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RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

MEMORANDUM

TO: Chairman Barry Smitherman
Commissioner David Porter
Commissioner Christi Craddick

FROM: Marshall Enquist, Hearings Examiner
Hearings Division

DATE: April 22, 2014

SUBJECT: Appeal By Marathon Oil EF, LLC of Examiner's Denial of "Motion to Dismiss the Protest of the Gonzales County Underground Water Conservation District for Lack of Standing" in Oil & Gas Docket No. 01-0287364: Application of Marathon Oil EF, LLC Pursuant to Statewide Rule 9 for a Permit to Dispose of Oil and Gas Waste by Injection Into a Porous Formation Not Productive of Oil or Gas, Cherry-Bilsky Lease, Well No. 1WW, Eagleville (Eagle Ford-1) Field, Gonzales County, Texas.

I. Nature of Dispute and Deadline for Commission Action

Complainant Marathon Oil EF, LLC (hereinafter "Marathon") has filed an appeal of a Staff letter ruling issued April 10, 2014. In that ruling, this examiner denied Marathon's Motion to Dismiss the protest of the Gonzales County Underground Water Conservation District for lack of standing. Marathon timely filed its Appeal on April 21, 2014 at 4:41 P.M.. The Gonzales County Underground Water Conservation District has until May 1, 2014 to file a Reply to the Appeal, which will be forwarded to the Commissioners upon receipt.

The appeal will be deemed DENIED if an order ruling on the appeal is not signed by the Commission by June 6, 2014. There are three currently scheduled Conferences prior to the deadline for action: May 6, May 22 and June 3.

II. Summary of Key Facts

The most salient facts are as follows:

1.) On June 21, 2013 and June 28, 2013, the Notice of Application of Marathon Oil EF, LLC for a Disposal Well Permit in a Non Productive Formation was published in the Gonzales Inquirer, a newspaper of general circulation in Gonzales County.

2.) By letter dated June 24, 2013, the Gonzales County Underground Water Conservation District contacted the Environmental Service Section of the Commission, as directed by the published notice, and requested a public hearing on the application of Marathon for a disposal well permit.

3.) On November 21, 2013 and on January 9, 2014, the Injection-Storage Permits and Support Section of the Railroad Commission of Texas notified Applicant that the publication submitted with the application could not be accepted as the well number was not included and the notice indicated injection into the Carrizo Sand instead of the Carrizo formation. Both letters were copied by Injection-Storage Permits to Gonzales County UWCD to the attention of Greg Sengelmann, P.G.

3.) On March 5, 2014, Notice of Hearing in Marathon's application for a disposal well permit was issued by Docket Services. Greg Sengelmann of the Gonzales County UWCD was on the Service List.

4.) On March 10, 2014, Greg Sengelmann, representing Gonzales County UWCD, filed his Notice of Intent to Appear at Hearing in Protest.

5.) On April 8, 2014, Mark W. Hanna and John Hicks of Scott Douglass & McConnico, LLP filed their appearance as counsel for Marathon and their Motion to Dismiss the Protest of the Gonzales County Underground Water Conservation District, based largely on the fact that the proposed Marathon disposal well was outside the boundaries of the Gonzales County UWCD.

6.) By fax dated April 10, 2014, the Gonzales County Underground Water Conservation District replied to the Motion to Dismiss, noting that "...aquifers are not restricted by county or groundwater district boundary lines and changes in aquifer conditions outside of a groundwater conservation district boundary line can affect the aquifer conditions within the groundwater conservation district."

7.) On April 10, 2014, this examiner denied Marathon's Motion to Dismiss.

8.) On April 21, 2014, Marathon filed its Appeal of the Examiner's Interim Ruling.

III. Brief Discussion

Marathon argues that the Gonzales County Underground Water Conservation District (hereinafter "GCUWCD" or "District") is "interfering" in the captioned docket, and that under Statewide Rule 9, "a protest can trigger a hearing only if it is filed by an 'affected person or local government'." This is both an exaggeration and a misrepresentation.

Appeal of Examiner's Ruling
Oil & Gas Docket No. 01-0287364

First, the GCUWCD is not "interfering" in this application, but is merely trying to be heard at the Commission as an affected party. Second, Statewide Rule 9 is not so restrictive as Marathon indicates. Statewide Rule 9(5)(C) states:

> If, in connection with a particular application, the commission or its delegate determines that another class of persons should receive notice of the application, the commission or its delegate may require the applicant to mail or deliver a copy of the application to members of that class. Such classes of persons could include adjacent surface owners or underground water districts.

The Commission has copied the GCUWCD on its correspondence with Applicant Marathon since the District first responded to the published Notice of Application. It is apparent that a Commission delegate in the Injection-Storage Permits and Support Section considered the District to be an affected party. This is not unexpected because, as seen above, Statewide Rule 9 specifically contemplates notice to underground water districts. It defies logic to contend that such a noticed party would not have the right to respond to notice and enter a protest to a Notice of Hearing. When such a protest is entered, Statewide Rule 9(5)(E)(ii) states:

> For purposes of this section, "affected person" means a person who has suffered or will suffer actual injury or economic damage other than as a member of the general public...."

If Marathon wishes to argue over whether or not the GCUWCD is an affected party, it should make those arguments at an actual hearing, rather than try to have a sub-rosa hearing in the guise of a Motion to Dismiss. A determination of the "affected" status of the GCUWCD, that is, the extent to which it may or may not suffer actual injury or economic damage, depends on the presentation of numerous facts not in evidence at this time. For example, Marathon seeks to dispose into the Carrizo formation, which the District identifies as "...the principal water-bearing formation in the District..." Marathon has yet to show the existence of impermeable strata above and below the injection interval that will confine the injected fluids. If such impermeable strata do not exist, the case that the GCUWCD is an affected party becomes stronger. In its Motion to Dismiss, Marathon asserts that the injected fluids will not travel any great distance, but the assumptions behind that calculation have not been challenged or examined in the context of a hearing.

Marathon argues that the proposed well location is four miles outside the boundaries of the District. However, Marathon's Motion to Dismiss contains the GCUWCD Management Plan, which states on Page 2, in Paragraph 3.4, that the District expanded its boundaries by local election and the passage of Senate Bill 1225 in 2011. Given the increasing water needs of the State of Texas, it is not unlikely that the District may again expand its boundaries and take in the area under consideration.

Marathon also argues that the District is somehow challenging the Commission's jurisdiction and authority to regulate wells disposing of oil and gas waste. Quite the opposite. The GCUWCD is submitting to the Commission's jurisdiction by engaging in the hearing process, knowing full well that the Commission will enter a Final Order disposing of any issues.

Marathon has gone to great lengths in its Motion to Dismiss and subsequent Appeal of the Examiner's Interim Ruling to present evidence outside of hearing to obtain a favorable ruling that would allow it to avoid the scrutiny of a protestant, the examiners and the Commissioners. This examiner concludes that there are issues in this docket that should be explored and fully argued through the hearings process. Additionally, there are policy issues regarding disposal of oil and gas wastes into major aquifers of the State that the Commissioners may wish to address upon review of the Proposal for Decision that results from the hearings process. Consequently, this examiner recommends that the Appeal be DENIED.

IV. Relevant Documents

1.) June 24, 2013 letter from the Gonzales County Underground Water Conservation District requesting a public hearing on the application of Marathon for a disposal well permit.

2.) November 21, 2013 and January 9, 2014 notification of Marathon by the Injection-Storage Permits and Support Section of deficiencies in the Marathon application, copying the GCUWCD.

3.) March 5, 2014 Notice of Hearing in Oil & Gas Docket No. 01-0287364, the Application of Marathon.

4.) March 10, 2014 Notice of Intent to Appear in Protest in the subject docket by GCUWCD.

5.) April 8, 2014 appearance of Mark W. Hanna and John Hicks as counsel for Marathon, containing their Motion to Dismiss.

6.) April 10, 2014 Reply of the GCUWCD to the Motion to Dismiss.

7.) April 10, 2014 denial of Marathon's Motion to Dismiss.

8.) Marathon's April 21, 2014 Appeal of Examiner's Interim Ruling.

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