

TEXAS



GENERAL LAND OFFICE

JERRY PATTERSON, COMMISSIONER

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July 13, 2009

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BY \_\_\_\_\_ Deputy

JUL 13 2009

The Honorable Supreme Court of Texas  
201 W. 14<sup>th</sup> St., Room 104  
Austin, Texas 78701

Re: No. 05-0729, *Exxon Corporation v. Emerald Oil & Gas Company, L.C.*  
No. 05-1076, *Exxon Corporation v. Emerald Oil & Gas Company, L.C. and Laurie T. Miesch*

To the Honorable Members of the Supreme Court:

As Commissioner of the General Land Office of the State of Texas, I am responsible for managing 20 million acres of minerals owned by the State of Texas. Much of this acreage is dedicated to the Permanent School Fund, and royalties from these minerals are a significant source of revenue for the Permanent School Fund. During Fiscal Year 2008, the Permanent School Fund received over \$ 500 million in revenue from its mineral interests.

I am deeply concerned with the Court's rulings in these cases and their adverse effect on Texas's oil and gas industry and on royalties to the Permanent School Fund. This letter is submitted as an initial *amicus curiae* statement in support of the Motions for Rehearing filed by Respondents in the above-styled cases. The General Land Office will submit a more comprehensive brief shortly.

I believe that the Court has made serious errors in both decisions. The rulings in these cases will have both long-lasting and deleterious effects on the oil and gas industry in general, and on Permanent School Fund revenues in particular. For this reason, I urge the Court to reconsider its decisions.

Major points of concern to the General Land Office include the following:

- 1. The Court's holding that Exxon's actions did not cause waste radically changes the long-understood meaning of "waste" in Texas oil and gas law.**

"Waste" occurs whenever otherwise commercially recoverable oil and gas reserves are rendered irrevocably unrecoverable, either by dissipation on the surface or under the ground. Exxon's actions in sabotaging the wellbores caused waste because the oil that would have been recoverable through those wellbores became non-recoverable – the economics would not justify drilling new wells to reach the oil.

- 2. The Court's holding that the properties had been fully drilled and completed under the development terms of the lease overlooks the explicit and unambiguous language of the lease.**

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As with private minerals, the GLO includes special explicit provisions in its leases. It is critical that these provisions be honored. By disregarding the explicit lease provisions in this case the Court sets a dangerous precedent. The lease at issue in this case required the drilling of a well in each of the acreage blocks and the completion in each productive zone *in each well*. It is undisputed that Exxon did not honor this requirement. Exxon drilled the wells, but did not complete each of the wells in each productive zone *as required by the terms of the lease*. This is not an abstract dispute over "development." It is a question of whether the lease contract was honored.

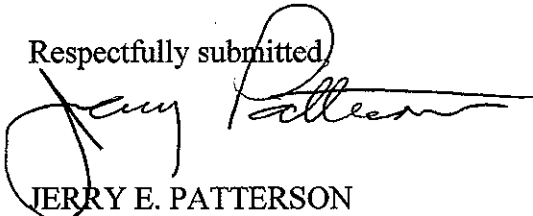
**3. The Court's holding that Emerald did not have standing to sue under Section 85.321 of the Texas Natural Resources Code creates new law and negates the express purpose of the Section 85.321.**

The Court's holding departs from common sense and disregards the realities of the oil and gas industry. The holding effectively says that Exxon is the only party that could sue Exxon for Exxon's unconscionable actions. This result defies logic. In sabotaging the properties, Exxon acted to prevent anyone else from using the wells. Exxon's actions violated the Natural Resource Code and the Railroad Commission's rules. Nothing in the language of Section 85.321 suggests that the Legislature intended the right of redress to be just an illusion.

The Court's rulings in these cases sanction the deliberate destruction of another's property. Can this be the Court's intent? I sincerely hope that this is not the case. I believe that a careful review of the Court's decisions will compel a different result. This is critical for the State of Texas.

I urge the Court to revisit its decisions in these cases and grant the Respondents' Motions for Rehearing. For the reasons noted above, I ask for your careful consideration of these cases and thank you for the opportunity to raise my concerns before this Honorable Court.

Respectfully submitted,



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Commissioner, Texas General Land Office

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