

UNITED STATES DISTRICT COURT
for the
DISTRICT of COLORADO

COLORADO OPEN SPACE COORDINATING COUNCIL,
on behalf of all those entitled to the protection of their
health and safety and of the health and safety of those
generations yet unborn, from the hazards of ionizing radiation
resulting from the distribution of radioactive materials
through the permanent biogeochemical cycles of the
Biosphere as a result of the defendants conduct of *Project
Rulison*, and
on behalf of all those entitled to the full benefit, use and
enjoyment of the national natural resource treasures of the
State of Colorado without degradation resulting from
contamination with radioactive material released as a result of
the defendants conduct of *Project Rulison*, and all others
similarly situated,

Plaintiffs,

-against-

AUSTRAL OIL COMPANY, INCORPORATED
and
CER GEONUCLEAR CORPORATION,

Defendants

U.S. ATOMIC ENERGY COMMISSION,
BUREAU OF MINES, U.S. DEPARTMENT OF INTERIOR, and
LOS ALAMOS SCIENTIFIC LABORATORY,

as their several interests may appear.

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The Plaintiffs, complaining of the Defendants by their attorneys, YANNAcone & YANNAcone, RICHARD D. LAMM, and THOMAS W. LAMM, set forth and allege:-

1. Venue

The venue of this action is determined under Title 28, United States Code, §§1391(c), 1391(e).

2. Jurisdiction

The jurisdiction of this Court is invoked under:

Title 28, United States Code, §1331(a), and the action arises under Article VI, section 2 of the Constitution of the United States, and involves the declaration and interpretation of the Plaintiffs' rights secured by the Ninth Amendment of the Constitution of the United States, and under the due process clause of the Fifth Amendment of the Constitution of the United States, and under the provisions of the Nuclear Test Ban Treaty.

Title 42, United States Code, §2231 and Title 5, United States Code, §702(a), and the federal statutes relevant to this proceeding are:

Atomic Energy Act of 1954, Title 42, United States Code, §§2011, 2012, 2013, 2051, 2052, 2053, 2093, 2099, 2111, 2121, 2131, 2132, 2133, 2140, 2161, 2201, 2209, 2210, 2232, 2239;

Water Pollution Control Act, Title 33, United States Code, §466(h)

Air Quality Control Act of 1967, Title 42, United States Code, §§ 1857(b), 1857 f(a);

Executive Order No. 11282, 31 F.R. 7663, issued pursuant to Title 42, United States Code, §1857-f(a);

Wild and Scenic Rivers Act, Title 16, United States Code, §1271;

Wilderness Preservation Act Title 16, United States Code, §§1131(a), 1131(c);

Title 28, United States Code, §§1343(4), Title 18, United States Code, §242, and Title 42, United States Code, §§1988, 2210(d), 2210(n)(2), 2014(j);

Title 5, United States Code, §552(a)(3) and Title 42, United States Code, §2161(b).

3. Declaratory Judgment

This is a proceeding for a Declaratory Judgment under Title 28, United States Code, §§2201, 2202, seeking declaration of the rights and legal relations of the parties to the matter in controversy, specifically:

(a) The rights of the people of the State of Colorado to the protection of their health and safety and the health and safety of those generations yet unborn from the hazards of ionizing radiation resulting from the distribution of radioactive materials through the Colorado Regional Ecosystem as a result of the actions of the defendants herein complained of.

(b) The rights of the people of the State of Colorado to the full benefit, use and enjoyment of the national natural resource treasures of the State of Colorado without degradation resulting from contamination with radioactive material released by the actions of the defendants herein complained of.

(c) The right of the people of the State of Colorado to a full disclosure by the defendants of the facts, if any, supporting the claims that:

“Safety of the public is a prime consideration of all Project Rulison participants. All factors that affect safety will be investigated thoroughly, reviewed by a panel of safety consultants, and evaluated on the basis of the knowledge gained from the extensive experience of previous nuclear detonations.

“AEC experience with more than 270 underground nuclear detonations indicates that escape of radioactivity into the atmosphere is highly unlikely to result from Project Rulison.

“Ground motion has been carefully calculated and no significant damage is predicted.

“Ground waters in the Rulison site area have been evaluated by numerous engineers and scientists, who are convinced that there will be no contamination of the ground water.

“Extensive operational safety measures have been undertaken to protect the public.”

(d) That the release of any radioactive material which might enter the permanent biogeochemical cycles of the Biosphere will violate the rights of the people guaranteed under the Ninth Amendment of the Constitution of the United States and protected by the *due process* clause of the Fifth Amendment of the Constitution of the United States.

4. Class Action

This action is brought by the COLORADO OPEN SPACE COORDINATING COUNCIL, INC., a non-profit, public benefit corporation duly organized and existing under and by virtue of the laws of the State of Colorado, on behalf of all those entitled to the protection of their health and safety and of the health and safety of those generations yet unborn, from the hazards of ionizing radiation resulting from the distribution of radioactive materials through the permanent biogeochemical cycles of the Biosphere as a result of the defendants conduct of *Project Rulison*, and on behalf of all those entitled to the full benefit, use and enjoyment of the national natural resource treasures of the State of Colorado without degradation resulting from contamination with radioactive material released as a result of the defendants conduct of *Project Rulison*, and all others similarly situated, as a class action in accordance with the provisions of Rule 23 of the Federal Rules of Civil Procedure.

The members of this class are so numerous as to make it impracticable to bring them all before this Court. There are substantial questions of law and fact common to the class and common relief on behalf of all members of the class is sought.

The claims of the representatives being typical of the claims of the members of the class, and the defendants' actions having substantial effect upon all members of the class, thereby making appropriate final injunctive and corresponding declaratory relief with respect to the class as a whole, this action is a proper class action.

The members of the class are fairly and adequately represented by the Plaintiffs and the Plaintiffs have no interest adverse to that of any individual who might be entitled to the relief sought herein.

5. The Defendants

Upon information and belief, the Defendant AUSTRAL OIL COMPANY, INCORPORATED, is a corporation duly organized and existing under and by virtue of the laws of the State of Texas and authorized to conduct business in the State of Colorado pursuant to the laws of the State of Colorado.

Upon information and belief, the Defendant AUSTRAL OIL COMPANY, INCORPORATED, is the Industrial Sponsor of *Project Rulison*.

Upon information and belief, the Defendant CER GEONUCLEAR CORPORATION is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and authorized to conduct business in the State of Colorado pursuant to the laws of the State of Colorado.

Upon information and belief, the Defendant CER GEONUCLEAR CORPORATION, is the Program Manager for *Project Rulison*.

6. Defendants Actions

That on or about September 4, 1969, the defendants, jointly or severally, intend to explode a forty (40) kiloton nuclear bomb in or near Rulison, in Garfield County, Colorado.

That the defendants, claim:

“Rulison is an experiment in the stimulation and recovery of natural gas using a nuclear explosive.

“The nuclear explosive will have the energy of 40,000 tons of TNT. This 40 kiloton device will be detonated about 8,450 feet below the ground surface in the gas-bearing Mesaverde formation of the Rulison Field, in Garfield County, Colorado.

“The nuclear explosion is expected to fracture a large volume of rock to allow the gas in the formation to flow to a post-shot wellbore. The production rate and total production from the nuclear-stimulated well are expected to be several times greater than from a conventional well.”

The public has not been adequately informed of the nature of the nuclear bomb to be used in *Project Rulison* and the Plaintiffs believe that the bomb will be of the fission type utilizing Uranium 235 as a fissionable material, and producing as fission products, quantities of Krypton 85, Strontium 90, Cesium 137, Iodine 131, and an indeterminate amount of Tritium. If, however, the bomb is a fusion device, there will be some of the same fission products, Krypton 85, Strontium 90, Cesium 137, Iodine 131, resulting from the use of fissionable material in the fusion device trigger, together with considerable quantities of Tritium.

That it appears from the public statements of representatives of the Defendant CER GEONUCLEAR CORPORATION made at Aspen, Colorado during July, 1969, that the radioactive gases, Krypton 85 and Tritium, will be ultimately released to the atmosphere, at a time considerable less than one half-life of either radioactive gas.

That the defendants have not demonstrated, at any time prior to the commencement of this action, any evidence indicating that the total effects of *Project Rulison* upon the State of Colorado and the permanent biological, chemical and geological cycles of the Biosphere have been studied or evaluated, and in any event no such information has been made available to the Plaintiffs, or the general environmental science community through publication in recognized scientific journals of general circulation.

7. Plaintiff's Complaint

That the defendants jointly and severally have refused to answer questions from the environmental science community with respect to the release of radioactive materials into the atmosphere and the permanent biogeochemical cycles of the Biosphere from the *Project Rulison* nuclear explosion.

That the release of tritium or krypton 85 into the atmosphere or their introduction into the permanent biogeochemical cycles of the Biosphere as a result of *Project Rulison* will cause serious, permanent and irreparable damage to the national natural resource treasures of the State of Colorado and will present a direct threat to the health and safety of the people of Colorado not only of this generation but of those generations yet unborn.

That there is no evidence now available to the environmental science community indicating that the radionuclides trapped in the blast underground, including strontium 90, cesium 137 and iodine 131 will not enter the permanent biogeochemical cycles of the Colorado Regional Ecosystem, in particular the underground water supply.

That in the event that radionuclides do enter the underground water supply of the Rulison region, there is reasonable probability that the foodstuffs, in particular cow's milk, will be contaminated to such an extent as to render them an immediate toxic hazard to human life.

That the proposed actions of the defendants insofar as they involve the detonation of a nuclear bomb in the Rulison region are a threat to the life and property of the people of the State of Colorado, and fail to represent a maximum contribution to the general welfare and common defense and security, nor will the project in any way promote world peace, improve the general welfare, increase the standard of living or strengthen free competition in private enterprise.

That *Project Rulison* as now proposed is an action in restraint of trade or commerce and an attempt to monopolize a part of the trade or commerce with respect to certain natural energy sources.

That *Project Rulison*, as now proposed, represents a toxic insult to the environment.

8. Equity Jurisdiction

That any resort to administrative remedies at this time by the Plaintiffs would be futile, since no administrative remedy is available capable of protecting the Plaintiffs from the toxic hazard posed by *Project Rulison*.

That the Plaintiffs have no adequate remedy at law.

WHEREFORE, the Plaintiffs demand judgement of the defendants:

DECLARING

The rights of the people of the State of Colorado to the protection of their personal health and safety and the health and safety of those generations yet unborn from the hazards of ionizing radiation resulting from the distribution of radioactive materials through the Colorado Regional Ecosystem as a result of *Project Rulison*.

The rights of the people of the State of Colorado to the full benefit, use and enjoyment of the national natural resource treasures of the State of Colorado without degradation resulting from contamination with radioactive material released by *Project Rulison*.

The rights of the people of the State of Colorado to a full disclosure by the defendants of the facts, if any, supporting the claims that:

“Safety of the public is a prime consideration of all Project Rulison participants. All factors that affect safety will be investigated thoroughly, reviewed by a panel of safety consultants, and evaluated on the basis of the knowledge gained from the extensive experience of previous nuclear detonations.

“AEC experience with more than 270 underground nuclear detonations indicates that escape of radioactivity into the atmosphere is highly unlikely to result from Project Rulison.

“Ground motion has been carefully calculated and no significant damage is predicted.

“Ground waters in the Rulison site area have been evaluated by numerous engineers and scientists, who are convinced that there will be no contamination of the ground water.

“Extensive operational safety measures have been undertaken to protect the public.”

RESTRAINING

the defendants, jointly or severally, individually or in concert with others from any act which will result in the contamination of the permanent biological, geological and chemical cycles of the Biosphere with radioactive material or the release of any ionizing radiation into the environment.

RESTRAINING

the defendants from proceeding with the detonation of any nuclear bomb in the State of Colorado, until such time as the defendants have shown good cause supported by substantial evidence that such detonation of a nuclear bomb will not cause contamination of the permanent biogeochemical cycles of the Biosphere with radioactive materials, and that such detonation of a nuclear bomb will not release any ionizing radiation into the environment.

TOGETHER

with such other and further relief shall seem just and proper to the Court under the circumstances.

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