

July 2, 2009

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The Honorable Supreme Court of Texas
201 W. 14th St., Room 104
Austin, Texas 78701-1614

Re: Exxon Corporation and Exxon Texas, Inc. v. Emerald Oil & Gas Company, L.C., Cause No. 05-0729

To the Honorable Members of the Supreme Court:

As the Texas Comptroller of Public Accounts (Comptroller), I am filing this amicus letter brief in support of the Motion for Rehearing filed by Emerald Oil & Gas Company (Respondent) in the above-referenced case. I have included 12 copies of the letter for submission and for distribution to the Justices of the Court for their consideration. I have also sent a copy of this letter to all parties of record. No fee has been or will be charged for preparing this letter.

Statement of Interest

The Court's holding in the above styled cause could reduce the flow of the state's revenues, especially the portion derived from the taxes imposed on the production of oil and gas under Chapters 201 and 202 of the Texas Tax Code that are vital to the state's Economic Stabilization Fund. I respectfully request that the Court rule in favor of Respondent's Motion for Rehearing to address these statewide policy concerns and potentially avoid any unanticipated impact these decisions might have on the state's overall economic well-being.

Argument

The Importance of Accurate Railroad Commission Records

The Court's interpretation of the term "waste," to include only the physical escape of oil or gas, coupled with its holding that a lessee has no standing to bring a claim under Section 85.321 of the Texas Natural Resources Code (Section 85.321) against a prior lessee who has intentionally sabotaged the wells and misrepresented the status of wells in public records eliminates an important method by which former operators can be held accountable for their actions. Accordingly, the holding may significantly diminish the number of wells that operators will attempt to reenter in the future.

Operators rely on Railroad Commission (Commission) records to make decisions and to evaluate whether they intend to reenter a well. However, because the Commission does not have the resources to ensure that every well in the state is plugged in accordance with state laws and regulations, an operator might be less than forthright in its filings with the Commission. That is why Section 85.321 was extremely important.



Section 85.321 acted as an invisible backstop to the Commission's enforcement authority in that it provided someone with an interest in property that was damaged by another party in violation of Chapter 85 of the Natural Resources Code, another state law prohibiting waste, or a Commission rule, the private right to sue and recover damages. So any undesirable behavior that might have otherwise slipped through the regulatory cracks would likely have been thwarted by the possibility of an operator utilizing this provision. The mere presence of this provision may have impacted operator behavior. The Court has decided to remove that backstop. As a result, operators now have less incentive to comply with Commission rules and regulations or even to file complete and accurate records with the Commission.

Because subsequent lessees may not be able to rely entirely on the Commission's plugging operation records when considering whether to reenter a plugged well, they could be forced to resort to other sources of information, if available, which may add cost to the operation. Alternatively, operators may refuse to attempt re-entries altogether. Such action could result in a decrease in revenues generated from taxes imposed on the production of oil and gas. That, in turn, could affect the state's overall economic health because the state's Economic Stabilization Fund or "Rainy Day Fund," as it is commonly referred to, consists primarily of oil and gas production tax revenues.

Oil and Gas Production Tax and the Impact on the Economic Stabilization Fund

Chapter 403 of the Texas Government Code requires the Comptroller, as the state's chief tax collector, accounting officer, revenue estimator and treasurer, to supervise and manage the state's fiscal concerns. The Comptroller's role as tax collector is vital to the state's economic well-being as tax revenues comprise a large percentage of the state's total revenues. The state's tax system is the primary source of General Revenue-related funding, and, according to the most recent Biennial Revenue Estimate published by this office, taxes are expected to yield \$68.5 billion during the upcoming biennium, contributing almost 90 percent of the state's total net revenues.

The state collected over \$4.1 billion in oil and gas production taxes in 2008, representing slightly more than 11 percent of the total taxes collected in that year. More important than their proportionate contribution to the total tax dollars collected is the impact these oil and gas production tax revenues have on the state's Rainy Day Fund.

Article III, §49-g of the Texas Constitution requires this office to transfer from the general revenue fund to the Rainy Day Fund certain amounts and types of revenues, consisting mostly of oil production and gas production tax revenues. As you are no doubt aware, Texas is unique among other states in the country in that it has a balance in this fund that can be appropriated by the legislature only under constitutionally specified circumstances. The Texas Legislature recently passed a budget for the state without dipping into the Rainy Day Fund and leaving in it a current balance of approximately \$6.7 billion. Given the uncertain economic times currently affecting the rest of the nation, a portion of this fund will likely be needed to help balance the budget here in Texas when legislators convene for another session in 2011.



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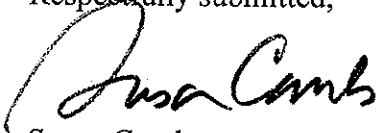
Reserve balances help plug unanticipated revenue shortfalls when state finances are tight, and they also help states save money in terms of financing costs when issuing bonds. Credit rating agencies, such as Fitch Ratings, Standard and Poor's, and Moody's, consider balances in these types of funds when evaluating states' credit quality. Generally, the higher a state's Rainy Day Fund balance and the more controls in place regarding access to that balance, the higher the state's creditworthiness. Credit ratings, in turn, are important to states because higher ratings translate into lower borrowing costs.

Maintaining a healthy balance in the state's Rainy Day Fund is critical to the state's economy. Because this fund consists primarily of oil and gas production tax revenues, a court ruling, proposed legislation, or some other type of governmental, legislative or judicial undertaking that could impact these amounts should be examined very carefully.

Conclusion

Operators need to be able to rely on Railroad Commission records. Section 85.321 helped keep operators from attempting to subvert the Commission's enforcement authority making these records more reliable than they might have otherwise been. This office is concerned that the Court's removal of this statutory backstop could diminish the amount of oil and gas production tax revenues the state will collect in the future and negatively affect the state's Rainy Day Fund. As supervisor of the state's fiscal concerns, I respectfully request the Court to rule in favor of Respondent's Motion for Rehearing.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Letter Brief of Amicus Curiae Comptroller of Public Accounts was sent to counsel of record for all parties by United States certified mail, return receipt requested, on the 2nd day of July 2009, addressed as follows:

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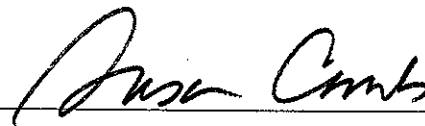
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