

FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

JOHN ETCHEVERRY,

NO. SF86-1509_{lc}

vs.

SAGE OIL COMPANY, a Texas
corporation; STATE LAND
OFFICE, and OIL CONSERVATION
DIVISION.

SUMMONS

TO R. L. Stamets, Director
Oil Conservation Division
310 Old Santa Fe Trail, Room 206
Santa Fe, New Mexico 87501

Defendant(s), Greeting:

You are hereby directed to serve a pleading or motion in response to the Complaint within 30 days after service of the Summons, and file the same, all as provided by law.

You are notified that, unless you so serve and file a responsive pleading or motion, the Plaintiff(s) will apply to the Court for the relief demanded in the Complaint.

Attorney or Attorneys For Plaintiff: Michael R. Comeau, Esq.
Address: Stephenson, Carpenter, Crout & Olmsted
P. O. Box 669
Santa Fe, New Mexico 87504-0669

PETRA JIMENEZ MAES

WITNESS the Honorable _____, District Judge of Said Court of the State of New Mexico and Seal of the District Court of Said County, this 30 day of June, 1986.

(SEAL)

SYLVIA L. SEDILLO
CLERK OF THE DISTRICT COURT
District Court Clerk

By: [Signature]
Deputy

NOTE

This summons does not require you to see, telephone or write to the District Judge of the Court at this time.

It does require you or your attorney to file your legal defense to this case in writing with the Clerk of the District Court within 30 days after the summons is legally served on you. If you do not do this, the party suing may get a Court Judgment by default against you.

This case is assigned to Judge Art Escobedo Division V

IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT
STATE OF NEW MEXICO, COUNTY OF SANTA FE

JUN 30 1986

SYLVIA L. SEDILLO
District Court Clerk

JOHN ETCHEVERRY,

Plaintiff,

vs.

No. SF812-1509 (C)

SAGE OIL COMPANY, a Texas
corporation; STATE LAND
OFFICE; and OIL CONSERVATION
DIVISION,

Defendants.

COMPLAINT FOR TRESPASS

COMES NOW Plaintiff, John Etcheverry, and for his complaint states:

1. Plaintiff, John Etcheverry, is a resident of Lea County, New Mexico.
2. Defendant, Sage Oil Company ("Sage"), is a corporation organized and existing under the laws of the State of Texas. Sage is not admitted to do business in New Mexico and does not maintain a statutory agent in New Mexico upon whom service of process may be had.
3. Defendant, State Land Office, is a constitutional agency of the State of New Mexico charged with the management, care, custody, control and disposition of all lands owned by the State of New Mexico. Its offices are located at the capital in Santa Fe County.
4. Defendant, Oil Conservation Division, is a statutory agency of the State of New Mexico charged with the enforcement of the laws of the State of New Mexico relating to the conservation of oil and gas. The Division's offices are located at the capital in Santa Fe County.

5. This action arises out of the transaction of business and the commission of tortious acts by defendant Sage while conducting a salt water disposal business for profit in Lea County, New Mexico.

COUNT I

6. Plaintiff realleges and incorporates by reference herein each of the allegations set forth in paragraphs 1 through 5.

7. Defendant Sage has since at least 1983 injected salt water produced in connection with oil production into hollow cavities of the underground geological formation known as the San Andreas formation, through a disposal well, known as Shell State SWD Well No. 1, located on land owned by the State of New Mexico in Unit V of Section 32, Township 14 South, Range 33 East, Lea County, New Mexico. The injection is purportedly authorized by an Order of the Oil Conservation Division dated December 8, 1982, Order No. R-7150, Case No. 7738, a copy of which is attached hereto as Exhibit A, and a Salt Water Disposal Easement granted to Sage by the State Land Office on November 12, 1982, No. SWD-0104, a copy of which is attached hereto as Exhibit B.

8. In applying to the State Land Office for a Salt Water Disposal Easement, defendant Sage represented that it sought to dispose of salt water derived from two oil wells that it operates elsewhere in New Mexico, "Hobbs '0' Well No. 1 Unit C," located in Section 35, Township 14 South, Range 33 East, and "Lea State 'CK' Well No. 1 Unit D," located in Section 35, Township 14 South, Range 33 East. Since obtaining the Salt Water Disposal Easement, Sage has become engaged in the business of salt water injection for profit through Shell State SWD Well No. 1. For a fee, Sage allows third parties to inject their salt water into Shell State SWD Well No. 1. Plaintiff is further

informed and believes that none of the salt water being injected into Shell State SWD Well No. 1 is obtained from producing oil wells on lands appurtenant to or located on Section 32, Township 14 South, Range 23 East.

9. Plaintiff is the owner of surface and mineral lands in Lea County which are immediately adjacent to the tract of Section 32, Township 14 South, Range 23 East upon which Sage operates its disposal well.

10. The San Andreas formation underlies not only the land on which Sage's disposal well is located, but also the land which plaintiff owns and possesses.

11. Defendant Sage has injected salt water into the San Andreas formation in sufficient quantities and under sufficient pressure to cause it to flow toward and under, and to accumulate in and upon the subsurface mineral lands that plaintiff owns and possesses.

12. Such injection has been willfully carried out in the course of conducting a salt water disposal business for profit.

13. Such injection has been carried out without plaintiff's authorization and despite plaintiff's protests, and constitutes an intentional trespass upon the subsurface lands that plaintiff owns and possesses.

14. Plaintiff is entitled to recover from defendant Sage the revenues which Sage has realized through such trespass.

15. The trespass of Sage has been willful, wanton, malicious and in reckless disregard of the rights of plaintiff. Accordingly, plaintiff is entitled to punitive damages.

COUNT II

16. Plaintiff realleges and incorporates by reference herein each of the allegations set forth in paragraphs 1 through 15.

17. Defendant Sage's injection of salt water into Shell State SWD Well No. 1 commenced no later than 1983, and has continued to the present, resulting in a continuing flow, and accumulation of salt water in and upon the subsurface mineral lands that plaintiff owns and possesses.

9 18. Such continuing flow and accumulation of salt water has caused and threatens to cause irreparable injury to plaintiff for which he has no adequate remedy at law.

19. Upon application, plaintiff is entitled to a preliminary injunction enjoining defendant Sage from further injection of salt water into the San Andreas formation pending resolution of plaintiff's claims, and, after trial, a permanent injunction enjoining Sage's injection thereafter.

COUNT III

20. Plaintiff realleges and incorporates by reference herein each of the allegations set forth in paragraphs 1 through 19.

21. If defendant Sage's trespass is purportedly authorized by defendant State Land Office, such authorization is unlawful in that the State may not authorize a trespass upon plaintiff's land. Moreover, such authorization is an unlawful taking of plaintiff's property without compensation in violation of the 5th and 14th Amendments to the U. S. Constitution and Art. II, § 20 of the Constitution of the State of New Mexico.

COUNT IV

22. Plaintiff realleges and incorporates by reference herein each of the allegations set forth in paragraphs 1 through 21.

23. If defendant Sage's trespass is purportedly authorized by defendant Oil Conservation Division, such authorization is unlawful in that the State may

not authorize a trespass upon plaintiff's land. Moreover, such authorization is an unlawful taking of plaintiff's property without compensation in violation of the 5th and 14th Amendments to the U. S. Constitution and Art. II, § 20 of the Constitution of the State of New Mexico.

WHEREFORE, plaintiff prays for:

A. a money judgment against defendant Sage in an amount equal to the gross revenues and benefits Sage has realized by virtue of its unlawful trespass upon the lands of plaintiff, and punitive damages of \$1,000,000;

B. a preliminary injunction enjoining defendant Sage from further injection of salt water into Shell State SWD Well No. 1 pending resolution of plaintiff's claims, and, after trial, a permanent injunction enjoining such injection; and

C. a declaration that the State Land Office and the Oil Conservation Division may not lawfully authorize a trespass upon plaintiff's land or take his property without compensation.

NEAL & NEAL, P.C.
J. W. Neal, Esq.
P. O. Box 278
Hobbs, New Mexico 88240
(505) 397-3614

STEPHENSON, CARPENTER, CROUT
& OLMSTED
P. O. Box 669
Santa Fe, New Mexico 87504-0669
(505) 982-4611

By 
Michael R. Comeau

Attorneys for Plaintiff

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

CASE NO. 7738
Order No. R-7150

APPLICATION OF SAGE OIL COMPANY
FOR SALT WATER DISPOSAL, LEA
COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 9 a.m. on November 23, 1982, at Santa Fe, New Mexico, before Examiner Richard L. Stamets.

NOW, on this 8th day of December, 1982, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner, and being fully advised in the premises,

FINDS:

(1) That due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) That the applicant, Sage Oil Company, is the owner and operator of the Shell State SWD Well No. 1, located in Unit K of Section 32, Township 14 South, Range 34 East, NMPM, Lea County, New Mexico.

(3) That the applicant proposes to utilize said well to dispose of produced salt water into the San Andres formation, with injection into the open-hole interval from approximately 4475 feet to 5970 feet.

(4) That the injection should be accomplished through 2 7/8-inch or 3-inch plastic lined tubing installed in a packer set at approximately 4400 feet; that the casing-tubing annulus should be filled with an inert fluid; and that a pressure gauge or approved leak detection device should be attached to the annulus in order to determine leakage in the casing, tubing, or packer.

EXHIBIT A

(5) That the injection well or system should be equipped with a pressure limiting switch or other acceptable device which will limit the wellhead pressure on the injection well to no more than 890 psi.

(6) That the Director of the Division should be authorized to administratively approve an increase in the injection pressure upon a proper showing by the operator that such higher pressure will not result in migration of the injected waters from the San Andres formation.

(7) That the operator should notify the supervisor of the Hobbs district office of the Division of the date and time of the installation of disposal equipment so that the same may be inspected.

(8) That the operator should take all steps necessary to ensure that the injected water enters only the proposed injection interval and is not permitted to escape to other formations or onto the surface.

(9) That approval of the subject application will prevent the drilling of unnecessary wells and otherwise prevent waste and protect correlative rights.

IT IS THEREFORE ORDERED:

(1) That the applicant, Sage Oil Company, is hereby authorized to utilize its Shell State SWD Well No. 1, located in Unit K of Section 32, Township 14 South, Range 34 East, NMPM, Lea County, New Mexico, to dispose of produced salt water into the San Andres formation, injection to be accomplished through 2 7/8-inch or 3-inch tubing installed in a packer set at approximately 4400 feet, with injection into the open-hole interval from approximately 4475 feet to 5970 feet;

PROVIDED HOWEVER, that the tubing shall be plastic-lined; that the casing-tubing annulus shall be filled with an inert fluid; and that a pressure gauge shall be attached to the annulus or the annulus shall be equipped with an approved leak detection device in order to determine leakage in the casing, tubing, or packer.

(2) That the injection well or system shall be equipped with a pressure limiting switch or other acceptable device which will limit the wellhead pressure on the injection well to no more than 890 psi.

(3) That the Director of the Division may authorize an increase in injection pressure upon a proper showing by the

Case No. 7738
Order No. R-7150

operator of said well that such higher pressure will not result in migration of the injected fluid from the San Andres formation.

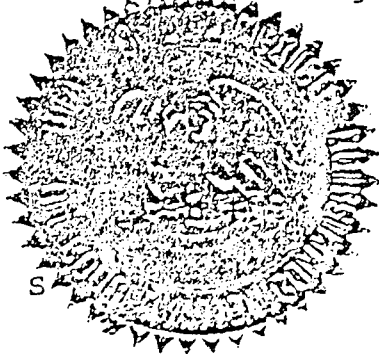
(4) That the operator shall notify the supervisor of the Hobbs district office of the Division of the date and time of the installation of disposal equipment so that the same may be inspected.

(5) That the operator shall immediately notify the supervisor of the Division's Hobbs district office of the failure of the tubing, casing, or packer, in said well or the leakage of water from or around said well and shall take such steps as may be timely and necessary to correct such failure or leakage.

(6) That the applicant shall submit monthly reports of its disposal operations in accordance with Rules 702, 703, 704, 705, 706, 708, and 1120 of the Division Rules and Regulations.

(7) That jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

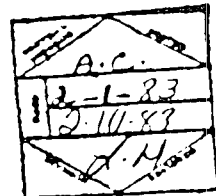


STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

Joe D. Ramey
JOE D. RAMEY,
Director



NEW MEXICO STATE LAND OFFICE
SALT WATER DISPOSAL EASEMENT



APPLICATION NO. _____

SALT WATER DISPOSAL
EASEMENT NO. SWD--0104

THIS AGREEMENT, dated this 12 day of November,
19 82, made and entered into between the State of New Mexico, acting by
and through the undersigned, its Commissioner of Public Lands, hereinafter
called the grantor, and Sage Oil Company,
of 425 Hamilton Building Wichita Falls, Texas 76301,
(Address)

hereinafter called the grantee,

WITNESSETH:

That, whereas, the said grantee has filed in the Land Office an applica-
tion for a salt water disposal easement and has tendered the sum of \$ 260.00,
which sums includes the first annual payment therefor, together with the sum of
\$10.00 application fee;

NOW, THEREFORE, in consideration of the foregoing tender, receipt
of which is acknowledged, and the covenants herein, grantor does grant to the
grantee a salt water disposal easement for the sole and only purpose of under-
ground disposal of salt water produced in connection with oil and gas operations,
together with the right to make such reasonable use of the land as may be neces-
sary to dispose of said salt water. Said easement shall cover the following des-
cribed lands:

INSTITUTION	SECTION	TOWNSHIP	RANGE	SUBDIVISION	ACRES
	32	14S	34E	NE/4SW/4	2.50

TO HAVE AND TO HOLD said lands and privileges hereunder for a term
of five years from the date first above written, subject to all terms and
conditions hereinafter set forth:

1. Grantee shall pay the grantor the sum of \$ 250.00 annually,
in advance.

2. With the consent of the grantor and payment of a fee of \$10.00, the
grantee may surrender or relinquish this salt water disposal easement to the
grantor; provided, however, that this surrender clause shall become absolutely
inoperative immediately and concurrently with the filing of any suit in any court
of law or equity by the grantor or grantee or any assignee to enforce any of the
terms of this salt water disposal easement.

3. The grantee, with the prior written consent of the grantor, may assign this salt water disposal easement in whole only. Upon approval of the assignment, in writing, by the grantor, the grantee shall stand relieved from all obligations to the grantor with respect to the lands embraced in the assignment, and the grantor shall likewise be relieved from all obligations to the assignor as to such tracts, and the assignee shall succeed to all of the rights and privileges of the assignor with respect to such tracts and shall be held to have assumed all of the duties and obligations of the assignor to the grantor as to such tracts.

4. The grantor may cancel this salt water disposal easement for non-payment of the annual consideration or for violation of any of the terms and covenants hereof; provided, however, that before any such cancellation shall be made, the grantor must mail to the grantee or assignee, by registered mail, addressed to the post office address of such grantee or assignee, shown by the records, a thirty-day notice of intention to cancel said salt water disposal easement, specifying the default for which the salt water disposal easement is subject to cancellation. No proof of receipt of notice shall be necessary and thirty days after such mailing, the grantor may enter cancellation unless the grantee shall have sooner remedied the default.

5. The grantee shall furnish copies of records and such reports and plats of his operations, including any and all data relating to geological formations as the grantor may reasonably deem necessary to his administration of the lands.

6. Grantee may make or place such improvements and equipment upon the land as may reasonably be necessary to dispose of salt water, and upon termination of this salt water disposal easement for any reason, grantee may remove such improvements and equipment as can be removed without material injury to the premises; provided, however, that all sums due the grantor have been paid and that such removal is accomplished within one year of the termination date or before such earlier date as the grantor may set upon thirty days written notice to the grantee. All improvements and equipment remaining upon the premises after the removal date, as set in accordance with this paragraph, shall be forfeited to the grantor without compensation. All pipelines constructed hereunder shall be buried below plow depth.

7. This salt water disposal easement is made subject to all the provisions and requirements applicable thereto which are to be found in various acts of the legislature of New Mexico and the rules of the Commissioner of Public Lands of the State of New Mexico, the same as though they were fully set forth herein, and said laws and rules, so far as applicable to this salt water disposal easement, are to be taken as a part hereof.

8. All the obligations, coverants, agreements, rights and privileges of this salt water disposal easement shall extend to and be binding and inure to the benefit of the lawful and recognized assigns or successors in interest of the parties hereto.

9. Grantee shall post with grantor a bond or undertaking in an amount required by grantor in favor of the owner of improvements lawfully located upon the lands herein to secure payment of damage, if any, done to such improvements by reason of grantee's operations.

10. Payment of all sums due hereunder shall be made at the office of the Commissioner of Public Lands, 310 Old Santa Fe Trail, P. O. Box 1148, Santa Fe, New Mexico 87501.

11. Grantee, including his heirs, assigns, agents, and contractors shall at their own expense fully comply with all laws, regulations, rules, ordinances, and requirements of the city, county, state, federal authorities and agencies, in all matters and things affecting the premises and operations thereon which may be enacted or promulgated under the governmental police powers pertaining to public health and welfare, including but not limited to conservation, sanitation, aesthetics, pollution, cultural properties, fire, and ecology. Such agencies are not to be deemed third party beneficiaries hereunder; however, this clause is enforceable by the grantor as herein provided or as otherwise permitted by law.

12. Grantee shall save and hold harmless, indemnify and defend the State of New Mexico, the Commissioner of Public Lands, and his agent or agents, in their official and individual capacities, of and from any and all liability claims, losses, or damages arising out of or alleged to arise out of or indirectly connected with the operations of grantee hereunder, off or on the hereinabove described lands, or the presence on said lands of any agent, contractor or sub-contractor of grantee.

IN WITNESS WHEREOF, the Stat. of New Mexico has hereunto signed and caused its name to be signed by its Commissioner of Public Lands, thereunto duly authorized with the seal of his office affixed, and the grantee has signed this agreement to be effective the day and year above written.

STATE OF NEW MEXICO

BY: [Signature]
COMMISSIONER OF PUBLIC LANDS

SAGE OIL COMPANY

[Signature]
GRANTEE Weldon S. Guest ✓

(PERSONAL ACKNOWLEDGMENT)

STATE OF TEXAS)
) ss.
COUNTY OF WICHITA)

The foregoing instrument was acknowledged before me on this 17
day of December, 19 82, by Weldon S. Guest.

My Commission Expires: 8-16-86 [Signature]
Notary Public Rena Lyn Shaffer

(ACKNOWLEDGMENT BY ATTORNEY)

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on this _____
day of _____, 19 _____, by _____.

My Commission Expires: _____
Notary Public _____

(ACKNOWLEDGMENT BY CORPORATION)

STATE OF _____)
COUNTY OF _____) ss.

The foregoing instrument was acknowledged before me on this _____
day of _____, 19____, by _____,
(name)
_____, of _____,
(title) (corporation)
a _____ corporation, on behalf of said corporation.
(state)

My Commission Expires: _____
Notary Public