



Geophysical Trespass

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Most rights sharable

Geophysical Trespass

“It may be conceded for the purposes of this case only that the geophysical tests or experiments conducted upon the public highway abutting the lands involved here were in the nature of exploratory operations, the right to which belonged exclusively to the owners of the mineral interests, and it may be further conceded that the tests and experiments shown to have been conducted were an unauthorized invasion of the property rights of the mineral owners, and one for which the owners of the mineral interests are afforded some measure of relief, either legal or equitable.”

Ohio Oil Co. v. Sharp, 135 F.2d 303, 308 (10th Cir. 1943)

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“Indeed, courts have held the right to enter upon lands for the purpose of making geophysical surveys a valuable property right which belongs exclusively to the owner, an unauthorized invasion of which renders the invader a trespasser and liable for damages resulting to the property right.”

Ohio Oil Co. v. Sharp, 135 F.2d 303, 308 (10th Cir. 1943)

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“Depending on the specific facts and circumstances, the owner of the right to explore may have a cause of action against a party who conducts geophysical operations without permission on several theories. These include trespass, assumpsit, loss of speculative value, interference with the right to contract regarding exploration, invasion of privacy, unlawful acquisition of a trade secret, and misappropriation. Thus, an ‘owner’ who has suffered unlawful geophysical operations will have a choice of tort remedies ... ”

Owen L. Anderson, Geophysical "Trespass" Revisited, 5 *Tex. Wesleyan L. Rev.* 137, 141 (1999)

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“Where there is no surface trespass ... Texas courts have consistently found no geophysical trespass even though the seismic waves may actually enter the non-consenting mineral owner’s land.”

Martin & Kramer, *Oil & Gas Law* §230.

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“Who owns the right to explore? This basic question is somewhat misleading. Obviously, because the right to explore is a valuable property right that the law will protect, the sole fee simple owner of both the surface and mineral estate in Blackacre is the only party authorized to conduct geophysical operations directly on, and relating to, Blackacre.”

Owen L. Anderson, Geophysical "Trespass" Revisited, 5 Tex. Wesleyan L. Rev. 137, 144 (1999)

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“Commentators on ‘geophysical trespass’ reason that the right to explore is a valuable right that should be protected. From this basic premise, all commentators agree that the gathering of seismic data by direct entry onto a target parcel (Blackacre) without permission of the mineral owner (Baxter) should be regarded as actionable trespass. Moreover, nearly all commentators argue that the intentional gathering of seismic data from a target parcel (Blackacre) solely through the use and occupancy of a nearby parcel (Whiteacre) without permission from a mineral owner of the target parcel (Baxter) also should be regarded as actionable trespass.”

Owen L. Anderson, Geophysical "Trespass" Revisited, 5 Tex. Wesleyan L. Rev. 137, 170 (1999)

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“In my view, the only actionable geophysical trespass should be one which involves a direct, physical surface entry on, or a subsurface entry into,¹⁶⁵ the property at issue.”

FN165: “By subsurface entry, I mean a physical intrusion such as the drilling of a directional shot hole beneath the property at issue, not mere concussion or sound waves generated by seismic operations conducted on nearby lands.”

Owen L. Anderson, Geophysical "Trespass" Revisited, 5 Tex. Wesleyan L. Rev. 137, 176 (1999)