

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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WILBUR C. OSBORN and
GERALDINE B. OSBORN,

PLAINTIFFS,

VS.

TEXAS-NEW MEXICO PIPELINE
COMPANY, INC.; TEXACO PIPELINE
INC.; SHELL PIPE LINE COMPANY, L.P.;
SHELL PIPE LINE GP LLC; SHELL
PIPELINE CORPORATION/SHELL
PIPE LINE LLC (DE),

DEFENDANTS.

PLAINTIFFS' ORIGINAL CIVIL COMPLAINT FOR DAMAGES

COME NOW, WILBUR C. OSBORN and GERALDINE OSBORN, (hereinafter sometimes referred to as Plaintiffs). by and through their counsel of record, **THE LEWIS LAW FIRM** (Craig Lewis and John J. Klevenhagen III) and **THE LAW OFFICE OF BRIAN K. BRANCH** (Brian K. Branch), and file this their original complaint against TEXAS-NEW MEXICO PIPELINE COMPANY, INC. and TEXACO PIPELINE, INC. (hereinafter sometimes referred to as the "TNMP Defendants") and SHELL PIPE LINE COMPANY, L.P.; SHELL PIPE LINE GP LLC; and SHELL PIPELINE CORPORATION/SHELL PIPE LINE LLC (DE) (hereinafter sometimes referred to as the "Shell Defendants"), and state to the Court and Jury as follows:

GENERAL ALLEGATIONS AND JURISDICTIONAL STATEMENT

1. This is a civil action for the recovery of damages.
2. The subject of this lawsuit is an actual controversy between the parties concerning the acts

BEFORE THE
OIL CONSERVATION COMMISSION
SANTA FE, NEW MEXICO
sdm EXHIBIT No. 3
CASE 13061 de novo

and omissions of the Defendants, TEXAS-NEW MEXICO PIPELINE COMPANY, INC.; TEXACO PIPELINE, INC.; SHELL PIPE LINE COMPANY, L.P.; SHELL PIPE LINE GP LLC; and SHELL PIPELINE CORPORATION/SHELL PIPE LINE LLC (DÉ); which has polluted and contaminated certain portions of the Plaintiffs' Property located in Lea County, New Mexico.

3. Jurisdiction is conferred on this Court by 28 U.S.C. § 1332 in that complete diversity of citizenship exists between the Plaintiffs and the Defendants, and the amount in controversy exceeds the jurisdictional minimum, \$75,000.00, exclusive of costs and interest as set forth in 28 U.S.C. § 1332, as amended.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1452(a).

5. Plaintiffs are resident citizens of Lea County, New Mexico.

6. Defendant TEXAS-NEW MEXICO PIPELINE COMPANY, INC. is a Delaware Corporation, duly organized and existing pursuant to law, with its principal place of business in Texas. It has owned and operated pipelines in the State of New Mexico, including but not limited to pipelines that are located on the Plaintiffs' Property in Lea County, New Mexico. It may be served with process herein by serving its registered agent, The Corporation Process Company at 220 W. Broadway, Suite 200, Hobbs, New Mexico 88241.

7. Defendant TEXACO PIPELINE INC. is a Delaware corporation, duly organized and existing pursuant to law, with its principal place of business in Texas. It has operated pipelines in the State of New Mexico, including pipelines that are located on the Plaintiffs' Property in Lea County, New Mexico, pursuant to contracts with other pipeline companies, including but not limited to contracts with Texas-New Mexico Pipeline Company, Inc. It may be served with process herein by serving

its registered agent, D.G. Yetter at 1111 Bagby Street; Houston, Texas 77002.

8. Defendant SHELL PIPE LINE COMPANY, L.P. is a Delaware limited partnership, duly organized and existing pursuant to law, with its principal place of business in Texas. It has owned and operated pipelines in the State of New Mexico, including but not limited to pipelines that are located on the Plaintiffs' Property in Lea County, New Mexico. It may be served with process by serving its registered agent, The Corporation Process Company at 220 West Broadway, Suite 200; Hobbs, New Mexico 88241.

9. Defendant SHELL PIPE LINE GP LLC is a Delaware limited liability company, duly organized and existing pursuant to law, with its principal place of business in Texas. It has owned and/or operated pipelines in the State of New Mexico, including but not limited to pipelines that are located on the Plaintiffs' property in Lea County, New Mexico. It may be served with process by serving its registered agent, The Corporation Process Company at 220 Broadway, Suite 200, Hobbs, New Mexico 88241.

10. Defendant SHELL PIPELINE CORPORATION/SHELL PIPE LINE LLC (DE) is a Maryland corporation duly organized and existing pursuant to law, with its principal place of business in Texas. SHELL PIPELINE CORPORATION may have merged into SHELL PIPE LINE LLC (DE). It has owned and/or operated pipelines in the State of New Mexico, including but not limited to pipelines that are located on the Plaintiffs' property in Lea County, New Mexico. It may be served with process by serving its registered agent, C.T. Corp. System at 811 Dallas Avenue; Houston, Texas 77002.

BACKGROUND INFORMATION COMMON TO ALL COUNTS

11. Plaintiffs are the surface interest owners and lessees of certain property located in Lea County, New Mexico, known as the "Rocky Top Ranch," hereinafter referred to as either the "Ranch" or the "Property."

12. Texas-New Mexico Pipeline Company, Inc. ("TNMP") owned and operated one or more pipelines on the Ranch at all times material to this suit. In May 1999, TNMP sold all of its pipelines that are the subject of this lawsuit to another company. All of the spills, leaks, acts and omissions for which this lawsuit is brought against the TNMP Defendants occurred prior to May 1, 1999, when the TNMP Defendants owned and operated the pipeline(s) in question.

13. Texaco Pipeline, Inc. operated TNMP pipelines in the State of New Mexico at various times in the past pursuant to written contracts and/or written operating agreements. Upon information and belief the Plaintiffs allege that one or more contracts and/or operating agreements between TNMP and Texaco Pipeline, Inc. pertained in whole or in part to one or more of the pipelines located on the Ranch in question prior to May 1, 1999.

14. The Shell Defendants owned and operated one or more pipelines on the Ranch at all material times to this lawsuit.

15. During the time that the TNMP Defendants and the Shell Defendants owned and operated pipelines on the Plaintiff's Ranch, the pipelines experienced numerous leaks, some of them massive in volume. To date, the Plaintiffs have identified eleven (11) leak sites with respect to the TNMP Defendants' operations and two (2) leak sites in connection with the Shell Defendants' operations. All of the leak sites involved situations where the leaks and/or spills from the pipelines were not

properly cleaned up and remediated and where the pollutants from these leaks and/or spills migrated beneath the Plaintiffs' Ranch, both horizontally and vertically, threatening and/or contaminating the groundwater and aquifers underneath the Ranch.

16. During the pendency of this action, should the Plaintiffs discover further leak sites wherein the TNMP and SHELL Defendants' pipeline operations on the Ranch have caused further surface, sub-surface, groundwater, and aquifer damage, they respectfully reserve the right to further amend this Complaint to include such additional areas of contamination which they discover.

17. Prior to the occurrence of any of the 13 leak sites for which this lawsuit is brought, each of the Defendants knew of the potable groundwater and aquifers underneath their pipeline operations in the Jal area and under the Plaintiffs' Ranch. Each of the Defendants also knew that if the oil and other products from a pipeline leak in this particular area was not promptly and adequately cleaned up, that the oil-containing hazardous substances, including hazardous substances that can cause cancer and other serious medical problems in humans, would soak into the soil and travel the short distance between the ground surface and the groundwater and underlying aquifers.

18. Prior to any of the 13 leaks in question, each of the Defendants knew the vertical distance between their pipelines in the Jal area and on the Plaintiffs' Ranch, and further knew of the need to thoroughly and adequately remove and clean up the oil products from the pipeline spills and/or leaks in order to prevent those oil products from reaching the potable, fresh groundwater and underlying aquifers.

19. Each of the Defendants further knew that the geology and lithology of the various formations underlying their pipeline operations and the Plaintiffs' Property allow for the migration of fluids and

oil byproducts through the various stratigraphic formations. Each of the Defendants further knew that contaminants from oil and gas operations and pipeline leaks and spills that were not promptly and adequately cleaned up would migrate downward and contaminate the potable, fresh groundwater and underlying aquifers.

20. Notwithstanding all of this knowledge concerning how spills and leaks from their pipeline operations could potentially contaminate the soil, groundwater, and aquifers underlying the Plaintiffs' Property, the TNMP and the SHELL Defendants failed to take reasonable measures to prevent spills and leaks from their pipelines, and failed to timely respond to and/or adequately clean up and remediate the spills and leaks from their pipeline operations so as to prevent extensive subsurface contamination of the soil, groundwater and aquifers underlying the Plaintiffs' Property.

21. Because each of the Defendants failed to timely respond to spills and leaks, and because each of the Defendants failed to adequately clean up and remediate the spills and leaks from their pipeline operations, the pipeline contaminants sunk deeper into the soils and ultimately in most, if not all, of the 13 sites have contaminated the groundwater and the underlying aquifers -- and continue to do so. In addition to not timely responding to the pipeline spills and leaks, and in addition to failing to conduct adequate and proper clean-up and remediation with respect to these spills and leaks, each of the Defendants further either failed to report these leaks to the appropriate regulatory agencies and/or provided misleading and inaccurate information to the regulatory agencies and the Plaintiffs, leading the regulatory agencies and the Plaintiffs to believe that the spills and leaks had been properly cleaned up and remediated -- when in fact, the spills and leaks had not been adequately cleaned up and remediated.

22. Each of the Defendants has a legal duty to act in a reasonable and prudent manner in the conduct of its pipeline operations on the Plaintiffs' Property. Further, each of the Defendants is mandatorily required to conduct its pipeline operations in such a manner to *not* potentially pollute and/or actually pollute natural resources such as the soil, groundwater and aquifers in the areas adjacent to and under their pipeline operations. This duty is non-delegable, as that term is defined and applied under the laws and statutes of the State of New Mexico.

23. It is undisputed and each Defendant has admitted that it can conduct its day-to-day pipeline operations without polluting the environment. It is undisputed and each Defendant has admitted that it can conduct adequate clean up and remediation of spills and leaks from its pipeline operations so as not to endanger and further contaminate the uncontaminated soil, potable, fresh groundwater, and underlying aquifers.

24. It is undisputed and each Defendant has admitted that when spills and leaks occur from its pipeline operations, it is possible for each Defendant to promptly respond and properly clean up the pollution before it spreads and while it is economically feasible to clean up the contaminants and restore the Property to its uncontaminated condition.

25. The spills and leaks from each of the Defendant's pipeline operations are abatable and can be cleaned up in an "economically feasible" manner, taking into consideration the natural resources that have already been polluted and the natural resources that will be polluted if the abatement and clean up and remediation are not timely performed by each Defendant.

26. Each Defendant owes the Plaintiff the duty to conduct its operations and maintain its pipeline and equipment in such a manner that oil contaminants, pollutants, salt water, hazardous substances,

toxic substances, and/or other liquids, gases and solids will not be allowed to contaminate and pollute the soil, groundwater and aquifers underlying the Plaintiffs' Property. As will be set forth, each Defendant breached these duties owed to the Plaintiffs, and such breach has proximately caused damages to the Plaintiffs' Property.

27. With respect to the leaks and spills made the basis of this suit, one or more representatives of the TNMP Defendants and one or more representatives of the SHELL Defendants specifically made representations and assurances to the Plaintiffs with respect to their alleged clean-up and remediation efforts which the Plaintiffs believed and relied upon. Only recently, have the Plaintiffs learned that the Defendants misrepresented material facts to the Plaintiffs with respect to the spills and leaks and the so-called clean-up and remediation.

28. In truth and in fact, the TNMP Defendants had a series of policies and developed a course of conduct with respect to spills and leaks from its pipeline operations that would promote the spread of contaminants -- as opposed to limiting the spread of contaminants or cleaning up the contaminants so as to minimize its pollution in the environment. Specifically, the TNMP Defendants did not report all of its spills and leaks to the regulatory agencies and to the Plaintiffs. Moreover, the TNMP Defendants encouraged a policy and procedure of "cover-up," instead of clean-up -- whereby massive amounts of pipeline contaminants would be covered up, not removed from the site, and would be intentionally permitted to further migrate through the soil and ultimately pollute the underlying groundwater and aquifers. Furthermore, the TNMP Defendants encouraged a "cheap fix" to many pipeline leaks whereby a temporary clamp would be left in place at the point of the pipeline leak, and the pipeline thereafter covered up and never re-exposed for the more costly, permanent

pipeline repair to take place. Notwithstanding the 'TNMP Defendants' admitted written policies against such a clamping procedure, numerous sites have been unearthed along each of the TNMP Defendants' pipeline systems in New Mexico and Texas, exposing temporary clamps at leak and spill sites where the TNMP Defendants represented to regulatory agencies and landowners that permanent repairs had been made.

29. Before, during, and after the 11 TNMP leak sites made the basis of this lawsuit, the TNMP Defendants also encouraged a practice whereby the oil-saturated soil was not removed from the leak site but rather was either left in place at the leak site or was inappropriately mixed with other soil -- with either alternative permitting high concentrations of cancer-causing contaminants to further migrate spatially and vertically, ultimately contaminating substantially more soil and ultimately polluting the underlying fresh, potable groundwater and aquifers.

30. The TNMP Defendants' cost-cutting measures to promote pollution, save money, and not clean up the environmental mess they were creating throughout their pipeline systems were not just confined to the pipeline underlying the Plaintiffs' Property. Rather, these cost-cutting and deceptive policies and procedures became the custom and practice along the TNMP's pipeline system in New Mexico and portions of Texas, and are therefore relevant to the issues in this case.

31. The TNMP Defendants' and the SHELL Defendants' acts and omissions set forth in this Original Complaint constitute a "continuing tort" as that term is defined, understood, and applied under the laws and statutes of the State of New Mexico. The TNMP Defendants and the SHELL Defendants have caused the pollution and contamination in the first place; and in their subsequent failures to adequately respond to, clean up, and remediate the contamination, their acts and omissions

have caused further pollution and contamination to spread and proliferate. Their failures in promptly responding to their spills and leaks and in failing to adequately clean up and remediate their spills and leaks have caused the ultimate environmental investigation, assessment, clean-up, and remediation costs and expenses to increase substantially over the actual costs that would have been incurred if the TNMP Defendants and the SHELL Defendants had reasonably and prudently responded to the spills and leaks in the first place. Accordingly, each of the Defendants has waived and/or is estopped to complain about the reasonable and necessary costs associated with the environmental investigations, assessments, clean-up, and remediation which may now, or in the future, be necessary in order to properly and completely clean up the contamination which each of the Defendants has caused and restore the Plaintiffs' Property and the groundwater to which the Plaintiffs have water rights to the pre-contaminated condition.

32. The acts and omissions of the TNMP Defendants and the SHELL Defendants, set forth in this Original Complaint were committed intentionally, and the TNMP Defendants' and the SHELL Defendants' conduct was willful, wanton, reckless and/or malicious as those terms are legally defined and applied under the laws and statutes of the State of New Mexico.

33. Further, the acts and omissions of each of the TNMP Defendants and the SHELL Defendants, and the intentional, willful, wanton, reckless and/or malicious conduct of the TNMP Defendants and the SHELL Defendants, as set forth in this Original Complaint, were committed by supervisors, managers, vice-principals; authorized by supervisors, managers, and vice-principals and/or ratified by supervisors, managers, vice-principals, as those terms are defined and applied under the laws and statutes of the State of New Mexico. Accordingly, the TNMP Defendants and the SHELL

Defendants are liable for the intentional, willful, wanton, reckless and/or malicious conduct of the officers, supervisors, management, vice-principals and agents, servants and employees, acting within the course and scope of their respective employment for the TNMP Defendants and the SHELL Defendants.

34. The TNMP Defendants and the SHELL Defendants have consciously and recklessly failed to clean up the oil contamination at the 13 leak sites in question and have consciously and recklessly failed to contain the pollution and contamination from those 13 pipeline leaks. As such, the TNMP Defendants' and the SHELL Defendant' conduct constitutes an intentional, conscious and reckless disregard to the legal rights of the Plaintiffs. This conduct rises to the level of gross negligence, as that term is defined and applied by the laws and statutes of the State of New Mexico.

35. Plaintiffs plead the discovery rule, as that term is defined and applied under the laws and statutes of the State of New Mexico with respect to each Count and each cause of action set forth in this Original Complaint, including but not limited to, negligence and gross negligence, trespass and statutory trespass, nuisance, fraud, fraudulent concealment, and breach of contract.

COUNT ONE
NEGLIGENCE AND GROSS NEGLIGENCE

36. Plaintiffs incorporate under Count One, paragraphs 1-35, as herein above alleged.

37. The TNMP Defendants and the SHELL Defendants owed the Plaintiffs the duty to exercise ordinary care in the conduct of their pipeline operations. The TNMP Defendants and the SHELL Defendants have been negligent and such negligence is a proximate cause of the Plaintiffs' damages. In addition, the acts and omissions of the TNMP Defendants and the SHELL Defendants constitute gross negligence, as that term is defined and applied under the laws and statutes of the State of New

Mexico.

38. The TNMP Defendants and the SHELL Defendants' acts and omissions constituting negligence and gross negligence include failing to prevent the pipeline leaks in question; failing to adequately investigate and adequately assess the full extent and nature of the pipeline leaks; failing to report some of the pipeline leaks and in the case of those pipeline leaks that were reported, in failing to provide adequate information and in failing to provide accurate information to both the regulatory agencies and to the Plaintiffs; in failing to report the full extent of the pipeline leaks; in covering up, not cleaning up, the contaminants from the pipeline leaks; in utilizing inadequate and insufficient measures in addressing the oil contamination from the pipeline leaks; in allowing the oil from the pipeline leaks to remain in the soils so that the oil contamination would eventually spread, both spatially and vertically into uncontaminated soil and into the underlying groundwater and aquifers; in permitting an initial volume of oil from the leaks and spills to ultimately contaminate a massive amount of soil, groundwater, and underlying aquifers; and in failing to perform an adequate clean-up and remediation to restore the soil, groundwater and underlying aquifer to its pre-contaminated condition.

39. The TNMP Defendants and the SHELL Defendants knew, or by the exercise of ordinary care, should have known, that their operations would pollute portions of the underlying groundwater and aquifers if their operations were not conducted in a reasonable and prudent manner. Each of the Defendants is charged with both the knowledge and responsibility of conducting their operations in such a way so as not to contaminate the surface and sub-surface soils on the Ranch, and in such a way so as to timely and properly clean up any leaks and spills from their operations so that the

underlying groundwater and aquifers do not become contaminated.

40. The TNMP Defendants' and the SHELL Defendants' actions reflect not only a failure to conduct careful and prudent operations, but in addition, conduct that was willful, wanton, reckless, and/or malicious, as those terms are legally defined. Accordingly, in addition to the actual damages which are set forth herein, punitive damages should be assessed against the TNMP Defendants and the SHELL Defendants in an amount to be set within the sole discretion of the Jury.

41. Further, the TNMP Defendants' and the SHELL Defendants' acts and omissions, as set forth herein, were committed with malice, as that term is defined and understood under the laws and statutes of the State of New Mexico. The TNMP Defendants' and the SHELL Defendants' acts and omissions were carried out and committed with an intent to cause substantial damage to the Plaintiffs' Property and/or with a flagrant disregard for the rights, health, and safety of the Plaintiffs, and with actual awareness that the result, in reasonable probability, would be the Property damage as described herein. The negligence and gross negligence of the TNMP Defendants and the SHELL Defendants was a proximate cause of the Plaintiffs' damages.

COUNT TWO
TRESPASS AND STATUTORY TRESPASS

42. Plaintiffs incorporate under Count Two, paragraphs 1 through 41, as herein above alleged.

43. Insofar as the TNMP Defendants' and the SHELL Defendants' leaks, spills and releases have polluted and contaminated portions of the soils, groundwater and aquifers on and underlying the Plaintiffs' Property, then such conduct constitutes a trespass as to the Plaintiffs' property rights as that term is defined and understood under the laws and statutes of the State of

New Mexico and until properly cleaned up, abated and/or remediated, constitutes a continuing threat and damage to the Plaintiffs' property rights and to the Plaintiffs' health and safety.

44. Pursuant to law, each of the Defendants has the duty to conduct its operations in such a manner so as not to trespass on the Plaintiffs' property rights and to conduct its operations in such a manner so as not to pollute and contaminate portions of the soil, groundwater and aquifers underlying the Plaintiffs' Property. In reality, the TNMP Defendants and the SHELL Defendants have conducted their operations in such a manner that they have failed to conduct adequate clean-up and adequate remediation so as to remove the potential of these contaminants and pollutants from damaging portions of the surface, sub-surface soils, groundwater, and aquifers underlying the Plaintiffs' Property. These acts and omissions of the TNMP Defendants and the SHELL Defendants constitute a trespass, as that term is defined and understood under the laws and statutes of the State of New Mexico. Therefore, the Plaintiffs seek reasonable and necessary costs associated with the investigation, assessment, clean-up, and remediation with respect to that contamination which is temporary, and if any contamination is permanent, the reasonable and necessary cost associated with that contamination with respect to that contamination which is temporary, and if any contamination is permanent, the reasonable and necessary costs associated with replacing the contaminated groundwater underlying the Plaintiffs' Property to which the Plaintiffs have legally recognized water rights with respect to the diversion of that water.

45. The TNMP Defendants' and the SHELL Defendants' actions constituting trespass reflect not only a failure to conduct careful and prudent operations, but also reflect conduct that is willful, wanton, reckless, and/or malicious as those terms are legally defined. Accordingly, each of the

TNMP Defendants and SHELL Defendants should be held accountable under the laws and statutes of the State of New Mexico for punitive damages by reason of their tortuous conduct constituting trespass. The TNMP Defendants' and the SHELL Defendants' trespass was a legal or contributing and/or contributing cause of the Plaintiffs' damages.

46. Further, the acts, omissions, and conduct of the TNMP Defendants and of the SHELL Defendants constitute a statutory trespass as more fully set forth in NMSA 1978 §30-14-1.1 (Rep. 2001), thus entitling the Plaintiffs to compensatory damages in an amount equal to double the value of the Plaintiffs' Property that has been injured and/or destroyed by reason of the conduct of the TNMP and the SHELL Defendants. The TNMP and the SHELL Defendants' violation of the statutory trespass statute is a legal and/or contributing cause of the Plaintiffs' damages.

COUNT THREE
NUISANCE

47. Plaintiffs incorporate under Count Three, paragraphs 1 through 46, as herein above alleged.

48. The TNMP Defendants and the SHELL Defendants owed the Plaintiffs the duty to conduct their operations and maintain their pipeline and equipment in such a manner so as not to create and/or maintain a nuisance, as that term is defined and understood under the laws and statutes of the State of New Mexico. The acts, omissions, and conduct of each of the Defendants, as herein alleged, unreasonably interfere with, and will continue to unreasonably interfere with, the normal and expected use and enjoyment of the Plaintiffs' Property. Such nuisance was also a legal or contributing cause of the Plaintiffs' damages as herein alleged.

49. The TNMP Defendants' and the SHELL Defendants' acts, omissions, and conduct reflect not only a failure to conduct careful and prudent operations, but in addition, such conduct was willful.

wanton, reckless and/or malicious as those terms are legally defined. Accordingly, the TNMP and the SHELL Defendants should be held accountable under the laws and statutes of the State of New Mexico for punitive damages for creating, maintaining and/or failing to abate the nuisance that they created in the first place. The TNMP Defendants and the SHELL Defendants creating a nuisance is a legal or contributing cause of the Plaintiffs' damages.

COUNT FOUR
BREACH OF CONTRACT

50. Plaintiffs incorporate under Count Four, paragraphs 1 through 49, as herein above alleged.

51. Upon information and belief, Plaintiffs believe that the TNMP and SHELL Defendants were conducting their operations pursuant to one or more easements.

52. Plaintiffs do not presently have copies of the easements that were in effect at the time of the leaks and spills at the 13 leak sites made the basis of this suit. However, if any term or terms of those easements were breached and not adhered to by one or more of the Defendants with respect to the 13 leak sites made the basis of this Complaint, and the contamination made the basis of this suit, then Plaintiffs are entitled to recover their actual damages, as herein set forth, by reason of Defendants' breach of that contract, for which suit is also brought. The TNMP Defendants' and the SHELL Defendants' breach of contract is a legal or contributing cause of the Plaintiffs' damages.

COUNT FIVE
FRAUD AND FRAUDULENT CONCEALMENT

53. Plaintiffs incorporate under Count Five, paragraphs 1 through 52, as herein above alleged.

54. One or more agents and/or representatives of the TNMP Defendants and the SHELL Defendants represented to the Plaintiffs that the contamination which they had caused at the 13 sites in question would be properly cleaned up and/or had already been properly cleaned up in accordance with the laws, statutes and regulations of the State of New Mexico. These representations were material representations, as that term is defined and applied under the laws and statutes of the State of New Mexico. The Plaintiffs relied upon those representations with respect to what the Defendants intended to do with respect to the contamination and/or what the Defendants claimed to have already done with respect to the contamination at the 13 sites. The Plaintiffs now know that those representations with respect to what the Defendants planned to do and/or representations with respect to what the Defendants claimed to have already done with respect to the contamination, were false when made, and that the agents and representatives of the Defendants knew of the falsity when the representations were made. In truth and in fact, the representations were *misrepresentations*, as those terms are defined and applied under the laws and statutes of the State of New Mexico. The Plaintiffs' damages were legally caused and/or proximately caused as a result of those misrepresentations for which this lawsuit is brought.

55. Further, the TNMP Defendants and the SHELL Defendants concealed their failure to adequately and timely clean up the 13 sites in question in such a manner and under such circumstances that the concealment constitutes a fraudulent concealment, as that term is defined and applied under the laws and statutes of the State of New Mexico. Accordingly, the Plaintiffs plead

"fraudulent concealment" to any pleading, averment, and/or affirmative defense that the TNMP Defendants and/or the SHELL Defendants may aver and/or seek to prove in this case with respect to the 13 sites.

56. The misrepresentations and "cover-ups" with respect to what the TNMP Defendants and the SHELL Defendants failed to do at the 13 sites in question have only recently been brought to the attention of the Plaintiffs, and the Plaintiffs' environmental investigations and assessments are continuing as they attempt to determine the fully nature and extent of the contamination which the Defendants failed to adequately clean up and which has spread further into the soil, sub-soils, groundwater and aquifers underlying their Property.

DAMAGES

57. Plaintiffs incorporate under Damages, paragraphs 1 through 56, as herein above alleged.

58. Plaintiffs bring suit for the following damages, in an amount far in excess of \$75,000, that have been caused and/or proximately caused by the acts and omissions of the TNMP Defendants and the SHELL Defendants:

- a. The reasonable and necessary costs, including mitigation costs, of investigating and assessing the nature and extent of the contamination and pollution of the surface, subsurface soils, groundwater, and aquifers with respect to the Plaintiffs' Ranch.
- b. The reasonable and necessary cost of abatement and/or clean-up and remediation, including but not limited to efforts to curtail, prevent, limit, and stop further contamination of the surface and sub-surface of the Plaintiffs' Ranch.
- c. The reasonable and necessary costs of replacing the groundwater supply from the aquifers underlying the Plaintiffs' Property that have been contaminated by the TNMP and the SHELL Defendants, to which the Plaintiffs had a right to appropriate under the laws and statutes of the State of New Mexico.

- d. Out-of-pocket expenses which the Plaintiffs have incurred, or in reasonable probability will incur in the future, that have been caused by and/or related to the TNMP and SHELL Defendants' acts and omissions.
 - e. The reasonable and necessary attorneys' fees and litigation costs and expenses, including but not limited to, the Plaintiffs' retained consultants and costs associated with the investigation and assessment of the cause of and spatial extent of the contamination caused by the TNMP and the SHELL Defendants' acts and omissions by virtue of either a breach of contract or by virtue of the acts and omissions found by the Jury to be intentional and of such a nature to permit the Plaintiffs to recover punitive damages from one or more of the Defendants.
 - f. With respect to any permanent damage to the Plaintiffs' Ranch caused by the TNMP and SHELL Defendants' acts, omissions, and conduct, the diminished market value of the Plaintiffs' Ranch, taking into consideration the contamination of the soil, groundwater, and aquifers on and underlying the Plaintiffs' Ranch, and/or the reasonable and necessary costs of abatement and/or clean-up which in reasonable probability would restore the Plaintiffs' Ranch to its pre-contaminated condition, including but not limited to applying principles of negative market value --a market concept recognized and applied by the oil and gas industry and pipeline industry in properties such as the Plaintiffs which have been polluted and contaminated by pipeline operations.
 - g. In the event the jury determines that a statutory trespass occurred pursuant to the laws and statutes of the State of New Mexico, the Plaintiffs are also entitled to recover two times the amount of the value of the Plaintiffs' Property that was destroyed and/or injured.
 - h. Punitive damages in an amount sufficient to punish the TNMP Defendants and/or the SHELL Defendants, and to deter others from similar acts, omissions and conduct.
 - i. Such other and further damages that are supported by the evidence and permitted in law and/or equity.
59. Should one or more of the Defendants attempt to limit, cap, or seek to impose some type of ceiling on the actual damages suffered by the Plaintiffs to their Ranch by reason of the TNMP and/or the SHELL Defendants' contamination at the 13 sites, such cap or limitation on the recovery of

actual damages should not be permitted and should be denied, as a matter of fact and as a matter of law, for the following reasons:

1. Such an artificial cap and limitation on actual damages would be a violation of the Constitution of the State of New Mexico and the Constitution of the United States of America. Such a cap violates the due process clauses of the Constitutions in question and constitutes a 'taking' as those terms are defined under the laws and statutes of the State of New Mexico and pursuant to federal law.
2. Such an artificial cap on the reasonable costs of clean-up and remediation should be denied if the Defendants attempt to limit or cap such damages to the value of the Ranch, for the reason that each of the spill and/or leak sites could have been cleaned up and remediated for a sum less than the value of the Ranch if the spills and/or leaks had been promptly and properly cleaned up at the time that they occurred. The reason why the reasonable costs of clean-up and remediation total what they presently total is only because the leaks and spills were not timely and properly cleaned up at the time they occurred; rather, the contamination has been permitted to continue to seep vertically and horizontally, encompassing a larger volume of soil to be excavated and/or remediated. The Defendants have therefore waived and/or are estopped to claim such cap or limitation on the recovery of the reasonable costs of clean-up because their original inaction and their dilatory response to the leaks and spills are the only reasons that the present costs of clean-up and remediation may exceed the market value of the property.
3. To permit the Defendants to cap the cost of clean-up at the market value of the property encourages pollution and encourages irresponsible action by the polluter who either negligently and/or intentionally contaminates the precious natural resources of the State of New Mexico. If a polluter is permitted to profit from inaction and failure to perform a timely and adequate clean-up, the ultimate victims will be the innocent property owner and the precious natural resources of this State. To not permit the full recovery of the total costs of clean-up and remediation permits a polluter, such as the TNMP and the SHELL Defendants in this case, to become unjustly enriched by not paying the costs to clean up the contamination mess which they originally caused and permitted to spread through their inaction and failure to pay for a prompt and adequate clean-up. If the Defendants had promptly and properly paid for an adequate clean-up,

the contamination would have been cleaned up and would not have spread. By doing nothing and/or inadequate measures to date, the Defendants have saved the money that they would have otherwise had to spend and have profited and unjustly enriched themselves by the sums they failed to pay.

4. The Defendants should not monetarily benefit on account of their intentional and/or negligent inaction in their failure to timely and properly respond to the contamination they caused from their pipeline operations.
5. Further, to the extent that the Defendants caused this Court to even consider such inappropriate capping and/or artificial limiting with respect to the recoverable actual damages, the 13 sites must be considered separately, as opposed to an aggregate, in seeking to compare the cost of clean-up and remediation with any alleged cap value such as market value.
6. Any cap or disincentive to a polluter which encourages the polluter to not timely and clean up pipeline leaks and spills will ultimately lead to inexcusable spreading of the contamination into the precious and scarce groundwater of the State of New Mexico which owns all of the groundwater and has an interest in preserving and protecting that groundwater for its citizenry.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that each of the Defendants be cited to appear and answer herein and, that upon final trial that Plaintiffs have judgment against the Defendants, jointly and severally, for their damages as set forth in this original complaint, including but not limited to, their actual damages, punitive damages, attorney's fees, pre-judgment and post-judgment interest at the legal rate, costs of Court and for such other and further relief to which the Plaintiffs may be entitled under the facts and circumstances.

Respectfully submitted,
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