

OIL AND GAS DOCKET NO. 08-0262269

THE APPLICATION OF DISCOVERY OPERATING, INC. TO CONSIDER COMMERCIAL DISPOSAL AUTHORITY ON ITS VOGLER LEASE WELL NO. 1, SPRABERRY (TREND AREA) FIELD, MARTIN COUNTY, TEXAS

Heard By: Donna K. Chandler, Technical Examiner
Marshall F. Enquist, Hearings Examiner

Appearances:

Representing:

APPLICANT:

John Soule
John Miller

REPRESENTING:

Discovery Operating, Inc.

PROTESTANTS:

Donald Williams

Himself

Procedural History of Case:

Application Filed:	May 28, 2009
Request for Hearing:	June 18, 2009
Notice of Hearing:	July 8, 2009
Hearing Held:	August 7, 2009
Record Closed:	August 26, 2009
Proposal for Decision Issued:	September 9, 2009

EXAMINERS' REPORT AND PROPOSAL FOR DECISION

STATEMENT OF THE CASE

Discovery Operating, Inc. ("Discovery") requests commercial disposal authority pursuant to Statewide Rule 9 for its Vogler No. 1 in Martin County.

This application is protested by Donald R. Williams. Mr. Williams owns an interest in both the surface and minerals in a tract offsetting the Vogler lease.

DISCUSSION OF THE EVIDENCE

Applicant's Evidence

Discovery requests authority to dispose of a maximum of 4,000 barrels of water per day (BWPD) into its Vogler Well No. 1, with a maximum injection pressure of 2,000 psi. The proposed disposal interval is the San Andres between 4,320 feet and 5,210 feet. The nearest San Andres production is approximately 20 miles away. Discovery requests commercial authority to allow disposal of water produced from other operators in the area, predominantly from wells in the Spraberry (Trend Area) Field which produces from 7,000-10,000 feet.

The subject well was drilled in 1981 to a total depth of 9,377 feet. The well produced from the Spraberry (Trend Area) Field but has been inactive for several years. The well has 355 feet of 12 3/4" casing cemented to surface, 4,200 feet of 8 5/8" casing and 9,377 feet of 4 1/2" casing. The top of cement behind the intermediate casing is calculated to be 3,400 feet. Originally, the top of cement behind the longstring was 5,625 feet, based on a temperature survey. In 1991, a cement squeeze was performed at 5,375 feet with 500 sacks of cement. Following this squeeze, the top of cement behind the longstring casing is 3,235 feet, as verified by a cement bond log. Discovery plans to set a cast iron bridge plug at 5,250 feet, with 20 feet of cement on top, to isolate the disposal interval in the well. Injection will be through 2 3/8" tubing, with a packer set at approximately 4,270 feet. (See attached wellbore diagram.) Usable quality ground water occurs to a depth of approximately 325 feet according to the Texas Commission on Environmental Quality.

In a workover in April 2009, a hole was milled in the 4 1/2" casing at 1,850 feet. Prior to using the well for disposal, Discovery plans to squeeze 50 sacks of cement at 1,850 feet to repair this hole.

There is only one wellbore within a 1/4 mile radius of the Vogler No. 1, the Vogler No. 2 operated by Discovery. The Vogler No. 2 was drilled in 2008 and is an active producing well in the Spraberry (Trend Area) Field. There are five wellbores within a 1/2 mile radius of the Vogler No. 1. Two have been plugged and abandoned and have plugs set above the proposed San Andres disposal interval and plugs across the base of usable quality water. The other three wells are active wells producing from the Spraberry (Trend Area) Field. All five wellbores have surface casing set and cemented through the base of usable quality water.

The area around the proposed disposal well is primarily rural. Access to the facility will be from Ranch Road 829. Discovery will have to comply with TXDOT requirements for building the entry to the facility.

Within a 10 mile radius, six commercial disposal wells have been permitted. Four of the six have had their permits canceled, the most recent in 2004. The two active wells are

permitted for using the San Andres as the disposal interval. The Atlas II SWD No. 1 is about 9 miles to the northeast and the J. W. Cave No. 1 is about 6 miles to the west of the Vogler No. 1.

Since 2007, there have been a couple of hundred drilling permits issued for the Spraberry (Trend Area) Field in the area around the Vogler No. 1, most of which are located to the southeast and southwest of the Vogler No. 1. Very few are north of the Martin County line. Spraberry completions typically produce about 70% water and there is a need for additional disposal facilities. Discovery currently trucks its produced water from the Vogler and offsetting Queen lease (approximately 250 BWPD total) to the Cave No. 1 disposal well. If approved, Discovery would pipe the produced water to the facility, reducing truck traffic to the Cave well. Spraberry development to the south and west of the Vogler No. 1 would likely use the Vogler No. 1 for disposal rather than travel additional miles to the Cave well. Discovery presented a letter from Patriot Resources indicating support of Discovery's application.

Discovery Operating, Inc. has a current Form P-5 and maintains a \$250,000 letter of credit for financial assurance as required by the Commission.

On May 27, 2009, notice of the application was sent to the surface owner of the tract on which the Vogler No. 1 well is located. Also on May 27, 2009, notice of the application was given to the surface owners of each tract which adjoins the disposal tract. There are no operators within ½ mile except Discovery. Notice was also sent to the County Clerk of Martin County on May 27, 2009. Notice of this application was published in the *Martin County Messenger* a newspaper of general circulation for Martin County, on May 7, 2009. Notice of this application was also published in the *Midland Reporter-Telegram*, a newspaper of general circulation for Midland County, on May 4, 2009.

Williams' Evidence

Mr. Williams owns an interest in both the surface and minerals in property offsetting the proposed disposal facility to the north. His minerals are currently under lease to Patriot Resources. Mr. Williams believes that the proposed disposal operations are trespass and constitute a taking. He believes that the salt water under his property in the San Andres, which will be displaced by disposal fluids, will be forever contaminated and not available for any future projects involving desalinization of the salt water. Because Discovery intends to make a commercial profit by injecting water into the San Andres which will move beneath his property, Mr. Williams further believes that his property rights are being adversely affected.

EXAMINERS' OPINION

The examiners recommend that the application for commercial disposal authority be approved, including a requirement that Discovery set a cast iron bridge plug at 5,250 feet, with 20 feet of cement on top, to isolate the disposal in the Vogler No. 1 well. Discovery must also perform a cement squeeze at 1,850 feet with 50 sacks of cement to repair a hole in the intermediate casing. Discovery did not object to these conditions of the permit. Otherwise,

the well is completed in a manner which will confine injected fluids to the permitted interval between 4,320 feet and 5,210 feet and which will protect usable quality water. Additionally, there are no wellbores in the area of review which would provide a conduit for migration of injected fluids out of the permitted interval.

Approval of the application is in the public interest. Discovery has shown the proposed disposal well is necessary to provide another option for disposal of produced water from numerous new Spraberry wells to the southwest of the Vogler No. 1. The Vogler No. 1 is closer to this new development than the any other commercial facility in the area and will thereby reduce truck traffic. Specifically, Discovery will pipe its produced water from its leases instead of hauling the water to another facility.

Protestant alleges that injected fluids will eventually cross the lease line of the Vogler Lease, resulting in a trespass of injected fluids into the subsurface of their lands. If protestants pursue this cause of action, "The cause is properly within the jurisdiction of the courts because the Railroad Commission has no authority to determine title to land or property rights." Amarillo Oil Company v. Energy-Agri Products, Inc., 794 S.W.2d 20 (Tex. 1990) citing Railroad Comm'n v. City of Austin, 524 S.W.2d 262, (Tex. 1975), Jones v. Killingsworth, 403 S.W.2d 325, Tex 1965), Nale V. Carroll, 289 S.W.2d 743, (Tex. 1956), Ryan Consol. Petroleum Corp. v. Pickens, 285 S.W.2d 201 (Tex. 1955) and Magnolia Petroleum Co. v. Railroad Comm'n, 170 S.W.2d 189 (Tex. 1943).

Protestant also asserts a "takings" issue; that the trespass of injected fluids would result in the permanent, physical occupation of his subsurface. As stated above, the Commission has no authority in this area and the proper source of relief is the court system. However, the examiners note that even if injected fluids did occupy the disposal interval beneath protestant's lands, nothing would prevent protestant from drilling and using his own disposal well in the same interval due to the migratory nature of injected fluids. In other words, it is debatable, and a matter for the courts, whether saltwater disposal operations rise to the level of a "permanent, physical occupation" of adjacent properties. "...This court has consistently distinguished between flooding cases involving a permanent, physical occupation, on the one hand, and cases involving a more temporary invasion, or government action outside the owner's property that causes consequential damages within, on the other. A taking has always been found only in the former situation." (Referring to surface flooding, as by water impoundments) Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 428 (1982).

FINDINGS OF FACT

1. Notice of this application and hearing was provided to all persons entitled to notice. Notice of this application was published in the *Martin County Messenger* a newspaper of general circulation for Martin County, on May 7, 2009. Notice of this application was also published in the *Midland Reporter-Telegram*, a newspaper of general circulation for Midland County, on May 4, 2009.
2. The Railroad Commission has no authority to determine title to land or property rights.

3. With the setting of a cast iron bridge plug at 5,250 feet, with 20 feet of cement on top, and a cement squeeze at 1,850 feet in the intermediate casing, the Vogler No. 1 will be completed in a manner which will not endanger any oil, gas or other mineral formation and will not cause the pollution of usable quality water.
 - a. The Texas Commission on Environmental Quality recommends protection of usable quality water resources to a depth of 325 feet in the Vogler No. 1.
 - b. The Vogler No. 1 has 355 feet of 12 $\frac{3}{4}$ " casing cemented to surface.
 - c. The Vogler No. 1 has 4,200 feet of 8 $\frac{5}{8}$ " casing and 9,377 feet of 4 $\frac{1}{2}$ " casing. The top of cement behind the intermediate casing is calculated to be 3,400 feet and the top of cement behind the longstring casing is 3,235 feet, as verified by a cement bond log.
 - d. Injection will be through 2 $\frac{3}{8}$ " tubing, with a packer set at approximately 4,270 feet.
 - e. The only wellbore within a $\frac{1}{4}$ mile radius of the Vogler No. 1 is the Vogler No. 2, an active producing well which is properly completed.
4. Use of the Vogler No. 1 as a commercial disposal well is in the public interest because it will serve to reduce hauling distances and costs associated with production of large volumes of salt water in new Spraberry (Trend Area) Field wells in the immediate area of the Vogler No. 1.
5. Discovery Operating, Inc. has a current Form P-5 and maintains a \$250,000 letter of credit for financial assurance as required by the Commission.

CONCLUSIONS OF LAW

1. Proper notice was issued in accordance with the applicable statutory and regulatory requirements.
2. All things necessary to give the Railroad Commission jurisdiction to consider this matter have occurred.
3. Discovery Operating, Inc. has met its burden of proof and its application satisfies the requirements of Chapter 27 of the Texas Water Code and the Railroad Commission's Statewide Rule 9.
4. The use of the proposed disposal well will not endanger oil, gas, or geothermal resources or cause the pollution of usable quality water resources.
5. The use of the proposed disposal well is in the public interest pursuant to Sec 27.051 of the Texas Water Code.

EXAMINERS' RECOMMENDATION

Based on the above findings and conclusions, the examiners recommend that the application of Discovery Operating, Inc. for commercial disposal authority for its Vogler No. 1 be approved as set out in the attached Final Order.

Respectfully submitted,

Donna K. Chandler
Technical Examiner

Marshall F. Enquist
Hearings Examiner