

DECISION SHEET
OF THE OIL & GAS APPELLATE REFEREE

FILED
SEP 30 2016

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

APPLICANT: EAGLE EXPLORATION)
PRODUCTION, LLC)

RELIEF REQUESTED: DISPOSAL WELL REITZ #1)

CAUSE PD NO.
201600074-T

LEGAL DESCRIPTION: SURFACE LOCATION: NW/4)
NE/4 NE/4 NE/4; BOTTOM)
HOLE LOCATION: SE/4 SE/4)
NW/4 NE/4 OF SECTION 10,)
TOWNSHIP 27 NORTH, RANGE)
11 WEST, ALFALFA COUNTY,)
OKLAHOMA)

APPLICANT: EAGLE EXPLORATION)
PRODUCTION, LLC)

RELIEF REQUESTED: DISPOSAL WELL REITZ #2)

CAUSE PD NO.
201600075-T

LEGAL DESCRIPTION: SURFACE LOCATION: NW/4)
NE/4 NE/4 NE/4 OF SECTION)
10, TOWNSHIP 27 NORTH,)
RANGE 11 WEST; BOTTOM)
HOLE LOCATION: NW/4 SE/4)
NE/4 SE/4 OF SECTION 3,)
TOWNSHIP 27 NORTH, RANGE)
11 WEST, ALFALFA COUNTY,)
OKLAHOMA)

ORAL APPEAL OF THE ADMINISTRATIVE LAW JUDGE'S
RULING ON A MOTION TO CHANGE VENUE

Curtis Johnson, Deputy Administrative Law Judge, for the Oklahoma Corporation Commission, pursuant to proper notice, heard on the 8th day of September, 2016, the Motions to Change Venue in the Commission's Courtroom, Kerr Building, Tulsa, Oklahoma.

APPEARANCES: **Michael D. Stack**, attorney, appeared for applicant, Eagle Exploration Production, LLC ("Eagle"); **Emily P. Smith**, attorney, appeared for Regina K. Kimbrel, Robert L. Glynn and The Robert V. Glynn and E. Lucille Glynn Revocable Living Trust, Robert V. Glynn, Trustee (collectively "Glynns"); **Richard Books**, attorney, appeared for Chesapeake Operating, LLC and Chesapeake Exploration, LLC ("Chesapeake"); **John R. Reeves**, attorney, appeared for SandRidge Exploration and Production, LLC ("SandRidge"); and **Jim Hamilton**, Assistant General Counsel for the Conservation Division, filed notice of appearance.

The Oral Arguments on the Oral Appeal were referred to Patricia D. MacGuigan, Oil and Gas Appellate Referee ("Referee"), on the 26th day of September, 2016. After considering the arguments of counsel and the record contained within these causes, the Referee finds as follows:

ORAL REPORT OF THE ALJ

1) **ALJ Johnson** stated that the Glynns are owners of surface and minerals in Sections 3 and 10 but not where the SWD Reitz #1 and #2 wells are located.

2) Both of these applications seek non-commercial disposal wells pursuant to OCC-OAC 165:10-5-5(c)(1). Pursuant to OCC-OAC 165:10-5-5-(c)(1), notice of these applications is required to be provided to surface owners where the well is located or to offsetting operators. Therefore, the Glynns as surface owners of land in the general area and mineral owners are not even required to be given notice of these applications.

3) 17 O.S. Section 40.1(B)(3) provides in pertinent part that an application protested by a respondent mineral owner or surface owner having standing to protest by statute or by rule of the Commission, may change venue if it would not be convenient for such respondent mineral or surface owner. The Commission rule does not require the Glynns to even be provided notice of this application. The ALJ therefore assumes that the Glynns do not have standing to protest the application.

4) As support for this conclusion, the ALJ offers *Estate of Doan, Matter of*, 727 P.2d 574 (Okl. 1986) where the court stated: "Standing determines whether a person is the proper party to request adjudication of a certain issue

and does not decide the issue itself. The key element is whether the party whose standing is challenged has sufficient interest or stake in the outcome."

5) Whether a party's interest was sufficiently affected by a Commission application was addressed in *State ex rel. Corporation Commission v. Texas County Irrigation and Water Resources Association, Inc.*, 818 P.2d 449 (Okla. 1991) which dealt with applications for approval of injection enhanced recovery fluids into an oil and gas reservoir. In this case, there was no requirement to provide notice to owners of fresh water rights in the Ogallala Aquifer because the Court determined that, "While we agree with this characterization of the state's police power, we are not unmindful that such police power must always be applied with the greatest practical regard for individual rights. We do not detract from the existing rules as to who is entitled to notice, but we decline to extend that entitlement to persons whose interests are not substantially affected by the order applied for." In this cause the injection wells were actually penetrating the Ogallala Aquifer and any injection fluid which escaped had the potential to invade the aquifer, yet the Court determined that the interests were not sufficiently affected to require notice be provided to the owner.

6) Likewise, the ALJ determined the Court would even be less inclined to arrive at the conclusion that the Glynns had sufficient interest at stake in the outcome of a hearing where the injection well would not even be located on their property or that the Commission rules even required that the Glynns be provided with notice. Thus, the ALJ must conclude that the Glynns did not have standing to protest said applications. 17 O.S. Section 40.1 does not support the Motion to Change Venue to Oklahoma City.

7) As a second basis for denying the Glynns' Motion to Change Venue, the ALJ concludes the Glynns would not be inconvenienced by having a hearing in the Commission Tulsa office. First, the Glynns' attorney, Ms. Smith, could not even verify if the Glynns would even attend the hearing. Second, Eagle argued that Tulsa is only 14 miles further from the Glynns' home. Third, Eagle offered to pay the Glynns' hotel bill in the event they attended the Tulsa hearing.

8) The only reason given by the Glynns' Motion to Change Venue of these applications was the Glynns had relatives living in Piedmont, Oklahoma, that they could visit in the event the case was moved to Oklahoma City for the hearing. Based upon these arguments, the ALJ must conclude the Glynns would not be inconvenienced by having the hearing in the Tulsa office.

DECISION OF THE OIL & GAS APPELLATE REFEREE

1) The Glynns appeal/take exceptions to the Oral Report of the ALJ given in Glynns' motions to change venue in Cause PD 201600074-T and Cause PD 201600075-T concerning the ALJ's finding regarding standing. The Glynns are asserting that the ALJ erred in his decision that the Glynns do not have standing to protest the present causes and therefore do not have standing to request a change of venue in the present causes.

2) The Glynns own surface and mineral rights in both Sections 3 and 10 where Eagle is requesting permission to turn previous Arbuckle disposal wells into disposal wells in the Mississippian common source of supply. The Mississippian common source of supply in which Eagle is seeking to inject saltwater in the Reitz #1 and Reitz #2 disposal wells is the common source of supply in the wells where the Glynns own and are receiving royalty interest payments.

3) The Referee agrees with the Glynns that the ALJ erred in stating that because the Glynns were not parties required to be noticed under OCC-OAC 165:10-5-5(c)(1), they therefore do not have standing to protest the applications and further do not have standing to request a change of venue under 17 O.S. Section 40.1.

4) 17 O.S. Section 40.1(B)(3)(a) provides:

3. All hearings on any application including but not limited to appellate hearing shall be held in the regional service office where the application is filed unless:

a. in the case of an application protested by a respondent mineral owner, or surface owner having standing to protest by statute or by Rule of the Corporation Commission, holding the hearing in the regional service office would not be at the convenience of such respondent mineral owner, or surface owner, or...

5) The fact that the Glynns in the present causes were not required to receive personal notice under the Commission rules does not mean that they do not have standing to protest. OCC-OAC 165:5-1-3 Definitions states:

"Respondent" means a named person against whom relief is sought in a proceeding, or a person who is entitled to receive a notice of hearing as set forth in 165:5-7-1(m), or who appears in opposition to relief sought by the applicant and includes the term "defendant".

The Glynnns are appearing in opposition to the relief sought by Eagle and are therefore included under the definition of "respondent".

6) The ALJ, concerning his analysis on notice and standing, cited the case of *Estate of Doan, Matter of*, 727 P.2d 574 (Okl. 1986). In this probate matter the Supreme Court held:

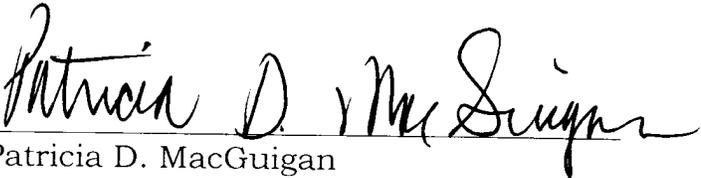
Standing determines whether the person is the proper party to request adjudication of a certain issue and does not decide the issue itself. The key element is whether the party whose standing is challenged as sufficient interest or stake in the outcome.

7) The ALJ also cited the case of *State ex rel. Corp. Com'n v. Texas County Irr. and Water Resources Assn. Inc.*, 818 P.2d 449 (Okl. 1991). In the *Texas County* case the Supreme Court was defining "sufficient interest" only in the aspect of whether owners of water interest within the Ogalla basin were entitled to personal notice of enhanced recovery injection wells as constitutional due process. The Supreme Court held that the lack of personal notice was not a violation of due process and further that their interest did not require personal notice to be given as their "interests are not substantially affected by the order applied for it." *Supra*, at 453. The Supreme Court did not, however, address whether these parties had standing to protest. The Supreme Court only addressed that personal notice was not extended to them. The Supreme Court applied the "substantial affect" standard noted in the above cited *Texas County* case only in regards to notice, and the Glynnns in the present matter are not claiming any personal notice rights. They are protesting the matter as owners of property rights in both Sections 3 and 10, who not only have a vested interest in the mineral and surface of both sections but also receive income from producing wells in both sections from the Mississippian common source of supply, which produces from the same common source of supply as the subject Eagle applications. Thus, the Glynnns have a substantial and sufficient interest to be substantially affected by the Eagle's proposed Reitz #1 and Reitz #2 disposal wells into the Mississippian common source of supply. The requested injection wells by Eagle have the capacity to decrease or wipe out not only a source of income for the Glynnns, but the long term lease and sale value of their property. The Glynnns' interest could be adversely affected by the

Eagle's proposed disposal wells and finding that they did not have standing to protest these wells would be a violation of procedural due process.

8) The Referee would therefore recommend that the finding by the ALJ that the Glynns "did not have standing to protest said application" should be reversed.

RESPECTFULLY SUBMITTED THIS 30th day of September, 2016.



Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony
Commissioner Murphy
Commissioner Hiett
James L. Myles
Michael D. Stack
Emily P. Smith
Richard Books
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Michael L. Decker, OAP Director
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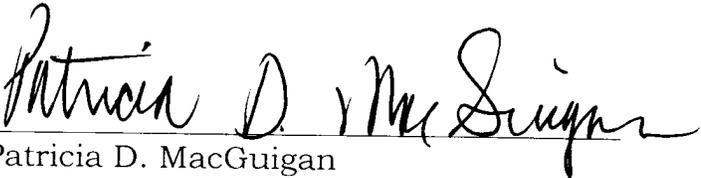
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