

OIL AND GAS DOCKET NO. 09-0247882

THE APPLICATION OF DAVID H. ARRINGTON OIL & GAS INC. TO INJECT FLUID INTO A RESERVOIR NOT PRODUCTIVE OF OIL OR GAS, T. R. MCCASLAND SWD LEASE WELL NO. 1, NEWARK, EAST (BARNETT SHALE) FIELD, HOOD COUNTY, TEXAS

HEARD BY: Donna K. Chandler, Technical Examiner
James M. Doherty, Hearings Examiner

APPEARANCES:

APPLICANT:

Brian Sullivan
Greg Friend
John Miller

REPRESENTING:

David H. Arrington Oil & Gas Inc.

PROTESTANT:

John Vay
Waymon Gore

Durant Grantor Trusts A & B

David Southern, Mayor

City of Granbury

Randal Watson
Jennifer Watson
Stanley Smith
Jackie Smith

Himself
Herself
Himself
Herself

PROCEDURAL HISTORY

Application Filed:	May 3, 2006
Request for Hearing:	May 30, 2006
Notice of Hearing:	July 20, 2006
Date of Hearing:	August 30, 2006
Transcript Received:	September 4, 2006
Proposal For Decision Issued:	October 23, 2006

EXAMINERS' REPORT AND PROPOSAL FOR DECISION**STATEMENT OF THE CASE**

David H. Arrington Oil & Gas, Inc. ("Arrington") requests authority pursuant to Statewide Rule 9 to operate Well No. 1 on its T. R. McCasland Lease in Hood County as a commercial disposal well. This application is protested by Durant Grantor Trust A & B "Trust", the City of Granbury, and several surface owners adjacent to the tract on which the proposed disposal well is located.

DISCUSSION OF THE EVIDENCE**Notice Issue**

The Trust has made a motion to dismiss or deny the Arrington application based on its contention that notices of the application and hearing were deficient. The examiners believe the motion should be denied for the following reasons.

At the hearing, the Trust conceded that it was provided with notice of the hearing. Although the name of the Trust did not appear on the original certificate of mailing filed by Arrington with the Form W-14 application, a supplemental certificate of mailing filed by Arrington on May 23, 2006, added the name of the Trust. Subsequent notices of hearing issued by the Commission were mailed either to the attorney who had filed a protest for the Trust on May 11, 2006, or to both the Trust and the Trust's attorney. The Trust does not have standing to complain about a failure of notice to anyone else. *McDaniel v. Texas Natural Res. Conservation Com'n*, 982 S.W.2d 650, 654 (Tex.App.-Austin 1998, pet. denied); *Copher v. First State Bank*, 852 S.W.2d 738, 740 (Tex.App.-Fort Worth 1993, no writ); *American Operating Co. v. Railroad Comm'n of Tex.*, 744 S.W.2d 149, 155 (Tex.App.-Houston 1987, writ denied). No other party has made any claim regarding a failure of notice.

At the hearing, the Trust reiterated its prehearing complaint that the notices it received did not adequately comply with the notice requirements of the Administrative Procedure Act, in particular as to the issues that would be considered at the hearing. Texas Government Code § 2001.052 requires that the notice of hearing include, among other things, a reference to the particular sections of the statutes and rules involved and a short, plain statement of the matters asserted. After the Trust had complained of the sufficiency of the notice of hearing dated July 20, 2006, the notice dated July 27, 2006, advised the Trust that the issues that would be considered at the hearing were those identified in 16 TEX. ADMIN. CODE §3.9 and Texas Water Code §27.051, in particular, whether the use or installation of the proposed well was in the public interest, whether the use or installation of the proposed well would endanger or injure any oil, gas, or other mineral formation or otherwise impair existing rights, whether, with proper safeguards, both ground and surface fresh water could be adequately protected from pollution, and whether the applicant had made a satisfactory showing of financial responsibility if required by

Texas Water Code §27.073 of the Texas Water Code. The Trust previously had been provided with a copy of Arrington's Form W-14 application, and it received all of the notice required by law.

The Trust complains further that the notice of the application published in the Hood County News on April 22, 2006, is insufficient because: (1) the publisher's affidavit does not plainly state that the Hood County News is a newspaper of general circulation in Hood County; (2) the published notice was titled "Notice of Application for Commercial Disposal Well Permit" rather than "Notice of Application for Commercial Oil and Gas Waste Disposal Well," as the Trust believes is required by publication guidelines in the Injection/Disposal Well Permit Applications Summary of Standards and Procedures found on the Commission's website; and (3) the injection interval described in the published notice did not match the W-14 application. This complaint is without merit. The publisher's affidavit stated that the Hood County News is regularly published in Hood County, and generally circulated in Granbury, Texas, the nearest municipality to the proposed disposal well, as required by the Oil and Gas Division form used to make the affidavit. Having officially noticed that Granbury is in Hood County, the examiners believe that the affidavit is sufficient to comply with Commission rules. The Trust has presented no evidence, and apparently does not contend, that the Hood County News is not a newspaper having general circulation in Hood County. The body of the published notice plainly stated that Arrington was applying for a commercial disposal well permit to dispose of produced salt water or other oil and gas waste, and the injection interval described in the published notice was slightly broader than, and wholly inclusive of, the injection interval described in the W-14 application.

The Trust next complains about the notices of the application mailed by Arrington pursuant to the requirements of Statewide Rule 9. The Trust states that the certificate of mailing filed by Arrington on May 2, 2006, did not include the name of the Trust or Harold Ray Maxwell. However, supplemental certificates of mailing filed by Arrington on May 11 and May 23, 2006, added the names of the Trust and Maxwell. A protest was filed to the application on behalf of the Trust by Melissa Meyer on May 11, 2006. The Commission's notice of hearing dated July 20, 2006, was mailed to Meyer, as representative of the Trust, and to Maxwell. Copies of the Commission's July 27, 2006, notice, which rescheduled the hearing pursuant to the Trust's motion, were sent to Meyer and Maxwell, and directly to the Trust in care of the Trustee.

From a June 1, 2006, letter from Miller Consulting to Arrington, in which Miller stated that it did not have correct addresses for Randall and Jennifer Watson, Phillip W. Ford, and Larry and Freda Munoz, the Trust argues that these persons were not properly noticed because the addresses originally used by Arrington were not subsequently corrected. However, the examiners have officially noticed from the application file that copies of the Commission's notices of hearing dated July 20, 2006, and July 27, 2006, sent to Mr. and Mrs. Munoz, the Watsons, and Ford at these same addresses were not returned to the Commission as undeliverable. Furthermore, Randall and Jennifer Watson appeared at the hearing, did not make any complaint concerning notice, and confirmed that the address for the Watsons is the same as shown on Arrington's original certificate of mailing.

The Trust also complains that the Commission's notices dated July 20, 2006, and July 27, 2006, did not include Hood County on the service lists. However, the certificate of service filed with the Form W-14 application by Arrington indicates that a copy of the Form W-14 was mailed to Hood County. Form W-14 requires that a protest or request for hearing be filed with the Commission within 15 days of publication of notice in a newspaper of general circulation in the county where the disposal tract is located or within 15 days of the date the Form W-14 application is filed with the Commission, and Hood County did not file such a protest. Furthermore, correspondence in the application file from counsel for the Trust dated July 27, 2006, acknowledged that Arrington had mailed notice of its application to the County Clerk of Hood County. The Mayor of the City of Granbury, who testified at the hearing, stated that he had been authorized to represent County Commissioner Larry Schaefer of Hood County and to represent his views as to the County's position on the application.

The Trust next complains that the Commission's notice dated July 20, 2006, did not directly notify the Trust through its Trustee or various parties who had "signed petitions" protesting the application. However, the Trust's protest had been filed by an attorney, Melissa Meyer, and a copy of the notice was mailed to Meyer. The Commission's July 27, 2006, notice was mailed to both Meyer and the Trust. With regard to the allegation of a failure of notice to various parties who "signed petitions," the Trust apparently refers to persons named in forms attached to correspondence dated May 24, 2006, and July 19, 2006, filed with the Commission by Melissa Meyer, attorney. The Meyer correspondence to which these forms were attached stated that the persons whose names were included on the forms were protesting the application, and stated also "Please contact Melissa Meyer with any questions or follow up." The July 20, 2006, notice of hearing and the July 27, 2006, notice of hearing were mailed to Meyer as attorney for these persons.

The Trust also complains that typographical errors in mailing addresses for Bar O Real Estate, Inc., Dwayne Pace, Walter Rains, and William Geyer caused copies of the July 20, 2006, notice of hearing mailed to these persons to be returned to the Commission undeliverable. However, the examiners have officially noticed from the application file that on August 14, 2006, a supplemental certificate of service was executed by the Docket Services Section stating that copies of the notice of hearing had been sent to Bar O, Pace, and Rains at their corrected addresses. Furthermore, the Rains and Geyer protests had been filed by Melissa Meyer, attorney, and copies of the Commission notices dated July 20, 2006, and July 27, 2006, were mailed to Meyer as attorney for these persons.

Finally, the Trust complains that the name of Carl Brite was dropped from the Commission's notice dated July 27, 2006. However, according to the certificate of service filed with Arrington's Form W-14 application, Brite was mailed a copy of the application, and Brite did not file a protest or request a hearing within 15 days of the date of filing of the application or within 15 days of the date of publication of notice in the Hood County News. A copy of the July 20, 2006, notice of hearing was sent to Brite, and Brite did not respond to the notice by filing a protest. Furthermore, June 1, 2006, correspondence presented into evidence by the Trust stated that the Trust had purchased the land owned by Brite.

The examiners believe that the notice of application and notices of hearing met all requirements of law. The motion to dismiss or deny, based on alleged deficiencies in the notices, is denied.

Applicant's Evidence

The subject well has not yet been drilled but a permit to drill was issued by the Commission on August 28, 2006. It is proposed that the well be drilled through the Ellenburger to a maximum depth of 8,500 feet. It was originally proposed that the well have 320 feet of 9⁵/₈ " surface casing with cement circulated from the casing shoe to the ground surface, and 7" casing set at approximately 7,500 feet, with cement circulated to surface. (See Arrington Exh. No. 11 Wellbore Diagram attachment). The Texas Commission on Environmental Quality recommends that usable-quality ground water be protected to a depth 20 feet below the base of the Cretaceous-age beds, which is expected to occur at 275 feet. TCEQ therefore recommends that surface casing be set to a depth of 295 feet. Subsequent to Protestant's cross-examination, Arrington agreed to set 495 feet of surface casing.¹ Additionally, Arrington will use a multi-stage cementing tool to insure that cement behind the longstring is circulated to surface, and a cement bond log will be run to insure proper bonding of the cement.

The proposed injection will be through 4 ½" tubing set on a packer at approximately 6,125 feet, but no higher than 100 feet above the top of the injection interval. The proposed injection interval is the Ellenburger formation, the top of which is expected to occur at about 5,900 feet. The proposed injection interval is between 6,200 and 7,500 feet. This estimated depth of the Ellenburger is based on the log of the W. A. Moncrief - Groce No. 1 well approximately 4 miles to the northwest of the proposed well. The proposed maximum injection volume is 20,000 BWPD, with an estimated average of 10,000 BWPD. The proposed maximum injection pressure is 3,100 psig.

There is only one wellbore within a ¼ mile radius of the proposed disposal well. The Dunaway "B" No. 2 was drilled in 1980 by Empire Exploration Corp. and was plugged in 1984. This well was drilled to a total depth of 5,750 feet and did not encounter the Ellenburger. The well was plugged with five plugs in accordance with Commission rules. The plugs are set in a manner which will prevent migration of fluids into useable quality water strata.

Only one well within a two mile radius of the proposed disposal well penetrated the Ellenburger, the Sunray-Little Well No. 1. This well was drilled in 1980 to a total depth of about 6,120 feet and completed in the Marble Falls at about 5,500 feet. The top of the Ellenburger in that well was 5,873 feet. The well was later re-entered and deepened to about 9,280 feet and apparently penetrated the entire Ellenburger. This deepened section of the wellbore was not logged and no completion was made in the Ellenburger in that well.

¹The deepest domestic water well within 2 miles of the proposed well is 425 feet.

Notice of the subject application was published in *The Hood County News*, a newspaper of general circulation in Hood County, on April 22, 2006. A copy of the application was mailed to the Hood County Clerk's Office and the offsetting surface owners and operators within ½ mile of the proposed well. Applicant owns the surface of the 76 acre tract on which the well is proposed.

Arrington plans to use the well to dispose of produced water generated by the active and ongoing development of the Barnett Shale in this area. Arrington believes that additional disposal facilities are necessary to accommodate the active drilling. From January 1 through August 23, 2006, 438 drilling permits have been issued for wells in Hood and Parker Counties. Since the beginning of 2004, Arrington has been issued 65 drilling permits for drilling in the Barnett Shale, most of the later permits being issued in Parker and Hood Counties. Arrington has 19 wells in the process of drilling/completion in Hood and Parker Counties. The proposed facility will service these wells. Currently, Arrington has to haul the frac fluids and produced water to other commercial disposal sites. For nine recent completions in Hood and Parker Counties, Arrington has spent over \$3 million in hauling and disposal of fluids. In 2005, more than 1.7 million barrels of fluid were hauled from Arrington wells for disposal. In many instances, wait time at facilities was noted. In some cases, wait time for unloading was 5-9 hours, with many waits being 4 hours. There are no other commercial disposal facilities within a 6 mile radius of the proposed well; there are five commercial facilities within a 12 mile radius of the proposed well.

Arrington has an active P-5 on file with the Commission, with \$50,000 financial assurance. There are no pending enforcement actions against Arrington.

Protestants' Evidence

Durant Grantor Trust A & B is an offset surface owner to the tract on which the facility will be located. The Trust does not believe that the proposed injection well is necessary due to the presence of 16 permitted commercial disposal facilities in a 20 mile radius of the proposed well. Of these 16 wells, only four have injection data available; the remaining 12 are recently permitted and information regarding injection has not yet been filed with the Commission. The Trust reviewed injection data for the 4 active wells in the area and found that none are being used at their maximum permitted injection volumes or rates.

Based on Arrington's data indicating that Arrington hauled a total of approximately 1.7 million of water in 2005 to disposal facilities, the average need for disposal is 217 barrels per day per well. With a permitted capacity of 270,000 barrels per day for the 16 permitted wells, there is capacity to support over 1,200 Barnett Shale wells. Less than 700 wells are producing or completed in the same 20 mile radius. The Trust does not believe that additional capacity is necessary in this area.

Also, the Trust feels that there is insufficient information available about the Ellenburger to conclude that the formation is suitable for disposal. The Trust suggests that limitations be placed on the permit to limit disposal to the deepest portion of the Ellenburger, with reduced limits on injected volume and pressure.

The City of Granbury objects to the application. The proposed location is near a creek which feeds into Lake Granbury. The City has concerns that the use of the well may endanger surface and sub-surface waters due to possible run-off from the site. Additionally, the City is concerned that increased truck traffic associated with the operation of the facility will accelerate deterioration of roads. The disposal site is not within the city limits of Granbury, or its extra-territorial jurisdiction, but the site is very near the current ETJ.

Mr. and Mrs. Randal Watson own property directly offsetting the proposed disposal site to the north. They are concerned about possible run-off from the site into a creek and possible harm to their water well. They also expressed concern about traffic and safety issues which may be associated with the operation of the facility. The minerals beneath the Watson property are unleased.

Mr. and Mrs. Stanley Smith own property adjacent to the proposed facility to the northeast. They are concerned that the proposed facility will decrease their property value. They are also concerned about traffic and safety issues, as well as the possibility that their water will be adversely affected by operation of the facility. The mineral rights beneath the Smith property are leased.

EXAMINERS' OPINION

The examiners believe that this application should be approved. The T. R. McCasland SWD No. 1 will be completed in a manner which will confine disposal fluids to the proposed disposal interval in the Ellenburger. Surface casing will be set and cemented through the base of usable quality water. Arrington agreed to set 495 feet of surface casing instead of the 295 feet required by TCEQ. The longstring production casing will also be cemented to the surface and Arrington will run a cement bond log to verify the adequacy of the cement behind the longstring. The only well in the one-quarter mile radius of review has been properly plugged and abandoned and will not provide a conduit for migration of fluids.

Approval of the requested permit is in the public interest given the number of wells being drilled to the Barnett Shale in the area. With the large fracture treatments necessary to stimulate production of the Barnett Shale and the accompanying produced frac water, sufficient commercial disposal facilities like the proposed well are needed. Arrington has personal experience with long wait times for disposal of fluids from his own wells.

The Commission does not have jurisdiction over issues regarding traffic safety and property values. These concerns raised by protestants must be addressed in another forum. The requirements in the recommended commercial disposal permit address concerns as to security and the surface handling of fluids. The evidence indicates that the operation of the subject disposal well and facility will not adversely impact any surface or subsurface useable quality water.

FINDINGS OF FACT

1. Notice of this hearing was given to all persons entitled to notice at least ten (10) days prior to the hearing. Notice of the application was published in the *Hood County News*, a newspaper of general circulation in Hood County, on April 22, 2006.
2. The T. R. McCasland SWD No. 1 has not been drilled. David H. Arrington Oil & Gas, Inc. plans to drill the well to a maximum depth of approximately 8,500 feet. The Ellenburger is expected to occur at approximately 5,900 feet.
3. The maximum requested injection volume is 20,000 barrels of water per day and the maximum requested surface injection pressure is 3,100 psi. The requested disposal interval is the Ellenburger formation between approximately 6,200 and 7,500 feet.
4. The T. R. McCasland SWD No. 1 will be cased and cemented in a manner to protect usable quality water and injection will be confined to the injection interval.
 - a. The subject well will have 495 feet of 9 5/8" surface casing cemented to surface.
 - b. The subject well will have approximately 7,500 feet of 7" casing cemented to surface.
 - c. Injection will be through tubing set on a packer no higher than 100 feet above the top of the injection interval.
 - d. The Texas Commission on Environmental Quality recommends that useable-quality water be protected to 295 feet in the area of the proposed well.
5. The only wellbore within one-quarter mile of the proposed disposal well has been properly plugged and abandoned.
6. Due to active development of the Barnett Shale in this area, large quantities of produced water must be disposed of. Use of the T. R. McCasland SWD No. 1 Well as a commercial disposal well is in the public interest to promote this development by providing a safe means of disposal of the fluids associated with production.
7. Arrington has an active P-5 on file with the Commission, with \$50,000 financial assurance. There are no pending or unresolved enforcement actions against Arrington.

CONCLUSIONS OF LAW

1. Proper notice was issued in accordance with the applicable statutory and regulatory requirements.
2. All things have occurred to give the Railroad Commission jurisdiction to consider this matter.
3. The use or installation of the proposed injection well is in the public interest.
4. The use or installation of the proposed injection well will not endanger or injure any oil, gas, or other mineral formation.
5. With proper safeguards, as provided by terms and conditions in the attached final order which are incorporated herein by reference, both ground and surface fresh water can be adequately protected from pollution.
6. David H. Arrington Oil & Gas, Inc., has made a satisfactory showing of financial responsibility to the extent required by Section 27.073 of the Texas Water Code.
7. David H. Arrington Oil & Gas, Inc. has met its burden of proof and satisfied the requirements of Chapter 27 of the Texas Water Code and the Railroad Commission's Statewide Rule 9.

EXAMINERS' RECOMMENDATION

Based on the above findings and conclusions, the examiners recommend that the application be approved as set out in the attached Final Order.

Respectfully submitted,

Donna K. Chandler
Technical Examiner

James M. Doherty
Hearings Examiner