

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

GOLIAD COUNTY, TEXAS; CRAIG
AND LUANN DUDERSTADT,
Plaintiffs,

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v.

CIVIL ACTION NO. _____

URANIUM ENERGY CORP.,
Defendant.

ORIGINAL COMPLAINT

COMES NOW, Goliad County, Texas, and Craig and LuAnn Duderstadt (“Duderstadts”), Plaintiffs herein, and complain of Uranium Energy Corp., Defendant.

I. INTRODUCTION AND SUMMARY OF THE CASE

1. This is a case about groundwater contamination in the northern portion of Goliad County, Texas.

2. Goliad County possesses an underground aquifer that is suitable for and used for drinking water purposes as well as for livestock and wildlife.

3. Throughout Goliad County, there is extensive reliance on these groundwater resources.

4. Goliad County’s economic future is directly tied to the availability and quality of this groundwater.

5. Uranium Energy Corp. (“UEC”) has been undertaking uranium exploration activities near Weser, Texas, east of U.S. Highway 183.

6. Uranium exploration is regulated by the Texas Railroad Commission (“TRRC”) whereas in situ solution mining of uranium is regulated by the Texas Commission on Environmental Quality (“TCEQ”).

7. After the initiation of uranium exploration activities by UEC, a number of the water wells within the UEC exploration area became contaminated and became impossible to use for drinking water purposes.

8. This lawsuit complains that Uranium Energy Company (UEC) created a condition of nuisance by causing contamination of a portion of the underground aquifer of Goliad County near Weser, Texas east of U.S. Highway 183.

9. This lawsuit also complains that UEC violated the rules of the TRRC associated with exploration for uranium and that these violations are directly related to this groundwater contamination, creating a condition of nuisance per se.

10. At the time of the filing of this litigation, a permit application filed by UEC is pending before the TCEQ to allow UEC to conduct in situ solution mining operations to remove uranium from the subsurface of Goliad County.

11. In situ solution mining for uranium is regulated as a Class III injection well under the program developed by the State of Texas to implement the federal Safe Drinking Water Act. 30 T.A.C. §331.11(2)(B).

12. The uranium deposit for which UEC is seeking an in situ solution mining permit is located within the Goliad sands of the Evangeline Aquifer near Weser, Texas.

13. This portion of the aquifer was used as an underground source of drinking water before the contamination complained of in this litigation occurred.

14. Under the rules of the United States Environmental Protection Agency (“EPA”) and the TCEQ, no Class III permit may be issued if such a permit would endanger an Underground Source of Drinking Water. 40 C.F.R. §144.1(e); 30 T.A.C. §331.5(a).

15. This litigation alleges that UEC collected so-called “baseline” groundwater samples of the Evangeline Aquifer after they had commenced exploration activities and after they had generated the contamination complained of in this litigation.

16. Plaintiffs are concerned UEC intends to submit these groundwater samples to both the TCEQ and EPA as “evidence” that the aquifer at the uranium mining site is unsuitable for drinking water purposes and should therefore be “exempted” from the protection of the Safe Drinking Water Act.

17. The aquifer exemption process is an independent evaluation separate from the in situ solution mining application filed with the TCEQ.

18. Currently, no public notice has been issued and no opportunity for public hearing has been made available as required by 30 T.A.C. §331.13(e).

19. This lawsuit seeks a declaration and/or remedy that UEC cannot create a nuisance condition by violating mining rules and contaminating an aquifer and then enjoy the fruits of that action by seeking to exempt the otherwise drinkable water from the protections of the Safe Drinking Water Act.

20. Goliad County has issued a 60-day notice of intent to sue UEC under the citizen suit provision of the Safe Drinking Water Act and intends to seek permission of this court to amend this pleading to include the Safe Drinking Water Act cause of action when it becomes ripe from a jurisdictional standpoint.

21. On March 17, 2008, Craig and LuAn Duderstadt issued a Notice of Intent to file a citizen suit alleging a violation of the SDWA by UEC.

II. JURISDICTION

22. This court has jurisdiction of the violations of the Safe Drinking Water Act, 42 U.S.C. 300h *et seq.*, by virtue of 28 U.S.C. §1331, actions arising under the Constitution, laws, or treaties of the United States.

23. This court has jurisdiction to offer declaratory relief relative to the Safe Drinking Water Act pursuant to 28 U.S.C. §§2201 and 2202, the Declaratory Judgment Act.

24. This court has supplemental jurisdiction of the nuisance and nuisance per se actions by virtue of 28 U.S.C. §1367(a), claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution

III. VENUE

Pursuant to 28 U.S.C. §§ 1391 (a) and (c), venue is proper because a substantial part of the events or omissions giving rise to the claims occurred in this district and a substantial part of the property that is subject of the action is situated in this district.

IV. PARTIES

25. Plaintiff, Goliad County, Texas, is a corporate and political body whose duty incorporates the enforcement of certain federal, state and local laws controlling the activities complained of herein, and protecting the interests of its citizens as described in this Complaint.

26. Plaintiffs, Craig and Luann Duderstadt, are property owners and residents of Goliad County, Texas. Their residence is located within the area permitted to Uranium Energy Corp. for uranium exploration mining by the Texas Railroad Commission. The Duderstadt's livelihood is dependent on a water supply derived from a water well also located within this exploration area.

27. Defendant Uranium Energy Corp. is a corporation organized under the laws of the State of Nevada with permission to and conducting business in the State of Texas and may be served by serving its registered agent INCORP SERVICES INC. at 720 Brazos Street, Suite 1115, Austin, Texas 78701.

V. FACTS

28. Goliad County lies northwest of Victoria, Texas.

29. The County Seat of Goliad County is the city of Goliad.

30. The legal entity known as Goliad County is administered by County Judge Gleinser and four County Commissioners – Commissioners Long, Flores, Rodriguez and Kreneck.

31. Goliad County relies upon fresh groundwater aquifers for its source of water throughout virtually the entire county.

32. Groundwater is relied upon for drinking water, cattle and livestock watering, irrigation and wildlife.

33. The Goliad County Groundwater Conservation District (“GCGCD”) was formed under the provisions of Texas law in 2003 to protect, preserve, conserve and prevent waste of the groundwater in Goliad County. TEX. WATER CODE §36.011.

34. GCGCD has responsibility for issuing permits allowing the use of groundwater in Goliad County and for monitoring water quality within the aquifer.

35. The GCGCD is presided over by Chairman Art Dohmann, Vice President Joe Kozielski, and Directors – Wesley Ball, John Dreier, John Duke, Raulie Irwin and Barbara Smith.

36. In certain areas of the State of Texas, uranium has been deposited within the sands of subsurface aquifers over the eons.

37. Uranium is deposited in certain of these aquifers at specific locations as a result of subsurface chemistry and resultant chemical reactions that caused uranium that was in solution in the aquifer waters to precipitate within the sand formation.

38. TCEQ authorizes by permit extraction of uranium by the process of in situ solution. TEX. WATER CODE §§27.002(12) and 27.011.

39. In order to explore for uranium, wells are drilled to a particular depth in the sand formation and a sample of the deposit is removed and brought to the surface for analytical testing.

40. Uranium exploration in Texas is regulated by the Railroad Commission of Texas. 16 T.A.C. §11.136.

41. On or about April 4, 2006, UEC applied for and received Permit #123 from the TRRC to conduct uranium exploration activities in Goliad County, Texas.

42. The project approved by Permit #123 is also known as the Weesatche Project.

43. On or about October 25, 2006, Permit #123 was amended to allow casing of some of the exploration boreholes for use as water wells or monitoring wells.

44. The geographic area that is the subject of exploration mining Permit #123 is located near Weser, Texas, east of U.S. Highway 183.

45. In or around July of 2006, UEC initiated exploration activities by drilling test holes and extracting samples pursuant to Permit #123.

46. The terms of the permit and the TRRC rules specify the manner in which exploration activities are to be conducted.

47. TRRC Rules 16 T.A.C. §§11.138(1) and (2) require that reclamation of any material such as debris, trash and well cutting be addressed in the application for an exploration permit.

48. TRRC Rule 16 T.A.C. §11.138(4)(A) requires that no boreholes remain open after the exploratory sample is taken.

49. The representations of the permit application submitted by UEC also become enforceable requirements of law.

50. A number of Goliad County residents in the vicinity of the UEC exploratory activity use groundwater for drinking water and other household uses.

51. In December 2006, GCGCD contracted the San Antonio River Authority to test fifteen (15) water wells including the wells of Tom Anklam, Craig and LuAnn Duderstadt and Ted Long.

52. On February 5, 2007, Goliad County informed the TRRC that Goliad County had tested 15 wells for radiation and that the levels of radiation found in three of these wells – 13, 14 and 15 – are alarming.

53. Radiation levels in wells 13, 14, and 15 were found to be significantly higher than the EPA standard and are down dip of the exploration activity.

54. In this February 5, 2007 correspondence, Goliad County complained of residue being left on the surface in violation of UEC representations, and concluded by asking for an investigation by the TRRC.

55. The Texas Railroad Commission conducted an inspection of the Weesatche field from March 7-9, 2007.

56. On March 26, 2007, field inspectors issued a Notice of Violation (NOV) identifying two (2) violations of various Texas Railroad Commission rules and a violation of Exploration Permit #123 .

57. The field inspectors identified that seventy-four (74) exploratory boreholes were not properly sealed. Exhibit 1, Railroad Commission of Texas Uranium Exploration Inspection Report and NOV No. 080A.

58. Upon receipt of this NOV, UEC proceeded to address the regulatory violations.

59. On April 20, 2007 Melvin Hodgkiss of the Surface Mining and Reclamation Division of the Texas Railroad Commission responded to Goliad County's concerns about groundwater contamination, stating that an assessment of the material submitted by Goliad County had been undertaken by Tim Walter, P.G. of the TRRC staff.

60. According to this letter, Mr. Walter concluded that no ground water contamination has occurred as a result of drilling activities and that the source of groundwater contamination identified in the samples was from natural sources in contact with the sampled wells.

61. In or around the first quarter of 2007, LuAnn and Craig Duderstadt observed coloration and bad taste in their water well as well as gray slimy residue and sand and iron residue in the filter bowl.

62. In or around the first quarter of 2007, Tom Anklam, Aldon Bade and Reta Brown experienced a reddish coloration in their household water.

63. In or around the first quarter of 2007, the residence of Ted Long experienced a red deposit in the toilet bowl.

64. In the first two weeks of April, 2007 the GCGCD was advised of five individual residences that were experiencing plugged water filters and discolored water.

65. On April 26, 2007, further testing was undertaken by the GCGCD of five wells near the Weesatche field, including the three wells previously tested by both GCGCD and UEC and two more – one owned by Alton Bade and one by Reta Brown – that had been previously tested only by UEC.

66. A comparison of the April 26 test data with earlier tests on the Bade property indicated that chloride, sulfate, iron and sodium levels had increased during the time since December, 2006.

67. A comparison of the April 26 test data with earlier tests on the Anklam property indicated that sulfate and sodium had increased.

68. A comparison of the April 26 test data with earlier tests on the Reta Brown property indicated that iron had increased.

69. A comparison of the April 26 test data with earlier tests on the Duderstadt property indicated that chloride, sulfate, nitrate, calcium, sodium and magnesium had all increased.

70. On May 3, 2007 a geologist with the TRRC named Murphy Hawkins visited the Duderstadt residence.

71. After observing dirty filters and filter bowl residue from the Duderstadt water well, Mr. Hawkins stated that the TRRC had no jurisdiction over this problem.

72. On May 9, 2007, responding to Goliad County's concerns submitted in its February 5, 2007 letter, the TRRC wrote County Judge Harold Gleinser regarding the results of their gamma radiation study of the Weesatche project.

73. In this May 9, 2007 letter the TRRC stated that their gamma radiation study confirmed that cuttings had been left on the land surface and that while some elevated gamma radiation levels were found, the readings were not sufficient to pose a radiation hazard.

74. On July 9, 2007 the Goliad County Groundwater Conservation District sent a letter to the TRRC, conveying water well sampling data and a report from a groundwater geohydrologist titled "Evaluation of Potential Impacts Related to Proposed Uranium Mining in Goliad County, Texas," and requesting further investigation of this situation by the TRRC.

75. Subsequent to that letter, field observations have indicated further groundwater problems and violation of TRRC rules.

76. On around December 20, 2007, Goliad Commissioner Ted Long documented additional unplugged boreholes in violation of Texas Railroad Commission Rule 16 T.A.C. § 11.138(4)(A) and (C).

77. On February 6, 2008, Dr. Bruce Darling, P.G. of Southwest Groundwater Consulting, LLC. accompanied Ms. LuAnn Duderstadt onto property owned by Mr. Elder Abrameit.

78. At this time, Dr. Darling observed additional boreholes that had been left open to the land surface.

79. Some of these boreholes extended into the aquifer in the subsurface.

80. These holes were left open to surface water runoff occurring across the surface of Mr. Abrameit's property.

81. The boreholes were left open for at least more than 48 hours.

82. By leaving a borehole open to the surface for more than 48 hours, UEC violated TRRC Rule §11.138 (4)(A) and (C).

83. Stormwater has flowed down these open boreholes into the aquifer contributing and/or exacerbated the contamination of the Evangeline Aquifer.

A. Facts Regarding In Situ Solution Mining and Aquifer Exemption

84. On or about August 7, 2007, UEC submitted an application for Permit # UR03075 to the TCEQ to conduct in situ solution mining for uranium in Goliad County, Texas of the Evangeline aquifer in accordance with 30 T.A.C. 331.7(a).

85. In that application, UEC identified a baseline water quality.

86. In that baseline, the water quality of the Evangeline Aquifer was shown to be relatively poor.

87. UEC has proposed to conduct uranium mining activities in the approximate area where the exploratory boreholes have been completed.

88. UEC proposes to mine uranium using in situ solution mining processes.

89. In situ solution mining is accomplished by injecting fluids into the subsurface.

90. The injection of fluids into the subsurface through a well is regulated by the Underground Injection Control Program of the federal Safe Drinking Water Act (SDWA). 42 U.S.C. 300f et seq.; 40 C.F.R. §144.11.

91. Under the regulatory process of the SDWA, in situ mining is regulated as a Class III injection well.

92. Under the regulatory program of the SDWA, underground sources of drinking water (USDWs) are to be protected from underground injection. 42 U.S.C. 300h-1(a); 40 C.F.R. §144.12.

93. The state of Texas has been delegated primary enforcement responsibility pursuant to §300h-1(b)(3) of the Safe Drinking Water Act, which has been adopted by the State under Chapter 27 of Texas Water Code.

94. The Goliad Sands within the area where the uranium mining is proposed to occur contains drinkable water, currently used for drinking water purposes, which generally requires a Class III permit application to be denied under the various rules applicable to underground injection. 30 T.A.C. §331.5(a); 30 T.A.C. §331.13.

95. If, however, the underground aquifer were not suitable for or used for drinking water purposes, a Class III permit could be obtained if the aquifer were “exempted” from the protections of the Safe Drinking Water Act. 40 C.F.R. §144.7(b); 30 T.A.C. 331.13.

96. Under the SDWA, a process exists to exempt a portion of an aquifer or a USDW. 40 C.F.R. 144.7(b).

97. Currently, no public notice has been issued and no opportunity for public hearing has been made available as required by 30 T.A.C. §331.13(e).

98. UEC has indicated in Section 14 of its permit application that it intends to obtain approval from both the TCEQ and United States Environmental Protection Agency for an exemption of a portion of the Evangeline aquifer.

99. UEC contends that water quality data indicates that a portion of the Evengeline Aquifer is not usable for drinking water purposes.

100. UEC completed collecting samples from water wells for the “baseline” data in the Area of Review defined in the application for Permit #UR03075 between December 13, 2006 and January 3, 2007.

101. This so-called baseline water quality data was collected after the initiation of exploration mining activities by UEC, which began in July 2006 – five months prior to the baseline testing.

102. In letter correspondence dated September 5, 2007, the Texas Railroad Commission confirmed that “no baseline (prior to exploration) water quality data appeared to be available for the subject wells.”

B. Facts Regarding Nuisance and Nuisance Per Se

103. Craig and LuAnn Duderstadt are residents of Goliad County.

104. The Duderstadts own a 100 acre tract of land in Goliad County.

105. On this tract of land, the Duderstadts operate a water well within UEC’s permitted area for uranium mining exploration.

106. The Duderstadts rely on this water for drinking and domestic use.

107. The contamination has caused Mr. and Mrs. Duderstadt and others to rely primarily on bottled water for drinking, domestic uses, and for livestock and has precluded the reasonable use and enjoyment of their land.

108. But for the exploration mining activities and rule violations by UEC, that portion of the Goliad County aquifer would not be potentially eligible for exemption from the protection of the SDWA.

109. The contamination identified by Mr. and Mrs. Duderstadt and others was not present in their water wells until after the initiation of exploration mining activities.

110. On March 26, 2007, almost one year after initiation of borehole drilling, field inspectors issued a NOV identifying that seventy-four (74) exploratory boreholes were not properly sealed. NOV 080A.

111. On or around December 20, 2007, County Commissioner Ted Long took photographic documentation of additional improperly sealed or completely open boreholes.

112. On February 6, 2008, Dr. Bruce Darling, P.G. of Southwest Groundwater Consulting, LLC. accompanied Ms. LuAnn Duderstadt onto property owned by Mr. Elder Abrameit.

113. At this time, Dr. Darling observed additional boreholes that had been left open to the land surface.

114. By leaving the boreholes open from the land surface to the aquifer in violation of TRRC rules, UEC provided a pathway for contamination and subsurface disturbance.

115. By leaving the boreholes open from the land surface to the aquifer, UEC caused stormwater to be injected into a well without a permit being issued under the SDWA.

116. On February 27, 2008, Goliad County issued a Notice of Intent to file a citizen suit alleging a violation of the SDWA by UEC.

117. On March 17, 2008, Craig and LuAn Duderstadt issued a Notice of Intent to file a citizen suit alleging a violation of the SDWA by UEC.

VI. CAUSES OF ACTION

118. The facts set forth in paragraphs 1 to 117 are adopted and incorporated herein.

Cause of Action No. 1: Declaratory Relief

119. But for the action of Defendant UEC, the Goliad County aquifer would not be contaminated.

120. The presence of contaminants in a portion of the Goliad County aquifer creates a fact situation for a possible issuance of an aquifer exemption by regulatory agencies that, if

issued, would allow the issuance of a Class III permit allowing in situ solution mining within the contaminated portion of the aquifer.

121. UEC's pattern of rule violation created pathways for subsurface contamination of the aquifer and helped create the contamination necessary to exempt an aquifer from the protection of the UIC Program.

122. By this action, Plaintiffs Goliad County and Duderstadts seek a declaration that Defendant UEC not be allowed to benefit from the fruits of its contamination and rule violations and be estopped and enjoined from initiating the aquifer exemption process.

Cause of Action No. 2: Violation of SDWA

123. Cause of Action No. 4 will allege violation of the SDWA by UEC for undertaking injection without a permit. Plaintiffs will seek permission of court to amend this pleading and add this cause of action after the passage of 60-days from the receipt of such notice of violation by UEC. See Exhibit 2, Notice of Intent to Sue and Supplemental Notice of Intent to Sue.

Cause of Action No. 3: Nuisance

124. The groundwater resources of Goliad County are a natural resource essential to the continued economic development of Goliad County.

125. As a result of its exploration mining activities, UEC has caused contamination of the Goliad County aquifer.

126. Craig and LuAnn Duderstadt have lost the use of their drinking water well as a result of the exploration mining activities by UEC.

127. As a result of the use of its property for exploration mining activity, UEC has unreasonably interfered with the use and enjoyment of groundwater resources within Goliad County.

128. As a result of its use of its property for exploration and mining activity, UEC has created a condition of nuisance

Cause of Action No. 4: Nuisance Per Se

129. While conducting its exploration mining activities, UEC violated TRRC Rules 16 T.A.C. §11.137 and §11.138.

130. On March 26, 2007, field inspectors issued a NOV identifying two (2) violations of various Texas Railroad Commission rules and a violation of Exploration Permit #123 .

131. The field inspectors identified that seventy-four (74) exploratory boreholes were not properly sealed. See Exhibit 1, Railroad Commission of Texas Uranium Exploration Inspection Report and NOV No. 080A.

132. In December of 2007, after being cited by the Texas Railroad Commission, Commissioner Ted Long documented additional boreholes left open in violation of Texas Railroad Commission Rules 16 T.A.C. §11.137 and §11.138 - the same rules cited in the March 26, 2007 NOV.

133. Similarly, on February 6, 2008, Dr. Bruce Darling, P.G. of Southwest Groundwater Consulting, LLC. found more open boreholes in violation of Texas Railroad Commission Rules 16 T.A.C. §11.137 and §11.138.

134. As a result of these continuing violations, stormwater was allowed to be introduced into the subsurface.

135. The violations of the Texas Railroad Commission rules caused and/or exacerbated the contamination of the aquifer.

VII. STANDING

136. Plaintiff Goliad County, Texas is a local governmental body created pursuant to Article IX, Section 1 of the Texas Constitution.

137. Plaintiff Goliad County, Texas is authorized under the Texas Water Code to protect the public health and environmental interests of the citizens of Goliad County.

138. Craig and LuAnn Duderstadt are residents of Goliad County.

139. The Duderstadts own a 100 acre tract of land in Goliad County.

140. On this tract of land, the Duderstadts operate a water well within UEC's permitted area for uranium mining exploration.

141. The Duderstadts rely on this water for drinking and domestic use.

142. The Duderstadts have been forced to use bottled water for more than a year due to uranium exploration drilling.

VIII. RELIEF REQUESTED

143. Plaintiffs Goliad County, Texas and Craig and LuAnn Duderstadt respectfully requests the Court:

- a. exercise jurisdiction over this matter;
- b. issue an order enjoining UEC from further exploration activities by UEC in the Weesatche Project in Goliad County;
- c. issue an order requiring UEC clean-up the contamination of the aquifer;
- d. issue an order enjoining initiating the aquifer exemption process until UEC has cleaned the contaminated aquifer;
- e. issue an order prohibiting UEC from benefiting from its illegal activities, to wit, that it be prohibited from using any water quality data for purposes of establishing baseline water quality if such data was collected after initiation of the mining activity;
- f. issue an order granting Goliad County payment of its expert fees necessitated to prosecute this litigation;

- g. issue an order granting Goliad County payment of its attorneys fees necessitated to prosecute this litigation;
- h. grant Plaintiffs such additional relief as this Court may deem just, proper and equitable, including an award of reasonable attorneys' fees, expenses, and costs.

IX. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request that upon a final trial hereof, that an injunction be issued and the relief as requested and listed above be granted, and for other and further relief to which the Plaintiffs may show themselves justly entitled, including attorneys fees.

Respectfully submitted,

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by: /s/ James B. Blackburn, Jr.

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