

No. 14-0979

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IN THE SUPREME COURT OF TEXAS

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FOREST OIL CORPORATION,  
Now known as Sabine Oil & Gas Corporation,  
*Petitioner,*

v.

EL RUCIO LAND AND CATTLE COMPANY, INC., SAN JUANITO LAND  
PARTNERSHIP, LTD., MCALLEN TRUST PARTNERSHIP, AND JAMES  
ARGYLE MCALLEN,  
*Respondents.*

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**BRIEF IN SUPPORT OF RESPONDENTS OF AMICI CURIAE TEXAS  
AND SOUTHWESTERN CATTLE RAISERS ASSOCIATION, TEXAS  
FARM BUREAU, SOUTH TEXANS' PROPERTY RIGHTS  
ASSOCIATION, TEXAS LAND AND MINERAL OWNERS  
ASSOCIATION, TEXAS WILDLIFE ASSOCIATION, TEXAS CATTLE  
FEEDERS ASSOCIATION, LANDOWNER COALITION OF TEXAS, AND  
TEXAS FORESTRY ASSOCIATION**

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## **STATEMENT OF INTEREST OF AMICI CURIAE**

The membership of the Amici is comprised of landowners in the State of Texas, representing over 100 million acres, who are concerned with the protection of private property rights, groundwater, protection of property from contamination and the related agricultural economy in Texas, which has grown to more than \$21 billion annually. The Amici are not parties to the case and will pay all attorneys' fees incurred in the preparation of this amici brief. Well beyond the important legal issues between the parties below, the Court has before it critical questions of private property rights, freedom to contract, and protection of important natural resources of the State of Texas. The Amici wish to make a clear statement of the law, policy and practice regarding contamination on private lands arising from oil and gas operations. The Amici respectfully request the opportunity to present these important concerns affecting agriculture, land stewardship, the freedom of contract, and private property interests. The Amici ask that copies of this Brief be circulated to the chambers of the Justices of the Supreme Court as they consider the pending case. In accordance with Rule 11 of the Texas Rules of Appellate Procedure, counsel certifies that copies of this Brief of Amici Curiae has been served on all parties.

The Texas and Southwestern Cattle Raisers Association (TSCRA) is a 139-year-old trade association and is the largest and oldest livestock organization based in Texas. TSCRA has more than 17,000 beef cattle operations, ranching families and

businesses as members. These members represent approximately 50,000 individuals directly involved in ranching and beef production who manage 4 million head of cattle on 76 million acres of range and pasture land primarily in Texas and Oklahoma, but throughout the Southwest.

Texas Farm Bureau (TFB) is a Texas non-profit membership corporation committed to the advancement of agriculture and prosperity for rural Texas. Founded in 1933, TFB has over 500,000 member families and is associated with 206 organized county Farm Bureau organizations across the state. TFB and its members—who are farmers, growers, and producers—believe the preservation of the freedom to contract and private property rights as well as the protection of the environment and groundwater is of critical importance to the strength of the agricultural economy in Texas.

The South Texans' Property Rights Association (STPRA) works with both government and the general public to protect the rights of property owners in South Texas. Representing over five million acres of farm and ranch land near the Texas-Mexico border, STPRA strives to promote the growth, prosperity, and security of South Texas property owners by addressing issues of critical importance to property owners, including contamination by oil and gas operations, the freedom of contract, and the protection of private property rights.

The Texas Land and Mineral Owners Association (TLMA) is a statewide advocacy association whose members are farmers, ranchers, and royalty owners. TLMA advocates for a business and legal environment that promotes the production of oil and natural gas in a manner that respects the property rights of landowners.

The Texas Wildlife Association (TWA) serves Texas wildlife and its habitat, including the protection of property rights, hunting heritage, and conservation efforts of stewards of wildlife resources. With a membership of over 10,000, TWA focuses its mission on private landowners and their commitment to wildlife habitat. Protection of property rights is a key aspect of their mission.

The Texas Cattle Feeders Association (TCFA) is an agricultural trade association representing 200 beef cattle feedyards in Texas, Oklahoma, and New Mexico and approximately 4,000 cattle feeders across the United States. TCFA members feed and market approximately 6.5 million head of cattle annually, producing about 30% of the nation's fed beef. TCFA works to promote the cattle feeding industry, which provides approximately 30,000 jobs and \$19 billion to the Texas economy and works to develop laws and regulations based on free-market principles and sound science. TCFA is a strong advocate of private property rights.

The Landowner Coalition of Texas is comprised of the owners of some of the largest ranches in Texas. The Coalition was formed in 2012 to monitor and intercede, as needed, in policy issues that affect Texas landowners' property rights. Members

of the Coalition that are participating in filing this brief are: Lykes Bros. Inc., Guitar Ranches, Jones Family Ranches, Catto Gage Ranches, Llano Partners, L.P., Santa Fe Ranch, Santiago Cattle Co., and Sarco Creek Ranch. These participants represent in excess of 1.6 million acres of Texas land. Mostly, the ranches raise cattle. Several are involved in wildlife conservation. And many are supported through revenue from oil and gas leases.

The Texas Forestry Association (TFA) was founded in 1914 to enhance and perpetuate Texas forest resources through tree planting, education, training, and political action. TFA has approximately 2,855 members which include private landowners, professional loggers, consulting foresters, and processing mills. In East Texas alone forest lands are 94% privately owned and cover more than 12 million acres.

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## **STATEMENT OF THE CASE**

- Nature of the case:* This case involves the McAllen Ranch seeking damages for contamination of its land and groundwater by Forest Oil Corporation (Forest Oil). After learning from a former Forest Oil employee of its burial of contaminants on the McAllen Ranch and delivery of other contaminants, including radioactive material, the McAllens sued Forest Oil.
- Trial Court:* 55<sup>th</sup> District Court of Harris County, Texas, Honorable Jeffrey A. Shadwick presiding
- Course of Proceedings & Disposition in the Trial Court:* Forest Oil moved to compel arbitration. After a 17-day arbitration hearing, the Panel issued its award in the Respondents' favor. The trial court vacated the award's bond requirement but confirmed the award in all other respects.
- Court of Appeals:* First Court of Appeals, Houston, Justices Jennings, Higley, and Sharp presiding
- Court of Appeals' Opinion:* *Forest Oil Corp. v. El Rucio Land & Cattle Co.*, 446 S.W.3d 58 (Tex. App.—Houston [1st Dist.] 2014, pet. filed)
- Court of Appeals' Disposition:* The court of appeals unanimously affirmed the trial court. Forest Oil's subsequent motions for panel rehearing and en banc reconsideration were denied, with one justice dissenting from the denial of the en banc review.

## **ISSUES PRESENTED**

Whether the court of appeals properly rejected Forest Oil's claim that the arbitration award interferes with the Railroad Commission's exclusive and primary jurisdiction.

## **STATEMENT OF FACTS**

The Amici adopt and incorporate by reference herein the Statement of Facts as set forth in Respondents' Brief on the Merits as it pertains to the issues and arguments addressed in this Brief of Amici Curiae.

## **SUMMARY OF THE ARGUMENT**

This case involves a landowner seeking damages for contamination of its land and groundwater by an oil and gas operator. Cases of oil and gas contamination are not uncommon. The implications of this case, however, are far-reaching. A departure from current law and practice, as Forest Oil invites the Court to do, will have substantial consequences for landowners, private lands, and the State of Texas. Further, a decision declaring that the Railroad Commission has *exclusive* jurisdiction over all matters related to the damage to private lands by contamination would significantly disrupt the extensive contractual and other relationships between Texas landowners and the oil and gas industry.

Seeking to avoid a negative result in arbitration, Forest Oil contends that the Railroad Commission of Texas has been given exclusive and primary jurisdiction by the Legislature over this and all contamination cases. It asks this Court to read into

certain statutes “exclusive jurisdiction.” In so doing, Forest Oil asks this Court to render meaningless other statutes that expressly provide landowners with a private cause of action and common-law remedies for contamination of their land. Such a ruling would mean that thousands of negotiated contracts, surface use agreements, and lease covenants are effectively unenforceable because, ironically the Railroad Commission has no authority to adjudicate contracts or contractual disputes. It would create a black hole for landowner claims against operators for property damage.

Forest Oil asks this Court to leave Texas landowners with no effective remedy to address potentially devastating contamination to their land and water—resources on which many depend for their livelihoods. This Court has long-encouraged, supported and protected the freedom of contract and private property rights. Both the agriculture industry and the oil and gas industry depend upon the balance and certainty that exists in the current law and practice. The Amici Curiae urge this Court to continue to protect these fundamental rights and freedoms and affirm the Court of Appeals.

## **ARGUMENT**

### **I. Introduction**

While the specific facts of this case are unique, the aspects that relate to oil and gas contamination of private lands are a very real part of the use of private lands

to accomplish mineral production. Texas ranches are home to the nation's largest supply of beef cattle. Imagine an oil and gas operator who negligently or intentionally pollutes the ranches' water supply killing many, if not all, of the cattle. The ranches' business is brought to a halt, and all that remains is contaminated land and water that must be made clean and restored before the cattle business can safely operate again.

Under the current status of the law, a landowner can file a complaint with the Railroad Commission and also file suit in the courts of this State to sue for damages and injunctive relief. If the Railroad Commission has exclusive jurisdiction, the landowner's only claim can be with the Commission. Any surface use agreement or lease they may have had would be unenforceable, and they would be at the mercy of the under-staffed and overwhelmed Railroad Commission to determine what, if any, remediation should occur and on what timetable. Considering that the McAllen Ranch's action has been pending before the Railroad Commission for at least ten years with no resolution, this is no real remedy at all. Further, there would be no available recovery of damages for landowners since the Railroad Commission can only assess fines and penalties and has no authority to award damages. The ranches practically cannot sell the property because of the contamination. Instead, they are left in limbo—unable to achieve any remedy and awaiting a decision by the Railroad Commission, which would be busy handling thousands of other disputes and trying

to monitor the 435,000 wells across Texas. This is no remedy or protection. This is a result never intended nor endorsed by the Texas Legislature, but it is precisely the result Forest Oil now seeks from this Court.

## **II. Texas Landowners Depend on the Freedom to Contract and the Right to Sue to Ensure Protection of Their Lands**

Over eighty percent—more than 140 million acres—of Texas land is rural. Tex. Dept. of Agriculture, Tex Ag Stats, *available at* <https://www.texasagriculture.gov/About/TexasAgStats.aspx>. These rural lands contribute more than \$20 billion annually to the Texas economy. *Id.* Every year, millions of acres of these rural lands are also used for oil and gas production. In 2016, more than 1 billion barrels of oil and more than 7 billion MCF of natural gas were produced in Texas. Railroad Commission of Texas, Texas Monthly Oil and Gas Production, *available at* <http://www.rrc.state.tx.us/oil-gas/research-and-statistics/production-data/texas-monthly-oil-gas-production/>. These are all mineral producing lands with over 700,000 acres managed on behalf of the Permanent School Fund by the Texas General Land Office and 2.1 million acres managed on behalf of the University of Texas Permanent University Fund. *See* Texas General Land Office, Leasing & Easements, *available at* <http://www.glo.texas.gov/land/land-management/leasing-easements/index.html>; University Lands, *available at* <http://www.utlands.utsystem.edu>.

Surface use agreements and detailed lease provisions are the standard tools for a landowner or mineral owner to ensure the protection of their lands. The provisions in these agreements often present the most difficult element in negotiations with oil and gas operators. Elevated standards of practice and protection are typically the commitment an operator must make in order to receive a lease of minerals or access to surface lands.

While both industries are important to the Texas economy, the dominance of the mineral estate in Texas law means that landowners must rely on their ability to protect their lands and water resources by contract. Unlike other states, Texas does not have a surface damages act. Without the freedom to contract through negotiated leases and surface use agreements and bring common law claims for injunctive relief and damages, landowners would be placed at a severe disadvantage. For landowners who depend on the health of the land and water for their livelihood, contamination can have devastating financial consequences. Leveling the playing field, therefore, is dependent on this right to contract.

Representation of agricultural producers against oil and gas interests utilizing the same surface is an uphill fight relying solely on the common law. They don't call it the dominant estate without a reason. However, the lawyer who has an opportunity to contractually protect the agricultural producer through lease negotiations or surface use agreements can make a real difference in leveling the field.

Harper Estes & Douglas Prieto, *Contracts As Fences: Representing the Agricultural Producer in an Oil and Gas Environment*, 73 TEX. B.J. 378, 387 (2010) (understanding the prevalent competing interests of the agricultural sector and the energy sector). Without a protected freedom to contract and right to sue for damages and injunctive relief, landowners will be left to rely on the Railroad Commission to protect their land—an agency sorely underfunded and unable to adequately address the thousands of contamination events that occur each year in the oil patch.

Though the mineral estate is dominant in Texas, it is not without limitation. Private property rights have long been a foundational principle in Texas, worthy of constitutional protection. *See* U.S. CONST., amend. V; TEX. CONST. art. 1, § 17. This Court recently reaffirmed the need for strong protections of private property rights in the face of oil and gas production through pipeline development in *Texas Rice Land Partners, Ltd. v. Denbury Green Pipeline-Texas, LLC*:

Pipeline development is indisputably important given our State’s fast-growing energy needs, but economic dynamism—and more fundamentally, freedom itself—also demand strong protections for individual property rights. Locke deemed the preservation of property rights “[t]he great and chief end” of government, a view this Court echoed almost 300 years later, calling it “one of the most important purposes of government.” Indeed, our Constitution and laws enshrine landownership as a keystone right, rather than “one relegated to the status of a poor relation.”

363 S.W.3d 192, 204 (Tex. 2012). Similarly, freedom of contract has long been acknowledged and protected by this Court. *E.g.*, *Philadelphia Indemnity Insurance Co. v. White*, 490 S.W.3d 468, 471, 475 (Tex. 2016) (reasoning that “Texas’s strong public policy favoring freedom of contract is firmly embedded in our jurisprudence. Absent compelling reasons, courts must respect and enforce the terms of a contract the parties have freely and voluntarily entered” and “[a]s a general rule, parties in Texas may contract as they wish so long as the agreement reached does not violate positive law or offend public policy”). When landowners and oil and gas operators enter into surface use agreements, those contracts should be upheld and enforced so long as they do not violate the law or public policy. *See id.* The risks are even greater for surface-only landowners that do not have the ability to contractually limit the scope of activities and standards of practice, including contamination.

The Texas Legislature has taken deliberate steps to protect landowners by expressly providing that landowners have the right to sue for damages in cases of contamination or other violations by oil and gas producers. *See* Tex. Nat. Res. Code §§ 85.321-322. These provisions make clear that landowners have a right to sue for damages or injunctive relief to address violations of the law, contamination, and other harm arising from oil and gas operations and that this right exists *in addition to* the Railroad Commission’s authority to enforce the law and regulations of this State. *See id.* Protecting private property rights, the freedom to contract, and the right

to sue is integral to enabling landowners to adequately protect their lands and their livelihoods.

Forest Oil seeks to undermine the right of contract and ability of landowners to maintain the health of their land and livelihoods amidst oil and gas production, all to avoid a single arbitration award that itself arose out of a contract governing the protection of land. The freedom to contract, which binds the entire oil and gas industry together, must include the right to enforce negotiated contract obligations in a private action. Similarly, those surface-only landowners without surface use agreements must have the right to bring common law claims for damages and injunctive relief. Neither this Court nor the Legislature has ever determined that private landowners in Texas must yield the protection of their property to a regulatory agency.

### **III. Contamination by Oil and Gas Operations is Growing While the Railroad Commission Struggles to Keep Pace with Oversight**

Forest Oil argues that the Railroad Commission, and it alone, should have authority over all matters concerning pollution from oil and gas production. Forest Oil neglects to point out to this Court the extent of ongoing contamination and damage to Texas lands by oil and gas operations as well as the growing challenges facing the Railroad Commission as it monitors oil and gas operations and enforces its regulations. The potential contamination and damage to property from oil and gas

production can be significant, and the threat of contamination is far greater than many realize.

Last year, the Texas Tribune reported that while Texas is home to as many as 300,000 wells currently pumping oil and gas, there are estimated to be as many as “1.5 million oil-and-gas related *holes*, including hundreds of thousands of test wells, service wells, and those that came up dry” dating back to 1990. Jim Malewitz, Abandoned Texas oil wells seen as “ticking time bombs” of contamination, Texas Tribune, Dec. 21, 2016, *available at*: <https://www.texastribune.org/2016/12/21/texas-abandoned-oil-wells-seen-ticking-time-bombs/> (emphasis added). From these abandoned holes, “[f]luids can gurgle and leak, migrating where they don’t belong. In rare instances, land could even sink or collapse.” *Id.* Virtually all of these conditions exist on privately held lands. Landowners face extensive risks of contamination when oil and gas wastes and other pollutants penetrate the soil of the land surrounding a well, sometimes finding its way to underlying groundwater aquifers.

For landowners who use their land for agricultural operations, contamination of this magnitude carries devastating consequences, particularly when water is polluted. Growing crops and livestock requires a ready supply of clean water. These impacts are particularly acute in places like West Texas where contamination of scarce and dwindling water sources could spell permanent disaster for a farm or

ranch. Yet, Forest Oil asks this Court to render a decision that effectively alleviates any practical remedy a landowner may have to address such contamination in a timely fashion.

Instead, Forest Oil contends that the Railroad Commission alone is charged with the authority to handle all matters concerning pollution from oil and gas production, including contamination. Yet the Railroad Commission is already stretched far beyond its capacity to regulate oil and gas operations. Landowners would wait, operators would avoid the risk of suits for damages, and the existing balance would collapse.

Putting aside that the Legislature has never committed landowners and the protection of their property to the Railroad Commission, the agency is wholly unable to take on such a burden in this vast State. A recent article from the Houston Chronicle points to an alarming shortage of inspectors at the agency and an outdated computer system leaving thousands of wells unmonitored. Ryan Maye Handy, Shortage of Inspectors leaves thousands of oil, gas wells unmonitored, HOUSTON CHRONICLE, Feb. 7, 2017, *available at* <http://www.houstonchronicle.com/business/article/Shortage-of-inspectors-leaves-thousands-of-wells10913787.php?t=6d7d654454438d9cbb&>. The Railroad Commission has only 158 inspectors for over 435,000 wells, and this shortage of manpower has resulted in sixty-five percent of wells going at least five years without inspection. *Id.* The findings of this article are supported

by the latest Sunset Advisory Commission Report on the Railroad Commission. Significantly, the Report found the current state of the Commission inadequate to ensure public safety or environmental protection. Sunset Advisory Commission, Staff Report with Commission Decisions Railroad Commission of Texas, Jan. 2017, at 33, *available at* <https://www.sunset.texas.gov/public/uploads/files/reports/Railroad%20Commission%20of%20Texas%20Staff%20Report%20with%20Commission%20Decisions.pdf>. Further, the Report indicates that “operators have a reasonable expectation they will not be penalized,” and the enforcement policies “do not effectively deter pollution violations.” *Id.* at 37.

And yet, Forest Oil asks this Court to change the law to its benefit, denying landowners any opportunity to seek the assistance of the courts to address contamination and property damage. The resultant chaos, backlog, and gridlock would undoubtedly be significant. Meanwhile, contamination would continue unfettered and unaddressed, and landowners would effectively be left with no remedy for contamination and damage to their property. Texas law does not support such a result. The Court should affirm the Court of Appeals.

#### **IV. Exclusive and Primary Jurisdiction of the Railroad Commission Over All Oil and Gas Operations is Not Supported by the Law**

Forest Oil’s argument hinges on the suggestion that the Railroad Commission has exclusive jurisdiction over all aspects of pollution from oil and gas operations including damage to private lands and contractual rights. Texas law does not support

this finding. Forest Oil points to three statutes that purportedly grant the Railroad Commission exclusive jurisdiction over all matters arising from oil and gas production. *See* Tex. Water Code § 26.131(a); Tex. Nat. Res. Code § 91.101(a)(4); Tex. Health & Safety Code § 401.415. None of these statutes, however, include the requisite grant of authority. Rather, they speak solely to the Railroad Commission’s authority vis-à-vis other agencies.

Administrative agencies are creatures of the Legislature and therefore, only have those powers and authority expressly granted to them by the Legislature. *See Subaru of America, Inc. v. David McDavid Nissan, Inc.*, 84 S.W.3d 212, 220 (Tex. 2002). The Texas Legislature has on seven separate occasions given the Railroad Commission “exclusive jurisdiction” over certain matters. *See* Tex. Nat. Res. Code §§ 117.102(d), 131.022(a)-(b), 134.012(a); Tex. Util. Code §§ 102.001(a), 121.2025(d); Tex. Spec. Dist. Local Laws Code §§ 8835.102(b), 8849.103(b), 8865.102(b), 8866.102(b). *See also* Respondent’s Oral Argument Exhibits, Ex. D. In those seven instances, the terms “exclusive jurisdiction” were expressly used. *See id.* These terms are absent from the statutes relied upon by Forest Oil. *See* Tex. Water Code § 26.131(a); Tex. Nat. Res. Code § 91.101(a)(4). If the Legislature intended for those statutes to grant exclusive jurisdiction, the Legislature could have and would have said so. *See Subaru America*, 84 S.W.3d at 221. It never did because doing so would have met with monolithic political opposition from private

landowners. Neither Forest Oil nor the courts may read that interpretation into the statutes at issue. *See id.* at 220 (stating “Courts will not imply additional authority to agencies, nor may agencies create for themselves any excess powers”).

Other statutes point to a clear intention by the Texas Legislature to allow courts jurisdiction to resolve contractual disputes and suits for tort damages involving oil and gas production. Specifically, sections 85.321 and 85.322 of the Texas Natural Resources Code each recognize a private cause of action and preserve common-law claims for landowners notwithstanding the rules, regulations, and authority of the Railroad Commission. *See Exxon v. Emerald Oil & Gas*, 331 S.W.3d 419, 422, 424 (Tex. 2010); *In re Apache Corporation*, 61 S.W.3d 432, 435 (Tex. App.—Amarillo 2001, orig. proceeding [mand. denied]). The plain language of these statutes demonstrates that the Railroad Commission does not have exclusive jurisdiction in this case. *See Subaru*, 84 S.W.3d at 220 (stating administrative agencies “may exercise only those powers the law, in clear and express statutory language, confers upon them”); *In re Apache*, 61 S.W.3d at 436 (holding that the legislature has yet to grant the Railroad Commission exclusive jurisdiction over disputes concerning the abatement of water contamination caused by oil and gas operations). Any other interpretation would render sections 85.321 and 85.322 meaningless.

Moreover, granting the Railroad Commission exclusive jurisdiction over all matters stemming from pollution from oil and gas production would place the Commission in the position of adjudicating thousands of contracts, leases, and surface use agreements. That cannot be, as it is well-established that the Railroad Commission has no authority over contracts. *See Railroad Comm'n of Texas v. City of Austin*, 524 S.W.2d 262, 267 (Tex. 1975); *Duncan Land & Exploration, Inc. v. Littlepage*, 984 S.W.2d 318, 328 (Tex. App.—Fort Worth 1998, pet denied). Such a ruling would render thousands of existing contracts, leases, and surface use agreements meaningless and void. A conclusion that the Commission has exclusive jurisdiction over all oil and gas production matters would grant the Commission authority in excess of what the Texas Legislature intended (i.e., authority over contracts and damages). Neither result is supported by Texas law, and the consequences of such a dramatic change in precedent would be significant.

Neither does the issue of primary jurisdiction alter the analysis. This Court has made clear that as a prudential not jurisdictional matter, primary jurisdiction does not divest a court of subject matter jurisdiction. *See Subaru*, 84 S.W.3d at 220. As such, primary jurisdiction may be waived, and in this case, it was as it is in many other similar cases where an operator agrees to cleanup standards and judicial relief. *See Ellis v. Reliant Energy Retail Services, L.L.C.*, 418 S.W.3d 235, 245 (Tex. App.—Houston [14th Dist.] 2013, no pet.). Forest Oil specifically requested that this

case be subject to arbitration—a request that was granted by this Court in 2007. *See Forest Oil Corp. v. McAllen et al*, 268 S.W.3d 51 (Tex. 2008).

Forest Oil waived primary jurisdiction when it agreed to arbitrate, sought arbitration, and arbitrated the dispute. Now having received an unfavorable result in arbitration, Forest Oil seeks a second bite at the apple by asserting primary jurisdiction of the Railroad Commission. But Forest Oil waived any primary jurisdiction when it sought arbitration. Moreover, the matter was handled in an arbitration with a panel that included an oil and gas expert, making the application of primary jurisdiction unnecessary because it is intended only in scenarios where agency experts are essential. *See Subaru*, 84 S.W.3d at 220-221; *Ellis*, 418 S.W.3d at 245. Accordingly, neither exclusive nor primary jurisdiction of the Railroad Commission is supported by Texas law or the facts of this case.

The potential impact of this case and the precedent Forest Oil asks this Court to make is far-reaching and substantial. Landowners like the Amici landowners will be left without an effective remedy to stop contamination and restore their properties. But the impacts will be felt on a much deeper level by the owners of millions of acres of agricultural lands.

### **CONCLUSION AND PRAYER**

In an effort to avoid the arbitration award, Forest Oil invites the Court to hold that the Railroad Commission now has exclusive and primary jurisdiction, ensuring

that a landowner's only recourse against a polluting operator or the many subcontractors that carry out production work is to file an administrative claim with the Railroad Commission, an agency that is ill-equipped to moderate disputes, has no authority to interpret contracts, and lacks sufficient staff and funding to timely and efficiently manage these cases. Further, the Railroad Commission can assess penalties but it cannot award damages. Such a result is no remedy at all. It is not protective of landowners or the environment but rather provides a safe harbor for oil and gas operators. Forest Oil has painted a portrait for the Court that does not exist. The Railroad Commission does not have exclusive or primary jurisdiction in this case or for other landowner pollution suits. The Amici Curiae respectfully pray that the Court continue its long-standing protection of the freedom of contract and private property rights and the right to pursue remedies in the courts of Texas and affirm the Court of Appeals.

Respectfully submitted,

/s/ James D. Bradbury

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**ATTORNEYS FOR AMICI  
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**CERTIFICATE OF COMPLIANCE WITH TRAP 9.4(i)**

This is to certify that the foregoing Letter Brief of Amici Curiae consists of 4,415 words, in accordance with Texas Rule of Appellate Procedure 9.4(i)(2).

/s/ James D. Bradbury

James D. Bradbury

**CERTIFICATE OF SERVICE**

This is to certify that on the 28th day of February, 2017 the foregoing document was served on the following parties via electronic filing:

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