

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

RANGE PRODUCTION COMPANY,
Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, and LISA PEREZ
JACKSON, ADMINISTRATOR, UNITED
STATES ENVIRONMENTAL
PROTECTION AGENCY,
Defendants.

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Civil Action No. A-11-CA-011-LY
(Consolidated with A-11-CA-019-
LY)

**PLAINTIFF RANGE PRODUCTION COMPANY'S
RESPONSE TO DEFENDANTS' NOTICE OF FILING OF SECOND SUPPLEMENTAL
APPENDIX TO RESPONSE IN OPPOSITION TO ADDITIONAL DISCOVERY**

TO THE HONORABLE LEE YEAKEL, UNITED STATES DISTRICT JUDGE:

Earlier today, the U.S. Environmental Protection Agency and EPA Administrator Lisa Perez Jackson, Defendants (collectively, "*EPA*"), filed a pleading entitled Notice of Filing of Second Supplemental Appendix to Response in Opposition to Additional Discovery. EPA offers a quote from the Closing Statement submitted by the staff of the Railroad Commission of Texas ("*RCT*") and some additional argument in support EPA's oft-stated position that Range just does not need any further evidence to make its case before its primary regulator, the RCT. The EPA is wrong. And the Court was right when it said:

[I]f the EPA has evidence or has information that would aid either Range or the Railroad Commission in the matter pending before the Railroad Commission or have evidence that would provide a more fully developed record of what occurred and is occurring with Range's well bores and that information is non-privileged, I don't know why the EPA would not produce it to the Railroad Commission. And why, as a matter of discovery, the Railroad Commission and Range should not

have that -- everything that is available from any source before the Railroad Commission in order that the Railroad Commission can render a rational and reasoned decision.

Transcript of February 3, 2011 Hearing.

Range continues to believe that all available evidence should be before the RCT before it issues a ruling that could involve substantial fines and the shutting in of two productive and environmentally-responsible wells. A record can never be sufficient when highly probative, non-cumulative, readily-available evidence is missing. As long as EPA continues to withhold evidence, its integrity and the integrity of the record before the RCT remains compromised.

Just what is the EPA going to such great lengths to hide? As the EPA dribbles out relevant information pursuant to Range's Freedom of Information Act request, Range is gaining greater insight as to EPA's true motives in this matter. Less than thirty minutes after Region 6 staff provided a "courtesy" notification by voice message to Range of the impending issuance of the EPA order, Dr. Armendariz, Regional Administrator for EPA Region 6, boasted to "friends" Ramon Alvarez (Environmental Defense Fund), Tom "Smitty" Smith (Public Citizen), Jim Shermbeck (Downwinders at Risk), Jeremy Nichols (WildEarth Guardians), TXSharon (Earthworks – Texas Oil & Gas Accountability Project), and Kelly Haragan (UT Environmental Law Clinic) that EPA was "[a]bout to make a lot of news" with its order. E-mail Correspondence dated December 7, 2010, attached as Exhibit 1 hereto. Further, Dr. Armendariz thanked this group for "helping to educate" him and encouraged the group to seek information from EPA employee David Gray. *Id.* EPA should not be allowed to shield information and evidence from the RCT and Range while it shares information with its non-governmental allies.

WHEREFORE, PREMISES CONSIDERED, Range prays that its Motion for Limited Additional Discovery be in all things granted, that Defendants' Cross-Motion for Protective Order Limiting Use of Discovery be in all things denied, and that Range be granted such other and further relief to which it may show itself justly entitled. Range further prays that this Court order Defendants to produce the following on a date certain specified by the Court: 1) all non-privileged documents related to the EPA investigation that resulted in the December 7 Order (not previously produced), and 2) a privilege log for all documents withheld on the basis of a claimed privilege. Range further prays that this Court order Chris Lister and Jerry Saunders to be deposed for no more than three (3) hours each on a date certain specified by the Court in the deponents' Dallas offices.

Respectfully submitted,

David P. Poole, General Counsel
State Bar No. 16123750
Range Production Company
100 Throckmorton St., Ste. 1200
Fort Worth, TX 76102
Tel 817.869.4254

HARRIS FINLEY & BOGLE, P.C.
Andrew D. Sims
State Bar No. 18415600
777 Main Street, Suite 3600
Fort Worth, TX 76102
Tel 817.870.8704; Fax 817.333.1186

KELLY HART & HALLMAN LLP
301 Congress Avenue, Suite 2000
Austin, TX 78701
Tel 512.495.6400; Fax 512.495.6401

BY: /s/ J. Stephen Ravel
J. Stephen Ravel
State Bar No. 16584975
Diana L. Nichols
State Bar No. 00784682

JACKSON, SJOBERG, MCCARTHY & WILSON, LLP
David E. Jackson
State Bar No. 10458500
711 W. 7th Street
Austin TX 78701
Tel 512.472.7600; Fax 512.225-5565

**ATTORNEYS FOR RANGE PRODUCTION
COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the forgoing document, was served as indicated below on this the 10th day of February 2011, as follows:

E-Mail: henson.tucker@epamail.epa.gov

Tucker Henson
U.S. EPA Region VI
Office of Regional Counsel (6RC-EW)
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

E-Mail: dbarrett@toase.com

Dan Barrett, Bryn Meredith, David Ritter
Taylor, Olson, Adkins, Sralla & Elam,
L.L.P.
6000 Western Place, Suite 200
Fort Worth, TX 76107
Attorney for Mr. Steven Lipsky

E-Mail: brian.lynk@usdoj.gov

ECF System
Brian H. Lynk
Trial Attorney
Environmental Defense Section
U.S. Department of Justice
601 D Street, NW
Washington, DC 20004

E-Mail: astewart@allenstewart.com

Allen M. Stewart
Allen Stewart, P.C.
325 N. St. Paul Street, Suite 2750
Dallas, Texas 75201
Attorney for Mr. Steven Lipsky

E-Mail: katherine.mcgovern@usdoj.gov

Katherine S. McGovern
Assistant United States Attorney
1100 Commerce Street, Suite 300
Dallas, TX 75242

/s/ J. Stephen Ravel

J. Stephen Ravel