

# MONTGOMERY & ANDREWS

PROFESSIONAL ASSOCIATION  
ATTORNEYS AND COUNSELORS AT LAW

COUNSEL EMERITUS  
William R. Federici

Post Office Box 2307  
Santa Fe, New Mexico 87504-2307

J.O. Seth (1883-1963)  
A.K. Montgomery (1903-1987)  
Frank Andrews (1914-1981)  
Seth D. Montgomery (1937-1998)

October 25, 2005

www.montand.com

325 Paseo de Peralta  
Santa Fe, New Mexico 87501

Telephone (505) 982-3873  
Fax (505) 982-4289

Victor R. Ortega  
Gary Kilpatrick  
Thomas W. Olson  
Walter J. Melendres  
John B. Draper  
Nancy M. King  
Sarah M. Singleton  
Stephen S. Hamilton  
Edmund H. Kendrick  
Louis W. Rose

Andrew S. Montgomery  
Jennifer L. Weed  
Randy S. Bartell  
Jeffery L. Martin  
Carolyn A. Wolf  
Emma Rodriguez Brittain  
Alexandra Corwin Aguilar  
Jeffrey J. Wechsler  
Lauren Tiano  
Brian F. Egoif

**HAND DELIVERED**

OF COUNSEL  
Earl Potter, P.A.

Sutin Thayer & Browne, P.C.  
Attn: Germaine R. Chappelle, Esq.  
317 Paseo de Peralta  
Santa Fe, New Mexico 87501

Re: Title Opinion/Edwin Smith, LLC

Ladies and Gentlemen:

You have asked that we render a title opinion regarding the surface and mineral ownership of the following described property:

SW/4 of Section 8  
Township 29 North, Range 11 West, N.M.P.M., San Juan County,  
New Mexico containing 160 acres, more or less (the "Property").

You asked that we base our opinion on a report and title research performed by Tammy Sloan Smith, Certified Professional Landman that you provided us. We have reviewed Ms. Smith's report and the documents provided with that report as well as additional documents provided to us by you. We have not made an independent review of the real property records of San Juan County, New Mexico nor have we obtained or reviewed an abstract of title prepared by a licensed title company in San Juan County, New Mexico. Further, Ms. Smith's title report covers a period of time from January 1, 1958 to September 9, 2005. Title to the Property was quieted under a judgment entered August 19, 1958, therefore, we were not asked to review the chain of title prior to this date for the Property.

We have been provided with a deed that was executed on April 28, 1951 by Earl W. Kouns, Grantor to Margaret Hasselman Jones, Julia Hasselman Keller, May

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Hasselmann Kouns and Jennie Hasselman Hill, "Grantees" or the "Hasselmann sisters", conveying an undivided one-half interest in and to the Southwest quarter of Section eight (8) in Township Twenty-nine (29) North, Range eleven (11) west N.M.P.M. to the four Grantees in joint tenancy with right of survivorship. From the record, it appears that the mineral estate had not been severed at the time title was conveyed to the Hasselman sisters and they were granted an undivided one half of the Property, surface and mineral. There was no evidence in the documents we reviewed to indicate that they ever severed the mineral estate. The Hasselman sisters' interest in the Property was confirmed under a judgment entered on August 13, 1958 in San Juan County District Court Case No. 5994.

The record reflects confusion about the ownership of the mineral rights to the Property because there are numerous assignments of oil and gas interests that have been recorded in the San Juan County records from the heirs of one of the Hasselman sisters, May Hasselman Kouns. These assignments are void and of no effect because May Hasselman Kouns' heirs never owned an interest in the Property. Jennie Hasselman Hill was the surviving sister of the four Hasselman sisters and, as such, became the sole owner of the Property in 1974 when her remaining surviving sister died. Her interest has passed to her heirs through the probate of her will and is now held by J. Truman Walmsley, Trustee of the Bypass Trust under the Will of June H. Walmsley, Deceased, dated April 7, 1992.

New Mexico law provides that in "a conveyance of real estate, the designation of two or more grantees 'as joint tenants shall be construed to mean that the conveyance is to the grantees as joint tenants and not as tenants in common, and to the survivor of them and the heirs and assigns of the assignor." NMSA 1978, Section 47-1-35. See also Section 47-1-16. Joint tenancies are defined in NMSA 1978, Section 47-1-36 which provides that a joint tenancy in real property is owned by two or more persons, each owning the whole and equal and undivided share, by a "title created by a . . . single conveyance when expressly declared in . . . the conveyance to be a joint tenancy. . . ."

There is no question but that the deed into the Hasselman sisters created a joint tenancy with right of survivorship because the deed had specific language evidencing a clear intent to create the joint tenancy. It is well established law that upon the death of one joint tenant, the remaining joint tenant or tenants automatically inherit the deceased tenant's share of the property. See, *Taylor v. Canterbury*, 92 P.3d 961, (Col.2004).

There is no New Mexico case law determining when a joint tenancy may be extinguished or converted into a tenancy in common where the owners possess a fractional share rather than the entire estate. However, case law in other jurisdictions has held that "in determining whether a joint tenancy has been created or severed, [courts look]. . .to the intent of the parties." *Taylor v. Canterbury*, 92 P.3d 961, 966, (Col. 2004) There is no evidence in the documents reviewed that demonstrates an attempt by the original four grantees to convert the Property from a joint tenancy into some other form of ownership.

In 1958, the Hasselman sisters, owners of an undivided one half interest in the Property, joined with Claude Smith to quiet title to the property in San Juan County District Court Cause No. 5995. The final judgment entered therein on August 19, 1958 ordered and decreed that: "the plaintiffs, Margaret Hasselman Jones, Julia Hasselman Keller, Jennie Hasselman Hill and May Hasselman Kouns, as heirs at law of Herman Hasselman...are the owners in fee simple of...and undivided one-half of...the Property." There is no language in that judgment of any intent to transmute the joint tenancy to a tenancy in common.

Beginning on May 11, 1964, a number of documents entitled either "Power of Attorney" or "Designation of Agent" were recorded in the real property records of San Juan County. These documents were executed and recorded as follows:

Executed	Recorded	Book/Page
April 4, 1964	May 11, 1964	576/553
February 9, 1965	February 8, 1965	594/332
January 9, 1965	February 8, 1965	596/76

The documents were executed by three surviving Hasselman sisters, Margaret Hasselman Jones, Julia Hasselman Keller and Jennie Hasselman Hill as well as by the children of May Hasselman Hill, Richard H. Kouns, Evelyn K. Kurtz, Clara Prangle and Robert H. Kouns. We do not believe that the heirs of May Hasselman Jones ever had an interest in the Property because her interest passed to her surviving sisters immediately upon her death on November 11, 1962 and there is nothing recorded prior to her death that would indicate an intent that the joint tenancy be transmuted to a tenancy in common. Therefore the "Designation of Agent" documents, executed after her death, misstate the ownership of the Property and create the confusion in the record as to the ownership of the Hasselman sisters' interest in the Property.

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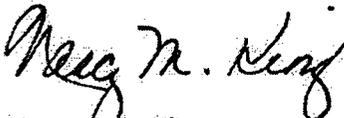
Based upon our review of the title report and the documents provided therein, we are of the opinion that title to the Hasselman interest in the Property is as follows:

J. Truman Walmsley, Trustee  
Of the Bypass Trust under the  
Will of June H. Walmsley, Deceased,  
Dated April 7, 1992  
Post Office Box 2605  
Spokane, Washington 99220

Mineral Interest Owned: 50.00%  
Surface Interest Owned: 50.00%

In rendering this opinion, as mentioned, we have not made an independent review of the San Juan County Real Property records and have relied solely upon the materials furnished to us by you and Ms. Smith's title report and we assume no liability as to the accuracy of the documents provided or if there are any additional documents that relate to the Property. Please let us know if you have any questions.

Sincerely yours,



Nancy M. King

NMK:bjw

**H. Denise Pisto**

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**From:** Derek V. Larson  
**Sent:** Tuesday, October 25, 2005 1:46 PM  
**To:** H. Denise Pisto  
**Subject:** FW: Title Opinion/Edwin Smith, LLC  
**Attachments:** 10-25-2005\_10-56-24 AM.pdf

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**From:** Geraldine M. Romero  
**Sent:** Tuesday, October 25, 2005 11:00 AM  
**To:** Derek V. Larson; Sarita Nair; C. Shannon Bacon  
**Cc:** Germaine R. Chappelle  
**Subject:** Title Opinion/Edwin Smith, LLC

Germaine asked that send the attached.