CAUSE NO. D-1-GN-14-004628

JERRY PATTERSON, COMMISSIONER, TEXAS GENERAL LAND OFFICE,	§	IN THE 53RD DISTRICT COURT
Plaintiff,	§	
vs.	§	
CITY OF DENTON,	§	
Defendant,	§	OF
and	§	
DENTON DRILLING AWARENESS GROUP and EARTHWORKS,	§	
Defendants-Intervenors.	§	TRAVIS COUNTY, TEXAS

ORIGINAL PETITION IN INTERVENTION OF DENTON DRILLING AWARENESS GROUP AND EARTHWORKS

TO THE HONORABLE JUDGE OF THIS COURT:

Pursuant to Rule 60 of the Texas Rules of Civil Procedure, Defendants-Intervenors Denton Drilling Awareness Group and Earthworks (collectively, "Intervenors") file this Original Petition in Intervention ("Intervention Petition") and respectfully show the Court as follows:

I.

PARTIES

1. Defendant-Intervenor Denton Drilling Awareness Group ("DentonDAG") is a Texas non-profit corporation with its registered office in the City of Denton, Texas. DentonDAG is dedicated to educating the public about the dangers of gas well drilling and its related processes to public health, the environment, and property values in the City of Denton. DentonDAG created the "Frack Free Denton" campaign, which supported a November 2014 ballot initiative calling on the City of Denton to enact an ordinance prohibiting hydraulic

fracturing within city limits. The ballot measure passed by a margin of almost 59% to 41%, and DentonDAG now seeks to intervene to defend the ordinance enacted by the City following passage of the initiative (the "Ordinance").

2. Defendant-Intervenor Earthworks is a national nonprofit organization dedicated to protecting communities and the environment from the adverse impacts of mineral and energy development, while promoting sustainable solutions. Earthworks fulfills its mission by forming partnerships with local affected communities, including the community in Denton, Texas, and working collectively with them to solve the growing threats presented by extractive industrial activities. Earthworks worked closely with DentonDAG in support of a prohibition on hydraulic fracturing within Denton's city limits, including collecting signatures for and educating the public about the ballot initiative calling for enactment of the Ordinance. Earthworks seeks to intervene to defend the Ordinance.

3. Plaintiff Jerry Patterson is the Commissioner of the Texas General Land Office, a state agency of Texas that manages certain state-controlled lands and mineral interests. Plaintiff asserts that it manages state-owned lands and mineral interests within the City of Denton and seeks to invalidate the Ordinance. Through its counsel, Plaintiff has entered an appearance in this Court, and no service of process is needed upon it.

4. Defendant City of Denton, Texas, is a chartered home rule municipal corporation under Article XI, Section 5, of the Texas Constitution. At approximately 3:00 A.M. on July 16, 2014, the City Council of the City of Denton voted 5-2 not to enact an ordinance prohibiting hydraulic fracturing within city limits. Following the passage of the November 2014 ballot initiative requiring enactment, the City of Denton enacted the Ordinance, which became effective

on December 2, 2014. Through its counsel, the City of Denton has entered an appearance in this Court, and no service of process is needed upon it.

II.

JURISDICTION AND INTERVENTION

5. The jurisdictional allegations in the original action confer jurisdiction over the Intervention Petition because this petition concerns the same subject matter as that in the original suit.

6. The original action and Intervenors' defense concern a dispute over the legality of the Ordinance. Plaintiff claims, and Intervenors deny, that the Ordinance: (i) is inapplicable to and may not be enforced against the lands and mineral interests owned by the State of Texas; (ii) is preempted by state law; and (iii) is arbitrary, capricious, and unreasonable in violation of state statutory and constitutional provisions, including Article I, Section 16, of the Texas Constitution.

7. On November 5, 2014, Plaintiff filed an Original Petition and Application for Permanent Injunction against the City of Denton seeking declaratory relief as to each of the three claims described in paragraph 6, above, and an injunction against the City's enforcement of the Ordinance.

8. On December 1, 2014, on or before 10:00 A.M., the City of Denton filed its Motion to Transfer Venue, Special Exceptions and Original Answer (the "Answer"). In its Answer, the City specially excepted to Plaintiff's claim that the City acted arbitrarily, capriciously, and unreasonably in violation of state statutory and constitutional law; generally denied the allegations in the Original Petition and Application for Permanent Injunction; and asserted an affirmative defense of public nuisance.

9. Intervenors file this Intervention Petition as party defendants to provide a vigorous defense of the legality and enforceability of the Ordinance. An entity has a right to intervene as a defendant where "if the action had been brought against him, he would be able to defeat recovery, or some part thereof." *Guaranty Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657 (Tex. 1990). Had the original petition been filed against Intervenors, as proponents of a prohibition on hydraulic fracturing within Denton's city limits and the sponsors of the ballot initiative that required enactment of the Ordinance, Intervenors would have been able to defeat Plaintiff's claims by establishing that the Ordinance is applicable and enforceable with respect to Plaintiff's property interests in the City of Denton and does not violate or conflict with state statutory or constitutional law.

10. Moreover, intervention as a defendant is proper if "a judgment for the plaintiff may . . . seriously prejudice the intervenor." *Evan's World Travel, Inc. v. Adams*, 978 S.W.2d 225, 234-35 (Tex. App.—Texarkana 1998, no pet.). Intervenors expended extensive time and resources to secure passage of the Ordinance that Plaintiff now seeks to nullify. Intervenors identified the need for a prohibition on hydraulic fracturing within Denton's boundaries to prevent harms to the health, environment, and property of citizens within the community; participated in the drafting of the Ordinance; educated the citizens of Denton about the need for the Ordinance; educated the citizens of Denton about the need for the ballot initiative following the City Council's refusal on July 16 to enact the Ordinance; collected signatures sufficient to get the Ordinance on the November 4, 2014, ballot; and then tirelessly advocated for its passage. Because of the close, continuous, and integral role that Intervenors played in the sponsorship of the initiative and passage of the Ordinance, Intervenors would be seriously prejudiced by a judgment for Plaintiff. *Cf. Blum v. Lanier*, 997 S.W.2d 259, 262 (Tex. 1999) (recognizing that

initiative sponsors and signers have a justiciable interest in the valid execution of a charter amendment election that is distinct from that of the public at large); Tex. Civ. Prac. & Rem. Code § 37.006(a) ("When declaratory relief is sought, all persons who have or claim any interest that would be affected by the declaration must be made parties.").

III.

DEFENSES TO CAUSES OF ACTION

11. Intervenors adopt and incorporate by reference the Answer of the City of Denton and hereby assert the special exceptions, general denial, and affirmative defenses contained therein as if set forth in this Intervention Petition in their entirety. Intervenors also support the City of Denton's motion to transfer venue.

IV.

PRAYER FOR RELIEF

Intervenors request the following relief:

(a) That this Court grant the City's motion to transfer venue and that this action be transferred to Denton County, Texas;

(b) That this Court declare that the Ordinance is valid and fully enforceable by the City of Denton, including against any and all lands or mineral interests owned by the State of Texas within Denton's city limits;

(c) That this Court declare that the Ordinance is not inconsistent with any state law, rules, or regulations, that enforcement of the Ordinance does not conflict with the duties or jurisdiction of the Railroad Commission of Texas or the General Land Office, and that the Ordinance therefore is lawful and not preempted by state law;

(d) That this Court declare that the City of Denton's enactment of the Ordinance was not arbitrary, capricious, unreasonable, or in violation of state statutory or constitutional provisions, including Article I, Section 16, of the Texas Constitution;

(e) That this Court award attorneys' fees and costs to Intervenors; and

(f) That this Court grant Intervenors such other and further relief, both general and special, at law and in equity, to which they may be justly entitled.

Respectfully submitted,

/s/ Robert F. Brown

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ATTORNEYS FOR DEFENDANTS-INTERVENORS DENTON DRILLING AWARENESS GROUP AND EARTHWORKS

* Admitted in New York (NY State Bar. No. 2108959); not yet admitted in Texas. The Texas Board of Law Examiners acknowledged receipt of Ms. Goldberg's *pro hac vice* admission application on December 2, 2014.
** Admitted in Illinois (IL State Bar No. 6306784) and New York (NY State Bar No. 5174164); not yet admitted in Texas. Mr. Raichel's *pro hac vice* admission application and fee were sent to the Texas Board of Law Examiners on December 1, 2014.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following attorneys via the method indicated below, pursuant to Rule 21a of the Texas Rules of Civil Procedure, on this the 4th day of December, 2014.

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/s/ Robert F. Brown
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CIVIL CASE INFORMATION SHEET

MAY ENTER CAUSE # / COURT # IF ALREADY ASSIGNED (E.G., FAMILY MOTION, AMENDED PETITION)

CAUSE NUMBER *(FOR CLERK USE ONLY)*: D-1-GN-14-004628 COURT *(FOR CLERK USE ONLY)*: 53rd District Court

STYLED Jerry Patterson, Commissioner, Texas General Land Office, Plaintiff v. City of Denton, Defendant, and Denton Drilling Awareness Group and Earthworks, Defendants-Intervenors

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing. This sheet, approved by the Texas Judicial Council, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

1. Contact information for person completing case information sheet:

Name: Robert F. Brown
Email: rbrown@bhlaw.net
Address: 740 E. Campbell Rd., Suite 800
Telephone: 214-747-6100
City/State/Zip: Richardson, TX 75081
Fax: 214-747-6111
Signature: Robert F. Brown
State Bar No: 031647725

Names of parties in case:

Plaintiff(s)/Petitioner(s):
Jerry Patterson, Commissioner,
Texas General Land Office

Defendant(s)/Respondent(s):
City of Denton
Defendants-Intervenors:
Denton Drilling Awareness Group and Earthworks

[Attach additional page as necessary to list all parties]

Person or entity completing sheet is:

- ☐ Attorney for Plaintiff/Petitioner
- ☐ *Pro Se* Plaintiff/Petitioner
- ☐ Title IV-D Agency
- ☒ Other: Defendants-Intervenors

Additional Parties in Child Support Case:

Custodial Parent:

Non-Custodial Parent:

Presumed Father:

2. Indicate case type, or identify the most important issue in the case *(select only 1)*:

OPTION A: CK CASE TYPE (EXCEPT OTHER) FOR CLERK TO SELECT SUIT TYPE; SEE SEC. 3 NOTE BELOW

Civil

Contract

Debt/Contract
- ☐ Consumer/DTPA
- ☐ Debt/Contract
- ☐ Fraud/Misrepresentation
- ☐ Other Debt/Contract:

Foreclosure
- ☐ Home Equity—Expedited
- ☐ Other Foreclosure
- ☐ Franchise
- ☐ Insurance
- ☐ Landlord/Tenant
- ☐ Non-Competition
- ☐ Partnership
- ☐ Other Contract:

OPTION B: CK OTHER & ENTER 3-LETTER SUIT TYPE FOR CLERK TO USE WHEN DOCKETING

Injury or Damage
- ☐ Assault/Battery
- ☐ Construction
- ☐ Defamation

Malpractice
- ☐ Accounting
- ☐ Legal
- ☐ Medical
- ☐ Other Professional Liability:
- ☐ Motor Vehicle Accident
- ☐ Premises

Product Liability
- ☐ Asbestos/Silica
- ☐ Other Product Liability List Product:
- ☐ Other Injury or Damage:

Real Property
- ☐ Eminent Domain/ Condemnation
- ☐ Partition
- ☐ Quiet Title
- ☐ Trespass to Try Title
- ☐ Other Property:

Related to Criminal Matters
- ☐ Expunction
- ☐ Judgment Nisi
- ☐ Non-Disclosure
- ☐ Seizure/Forfeiture
- ☐ Writ of Habeas Corpus—Pre-indictment
- ☐ Other:

Employment
- ☐ Discrimination
- ☐ Retaliation
- ☐ Termination
- ☐ Workers' Compensation
- ☐ Other Employment:

Other Civil
- ☐ Administrative Appeal
- ☐ Antitrust/Unfair Competition
- ☐ Code Violations
- ☐ Foreign Judgment
- ☐ Intellectual Property
- ☐ Lawyer Discipline
- ☐ Perpetuate Testimony
- ☐ Securities/Stock
- ☐ Tortious Interference
- ☐ Other:

Tax
- ☐ Tax Appraisal
- ☐ Tax Delinquency
- ☐ Other Tax

Family Law

Marriage Relationship
- ☐ Annulment
- ☐ Declare Marriage Void

Divorce
- ☐ With Children
- ☐ No Children

Post-judgment Actions (non-Title IV-D)
- ☐ Enforcement
- ☐ Modification—Custody
- ☐ Modification—Other

Title IV-D
- ☐ Enforcement/Modification
- ☐ Paternity
- ☐ Reciprocals (UIFSA)
- ☐ Support Order

Other Family Law
- ☐ Enforce Foreign Judgment
- ☐ Habeas Corpus
- ☐ Name Change
- ☐ Protective Order
- ☐ Removal of Disabilities of Minority
- ☐ Other:

Parent-Child Relationship
- ☐ Adoption/Adoption with Termination
- ☐ Child Protection
- ☐ Child Support
- ☐ Custody or Visitation
- ☐ Gestational Parenting
- ☐ Grandparent Access
- ☐ Parentage/Paternity
- ☐ Termination of Parental Rights
- ☐ Other Parent-Child:

Probate & Mental Health

Probate/Wills/Intestate Administration
- ☐ Dependent Administration
- ☐ Independent Administration
- ☐ Other Estate Proceedings
- ☐ Guardianship—Adult
- ☐ Guardianship—Minor
- ☐ Mental Health
- ☐ Other:

3. Indicate procedure or remedy, if applicable *(may select more than 1)*:
- ☐ Appeal from Municipal or Justice Court
- ☐ Arbitration-related
- ☐ Attachment
- ☐ **Bill of Review**
- ☐ Certiorari
- ☐ **Class Action**
- ☒ **Declaratory Judgment**
- ☐ **Garnishment**
- ☒ **Interpleader**
- ☐ **License**
- ☐ **Mandamus**
- ☐ Post-judgment
- ☐ Prejudgment Remedy
- ☐ **Protective Order**
- ☐ **Receiver**
- ☐ **Sequestration**
- ☐ Temporary Restraining Order/**Injunction**
- ☐ Turnover

OPTION C: SECTION 3 PROCEDURES/REMEDIES IN BOLD MAY BE USED AS CASE OR SUIT TYPES. YOU MAY SPECIFY THAT ONE OF THESE PROCEDURES/REMEDIES BE USED AS A SUIT TYPE BY CHECKING IT AND LEAVING THE CASE TYPE IN SECTION 2 BLANK. SELECTING A CASE TYPE IN SECTION 2 OVERRIDES ANY SELECTION IN SECTION 3.