b(a). The letters’ sole allegation was that R & D’s publication notice was invalid because it allegedly did not agree with R & D’s well completion form.¹⁴ The Commission finds this does not meet the standards articulated in paragraph 8 of this Order above.

11. Mr. Yeargain’s Motion to Accept Protests also lacks merit because it provides no specific allegations as to the manner in which the grant of this particular Application will pollute the water resources of Kansas. A general discussion of alleged oil and gas related water pollution, as Mr. Yeargain has provided,¹⁵ does not satisfy the regulatory standard. Therefore, the Commission finds that none of the Protestants has filed a valid protest pursuant to K.A.R. 82-3-135b(a).

12. Based on the above, the Commission finds the protests of Scott Yeargain, Polly Shteamer, and Roxanne Mettenburg shall be dismissed. There are no other protests of record in this matter. As such, Staff is directed to process R & D’s Application accordingly and advise the Commission if, in Staff’s opinion, a hearing is necessary. Otherwise, the docket shall be closed, and there shall be no further proceedings.

THEREFORE, THE COMMISSION ORDERS:

A. R & D’s Motion to Dismiss the Protests is granted. Staff shall process the Application accordingly.

B. Any party affected by this Order may file with the Commission a petition for reconsideration pursuant to K.S.A. 77-529(a) and K.S.A. 55-162. The petition shall be filed within 15 days after service of this Order, plus three days if mailed service, and must state the specific

¹⁴ See e.g. Scott Yeargain’s Letter of Protest, p. 1. On p. 1 of his Letter Requesting a Hearing, filed on March 2, 2018, Mr. Yeargain acknowledged that the discrepancy he alleged in his protest letter between R & D’s publication notice and its well completion form was erroneous.

¹⁵ See Motion to Accept Protests, ¶¶ 1, 4.

grounds upon which relief is requested. The petition shall be addressed to the Commission and sent to 266 N. Main, Ste. 220, Wichita, Kansas 67202.

C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner-

05/15/2018

Dated: _____



Lynn M. Retz
Secretary to the Commission

05/16/2018

Mailed Date: _____

MJD

CERTIFICATE OF SERVICE

18-CONS-3324-CUIC

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of
first class mail and electronic service on 05/15/2018.

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