

D-1-GN-14-004628

CAUSE NO. _____

JERRY PATTERSON, COMMISSIONER, TEXAS GENERAL LAND OFFICE,	§	
	§	IN THE <u>53rd</u> DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	OF
	§	
CITY OF DENTON, TEXAS,	§	
	§	
Defendant.	§	TRAVIS COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION
AND APPLICATION FOR PERMANENT INJUNCTION**

COMES NOW the State of Texas, by and through the Texas General Land Office, by and through its counsel of record, and files this Plaintiff's Original Petition and Application for Permanent Injunction, and would respectfully show the Court the following:

I. PARTIES

1.1 Plaintiff is Jerry Patterson, the Commissioner for the Texas General Land Office (hereinafter "GLO"). Commissioner Patterson and the GLO have the sacred and solemn responsibility to the school children of Texas to manage oil and gas leases for state-owned mineral interests and state-owned lands within the City of Denton, including free royalty lands dedicated to the funding of our public schools, lands owned by the Texas Department of Aging and Disability Services, and Texas highway right-of-way lands. GLO is not required to pay a bond in relation to this suit. TEX. CIV. PRAC. & REM. CODE ANN. § 6.001(b)(1), (2) (West 2002).

1.2 Defendant is the City of Denton (hereinafter "Denton"), a municipality and political subdivision of the State of Texas.

1.3 Service of Process may be accomplished by serving the mayor, Chris Watts, or the city secretary, Jennifer Walters, at 215 E. McKinney Street, Denton, TX 76201.

II. JURISDICTION AND VENUE

2.1 The Court has jurisdiction over this case pursuant to the Uniform Declaratory Judgment Act. TEX. CIV. PRAC. & REM. CODE ANN. § 37.004(a) (West 2008).

2.2 Venue properly lies in Travis County in this suit by a state agency domiciled in Travis County seeking declaratory relief to challenge a municipal ordinance or action on constitutional and other grounds that impairs the management of state assets by the state agency.

III. DISCOVERY LEVEL

3.1 The GLO intends to conduct discovery under Level 3 of TEX. R. CIV. P. 190.4 and affirmatively pleads this suit is not governed by the expedited actions process in Rule 169 of the Texas Rules of Civil Procedure.

IV. LEGAL AND FACTUAL BACKGROUND

4.1 The Texas Constitution of 1876 set aside half of Texas' remaining public lands to establish a Permanent School Fund ("PSF"), to help finance public schools. The Texas Constitution intended for this land to be managed or sold and the proceeds to be deposited into the PSF. Deposits to the PSF would be an inexhaustible source of revenue because only interest income from the fund could be spent and would be apportioned among the state's public schools for the benefit of all school children of Texas.

4.2 Commissioner Patterson and the GLO are responsible for managing these lands, including sales, trades, leases and improvements, as well as administration of contracts, mineral royalty rates, and other transactions. These lands generate funds primarily through oil and gas revenues.

4.3 Commissioner Patterson and the GLO are constitutionally charged with the solemn fiduciary obligation to maximize revenues from leasing public school lands. *See Coastal*

Oil and Gas Corp. v. Garza Energy Trust, 268 S.W.3d 1, 34 (Tex. 2008); *Rutherford Oil Corp. v. General Land Office of State of Tex.*, 776 S.W.2d 232, 235 (Tex. App.–Austin 1989, no writ).

4.4 The interest earned on the PSF investments is distributed by the State Board of Education to every school district in Texas on a per-pupil basis and, as such, this action affects every school child in Texas. Since only interest income may be spent, the principal amount of the PSF remains intact and will continue to benefit the public school children of Texas. GLO involvement in the PSF is managed by the School Land Board.

4.5 Commissioner Patterson and the GLO are also charged by Chapter 32 of the Texas Natural Resources Code with the authority to lease mineral rights owned by the State of Texas.

4.6 Within the City of Denton, GLO is the lessor of oil and gas interests and a party to oil and gas leases for the mineral rights for state-owned property, including the Permanent School Fund with respect to free royalty lands and as an agent for the Texas Department of Aging and Disability Services and the Texas Department of Transportation for their state-owned tracts of land (hereinafter “GLO lands”).

4.7 GLO leases state-owned mineral interests within the City of Denton in order to raise money for the State of Texas and Texas school children particularly.

4.8 GLO currently has active leases within the City of Denton.

4.9 On November 4, 2014, Denton voters approved a proposition authorizing enactment of an ordinance amending Chapter 16, Licenses, Permits, and Business Regulation of the Code of Ordinances of the City of Denton, Texas, by adding new Article VII, Prohibition of Hydraulic Fracturing, prohibiting hydraulic fracturing within the corporate limits of the City of Denton, Texas (“Prohibition”). Hydraulic fracturing is defined in the ordinance as the process of

directing pressurized fluids containing any combination of water, proppant, and any added chemicals to penetrate tight formations, such as shale or coal formation, that subsequently require high rate, extended flowback to expel fracture and solids during completions. The Prohibition has been adopted as a result of the approval of the proposition.

4.10 The Prohibition purports to make hydraulic fracturing undertaken on GLO lands unlawful and, as a consequence, would cost the PSF and other state entities millions of dollars in lost revenues. The Prohibition against hydraulic fracturing will completely destroy the value of the school kids' minerals.

4.11 The Railroad Commission of Texas has jurisdiction over all oil and gas wells in Texas and over persons owning or engaged in drilling or operating oil or gas wells in Texas. TEX. NAT. RES. CODE ANN. § 81.051(a) (West 2011). The Railroad Commission of Texas is solely responsible for the prevention of pollution of surface and subsurface water resulting from activities associated with the exploration, development, and production of oil or gas. TEX. WATER CODE ANN. § 26.131(a) (West 2008).

4.12 No home-rule ordinance shall contain any provision inconsistent with the general laws enacted by the Legislature of this State. TEX. CONST. art. XI § 5.

V. CAUSES OF ACTION

Cause of Action One: Declaratory Relief – The Prohibition Is Inapplicable to Lands and Mineral Interests Owned by the State of Texas

5.1 Plaintiff requests declaratory judgment that the Prohibition is inapplicable to and may not be enforced against lands or mineral interests owned by the State of Texas, including lands or mineral interests owned by the State of Texas for which GLO is the lessor, and that the GLO, its lessees, operators, and assigns may fully, and without restriction, lease, operate and manage the State's minerals on and with respect to state-owned lands and mineral interests

within the corporate limits of the City of Denton.

Cause of Action Two: Declaratory Relief – The Prohibition Is Preempted by State Law

5.2 Plaintiff requests declaratory judgment that the Prohibition is an unlawful ordinance and preempted because it is inconsistent with the general laws of this State, specifically the Legislature's grant of jurisdiction over oil and gas wells in Texas to the Railroad Commission of Texas, and also conflicts with state law by allowing a municipality to preempt Commissioner Patterson and the GLO's management of the State's mineral interests.

Cause of Action Three: Declaratory Relief – The Prohibition Is Arbitrary, Capricious and Unreasonable

5.3 Plaintiff requests declaratory judgment that the Prohibition is invalid because it is arbitrary, capricious and unreasonable in violation of statutory and constitutional provisions, including violation of Article I, Section 16 of the Texas Constitution as it impairs Commissioner Patterson and the GLO's right to manage and operate the State's mineral interests in Denton County, Texas.

VI. INJUNCTIVE RELIEF

6.1 The Prohibition will affect Plaintiff's existing oil and gas leases, which provide much needed revenues to the PSF and to other state entities. Unless restrained, GLO lands will be subject to enforcement of the Prohibition by the City of Denton, at great cost to the State of Texas. There is no adequate remedy at law.

6.2 GLO requests that upon trial, permanent injunctive relief be granted against the City of Denton and its agents and employees, to ensure that the Prohibition is not enforced against any state-owned lands, including GLO lands.

VII. ATTORNEY'S FEES AND COSTS

7.1 Commissioner Patterson, on behalf of the GLO, seeks to recover its reasonable

and necessary attorney's fees and costs pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff Commissioner Patterson, on behalf of the GLO, prays for the following: that Defendant be cited to appear and answer herein; that a declaratory judgment be issued against Defendant, as requested above; that the GLO receive the injunctive relief requested in this Petition; that the GLO recover its reasonable attorney's fees; and that GLO be awarded all such other and further relief, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

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