

CAUSE NO. 14-08933-431

TEXAS OIL AND GAS ASSOCIATION	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	DENTON COUNTY, TEXAS
	§	
CITY OF DENTON,	§	
	§	
Defendant.	§	431 <sup>ST</sup> JUDICIAL DISTRICT

**DEFENDANT'S SPECIAL EXCEPTIONS AND  
ORIGINAL ANSWER TO PLAINTIFF'S ORIGINAL PETITION**

The City of Denton, Texas ("City" or "Denton") files its Special Exceptions and Original Answer to the Original Petition filed by Plaintiff Texas Oil and Gas Association ("TXOGA" or "Plaintiff") as follows:

**I.**

**SPECIAL EXCEPTIONS**

The City specially excepts to Section C of the Petition (containing paragraphs 37-41) wherein Plaintiff asserts that field preemption applies to the ordinance passed by the citizens of Denton banning hydraulic fracturing in Denton on November 4, 2014 (the "Initiative Ordinance"). Nowhere in Section C, or in the Petition as a whole, does Plaintiff identify what regulations have been passed by the Texas Railroad Commission or the Texas Commission on Environmental Quality that allegedly occupy the "entire field" rendering the Initiative Ordinance preempted and unconstitutional. Accordingly, Section C and the Petition as a whole fail to meet the fair notice requirements of the Texas Rules of Civil Procedure relating to that field preemption claim and the City requests the Court to order Plaintiff to replead that claim with greater specificity to meet those fair notice requirements.

## **II.**

### **GENERAL DENIAL**

The City, denies each and every, all and singular, the allegations contained in Plaintiff's Original Petition and demands strict proof thereof.

## **III.**

### **AFFIRMATIVE DEFENSES**

By way of further answer, if such be necessary, the City would show that the hydraulic fracturing activities that are the subject of the Initiative Ordinance have occurred throughout the City of Denton overlaying the Barnett Shale. Those activities have caused conditions that are subversive of public order and constitute an obstruction of public rights of the community as a whole. Such conditions include, but are not limited to, noise, increased heavy truck traffic, liquid spills, vibrations and other offensive results of the hydraulic fracturing process that have affected the entire Denton Community. Those conditions, all of which are generated by hydraulic fracturing, constitute a public nuisance which may be abated and future occurrences prevented by the City under its regulatory powers and are not subject to preemption as alleged by Plaintiff.

**WHEREFORE, PREMISES CONSIDERED,** the City prays that Plaintiff take nothing by way of its Original Petition, that the City be awarded its reasonable and necessary attorneys' fees and costs of court pursuant to the Uniform Declaratory Judgment Act incurred in connection with this matter, and for such other and further relief, at law and in equity, to which the City is justly entitled.

Respectfully submitted,

/s/ Terry D. Morgan

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**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 1<sup>st</sup> day of December 2014.

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