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.*	§ § § § § § § § § § § § §	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,

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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:

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