

NO. \_\_\_\_\_

THE CITY OF DENTON, TEXAS,

*Plaintiff,*

VS.

EAGLERIDGE ENERGY, LLC AND  
EAGLERIDGE OPERATING, LLC,

*Defendant*

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IN THE DISTRICT COURT

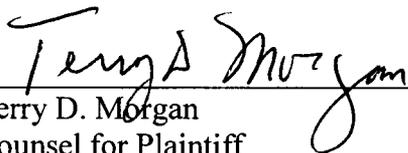
DENTON COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

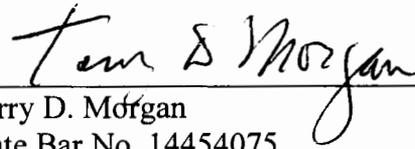
**CERTIFICATION FOR APPLICATION FOR TEMPORARY RESTRAINING ORDER**

The undersigned counsel of record for Plaintiff the City of Denton, Texas, in accordance with Local Rule 2.1.3, hereby certifies as follows:

“I certify that counsel for the party against whom relief is sought ex parte has been notified of the application and has been informed that such relief would be sought on the morning of October 18, 2013 if he wishes to be heard as evidenced by the attached email communication.”

  
\_\_\_\_\_  
Terry D. Morgan  
Counsel for Plaintiff

Respectfully submitted,



Terry D. Morgan  
State Bar No. 14454075

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Attorneys for Plaintiff  
**CITY OF DENTON, TEXAS**

## Jim Morris

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**From:** Terry Morgan  
**Sent:** Thursday, October 17, 2013 5:25 PM  
**To:** rmiklos@milbyfirm.com; Ike Shupe  
**Cc:** Jim Morris; Burgess, Anita  
**Subject:** Eagleridge drilling, Bonnie Brae 2H well

Gentlemen: It is my understanding that you represent the Eagleridge entities. Please be advised that the City of Denton will present its petition and application for temporary restraining order for the purpose of preventing drilling operations on the Bonnie Brae new well sites to the district court of Denton County tomorrow at approximately 9:00 a.m. You are invited to attend.

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VS.

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IN THE DISTRICT COURT

DENTON COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF’S BRIEF IN SUPPORT OF TEMPORARY RESTRAINING ORDER**

COMES NOW Plaintiff The City of Denton (“City”) and files this Brief in support of its Application for Temporary Restraining Order against Defendants as follows:

**I.**  
**FACTUAL BACKGROUND**

Defendants are owners and operators of gas wells on property located within the City (the “Subject Property”). Current city codes and ordinances concerning such operations on the Subject Property contain multiple prerequisites to the drilling and operation of gas wells, including, inter alia, the following: (1) no well may be located within 1,200 feet of a residence; (2) no work on any well can commence until a site plan identifying that specific well has been approved by the City; and (3) no work on any well can be commenced until certain permits are received from the City.

Defendants are currently performing work in connection with Bonnie Brae Gas Wells 2H and/or 1H on the Subject Property (the “New Wells”). Defendants have not obtained an approved site plan for those wells or the permits required for those wells as required by the City’s Gas Well Regulations and codes. Further, both wells 1H and 2H are located well within 1,200 feet of existing residences in violation of current city regulations.

The City has notified Defendants that they do not have the authorizations from the City necessary to construct and operate those wells as required by city codes and ordinances. The City has further demanded that Defendants cease all activity on Bonnie Brae Gas Wells 1H and 2H until Defendants have complied with all city codes and ordinances. Despite such demands by the City, Defendants continue to perform work in connection with well 2H and/or 1H.

## **II.** **ARGUMENT AND AUTHORITIES**

### **1. Standards For Injunctive Relief.**

In the context of Plaintiff's application for temporary injunctive relief, it needs only to show a probable right of recovery; Plaintiff is not required to show it will finally prevail in the litigation. Egan v. Woodell, 720 S.W.2d 169, 171 (Tex. App. -- San Antonio 1986, writ denied); Kennedy v. Gulf Coast Cancer & Diagnostic Center at Southeast, Inc., 326 S.W.3d 352, 361 (Tex. App. – Houston [1st Dist.] 2010, no pet.). Where such probable right of recovery is shown, the Court is clothed with broad discretion to issue the writ. Transport Co. of Texas v. Robertson Transports, Inc., 261 S.W.2d 549, 552 (Tex. 1953).

### **2. Irreparable Harm Has Been Shown.**

The Texas courts have consistently held that violations of statutes or ordinances state sufficient grounds for injunctive relief. City of Fort Worth v. Johnson, 388 S.W.2d 400, 402 (Tex. 1964); State v. Cook United, Inc., 464 S.W.2d 105, 107 (Tex. 1971); Swinney v. City of San Antonio, 483 S.W.2d 556, 559 (Tex. Civ. App. -- San Antonio 1971, no writ); and Schleuter v. City of Fort Worth, 947 S.W.2d 920, 932 (Tex. App. – Fort Worth 1997, pet. denied). In such cases, the doctrine of balancing equities has no application. State v. Texas Pet Foods, Inc., 591 S.W.2d 800, 805 (Tex. 1979). This rationale has been specifically applied in the context of

temporary injunctions resulting from violation of a zoning ordinance. In Maloy v. City of Lewisville, 848 S.W.2d 380, 385 (Tex. App. -- Ft. Worth, 1993, no writ)

3. **Probably Right to Recovery Shown**

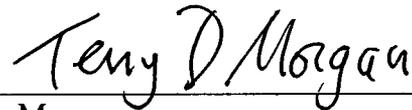
The requirements which must be met to establish that a City is entitled to a permanent injunction in cases involving violations of zoning ordinances have long been established and repeated by the Texas courts. The court in Troth v. City of Dallas, 667 S.W.2d 152, 156-157 (Tex. Civ. App. -- Corpus Christi, 1984, writ ref'd n.r.e.) held that in order to be entitled to a permanent injunction prohibiting the violation of a zoning ordinance, the City must only show (1) the property is within the corporate limits of the City; (2) there is zoning on said property; (3) the construction on the property was in violation of the zoning ordinance; (4) that the owner had been advised on the violation; and (5) that the owner failed to comply with the zoning ordinance. See Fuentes v. City of Kingsville, 616 S.W.2d 679, 682 (Tex. Civ. App. -- Corpus Christi 1981, no pet.). Since this is a request for temporary injunctive relief, Plaintiff must only show probable right of recovery on these factors. Violation of an ordinance makes out a sufficient case for injunctive relief, and no separate showing of irreparable harm is required. Maloy v. City of Lewisville, 848 S.W.2d 380, 385 (Tex. App. -- Ft. Worth, 1993, no writ).

The evidence shows that the City has established with probability that the Subject Property is within the City boundaries; that the applicable current gas well regulations, passed as part of the City's zoning regulations, require approved site plans and permits for each gas well; that Defendants are conducting gas well operations on the new wells without the approved site plans and permits required by the ordinances and codes; the New Wells are within 1,200 feet of residences; and that Defendants have been advised of these violations and have failed to comply.

**III.**  
**CONCLUSION**

City has established that it will probably recover and has probable injury as a result of Defendant's acts. Accordingly, City is entitled to the temporary injunction sought in this case.

Respectfully submitted,



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Attorneys for Plaintiff  
**CITY OF DENTON, TEXAS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been hand-delivered to Defendants' counsel of record on this 18th day of October 2013.

  
\_\_\_\_\_  
Terry D. Morgan

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IN THE DISTRICT COURT

DENTON COUNTY, TEXAS

\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION, APPLICATION FOR  
TEMPORARY RESTRAINING ORDER AND APPLICATION  
FOR TEMPORARY AND PERMANENT INJUNCTION**

Plaintiff, the City of Denton, Texas (“City” or “Denton”) files this action against Eagleridge Energy, LLC (“Eagleridge Energy”) and Eagleridge Operating, LLC (“Eagleridge Operating”) and in support thereof would show as follows:

**I.**  
**Parties**

1. The City is a home rule city acting under its Charter adopted pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code.

2. Eagleridge Energy is a limited liability company organized and existing under the laws of the State of Texas with its principal place of business in Dallas, Texas. Eagleridge Energy may be served with process by serving its registered agent, Mark L. Grawe, Executive Vice President, at 3500 Oak Lawn Ave., Suite 300, Dallas, Texas 75219.

3. Eagleridge Operating is a Texas limited liability company with its principal place of business and corporate office located in Dallas, Texas. Eagleridge Operating may be served with process by serving its registered agent, Mark L. Grawe, Executive Vice President, at 3500 Oak Lawn Ave., Suite 300, Dallas, Texas 75219.

4. Defendants are engaged in the business of natural gas exploration and production. Upon information and belief, Defendants acquired either ownership or leasehold interests in the Subject Property in 2013. The activities described in this lawsuit are being conducted by Defendants and possibly by agents or lessees of Defendants on the Subject Property.

## **II.** **Venue**

5. Venue is proper in Denton County because it is the county in which the property and activities at issue in this case are located.

## **III.** **Discovery**

6. Discovery in this matter will be conducted under Level 2 of Texas Rule of Civil Procedure 190.

## **IV.** **Factual Background**

### **A. The Subject Property and Vicinity**

7. The property upon which the activity at issue in this case is occurring is a pad site on a tract 1 (consisting of 40 acres) of a gas well development plat for Ranches at Hickory Creek located within the city limits of Denton, Texas (the “**Subject Property**”). The gas well plat includes two other tracts, and consists of a total of approximately 95 acres. The Subject Property was zoned as an Agriculture (A) District, at the time that gas well drilling operations were approved for the Subject Property.

8. There are two residential developments located proximate to the Subject Property. The Vintage subdivision lies west of Bonnie Brae Road and the Subject Property. An application for preliminary plat was filed in 2000 for 3 phases of the Vintage subdivision and was approved by the City. The Meadows at Hickory Creek subdivision lies south of the Subject

Property and north of Vintage Road. A preliminary plat for 4 phases of the Meadows subdivision was approved by the City in 2003.

9. The Existing Well head lies between 500 and 600 feet of the boundaries of the Vintage and Meadows at Hickory Creek subdivisions.

**B. Gas Well Development and Production Activities on Subject Property**

10. In January, 2002, R. L. Adkins Corp. (the “**Original Operator**”) applied for the gas well development plat for a gas well on the Subject Property (the “**Original Development Plat**”). The development plat application, which was approved by the City in April, 2002, depicts only a single gas well on the Subject Property. The Original Operator also applied for a gas well permit in order to authorize drilling for a single gas well on the Subject Property. The City issued an operating permit for drilling a single gas well on July 15, 2002 for Bonnie Brae A, Well #1, now known as Bonnie Brae Well 3H (the “**Existing Well**”). In 2003, the Original Operator applied for an amended gas well development plat for the Subject Property (the “**Amended Development Plat**”), in order to reposition the road accessing the gas well sites, which was approved by the City in 2003. No other applications for a gas well development plat or a gas well development site plan for the Subject Property have ever been submitted to the City.

11. The Original Operator commenced drilling of the Existing Well on July, 29, 2002. Gas well production from the Existing Well was commenced in 2003.

12. The Original Operator never applied for additional gas well plats or drilling permits on the Subject Property and never began additional drilling operations on the Subject Property.

13. The Original Operator applied for and received from the City a gas well permit authorizing drilling of a single gas well on tract 2 of the Original Development Plat on July 15, 2002. The well was designated Bonnie Brae B, Well # B-1.

14. No further applications for gas well operating permits or amended gas well permits were received by the City for the Subject Property until October of 2013.

15. On September 1, 2010, the Texas Railroad Commission approved a transfer of the Existing Well from the Original Operator to Defendants. The Texas Railroad Commission issued a permit to Defendants to re-drill the Existing Well on September 16, 2013. Defendants commenced re-drilling of the Existing Well at some time thereafter.

16. Defendants also received permits from the Railroad Commission to situate two new gas wells on the Subject Property (the “**New Wells**”) on September 23, 2013. The New Wells were designated as Bonnie Brae 1H and 2H.

17. Defendants applied to the City Fire Department for gas well “operating permits” for the New Wells on or about October 3, 2013. These permits pertain to compliance with the City’s International Fire Code and do not authorize drilling of the New Wells on the Subject Property. The Fire Department approved the operating permit for Well Bonnie Brae 2H on October 8, 2013.

18. The City has never received an application for a Gas Well Development Site Plan (“**Site Plan**”) or a gas well permit to authorize drilling of the New Wells on the Subject Property, as required by the City’s Current Gas Well Regulations (as hereinafter defined). Defendants commenced drilling of Well 2H on the Subject Property on or about October 8, 2013. Defendants apparently rely upon the gas well permit for Bonnie Brae A, Well # 1 obtained by the Original Operator in 2002, for authority to drill new wells on the Subject Property.

C. City's Gas Well Regulations

19. The City passed Ordinance Nos. 2001-465 on 2001-465 on December 4, 2001, amending its zoning and subdivision regulations to include provisions regulating the drilling and operation of gas wells within the City (the "**Original Gas Well Regulations**"). The Original Gas Well Regulations contain requirements for obtaining gas well development plats and gas well permits necessary to conduct gas drilling activities within Denton's city limits. Specifically, under the Original Gas Well Regulations, a gas well operator had to first obtain approval of a gas well development plat identifying proposed gas wells and a gas well permit authorizing drilling operations for each well depicted on the approved gas well development plat. The gas well operator also had to obtain permits from the City's Fire Department for purposes of assuring compliance with the City's adopted Fire Code. Although the Original Gas Well Regulations allowed an operator to obtain a gas well permit for multiple gas wells, in practice only gas well permits for drilling individual gas wells were issued by the City. If an operator wished to drill a new gas well at a site subject to an approved gas well development plat, the operator was required to amend the approved plat to identify the new well, and to obtain a new gas well permit authorizing drilling of the new well.

20. The City modified the Original Gas Well Regulations by a series of amendments as follows:

a. In 2004, by Ord. No. 2004-059 which, among other things, removed the provision authorizing a gas well permit for multiple gas wells (the "**2004 Amendments**");

b. In 2010, by Ord. Nos. 2010-181 and 2010-196 (the "**2010 Amendments**"); and

c. In 2013, by Ord. No. 2013-014 (the “**2013 Amendments**”), which amendments resulted in the “**Current Gas Well Regulations**”.

21. In order to ensure compatibility with adjacent residential land uses, the Original Gas Well Regulations and the Current Gas Well Regulations provide that gas wells must be separated from adjoining residential uses by a specified distance. In pertinent part, the Original Gas Well Regulations provided that a gas well could not be located within 250 feet of a residential structure. The Current Gas Well Regulations provide that a gas well must be at least 1,200 feet from any residence.

22. Section 35.22.4 of the Current Gas Well Regulations, which supersede all prior procedural standards relating to gas well drilling and operation within the city limits, provide, *inter alia*, that no gas well drilling or production activities may commence within city limits until the following authorizations have been obtained:

a. Approval of a Gas Well Development Site Plan, subject to the application requirements and standards contained in the Current Gas Well Regulations; and

b. Approval of a Gas Well Permit, subject to the application requirements and standards contained in the Current Gas Well Regulations.

23. The City has never received or approved a gas well permit application for multiple gas wells. The City’s convention and practice in processing gas well permit applications has been to require a separate permit for each gas well to be drilled, regardless of whether the gas well development plat (or gas well site development plan, under the Current Gas Well Regulations) identifies multiple well sites. The Current Gas Well Regulations provide that an operator may obtain a Site Plan showing multiple gas wells, but must obtain a separate gas well permit for each gas well to be drilled.

24. The City has enacted procedures by which a gas well operator may claim that its gas well operations have “vested” against subsequently enacted regulations through passage of Ord. No. 2013-335 on December 4, 2012. Defendants have never made application to the City under that ordinance.

D. City’s Non-Conforming Use Regulations

25. Because the Original Gas Well Regulations and the Gas Well Amendments constitute zoning regulations, the provisions of Sub-chapter 11 of the Denton Development Code regarding non-conforming uses and structures apply to gas well development.

26. The issuance of a gas well permit by the City authorizing drilling of the Existing Well in 2002 and the drilling of the Existing Well established the use of the Subject Property for gas well drilling and production activities for Bonnie Brae A, Well # A-1. The increased separation distances between gas wells and residential structures first effected by the 2010 Amendments (1000 feet), and subsequent modification by adoption of the 2013 Amendments (1200 feet) render the authorized gas well operations for the Existing Well as a non-conforming use.

27. The actual and proposed New Wells for the Subject Property constitute an expansion of a non-conforming use. A non-conforming use may only be expanded after approval by the Board of Adjustment. Defendants have not applied to the Board of Adjustment to expand the non-conforming use of the Subject Property.

E. Injury to City and Adjoining Residential Developments

28. In early October, 2013, the City received multiple complaints from the residents in the Vintage and Meadow subdivisions pertaining to vibrations, noise and glare resulting from Defendants' re-drilling of the Existing Well.

29. On October 2, 2013, Defendants attended a meeting with residents of the Vintage and Meadows subdivisions during which Defendants responded to complaints of the residents pertaining to re-drilling of the Existing Well.

30. On or about October 3, 2013, Defendants submitted applications for operating permits for the New Wells to the City's Fire Department. Since Defendants commenced drilling of Bonnie Brae Well 2H, the City has received additional complaints from the residents of the adjoining subdivisions pertaining to the effects of such drilling.

31. By letter dated October 8, 2013, the City notified Defendants that they could not perform drilling activities on the New Wells until all permits required by the Current Gas Well Regulations had been obtained.

32. Despite such notification from the City, Defendants have commenced illegal drilling activities for gas well Bonnie Brae 2H on the Subject Property and propose to commence drilling on gas well Bonnie Brae 1H as soon as permits from the Fire Department are obtained. Such activities violate the Current Gas Well Regulations and Development Code.

33. By letter dated October 16, 2013, the City demanded that Defendants cease and desist all gas well development activities for the New Wells on the Subject Property until such time as all requisite permits and approvals are obtained from the City. Defendants have ignored that demand.

34. The actions of the Defendants are causing immediate and irreparable harm to the City for which it has no adequate remedy at law. Specifically, Defendants' actions constitute violation of the City's Current Gas Well Regulations, Section 35.22.4, and Denton Development Code Section 35.11.2 pertaining to non-conforming uses. To the extent that the Original Gas Well Regulations are applicable to the New Wells, Defendants' actions are also in violation of those provisions. Defendants' actions are being performed in flagrant disregard of the City's right and duty to enforce its codes and ordinances designed to provide for orderly and safe development and to preserve the public health, safety and general welfare. Without the intervention of this court, Defendants are likely to continue such illegal operations in the immediate future.

35. The City relies upon the Affidavits of Darren Groth, Brian Lockley, Quentin Hix and Charles Meyers and all exhibits thereto, attached hereto as **Exhibits A – D** and incorporated by reference, in support of the injunctive relief sought herein.

**COUNT ONE**  
**Declaratory Relief**

36. Paragraphs 1 through 35 are incorporated herein by reference.

37. The City seeks a judgment pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code declaring that the actions of Defendants described herein are in violation of the City's Original and Current Gas Well Regulations and the non-conforming use regulations of Sub-Chapter 11 of the Denton Development Code, and that the City has authority to enforce the provisions of its codes and ordinances against the activities being performed by Defendants on the Subject Property.

**COUNT TWO**  
**Application for Temporary Restraining Order**

38. Paragraphs 1 through 37 are incorporated herein by reference.

39. The City and its officials are bound to follow and enforce its codes and ordinances. Defendants have failed and refused to abide by the City's Original and Current Gas Well Regulations and the provisions of the Denton Development Code pertaining to non-conforming uses, all of which are part of the City's zoning regulations as described herein. The acts of the Defendants are causing damage to the City in an amount which the City is unable to calculate presently, and for which there is no adequate remedy at law. The City will be irreparably harmed unless Defendants and their attorneys, contractors, lessees, officers, agents, servants, employees, representatives, and all persons in concert or participation with them are immediately and permanently restrained and enjoined from proceeding with unauthorized drilling, construction, and operations for the New Wells on the Subject Property without first complying with all requirements of the City's Gas Well Regulations and provisions of the Denton Development Code on non-conforming uses because the City will lose its right and ability to continue and regulate zoning and construction activities and operations within its borders.

40. Based on the foregoing, the City would show that the temporary restraining order requested is absolutely necessary to prevent immediate and irreparable injury to the City and to preserve the status quo.

**COUNT THREE**  
**Application for Temporary and Permanent Injunctive Relief**

41. Paragraphs 1 through 40 are incorporated by reference.

42. The City and its officials are bound to follow and enforce its codes and ordinances. Defendants have failed and refused to abide by those codes and ordinances by continuing to engage in activities on the Subject Property in violation of the City's Original and Current Gas Well Regulations and the provisions of the Denton Development Code pertaining to non-conforming uses, all of which are part of the City's zoning regulations as described herein. The acts of the Defendants are causing damage to the City in an amount which the City is unable to calculate presently, and for which there is no adequate remedy at law. The City will be irreparably harmed unless Defendants are temporarily and permanently restrained and enjoined from engaging in such activities for the New Wells on the Subject Property, in violation of the City's Original and Current Gas Well Regulations and the City's non-conforming use regulations, because the City will lose its right and ability to regulate zoning and construction activities and operations within borders.

43. Based on the foregoing, the City would show that a temporary injunction and permanent injunctive relief are absolutely necessary to prevent immediate and irreparable injury to the City and to preserve the status quo.

**COUNT FOUR**  
**Attorneys' Fees**

44. Paragraphs 1 through 43 are incorporated by reference.

45. The City is entitled to recover its attorneys' fees on its declaratory judgment claim pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code, for which fees and expenses the City now sues.

WHEREFORE, PREMISES CONSIDERED, Plaintiff the City of Denton prays that this Court:

1. Issue a temporary restraining order, without notice, to continue in force until the date set for hearing on Plaintiff's Application for Temporary Injunction or fourteen days after the entry of the restraining order, whichever is sooner, directing Defendants, their attorneys, contractors, lessees, officers, agents, servants, employees and all persons or entities in concert with them to immediately cease and desist all activities for the New Wells on the Subject Property and to secure the drilling site to assure the community's health and safety, until such time as Defendants have fully complied with all applicable provisions of the City's Gas Well Regulations and the non-conforming use provisions of its Development Code.

2. Appoint a day for hearing upon notice of this Application for Temporary Injunctive Relief and that Defendants be cited to appear on that date to show cause why a Temporary Injunction should not issue against it and at that hearing, a temporary injunction be granted and issued enjoining Defendants, their attorneys, contractors, lessees, officers, agents, servants, employees, and all persons or entities acting in concert with them to immediately cease and desist all activities for the New Wells on the Subject Property and to secure the drilling site to assure the community's health and safety, until such time as Defendants have fully complied with all applicable provisions of the City's Gas Well Regulations and the non-conforming use provisions of its Development Code.

3. Following upon final hearing, order that the temporary relief be made permanent;

4. Issue its order declaring that the actions of Defendants described herein are in violation of the City's Original and Current Gas Well Regulations and the non-conforming use regulations of Sub-Chapter 11 of the Denton Development Code, and that the City has authority to enforce the provisions of its codes and ordinances against the activities being performed by Defendants on the Subject Property.

5. Award the City reasonable attorneys' fees, expenses and costs of Court incurred in prosecuting this action in the trial court and any and all appeals therefrom; and

6. Award the City such other and further relief to which such Plaintiff is justly entitled.

Respectfully submitted,



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