

B.

5. Defendant Powder River conducts no business activities in Oklahoma County, Oklahoma and has no business dealings in Oklahoma County, Oklahoma. See Exhibit B.

6. Defendant Brian Fox is a Canadian citizen who resides in Calgary, Alberta, Canada. See Exhibit B.

7. Defendant Brian Fox maintains a post office box in Tulsa, Oklahoma for personal mail. See Exhibit B.

8. On or about July 14, 2008, a lawsuit was filed in the District Court of Tulsa County styled *Mark Chang, an individual, et al., Plaintiffs, vs. Powder River Petroleum International, Inc., an Oklahoma corporation, and Brian Fox, an individual, Defendants, CJ-2008-4855*, seeking monetary damages, a temporary restraining order, a preliminary injunction, a permanent injunction, an order appointing a receiver, and an order freezing assets (the "Tulsa Lawsuit"). The Defendants have vigorously defended this lawsuit.

9. As a result of the Tulsa lawsuit, Defendant Brian Fox, individually, and as a representative of Powder River, had scheduled to spend the week of October 6-10, 2008 in Tulsa, Oklahoma to aid his attorneys in the preparation of his defense, and that of Powder River, and in preparation of an evidentiary hearing scheduled in the Tulsa Lawsuit for October 10, 2008. See Exhibit B.

10. As a result of the Tulsa Lawsuit, a deposition of Plaintiff Mark Change was taken on October 6, 2008 in the office of the Defendants' counsel located in Tulsa, Oklahoma. Defendant Brian Fox, individually, and as a representative of Defendant Powder River, appeared in person at the deposition. See Exhibit B.

11. As a result of the Tulsa Lawsuit, Defendant Brian Fox, individually, and as a representative of Powder River, traveled to Oklahoma City, Oklahoma on October 8, 2008 with his legal counsel, in order to review discovery documents produced at the request of the Defendants and located at the Receiver's office in Oklahoma City, Oklahoma, in preparation for the evidentiary hearing. At all times, Bruce Day was appointed and consented to act as Receiver in Tulsa County and in the Tulsa Lawsuit. See Exhibit B.

13. It was at this time and on this day, October 8, 2008, at the Receiver's Oklahoma City office, that Brian Fox and Powder River were served with Summons of Process in the case at bar.

14. As a result of the Tulsa Lawsuit, a motion hearing was set in the District Court of Tulsa County on October 10, 2008. Defendant Brian Fox, individually, and as a representative of Defendant Powder River, appeared in person at the Tulsa County hearing. See Exhibit B.

15. In its *Petition for Permanent Injunction and Other Relief*, Plaintiff relies exclusively on a Powder River Shareholder meeting, and the activities which occurred at that meeting, held on October 30, 2007 in Tulsa, Oklahoma as the basis for its claims.

16. In its *Petition for Permanent Injunction and Other Relief*, Plaintiff has prayed for injunctive relief in the event the Receiver is discharged in the Tulsa Lawsuit.

ARGUMENTS AND AUTHORITIES

A. VENUE SHOULD BE TRANSFERRED TO TULSA COUNTY FOR ALL CLAIMS INVOLVING DEFENDANT POWDER RIVER.

The relevant venue statute regarding domestic corporations is codified at 12 O.S. § 134 and states as follows:

“An action, other than one of those mentioned in first three sections of this article, against a corporation created by the laws of this state, may be brought in the county

in which it is situated, or has its principal office or place of business, or in which any of the principal officers thereof may reside, or be summoned, or in the county where the cause of action or some part thereof arose, or in any county where a codefendant of such corporation created by the laws of this state may properly be sued.”

As set forth above, Defendant Powder River, while an Oklahoma corporation, maintains its principal place of business in Canada. Its principal officer, Brian Fox, is a resident of Canada. Pursuant to Plaintiff’s Petition, the pending cause of action arose in Tulsa County due to a corporate shareholder’s meeting that took place on October 30, 2007 in Tulsa, Oklahoma, and due to alleged activities occurring in Tulsa, Oklahoma. Tulsa County is the only county where venue properly lies. As discussed below, venue for Brian Fox, Powder River’s co-defendant, also is proper only in Tulsa County, Oklahoma.

Plaintiff served Defendant Powder River by issuing and serving Summons to Bruce Day, the Receiver appointed in the Tulsa Lawsuit. 12 O.S. § 134 does not permit the venue of an action in the county of residence of the Receiver. Defendants Powder River and Brian Fox have vigorously protested the appointment of the Receiver, the actions of the Receiver, and there are multiple pending motions in the Tulsa Lawsuit regarding the Receiver’s authority, jurisdiction, and powers. 12 O.S. § 134 establishes and fixes the venue of an action against a domestic corporation. *Chris Well Servicing Co. v. Coryell*, 1967 OK 236, 435 P.2d 610 (Okla. 1967). (“...if Plaintiff had so desired he could have maintained the action as against all defendants in the county where the cause arose, but he chose to bring it in a county where venue did not lie as regarded defendant domestic corporation, then that defendant had the option of saying whether or not it would submit to a suit in that jurisdiction.”) *Id.* at ¶ 15.

B. VENUE SHOULD BE TRANSFERRED TO TULSA COUNTY FOR ALL CLAIMS INVOLVING DEFENDANT BRIAN FOX.

12 O.S. § 137 sets forth the relevant venue statute pertaining to nonresident defendants as follows:

“In addition to other counties in which an action may be brought against a nonresident of this state, or a foreign corporation, such action may be brought in any county in which there may be property of or debts owing to such defendant, or where such defendant may be found, or in any county where a codefendant may be sued; . . .”

Defendant Brian Fox is a Canadian resident who maintains a post office box in Tulsa, Oklahoma for personal mail. He has no property or debts located in Oklahoma County and conducts no business in Oklahoma County. Thus, he may be sued only in a county where Co-Defendant Powder River may be sued, which as discussed above, is Tulsa County per 12 O.S. § 134.

In addition, service of process upon Brian Fox was illegal under immunity granted to him by virtue of his entering Oklahoma County for the sole purpose of conducting discovery and preparing for a court hearing in Tulsa County. *Harris Foundation v. District Court of Pottawatomie County*, 1945 OK 278, 163 P.2d 976 (Okla. 1945). (“The effect of such holding is that the immunity creates an exemption from service by reason of which the statute has no application and with the result that process issued in violation thereof is illegal, . . . and that the court issuing such process does not acquire jurisdiction thereby.”) The *Harris Foundation* court held that:

“The controlling rule, which has received general recognition, and which has been expressly recognized by this Court in *Lonsdale Grain Co. v. Neil*, 73 Okla. 221, 175 P. 823, is as follows:

‘Suitors and witnesses coming from foreign jurisdictions for the sole purpose of attending court, whether under summons or subpoena or not, are usually held immune from service of process while engaged in attendance and for a reasonable time in coming and going.’ 32 Cyc. 492.”

Id. at ¶ 6. The court further opined that such immunity is not impaired during the recess of the court.

“ . . . A nonresident, who comes within the confines of this state for the purpose of attending upon the taking of depositions to be used in the trial of a cause pending in another jurisdiction of in which he is one of the litigants, is privileged from service of summons while within the state upon that business, and he does not forfeit this privilege merely because he transacts other business not connected with the taking of the depositions, provided the controlling cause of his being within the state was the taking of the depositions.”

Id. at ¶ 7. Brian Fox, a Canadian resident, entered Tulsa County, Oklahoma for the limited purpose of attending depositions in the Tulsa Lawsuit and for the limited purpose of attending an evidentiary hearing in Tulsa County related to the Tulsa Lawsuit. During the interim of these two events, Mr. Fox traveled to Oklahoma County for the sole purpose of aiding his legal counsel in reviewing produced discovery documents to assist in his defense at the evidentiary hearing. As such, the fact that he was served with process in Oklahoma County, with the aid of the Receiver in the Tulsa Lawsuit, during this time in an attempt to obtain venue in Oklahoma County is illegal.

Venue in regards to Defendant Brian Fox does not lie in Oklahoma County, rather venue is proper in Tulsa County since Tulsa County is the only proper place for venue relating to Co-Defendant Powder River. Venue lies properly in Tulsa County and this action should be transferred to Tulsa County.

C. 12 O.S. § 143 DICTATES THE VENUE OF THE PENDING CASE.

Plaintiff presumably relies upon 71 O.S. § 1-603 to maintain the venue of this case in Oklahoma County:

“ . . . the Administrator may, prior to, concurrently with, or subsequent to an administrative proceeding, maintain an action in the district court of Oklahoma County or the district court of any other county where service can be obtained to enjoin the act, practice, or course of business and to enforce compliance with this act or a rule adopted or order issued under this act.”

However, it is 12 O.S. § 143 which applies in the instant case and which states as follows:

“All venue statutes are cumulative wherever they appear and any action brought under any such statute may be maintained where brought. No court shall apply one venue statute in preference to another whether considered general or special.”

The case of *Schwartz v. Diehl*, 1977 OK 115, ¶ 10 and ¶ 14, 568 P.2d 280 (Okla. 1977) held that:

“The venue of actions against multiple joint defendants ‘lies only in the county or counties meeting the requirements of all applicable specific venue statutes’ and only ‘when such requirements have been met, the action is ‘rightly brought’ . . . This result is not changed by the existence of § 143. The provisions of § 143 that venue statutes are ‘cumulative’ and disallowing preference of one statute over another, are necessarily dependent upon venue being proper in two or more counties.”

Accordingly, the applicable venue statutes in the case at bar are: 1) 71 O.S. § 1-603 which establishes Oklahoma County or “any other county where service can be obtained” as the sites for proper venue; 2) 12 O.S. § 134 which establishes that a domestic corporation may be sued in the county which the cause of action arose or in any county where a codefendant may be properly sued; and 3) 12 O.S. § 137 which states that a nonresident may be sued in any county where a codefendant may be sued. The only two counties at issue in this matter are Oklahoma County and Tulsa County. Defendant Brian Fox was not properly served within Oklahoma County given the special immunity afforded to him by attending depositions, engaging in discovery, and by attending an evidentiary hearing in Tulsa County. As discussed above, Oklahoma County cannot properly obtain venue over Defendant Powder River. Adhering to the reasoning contained in the *Schwartz v. Diehl* case, it is evident that Tulsa County is the only county where all applicable venue statutes are met. Venue should be transferred to Tulsa County as it is the only county where venue against both Defendants lie.

CONCLUSION

WHEREFORE, Defendants respectfully request that this Court transfer the venue of this cause of action to Tulsa County.

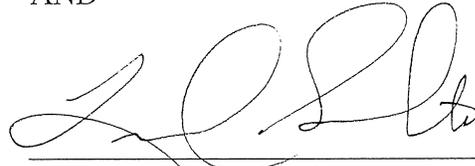
Respectfully Submitted,

EDWARDS & MAILATH, L.L.P.



Rodney A. Edwards, OBA #2646
Melissa Mailath, OBA #16573
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Tulsa, Oklahoma 74137
(918) 299-9360 (phone)
(918) 299-9369 (fax)

AND



Leslie Shelton, OBA #11515
6226 East 101st Street, Suite 100
Tulsa, Oklahoma 74137
(918) 299-9368 (phone)
(918) 299-9369 (fax)

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of December, 2008, I caused a true and correct copy of the above and foregoing instrument to be mailed with proper postage thereon prepaid to:

Terra Shamas Bonnell
Oklahoma Department of Securities
120 North Robinson Avenue, Suite 860
Oklahoma City, OK 73102
Attorney for Plaintiff

Bruce W. Day, Receiver
Day, Edwards, Propester & Christiansen, PC
210 Park Avenue, Suite 2900
Oklahoma City, OK 73102-5605



Melissa Mailath

OFFICE OF THE SECRETARY OF STATE



CERTIFICATE OF MERGER

WHEREAS,

POWDER RIVER PETROLEUM INTERNATIONAL, INC.

*a corporation organized under the laws of the State of OKLAHOMA,
has filed in the office of the Secretary of State duly authenticated evidence of a merger
whereby said corporation is the survivor, as provided by the laws of the State of Oklahoma.*

*NOW THEREFORE, I, the undersigned Secretary of State of Oklahoma, by virtue of
the powers vested in me by law, do hereby issue this Certificate evidencing such merger.*

*IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed
the Great Seal of the State of Oklahoma.*



*Filed in the City of Oklahoma City this
6th day of November, 2007, .*

A handwritten signature in cursive script, appearing to read "M. Susan Savage".

Secretary Of State

EXHIBIT

A

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CERTIFICATE OF MERGER OR CONSOLIDATION

TO: OKLAHOMA SECRETARY OF STATE
2300 N Lincoln Blvd., Room 101, State Capitol Building
Oklahoma City, Oklahoma 73105-4897
(405) 522-4560

SPECIAL INSTRUCTIONS: Submit this form to file a merger or consolidation pursuant to the Oklahoma General Corporation Act. **Please consult this Act carefully.** Use this form **ONLY** when one or more corporations, incorporated under the laws of a jurisdiction other than Oklahoma merge with one or more Oklahoma corporations and the surviving or resulting corporation is an **OKLAHOMA** corporation.

FILING FEE: IF the authorized capital of the surviving or resulting corporation is increased to a figure greater than the combined authorized capital of all corporations involved plus \$50,000.00, the filing fee shall be equal to one-tenth of one percent (1/10th of 1%) of such increase. IF the surviving corporation is a **NOT FOR PROFIT** corporation, the filing fee shall be \$25.00.

A. The Agreement of Merger or Consolidation, **ATTACHED HERETO**, has been adopted, approved, certified, executed, and acknowledged by each of the constituent corporations in accordance with the laws under which it is formed, and, in the case of an Oklahoma corporation, in the same manner as is provided in Title 18, Section 1081.

OR

B. In lieu of filing an executed agreement of merger or consolidation, the surviving or resulting corporation hereby states and certifies as follows:

1. The name and state of incorporation of each of the constituent corporations are:

NAME OF CORPORATION	STATE OF INCORPORATION
Powder River Basin Gas Corp.	Colorado
Powder River Petroleum International, Inc.	Oklahoma

2. An agreement of merger or consolidation (circle one) has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the provisions of Section 1082 of the Oklahoma General Corporation Act. In the case of each foreign corporation, the agreement shall be adopted, approved, executed and acknowledged in accordance with the laws under which it is organized.

3. The name of the surviving or resulting corporation is:

Powder River Petroleum International, Inc.

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4. Check the statement applicable to the merger or consolidation:

- No amendments or changes are desired so that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation.
- Any amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the terms of the merger are set out in an **attachment hereto**.
- The certificate of incorporation of the corporation resulting from the consolidation is set forth in an **attachment hereto**.

5. The executed agreement of merger or consolidation is on file at the principal place of business of the surviving corporation at the following address:

4444 East 66th Street, Suite 201	Tulsa,	OK	74136-4206
STREET ADDRESS	CITY	STATE	ZIP CODE

6. A copy of the agreement of merger or consolidation will be furnished by the surviving corporation, on request and without cost, to any shareholder of any constituent corporation.

7. The authorized capital stock of each constituent corporation which is not a corporation of this state:

NAME OF CORPORATION	NO. OF SHARES AUTHORIZED	PAR VALUE PER SHARE
Powder River Basin Gas Corp.	200,000,000 shares, Common Stock	\$0.001
	10,000,000 shares, Preferred Stock	\$0.001

IN WITNESS WHEREOF, the surviving or resulting corporation has caused this certificate of merger or consolidation to be executed by its President or Vice President and attested by its Secretary or Assistant Secretary this 31st day of October, 2007. **POWDER RIVER PETROLEUM INTERNATIONAL, INC.**



By its _____ President

Brian Fox, President

Please Print Name

ATTEST:



By its _____ Secretary

Brian Fox

Please Print Name

(SOS FORM 0024-12/01)

**IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY
STATE OF OKLAHOMA**

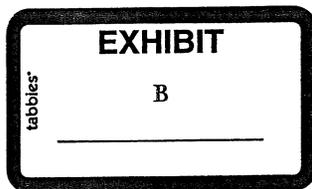
OKLAHOMA DEPARTMENT OF SECURITIES))	
ex rel. IRVING L. FAUGHT, Administrator,))	Case No.: CJ-2008-9048
)	
Plaintiff,))	Judge Daniel L. Owens
)	
vs.))	
)	
POWDER RIVER PETROLEUM))	
INTERNATIONAL, INC., an Oklahoma))	
corporation, and BRIAN FOX, an individual,))	
)	
Defendants.))	

AFFIDAVIT OF BRIAN FOX

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

I, Brian Fox, of legal age, being first duly sworn upon oath, state as follows:

1. I have personal knowledge of the matters set forth herein and I am competent to testify as to all matters stated herein.
2. I am a Canadian citizen and resident of Calgary, Alberta, Canada.
3. I maintain a mailing a Post Office address in Tulsa, Oklahoma for business purposes related to Powder River.
4. I am the President of Powder River Petroleum International, Inc. ("Powder River"), an Oklahoma corporation, whose principal place of business is located in Calgary, Alberta, Canada.
5. Powder River's registered service agent and registered office is located in Tulsa,



Oklahoma.

6. Powder River maintains a bank account in Tulsa, Oklahoma.

7. Powder River conducts no business activities in Oklahoma County, Oklahoma and has no business dealings in Oklahoma County, Oklahoma.

8. On or about July 14, 2008, a lawsuit was filed in the District Court of Tulsa County styled *Mark Chang, an individual, et al., Plaintiffs, vs. Powder River Petroleum International, Inc., an Oklahoma corporation, and Brian Fox, an individual, Defendants, CJ-2008-4855*, seeking monetary damages, a temporary restraining order, a preliminary injunction, a permanent injunction, an order appointing a receiver, and an order freezing assets (the "Tulsa Lawsuit"). Powder River and myself have vigorously defended this lawsuit.

9. Due to the Tulsa Lawsuit, I spent the week of October 6-10, 2008 in Tulsa, Oklahoma in order to aid my attorneys in the preparation and defense of myself and of Powder River in the lawsuit and due to an evidentiary hearing scheduled in Tulsa, Oklahoma on October 10, 2008.

10. On October 6, 2008, depositions in the Tulsa Lawsuit were held at my attorneys' office in Tulsa, Oklahoma and I attended these depositions on behalf of myself and on behalf of Powder River.

11. On October 8, 2008, I traveled to Oklahoma City, Oklahoma to the office of the appointed Receiver in the Tulsa Lawsuit, for the purpose of reviewing discovery documents produced by the Receiver with my legal counsel in preparation for the evidentiary hearing scheduled later in the week.

12. On this date, October 8, 2008, I was served with the Summons and Petition regarding this lawsuit at the offices of the Receiver and later learned that the Receiver had been simultaneously

served on behalf of Powder River. The Receiver evidently notified the Plaintiff in this matter that I would be present at the Receiver's office on said date.

13. On October 10, 2008, I attended the evidentiary hearing in the Tulsa Lawsuit on behalf of myself and on behalf of Powder River.

FURTHER AFFIANT SAYETH NOT.



BRIAN FOX

CITY OF CALGARY)
) ss.
PROVINCE OF ALBERTA)

Before me, the undersigned, a Notary Public (Commissioner for Oaths), in and for said City and Province, on this 26 day of November, 2008, personally appeared **BRIAN FOX** to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year last written above.



Notary Public/Commissioner of Oaths

My Commission Expires: 2-6-12
08001568
Commission No.:



OFFICE OF THE SECRETARY OF STATE



**AMENDED
CERTIFICATE OF INCORPORATION**

WHEREAS, the Amended Certificate of Incorporation of

POWDER RIVER PETROLEUM INTERNATIONAL, INC.

has been filed in the office of the Secretary of State as provided by the laws of the State of Oklahoma.

NOW THEREFORE, I, the undersigned, Secretary of State of the State of Oklahoma, by virtue of the powers vested in me by law, do hereby issue this certificate evidencing such filing.

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the Great Seal of the State of Oklahoma.



*Filed in the city of Oklahoma City this
11th day of July, 2007.*

Secretary of State

EXHIBIT

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OKLAHOMA SECRETARY OF STATE



SOS

AMENDED
CERTIFICATE OF INCORPORATION
(Before Receipt of Payment for Stock)



7601000002

SECRETARY OF STATE
Lincoln Boulevard
Room 101, State Capitol Building
Oklahoma City, OK 74105-4897

The undersigned Oklahoma corporation, for the purposes of amending its Certificate of Incorporation before payment is made for the issuance of any capital stock, as provided by Section 1076 of the Oklahoma General Corporation Act, hereby certifies:

1. A. The name of the Corporation is **POWDER RIVER PETROLEUM INTERNATIONAL, INC.**
B. NO change, as amended.
2. The name of the registered agent and street address of the registered office in the State of Oklahoma is: **FREDERICK K. SLICKER, 4444 East 66th Suite 201, Tulsa, OK 74136-4206.** There is no change in the registered office or agent.
3. The duration of the Corporation is perpetual. There is no change in the duration.
4. The aggregate number of the authorized shares, itemized by class, par value of shares, shares without par value, and series, if any, within a class is:

<u>Number of Shares</u>		<u>Series</u>	<u>Par Value per Share</u>
Common	200,000,000	None	\$0.001
Preferred	10,000,000	None	\$0.001

5. Set forth clearly any and all amendments to the Certificate of Incorporation which are desired to be made:

Reduce the number of authorized common shares from 500,000,000 shares to 200,000,000 shares. No change in par value of any shares is made. No other change in the Certificate of Incorporation is made.

6. IT IS FURTHER CERTIFIED that this Corporation has not received any payment for any of its stock.

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OKLAHOMA SECRETARY
OF STATE

IN WITNESS WHEREOF, said Corporation has caused this Certificate to be signed by its duly authorized Incorporator, this 3rd day of July, 2007.

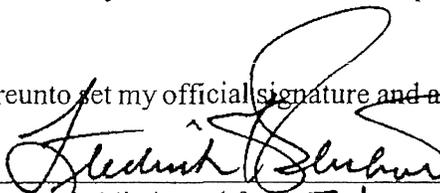


BRIAN FOX, SOLE DIRECTOR

CORPORATE ACKNOWLEDGMENT

BEFORE ME, the undersigned, a Notary Public, on this 10th day of July, 2007, personally appeared Brian Fox, known by me to be the Sole Director of POWDER RIVER PETROLEUM INTERNATIONAL, INC., and who, after having been duly sworn, acknowledged to me that each and every statement set forth in the foregoing instrument is true and correct in all respects to his best knowledge and belief and that he executed the same for and on behalf of the said corporation with full power and authority as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my official signature and affixed my notarial seal the day and year last above written.



Notary Public in and for Tulsa County, OK
My Commission expires: 1/23/08
My Commission number is: 04000663

[SEAL]

