

**EIGHTH JUDICIAL DISTRICT  
COUNTY OF COLFAX  
STATE OF NEW MEXICO**

CITY OF RATON, a municipal  
corporation and political subdivision  
of the State of New Mexico,

Plaintiff,

vs.

No. 07-206-CV

TDC ENGINEERING, INC., a  
Texas Corporation,

Defendant.

**SUMMONS  
THE STATE OF NEW MEXICO**

TO: Scott Leeth Taliaferro  
Registered Agent  
TDC Engineering, Inc.  
ADDRESS: 500 Chestnut, Ste. 1800  
Abilene, TX 79602

**GREETINGS:**

You are hereby directed to serve a pleading or motion in response to the complaint within thirty (30) days after service of this summons, and file the same, all as provided by law.

You are notified that, unless you serve and file a responsive pleading or motion, the plaintiff will apply to the court for the relief demanded in the complaint.

Attorney or attorneys for plaintiff: Luis G. Stelzner, John W. Utton, and Jaime L. Dawes  
SHEEHAN, SHEEHAN & STELZNER, P.A.  
Address of attorneys for plaintiff: Post Office Box 271, Albuquerque, New Mexico 87103

WITNESS the Honorable **JOHN M. PATERNOSTER** District Judge of the Eighth Judicial District Court of the State of New Mexico, and the seal of the district court of Colfax County, this 15 day of August, 2007.

**BERNARD E. STRUCK**

  
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 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 you may receive a Default Judgment against you.

**EIGHTH JUDICIAL DISTRICT  
COUNTY OF COLFAX  
STATE OF NEW MEXICO**

FILED IN MY OFFICE  
8TH JUDICIAL DISTRICT COURT  
COUNTY OF COLFAX, NEW MEXICO  
07 AUG 15 PM 2:00

**CITY OF RATON, a municipal  
corporation and political subdivision  
of the State of New Mexico,**

07-206-CV  
COUNTY OF COLFAX, NEW MEXICO

**Plaintiff,**

**vs.**

**TDC Engineering, Inc.,  
a Texas Corporation,**

**Defendant.**

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

COMES NOW the City of Raton (the City), by and through its attorneys, Sheehan, Sheehan & Stelzner, P.A., and Astrella & Rice P.C. and for its Complaint against TDC Engineering, Inc. (TDC) for Declaratory and Injunctive Relief states as follows:

**Jurisdiction and Venue**

1. The City of Raton is a municipal corporation and political subdivision of the State of New Mexico.
2. Upon information and belief, TDC Engineering is a Texas corporation.
3. This court has personal jurisdiction over TDC due to its contacts with the state including but not limited to negotiations it has recently conducted in this state, and its recent activities in this state related to its efforts to commence the coalbed methane drilling to be described in more detail below.

4. This court also has jurisdiction over TDC under New Mexico's long arm statute, NMSA 1978 § 38-1-16, because its actions that are the subject of this action would amount to the commission of a tort in this state.
5. Venue is proper because the property at issue in this proceeding is located in Colfax County. *See* NMSA 1978 § 38-3-1.

### **General Allegations**

1. The City's primary source of water supply comes from the Chicorico stream system, whose headwaters lie in the state of Colorado and run generally south into the state of New Mexico (the "City of Raton Watershed") and then are tributary to the Canadian River in New Mexico.
2. The City of Raton Watershed includes three municipal reservoirs owned by the City: Lake Dorothy located in Colorado just north of the state line; Lake Maloya, located in New Mexico just south of the state line, which is the largest reservoir; and, just downstream Lake Alice, also in New Mexico.
3. The Chicorico stream system is fully appropriated by uses in the state of New Mexico.
4. The City holds water rights to the Chicorico stream system confirmed by Final Decree of the adjudication court of September 25, 1935 in *State of New Mexico v. City of Raton, et al.*, No. 4605, and permitted by the New Mexico State Engineer.
5. Although other diverters, including the Vermejo Conservancy District, hold water rights downstream of the City, the City's diversions at Lake Maloya and Lake Alice are the first and highest up in the Chicorico stream system.
6. More than two-thirds of the City's water supply comes from the City of Raton Watershed, diverted just below the Lake Maloya and Lake Alice dams and piped to the

municipal water treatment plant before distribution as drinking water for nearly 10,000 people in the City and its surrounding area.

7. Water from the City of Raton Watershed is of very high quality and only requires minimal treatment.
8. The City owns most of the land of the Chicorico Creek Watershed above the City's diversion points, totaling approximately 19,000 acres. The City owns 5,746 acres in Las Animas County, Colorado (the "upper Watershed") and 3,505 acres in Colfax County, New Mexico (the "lower Watershed").
9. The City leases to the Colorado Division of Wildlife, Department of Natural Resources 5,442 acres of the upper Watershed for use as the Lake Dorothey Wildlife Area.
10. The City leases most of the lower Watershed, 3505 acres, to the New Mexico State Parks, for use as Sugarite State Park, one of the highest rated parks in New Mexico.
11. The upper City of Raton Watershed is pristine and undisturbed, having virtually no vehicle access, only one unimproved dirt road, no man-made structures other than Lake Dorothey dam, and very little human activity except as allowed by the Colorado Division of Wildlife in operation of the wildlife area.
12. The mineral rights associated with the upper Watershed are owned by Newmont Mining Corporation (Newmont).
13. Upon information and belief, TDC has entered into a lease with Newmont for the extraction of oil and gas in the upper Watershed under Newmont's mineral right.
14. By way of a letter dated May 10, 2007, TDC notified the City of TDC's intention to conduct coalbed methane drilling operations in the upper Watershed. A true and correct copy of that letter is attached hereto as Exhibit A.

15. In its May 10, 2007 letter, TDC stated that it would begin its drilling operations within 30 days to 12 months. The coalbed methane development TDC intends to commence would require pumping water out of the coal seams in order to release gas currently held there by hydrostatic pressure. TDC will be able to access the methane adsorbed on the coal only after water is pumped out of the coal seam.
16. Upon information and belief, TDC intends to conduct its coalbed methane drilling operations within 0.3 miles of the perennial stream system, and 2.5 miles from Lake Maloya. Such drilling will likely deplete surface flows, and impair the City's water rights.
17. TDC's contemplated coalbed methane operations threaten both the quality and quantity of the City's water supply.
18. The City has determined that the coalbed methane drilling TDC intends to begin (and more particularly the dewatering of the coal seam) has a significant potential to cause substantial depletion of its water supply that would last for decades.
19. Depletion of the City's water supply would likely occur through natural fractures that support the baseflow from Chicorico Creek once TDC dewateres the coal seam in order to access the coalbed methane gas.
20. TDC does not own and has not acquired any water right for the depletion of the Chicorico stream system that would result from TDC's proposed operations.
21. The City's investigation shows that there is a substantial likelihood that coalbed methane operations would decrease the quality of the City's water supply.
22. The quality of the City's water supply would be threatened by, for example, gas seepage caused by depressurization of the coal, erosion, sedimentation, and/or inadequate lining

of the production pits that would be used to store water that is pumped out of the coal seam.

23. The quality of the City's water supply would also be threatened by materials used and transported during the drilling and completion operations.
24. Seepage from reserve pits containing drilling fluids and flow-back fluids from fracturing operations also threaten the quality of City water supply.
25. The quality of the City's water supply would also decrease if TDC allowed storm water to disburse contaminants into Lake Maloya and Lake Alice.
26. When the City was first notified of TDC's intent to begin coalbed methane drilling, the parties attempted to negotiate a surface use agreement, which would have allowed TDC to begin limited coalbed methane drilling, while providing protections to the City.
27. On June 4, 2007, representatives of both TDC and Newmont Mining attended a meeting at City Hall in the City of Raton to discuss TDC's mining plans and timetable and to discuss a potential surface use agreement.
28. TDC recently discontinued negotiations with the City, and apparently intends to begin coalbed drilling without a surface use agreement, and without a water right.
29. TDC has taken preliminary steps in furtherance of its intent to commence coalbed drilling.
30. On information and belief, TDC has hired a road contractor located in New Mexico to begin preparations for construction of an access road into the upper Watershed from the lower Watershed.
31. On information and belief, the TDC road contractor has used existing roads in the lower Watershed to access the upper Watershed and to begin surveying and flagging a road

construction route that would allow access to for drilling and operation of well locations in the upper Watershed.

**COUNT I: REQUEST FOR DECLARATORY JUDGMENT**

32. The City incorporates the foregoing allegations herein by reference.
33. The aforementioned actions threaten the City's water rights.
34. The depletion of the City's water supply that will likely occur as a result of TDC's planned coalbed drilling operations would amount to an impermissible appropriation of the water to which the City is entitled.
35. By causing depletion of the City's water supply, TDC would impair the City's water rights.
36. TDC's planned coalbed methane operations will likely also cause contaminants and other materials to enter the City's water supply.
37. The reduction in the quality of the City's water supply that will likely occur as a result of TDC's planned coalbed methane operations will impair the City's water rights and would increase water treatment costs.
38. The impairment of the City's water rights that would be caused by TDC's intended coalbed methane operations would amount to a trespass upon the City's water rights.
39. An actual controversy exists between the parties concerning TDC's right to conduct coalbed methane drilling operations.
40. The interests of the parties concerning TDC's right to conduct coalbed methane drilling operations are real and adverse given that TDC intends to commence such operations in the near future, and that such operations will impact the quality, quantity, reliability, and security of the City's water supply.

41. The adversity of the parties' interest is further demonstrated by the fact that TDC has discontinued its negotiations concerning a surface use agreement with the City, and now apparently intends to begin its coalbed methane operations in the absence of a surface use agreement and in the absence of a water right.
42. This issue is ripe for adjudication in light of the fact that in May of 2007, TDC sent the City a letter indicating that it would begin its drilling operations within 30 days to 12 months.
43. This issue is ripe for adjudication for the additional reason that TDC has begun preliminary work in furtherance of its contemplated drilling operations.
44. Accordingly, the Court should, pursuant to NMSA 1978 § 44-6-2, enter an order declaring that the coalbed methane operations TDC intends to commence would result in an unlawful trespass to the City's water rights.

**COUNT II: REQUEST FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

45. The City incorporates the foregoing allegations herein by reference.
46. The City will suffer irreparable injury in the event that TDC is allowed to commence its planned coalbed methane operations without appropriate accommodations to protect the City's water rights. In particular, the City's water supply will likely be irreparably depleted and/or will suffer an immediate reduction in quality.
47. The injury that the City will suffer far outweighs the injury that TDC will suffer if it is not allowed to commence its planned coalbed methane operations, free of restriction required to accommodate the City's water rights.
48. The public interest will not be injured, and indeed will be furthered, by issuance of an injunction barring TDC from commencing its coalbed methane operations, free of



restriction required to accommodate the City's water rights. The public interest favors barring TDC from beginning coalbed methane operations in the absence of adequate protections for the City's water supply—which supplies drinking water to nearly 10,000 people.

49. There is a substantial likelihood that the City will prevail on the merits of its trespass claim, given that the coalbed methane operations, free of restriction required to accommodate the City's water rights, will threaten both the quality and the quantity of the City's water supply.
50. The City is entitled to an injunction barring TDC from commencing its coalbed mining operations pending resolution of this action. Such an injunction would merely preserve the status quo.
51. Because TDC's planned coalbed operations would amount to an impermissible trespass upon the City's water rights, the Court should also enter an order permanently enjoining TDC from conducting such operations in the upper watershed except in compliance with conditions imposed to accommodate the City's water rights and to protect the quality and quantity of the City's water supply.

WHEREFORE, the City respectfully requests that the Court enter an Order:

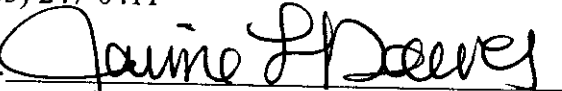
- i. Declaring that TDC's initiation of the coalbed methane operations at issue would result in an impermissible trespass upon the City's water rights;
- ii. Enjoining TDC from initiating its contemplated coalbed methane operations pending final resolution of this matter;
- iii. Permanently enjoining TDC from conducting coalbed methane operations in the upper Watershed, except in compliance with conditions imposed to

accommodate the City's water rights and to protect the quality and quantity of the City's water supply.

- iv. Awarding the City such other and further relief as the Court deems appropriate.

Respectfully submitted,

SHEEHAN, SHEEHAN & STELZNER, P.A.  
Post Office Box 271  
Albuquerque, New Mexico 87103  
(505) 247-0411

By:   
Luis G. Stelzner  
John W. Utton  
Jaime L. Dawes

and

Lance Astrella, *Colorado Atty. Registration #5183*  
Astrella & Rice P.C.  
1801 Broadway, Suite 1600  
Denver, CO 80202  
(303) 292-9021

**TDC ENGINEERING, INC.**

800 CHESTNUT, SUITE 1800  
P.O. BOX 240  
ABILENE, TEXAS 79604

(325) 673-5024  
FAX (325) 673-6201

May 10, 2007

**VIA CERTIFIED**  
**RETURN RECEIPT REQUESTED**

City of Raton.  
P.O. Box 810  
Raton, New Mexico 87740  
Attention: Pete Mileta, Jr

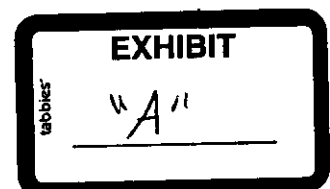
Re: Notice of Drilling Operations  
See Attached Plats  
Township 35 South, Range 63 West  
Sections 11 and 14  
Las Animas County, Colorado

Gentlemen:

In accordance with Rule 305(b)(1) of the State of Colorado Oil and Gas Conservation Commission ("COGCC"), this letter shall serve as a 30-day notice from TDC Engineering, Inc. ("TDC"), a wholly owned subsidiary of Scott Oils, Inc., of its intention to conduct drilling operations on the above referenced lands. TDC anticipates commencing operations no sooner than thirty (30) days from the date of this letter but within the next twelve (12) months, pending receipt of required permits, approval of title and drilling rig availability.

Even though the well locations have been "staked" prior to consultation, TDC's representative(s) are available to consult with you prior to commencement of the operations. The name of TDC's contact representative is Tommy Helm, who may be contacted at the address listed on the letterhead or his direct number (817)-332-1828 ext. 4. Rule 306 of the COGCC's Rules also provides you the opportunity to consult with the operator prior to commencement of operations with respect to location on your property of the roads, production facilities and wellsite(s). If you would like to schedule a time for such consultation, please so indicate by returning the attached Owner's Response Letter to TDC at your earliest opportunity and we will attempt to reasonably accommodate your preferred date and time for the consultation. If possible, TDC would prefer to secure a Surface Use Agreement with respect to our proposed operations; however, absent reaching such a mutually acceptable agreement within thirty (30) days, TDC may elect to proceed with the commencement of operations under a statewide bond.

The COGCC regulations provide that the surface owner may waive the 30-day notice requirement. You may elect to waive this 30-day notice, and thereby shorten this time period, by checking the appropriate space on the enclosed Owner Response Letter. When returning the letter, please also review and indicate your preference with regard to the consultation discussed in the preceding paragraph. Enclosed is a self-addressed stamped envelope for your



February 12, 2007

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convenience in returning the Owner Response Letter. If we do not receive the Owner Response Letter back from you within the next thirty (30) days, we will assume you elect not to engage in Rule 306 consultation.

As the surface owner, it is your responsibility to notify any affected tenant farmer, lessee or other party that may own or have an interest in any crops or surface improvements that could be affected by Scott Oils, Inc.'s proposed operations.

Also enclosed is an "Oil and Gas Well Notification Consultation and Reclamation Rules Brochure" containing information for Operators, Surface Owners and Surface Tenants and a copy of the Colorado Oil and Gas Conservation Commission Policy for Onsite Inspections on Lands Where the Surface Owner Did Not Execute a Lease or is Not a Party to a Surface Use Agreement. We are additionally providing you a copy of our Rule 306 Consultation form that we will fill out when we meet for consultation.

If you should need anything further in this regard, please contact me at 325-673-5024. Thank you in advance for your cooperation.

Very truly yours,



Scott Taliaferro, Jr.  
TDC Engineering, Inc.

Enclosures (5)

cc: