

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DR. TERI ALBRIGHT	§	
DR. MILTON SHAW	§	
MAX FOWLER	§	
PAULA FOWLER	§	
TRINITY EDWARDS SPRINGS	§	
PROTECTION ASSOCIATION	§	
Plaintiffs	§	
	§	CAUSE NUMBER: 1:20-cv-00651
v.	§	
	§	
PERMIAN HIGHWAY PIPELINE LLC	§	
and KINDER MORGAN TEXAS	§	
PIPELINE LLC,	§	
Defendants	§	

PLAINTIFFS' ORIGINAL COMPLAINT

INTRODUCTION

Earth Without Water

Imagine earth without water. The soil, with no water in it and nothing growing on it, would be lifeless, dead, collapsed into dust, sand, clay or rock....

Now imagine the air without water. Clouds provide a buffer from the heating power of the sun. Without them it would pour down with no mercy.... There would be no sweet scents, since moisture is what conveys smells....

If, instead of commanding it, we could conceive of ourselves as a partner or an intelligent component of water's own rain and storage cycle, it might encourage us to be more respectful of what water can do and more careful of the way we utilize it.

With water, we thrive. Without water, there is no life. We must learn to value, conserve, and take care of the water we have.¹

¹ <https://owlcation.com/stem/The-Importance-of-Water-to-Life>

NATURE OF THE CASE

1. Defendants pumped 36,000 gallons of drilling fluid containing at least seven different Class 1 probable human carcinogens into the aquifer near Blanco, Texas.
2. Defendants have not cleaned up the contamination.
3. There is no safe level of exposure to human carcinogens.
4. Contaminating the aquifer on which people depend for water along the Blanco River Valley is not acceptable to the conscience of the community or the law.
5. This case is brought against Defendants for alleged violation of the federal Safe Drinking Water Act, 42 U.S.C. §§ 300h to 300h-8, which protects “underground sources of drinking water.”
6. The Safe Drinking Water Act prohibits the injection of “contaminants” into the “underground sources of drinking water.”
7. “Contaminant” means any physical, chemical, biological, or radiological substance or matter in water. 42 U.S.C. § 300f(6).
8. On March 28, 2020, workers attempting to drill under the Blanco River made serious errors and as a consequence pumped 36,000 gallons of “AMC Gel” drilling fluid in the aquifer.
9. The plume of drilling fluid moved away from the drilling site under the river and contaminated home water wells a mile to mile and a half away ruining the drinking water of Dr. Teri Albright, Dr. Milton Shaw, Max and Paula Fowler, and others.
10. The AMC Gel Safety Data Sheet from the manufacturer of the product is attached. See, Exhibit 1
11. The Safety Data Sheet for AMC Gel drilling fluid states it contains two Class 1 human carcinogens, Acrylamide and Silica, which were injected into the aquifer, which is an

“underground source of drinking water,” which supplies water to Plaintiffs’ homes, as well as area public water supplies.

12. Later testing of this AMC Gel product by the lab at the Lower Colorado River Authority found this material contained numerous undisclosed noxious metals, several of which also are probable human carcinogens.

13. Once providing pristine water, among the best in the State of Texas, Plaintiffs’ home water wells remain cloudy months later from the injection of drilling fluid.

14. Defendants have made no effort to clean up the pollution they created.

15. The Defendants have not delineated the size of the plume or all areas impacted by the plume.

16. The plume remains in the aquifer.

17. The plume presents a continuing danger of contamination to this underground source of drinking water upon which 10,000 people depend.

18. This case is brought by homeowners for damages for violations of the federal Safe Drinking Water Act, as well as Texas state law causes of action.

19. Further, plaintiff TESPAs seeks forward-looking injunctive protections on a broader scale to protect the aquifer, which is an “underground source of drinking water,” which is supposed to be strictly protected, before it suffers more and greater irreparable damage.

PLAINTIFFS

20. Plaintiff, Dr. Teri Albright, is a resident of Blanco County, Texas. Dr. Albright owns property with a drinking water well, owns the groundwater under her property, and is a member of TESPAs.

21. Plaintiff, Dr. Milton Shaw, is a resident of Blanco County, Texas. Dr. Shaw owns property with a drinking water well, owns the groundwater under his property, and is a member of TESPAs.

22. Plaintiff, Max Fowler, is a resident of Blanco County, Texas. Mr. Fowler owns property with a drinking water well, owns the groundwater under his property, and is a member of TESPAs.

23. Plaintiff, Paula Fowler, is a resident of Blanco County, Texas. Ms. Fowler owns property with a drinking water well, owns the groundwater under her property, and is a member of TESPAs.

24. Plaintiff, Trinity Edwards Springs Protection Association is a Texas non-profit with its principal place of business in Hays County, Texas. TESPAs has members in Blanco and Hays counties with drinking water wells, and ownership of their groundwater.

DEFENDANTS

25. Defendant, Permian Highway Pipeline, LLC is a Delaware corporation with its principal place of business in Houston, Harris County, Texas. It may be served through its registered agent for service of process: Capital Corporate Services, Inc., 206 E. 9th Street, Suite 1300, Austin, Texas 78701-4411.

26. Defendant, Kinder Morgan Texas Pipeline, LLC is a Delaware corporation with its principal place of business in Houston, Harris County, Texas. Kinder Morgan is the managing partner of the Permian Highway Pipeline project. It may be served through its registered agent for service of process: Capital Corporate Services, Inc., 206 E. 9th Street, Suite 1300, Austin, Texas 78701-4411.

VENUE

27. The events giving rise to this action occurred in Blanco County, Texas, which is in the Austin Division of the Western District of Texas. Therefore, venue is proper in this court pursuant to 28 U.S.C. § 1391.

**PERSONAL JURISDICTION
OUT OF STATE INCORPORATED DEFENDANTS**

28. The Court has specific jurisdiction as the events made the basis of this action occurred in Blanco County, Texas, which is this division, and general jurisdiction as the corporations have their principal places of business in this state. *See, Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, --- U.S.---, 137 S. Ct. 1773, 1779–80, 198 L. Ed. 2d 395, 2017 WL 2621322 (2017).

SUBJECT MATTER JURISDICTION

29. This Court has original jurisdiction over this matter brought pursuant to the federal Safe Drinking Water Act, 42 U.S.C. §§ 300h to 300h–8.

30. Plaintiffs bring this action pursuant to the federal Safe Drinking Water Act, “SDWA” which allows for enforcement through a “citizen suit” such as this case and provides the basis for federal question jurisdiction. 42 U.S.C. § 300j-8.

31. “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

32. Plaintiffs have issued the necessary citizen suit notices of intent to sue and have waited more than sixty days to file this litigation as required by 42 U.S.C. § 300j-8(b)(1)(A). Exhibit 2.

33. This Court has jurisdiction to grant declaratory relief concerning violations of the Safe Drinking Water Act pursuant to 28 U.S.C. §§ 2201 and 2202 of the Declaratory Judgment Act.

34. This Court has supplemental jurisdiction of the state law causes of action as they arise out of the same event. 28 U.S.C. § 1367(a).

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