

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF OKLAHOMA

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

APR 11 11:00

**LOYD W. THOMPSON and RICKIE J.
THOMPSON, Husband and Wife,**

Plaintiffs,

vs.

**WESTERN FARMERS ELECTRIC
COOPERATIVE, a cooperative corporation,
CHAPMAN CONSTRUCTION, L.P., SGS
WITTER, INC., TERRY WHITE**

Defendants.

WILLIAM B. GUTHRIE, CLERK

BY _____
Clerk

Case No.: CIV-04-211-S

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

COME NOW the Plaintiffs, Loyd W. Thompson and Rickie J. Thompson, and for their causes of action against Defendants Western Farmers Electric Cooperative, a cooperative corporation ("WFEC"), Chapman Construction, L. P. ("Chapman"), SGS Witter, Inc. ("Witter") and Terry White ("White") allege and state as follows:

1. Plaintiffs are citizens and residents of Atoka County, State of Oklahoma, and are the owners of certain real property, to wit:

All of the S/2 lying North of HWY 43 and S/2 NE/4 and S/2NW/4 and S/2NW/4NW/4 less That part of S/2NE/4 conveyed to the State of Oklahoma by warranty Deed recorded in Book 291 at Page 1, all in Section 12 TWP 1 South RNG 12 East, Atoka County, Oklahoma.

2. WFEC is an Oklahoma cooperative corporation, with its principal place of business in the State of Oklahoma.

3. Chapman is, upon information and belief, a limited partnership with its principal place of business in the State of Texas.

4. Witter is a Texas corporation with its principal place of business in the State of Texas.

5. White is an individual who, upon information and belief, is a resident and citizen of the State of Texas.

6. This Court has jurisdiction over the parties, and also has jurisdiction over the subject matter pursuant to 33 U.S.C. § 1365(a)(1) and 28 U.S.C. § 1331.

7. On February 27, 2004, Plaintiffs gave notice of the violations alleged herein and of their intent to file suit to Defendants, and to the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of EPA, the Oklahoma Department of Environmental Quality, and the Oklahoma Water Resources Board as required by 33 U.S.C. § 1365(b)(1)(A). The notice is attached hereto as Exhibit "A".

8. More than sixty (60) days have passed since notice was served, and neither the EPA, the Oklahoma Department of Environmental Quality, nor the Oklahoma Water Resource Board has commenced and diligently prosecuted a court action or administrative action to redress the violations alleged herein.

9. Venue is appropriate in this District pursuant to 33 U.S.C. § 1365(c)(1), because the sources of the violations are located within this District.

FIRST CLAIM FOR RELIEF - CLEAN WATER ACT

10. This is a citizens' enforcement action brought by Plaintiffs against Defendants pursuant to section 505 of the Federal Water Pollution Control Act ("Clean Water Act"), 33 U.S.C. § 1365.

11. Defendants, apparently in the process of constructing a power line, conducted extensive operations, including bulldozing work, on property directly to the north of the property owned by Plaintiffs. As a result of these operations, large amounts of pollutants, including, but not limited to, storm water containing dirt, mud, silt, and other materials, run in the Plaintiffs' lake. The lake, which once contained clear water, has become horribly polluted, and the polluting activity continues unabated.

12. Defendants have discharged, and continue to discharge, pollutants as defined in 40 C.F.R. 122.2 into Plaintiffs' lake, which constitutes navigable waters.

13. Defendants have violated a storm water authorization/permit issued by the Oklahoma Department of Environmental Quality and have violated the Clean Water Act by:

- a. Failing to implement an adequate Storm Water Pollution Prevention Plan;
- b. Failing to use Best Management Practices to control pollutants in storm water discharges;
- c. Failing to retain sediment on site to the extent practicable, and failing to utilize controls designed to retain sediment on site to the extent practicable;
- d. Failing to install and maintain appropriate storm water management measures;
- e. Failing to place structural measures on upland soil to the highest degree practicable;
- f. Failing to implement various structural practices to limit runoff and the discharge of pollutants to the degree attainable;
- g. Failing to maintain erosion and sediment control measures and other protective measures in effective operating condition;
- h. Failing to make periodic inspections, or, alternatively, if such inspections were made, failing to take any meaningful action for

implementation of an adequate Storm Water Pollution Prevention Plan based on the results of the inspections; and

- i. Failing to properly operate and maintain all facilities and systems of treatment and control that were installed or used by Defendants.

14. Alternatively, if no storm water authorization/permit issued by the Oklahoma Department of Environmental Quality was applicable to Defendants' operations, Defendants violated the Clean Water Act by failing to have a storm water permit or authorization applicable to the discharges.

WHEREFORE, upon their First Claim for Relief, Plaintiffs pray that the Court:

- A. Enter judgment determining that Defendants have violated the Clean Water Act;
- B. Issue a permanent injunction compelling Defendants to comply with the Clean Water Act and all relevant authorizations or permits;
- C. Order Defendants to pay civil penalties of \$25,000 per day for each violation, pursuant to 33 U.S.C. §§ 1319(d) and 1365(a);
- D. Award Plaintiffs their costs of suit, including reasonable attorney and expert witness fees, pursuant to 33 U.S.C. § 1365(d); and
- E. Award such other and further relief as the Court finds just and proper.

SECOND CLAIM FOR RELIEF - DAMAGE TO REAL PROPERTY

15. Plaintiffs adopt and re-allege all of the allegations contained in Paragraphs 1 through 14 above.

16. In releasing the storm water containing the pollutants, Defendants have contaminated the lake located on Plaintiffs' real property, thereby diminishing the value and use of said property, for which Plaintiffs are entitled to recover damages.

17. In addition to the damages caused by Defendants as a result of releasing the storm water containing the pollutants, Defendants WPEC and Chapman Construction Company, L.P., have also otherwise damaged Plaintiffs' real property and have improperly taken or destroyed timber without compensating Plaintiffs.

18. Activities by Defendants WPEC and Chapman Construction Company, L.P., on Plaintiffs' property have also seriously damaged an access road located on Plaintiffs' property. Although WPEC is obligated to do so, it has taken no action to repair the road.

19. As a result of Defendants' acts and omissions, Plaintiffs have incurred, and will incur in the future, economic losses in investigating the nature and extent of the pollution and in the remediation of the property.

20. In addition, Plaintiffs are entitled to injunctive relief, including, but not limited to, an order requiring Defendants to remove the sources of the pollution and to restore Plaintiffs' property to its original condition.

WHEREFORE, upon their Second Claim for Relief, Plaintiffs pray for judgment for actual and punitive damages against Defendants in an amount to be determined at trial, as well as for injunctive relief, costs of remediation, attorneys' fees, litigation costs and interest, and for such other and further relief as the Court finds just and proper.

THIRD CLAIM FOR RELIEF - NUISANCE

21. Plaintiffs adopt and re-allege all of the allegations contained in Paragraphs 1 through 20 above.

22. Defendants' acts and omissions have polluted the waters of the State of Oklahoma; therefore, said pollution is, pursuant to 12 O.S. § 2-6-105(a), a public nuisance.

23. The pollution of Plaintiffs' property also constitutes a private nuisance. Plaintiffs have been, and continue to be, annoyed and inconvenienced by the nuisance which was created and maintained by Defendants.

WHEREFORE, upon their Third Claim for Relief, Plaintiffs pray for judgment for actual and punitive damages against Defendants in an amount to be determined at trial, as well as for injunctive relief, costs of remediation, attorneys' fees, litigation costs and interest, and for such other and further relief as the Court finds just and proper.

FOURTH CLAIM FOR RELIEF - TRESPASS

24. Plaintiffs adopt and re-allege all of the allegations contained in Paragraphs 1 through 23 above.

25. Defendants' acts and omissions have caused pollutants to enter upon and below the surface of Plaintiffs' property without Plaintiffs' permission, constituting a trespass.

WHEREFORE, upon their Fourth Claim for Relief, Plaintiffs pray for judgment for actual and punitive damages against Defendants in an amount to be determined at trial, as well as for injunctive relief, costs of remediation, attorneys' fees, litigation costs and interest, and for such other and further relief as the Court finds just and proper.

FIFTH CLAIM FOR RELIEF - UNJUST ENRICHMENT

26. Plaintiffs adopt and re-allege all of the allegations contained in Paragraphs 1 through 25 above.

27. Defendants' are aware that their acts and omissions have caused the pollution of Plaintiffs' property and have cause Plaintiffs to be annoyed and inconvenienced, yet Defendants have taken no action to stop the pollution and resulting trespass and nuisance from occurring. Defendants have benefited financially to the detriment of Plaintiffs by failing to take any action to stop the pollution, trespass and nuisance from occurring.

WHEREFORE, upon their Fifth Claim for Relief, Plaintiffs pray for judgment for actual and punitive damages against Defendants in an amount to be determined at trial, as well as for injunctive relief, costs of remediation, attorneys' fees, litigation costs and interest, and for such other and further relief as the Court finds just and proper.

SIXTH CLAIM FOR RELIEF - BREACH OF CONTRACT

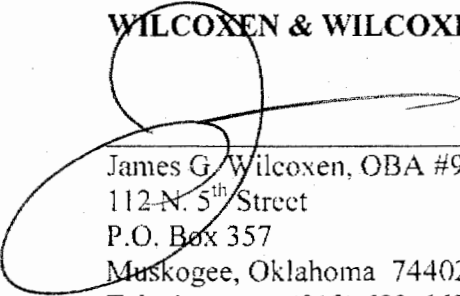
28. Plaintiffs adopt and re-allege all of the allegations contained in Paragraphs 1 through 27 above.

29. WFEC has breached its contractual obligations under the transmission line easement executed by WFEC and Plaintiffs, thereby causing damage to Plaintiffs, both by damaging the lake as set forth above, and by not repairing the damaged road described above in Paragraph 18. With regard to the road, WFEC agreed to restore the road as near as possible to its original condition, to smooth and reseed the road, and to place water berms appropriately. WFEC has breached these contractual obligations. Further, as set forth in Paragraph 17 above, WFEC has taken or destroyed timber without compensating Plaintiffs, which also constitutes a breach of WFEC's contractual obligations.

WHEREFORE, upon their Sixth Claim for Relief, Plaintiffs pray for judgment for actual and punitive damages against Defendants in an amount to be determined at trial, as well as for injunctive relief, costs of remediation, attorneys' fees, litigation costs and interest, and for such other and further relief as the Court finds just and proper.

Respectfully submitted,

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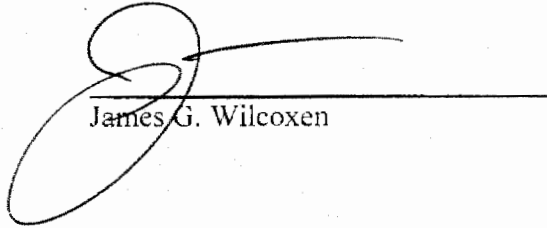
CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of February, 2005 a true, and correct copy of the above and foregoing instrument was deposited in the United States mail, Certified-Return Receipt Requested-with proper first-class postage fully prepaid thereon, to the following counsel of record:

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