

**STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION COMMISSION**

**IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
COMMISSION FOR THE PURPOSE OF  
CONSIDERING:**

**REOPENED  
CASE NO. 12,601  
(DE NOVO)**

**APPLICATION OF BETTIS, BOYLE & STOVALL  
TO RE-OPEN COMPULSORY POOLING ORDER  
NO. R-11573 TO ADDRESS THE APPROPRIATE  
ROYALTY BURDENS ON THE WELL FOR THE  
PURPOSES OF THE CHARGE FOR RISK  
INVOLVED IN DRILLING SAID WELL, LEA  
COUNTY, NEW MEXICO.**

**APPLICATION FOR REHEARING**

Sun-West Oil and Gas, Inc. ("Sun-West"), in accordance with NMSA 1978, § 70-2-25(A), applies to the Oil Conservation Commission for a rehearing as to those matters determined by the Commission in its February 15, 2002 Order No. R-11573-B issued in this matter. The Commission's Order affirms Order No. R-11573-A of the Oil Conservation Division, and the Commission's Order is believed to be erroneous for the reasons set forth in Sun-West's Prehearing Statement filed with the Commission and Sun-West's Hearing Memorandum and Response to Applicant's Hearing Memorandum filed with the Oil Conservation Division, which was incorporated as part of the record before the Commission. Additionally, the Commission's Order is believed to be erroneous for the following reasons:

1. The Commission's finding that Sun-West and Gulf Coast Oil and Gas Company ("Gulf Coast") are affiliates is not supported by substantial evidence.

*Oil Conservation  
Division  
11/13/03 - 5 PM 2:06*

2. The Commission's finding that Sun-West's non-cost-bearing interest is so large as to render the proposed McGuffin "C" Well No. 1 uneconomic and prevent drilling of the well is not supported by substantial evidence.

3. The Commission's finding that Sun-West's leasing of its mineral interest to Gulf Coast violated the correlative rights of other interest owners is not supported by substantial evidence.

4. The Commission's finding that Sun-West's lease to Gulf Coast was intended to circumvent the Division's pooling authority is not supported by substantial evidence.

5. The Commission's finding that the interest of Sun-West shall be treated as an unleased mineral interest for the purpose of Bettis, Boyle & Stovall's pooling application is not in accordance with law.

6. The Commission's authority to regulate matters relating to conservation of oil and gas production as set forth in NMSA 1978, § 70-2-6 does not authorize the treating of Sun-West's mineral interest as unleased.

7. The Commission exceeded its authority in determining title to property, and thus did not act in accordance with law.

8. The Commission failed to provide Sun-West with the opportunity to recover its just and equitable share of oil and gas produced in accordance with NMSA 1978, § 70-2-17(A), and thus did not act in accordance with law.

9. The Commission did not act in accordance with law by retroactively declaring a validly created royalty interest to not exist through the purported exercise of its pooling authority.

10. The Commission improperly exercised its police power to abrogate a private contract by declaring a vested property interest to be a nullity, and thus did not act in accordance with law.

11. The Commission did not act in accordance with law in declaring Sun-West's interest to be unleased, which constituted a deprivation of property interests without just compensation and without due process of law.

12. The Commission did not act in accordance with law in fixing Sun-West's interest as of the time of Bettis, Boyle & Stovall's pooling application when the Commission's pooling order is not effective until actual production.

13. The Commission's finding that Sun-West's reservation of a non-cost-bearing interest in its lease to Gulf Coast constituted proper circumstances to justify the Commission treating Sun-West's mineral interest as unleased for the purpose of Bettis, Boyle & Stovall's pooling application is arbitrary, as there is no standard set by the Commission as to when such circumstances exist to justify such a remedy.

14. The Commission's finding that Sun-West's actions were done to circumvent the authority of the Commission based on the submission of a seminar article authored by one of Sun-West's attorneys is unwarranted and arbitrary.

15. Even if the deeming of Sun-West's interest as unleased is determined to be within the statutory grant of authority to the Commission, the Commission arbitrarily exercised such authority in this case.


16. The Commission acted arbitrarily in not considering the option of offering an election to Sun-West to voluntarily reduce its royalty interest as the Commission has done in

other cases before ordering the drastic remedy of treating Sun-West's mineral interest as  
unleased.

WHEREFORE, Sun-West Oil & Gas, Inc. requests that the Commission rehear this  
matter, and upon such rehearing, that the Commission reverse Order No. R-11573-A of the Oil  
Conservation Division below from which Sun-West Oil & Gas, Inc. appealed to the  
Commission.

RESPECTFULLY SUBMITTED,

STRATTON & CAVIN, P.A.

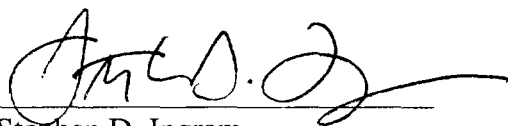
By:   
Sealy H. Cavin, Jr.  
Stephen D. Ingram  
40 First Plaza, Suite 610  
Albuquerque, NM 87102  
(505) 243-5400

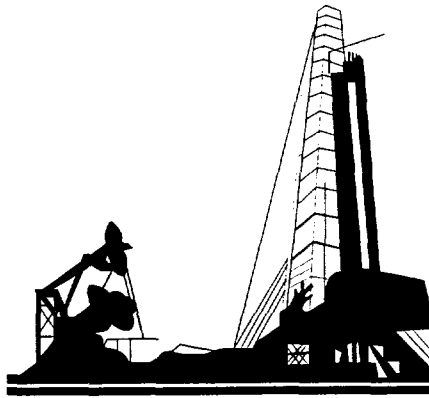
Attorneys for Sun-West Oil and Gas, Inc.

I hereby certify that a true and correct copy of  
the foregoing pleading was served via  
first-class mail on this 4th day of March,  
2002 to the following:

William F. Carr  
Holland & Hart, LLP  
P.O. Box 2208  
Santa Fe, NM 87504-2208

STRATTON & CAVIN, P.A.

By:   
Stephen D. Ingram



TRANSMITTAL COVER SHEET

OIL CONSERVATION DIVISION  
1220 S. ST. FRANCIS DRIVE  
SANTA FE, NM 87505  
(505) 476-3440  
(505)476-3462 (Fax)

PLEASE DELIVER THIS FAX:

TO: Stephen D. Ingram, Bill Carr

FROM: Stephen C. Ross

DATE: 1-4-02

PAGES: 2

SUBJECT: App. of Bettis, Boyle & Stowell

Case No. 12601

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# NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

**GARY E. JOHNSON**  
Governor  
**Jennifer A. Salisbury**  
Cabinet Secretary

**Lori Wrotenbery**  
Director  
Oil Conservation Division

January 3, 2002

Stephen D. Ingram  
Stratton & Cavin, P.A.  
40 First Plaza, Suite 610  
Albuquerque, New Mexico 87102

Re: Case No. 12601, Application of Bettis, Boyle and Stovall, *de novo*

Dear Mr. Ingram,

During the hearing in this matter, in response to questions from Commissioner Bailey, you promised to submit additional information concerning the relationship of Sun-West and Gulf Coast, their experience drilling and operating wells in the immediate area of the subject well, and what both entities charge and receive as royalty payments. You promised to deliver that information over an affidavit by December 10.

I have just had occasion to review the file, and I see no indication that you ever submitted anything. If this is true, I would appreciate a letter of explanation.

As always, if you have any questions, please do not hesitate to give me a call at 476-3451.

Sincerely,

A handwritten signature in dark ink, appearing to be "SR", written over a light-colored background.

Stephen C. Ross  
Assistant General Counsel

Cc: Florene Davidson, Commission Secretary

William F. Carr  
Holland & Hart and Campbell & Carr  
P.O. Box 2208  
Santa Fe, New Mexico 87504

TRANSACTION REPORT

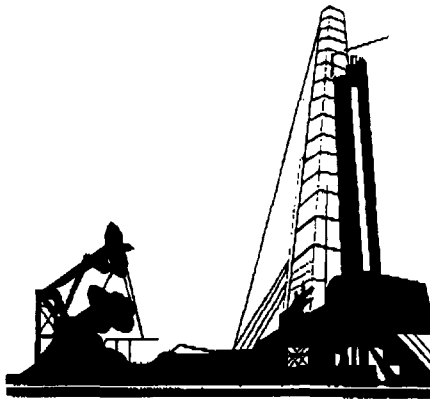
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TO: Stephen D. Fagnan, Bill Carr

FROM: Stephen C. Ross

TRANSACTION REPORT

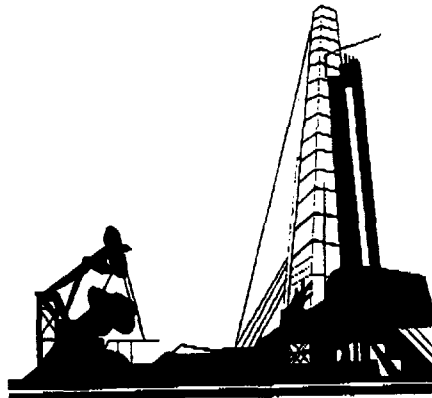
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 (505)476-3462 (Fax)

PLEASE DELIVER THIS FAX:

TO: Stephen D. Ingram, Bill Carr

FROM: Robert C. Ross



# STRATTON & CAVIN, P.A.

HAROLD D. STRATTON, JR.\*†\*\*  
SEALY H. CAVIN, JR.†\*\*  
STEPHEN D. INGRAM†  
CYNTHIA J. HILL\*

ATTORNEYS & COUNSELORS AT LAW  
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† Also Admitted in Texas  
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◦ New Mexico Board of Legal  
Specialization Recognized Specialist in  
the Area of Natural Resources - Oil and  
Gas Law

December 7, 2001

## VIA FEDERAL EXPRESS

Florene Davidson, Commission Secretary  
New Mexico Energy, Minerals & Natural Resources Department  
Oil Conservation Commission  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

Re: Case No. 12,601  
Application of Bettis, Boyle & Stovall, *de novo*

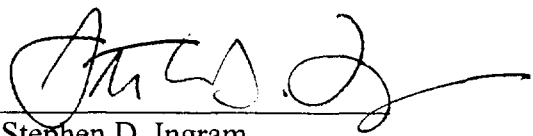
Dear Ms. Davidson:

Pursuant to the directive of the Oil Conservation Commission at the December 4, 2001 hearing of this matter, enclosed is an Affidavit of Shane Spear which is submitted on behalf of Sun-West Oil and Gas, Inc. for consideration by the Commission along with the other matters made of record in this proceeding.

Sincerely,

STRATTON & CAVIN, P.A.

By:

  
Stephen D. Ingram

SDI:ljc

Enclosure

cc: William F. Carr

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OIL CONSERVATION COMMISSION  
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**STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION COMMISSION**

**IN THE MATTER OF THE HEARING  
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PURPOSES OF THE CHARGE FOR RISK  
INVOLVED IN DRILLING SAID WELL, LEA  
COUNTY, NEW MEXICO.**

**AFFIDAVIT OF SHANE SPEAR**

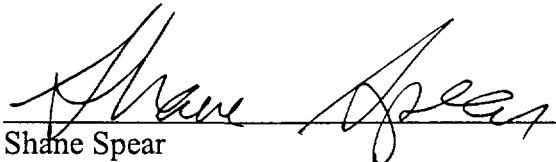
STATE OF NEW MEXICO            )  
  ) ss.  
COUNTY OF LEA                    )

Shane Spear, being duly sworn, deposed and stated as follows:

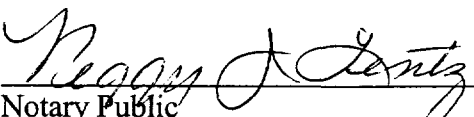
1. My name is Shane Spear. I am over 18 years of age, am fully competent to make this affidavit, and have personal knowledge of the facts stated herein.
2. I am the President of Sun-West Oil & Gas, Inc. and am knowledgeable about the affairs of such corporation. I am also President of Gulf Coast Oil and Gas Company and am knowledgeable about the affairs of such corporation.
3. Sun-West Oil & Gas, Inc. is a subchapter S corporation that was incorporated in the State of Texas on December 9, 1991. Its principal place of business is in Hobbs, New Mexico. It has neither drilled nor operated any wells in New Mexico. It is the standard practice of Sun-West Oil and Gas, Inc. to seek a ¼ royalty when leasing properties.
4. Gulf Coast Oil and Gas Company is a subchapter C corporation that was incorporated in Delaware on November 6, 1980. Its principal place of business is in Midland, Texas. It has neither drilled nor operated wells in New Mexico. Gulf Coast Oil and Gas Company does not utilize a standard royalty rate.
5. I am aware of royalty in the area of at least 30% between entities that are not affiliated with either Sun-West Oil & Gas, Inc. or Gulf Coast Oil and Gas Company.

6. Sun-West Oil & Gas, Inc. and Gulf Coast Oil and Gas Company are separate corporations with differing stock ownerships.

FURTHER AFFIANT SAYETH NAUGHT.

  
Shane Spear  
President, Sun-West Oil and Gas, Inc.

SUBSCRIBED AND SWORN to before me this 6<sup>th</sup> day of December, 2001, by Shane Spear.

  
Notary Public

My Commission Expires:

8-1-2002

*Steve Ross*

HOLLAND & HART LLP  
AND  
CAMPBELL & CARR  
ATTORNEYS AT LAW

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BOULDER • COLORADO SPRINGS  
DENVER TECH CENTER  
BILLINGS • BOISE  
CHEYENNE • JACKSON HOLE  
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TELEPHONE (505) 988-4421  
FACSIMILE (505) 983-6043  
www.hollandhart.com

November 27, 2001

**HAND DELIVERED**

Oil Conservation Commission  
New Mexico Department of Energy,  
Minerals and Natural Resources  
1220 South Saint Francis Drive  
Santa Fe, New Mexico 87505

Attention: Florene Davidson

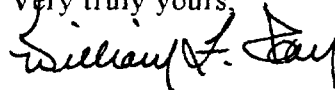
Re: New Mexico Oil Conservation Division Case 12601:  
Application of Bettis Boyle & Stovall to re-open compulsory pooling order no. R-11573 to address the appropriate royalty burdens on the well for the purposes of the charge for risk involved in drilling said well, Lea County, New Mexico.

Dear Ms. Davidson;

Pursuant to Mr. Ross's letter of November 9, 2001 enclosed for filing in the above-referenced case is the Pre-Hearing Statement of Bettis, Boyle & Stovall. The parties have agreed that no new evidence will be presented at the December 4th Oil Conservation Commission hearing and that the record should consist of the transcript and exhibits presented at the April 19, 2001 and May 31, 2001 examiner hearings in this case.

By copy of this letter, I have provided copies of this Pre-Hearing Statement to Commissioners Lori Wrotenbery, Jamie Bailey, and Robert Lee and to Sealy H. Cavin, Esq., and Stephen D. Ingram, Esq. attorneys for Sun-West Oil and Gas, Inc.

Very truly yours,



William F. Carr  
Attorney for Bettis, Boyle & Stovall.

Lori Wrotenbery, Chairman  
Oil Conservation Commission  
1220 South Saint Francis Drive  
Santa Fe, New Mexico 87505

01 NOV 27 PM 5:11  
Oil Conservation Division

Letter to Oil Conservation Commission

November 27, 2001

Page 2

Jami C. Bailey, Commissioner  
Oil Conservation Commission  
New Mexico State Land Office  
310 Old Santa Fe Trail  
Santa Fe, New Mexico 87504

Dr. Robert Lee, Commissioner  
Oil Conservation Commission  
c/o New Mexico Petroleum Recovery Research Center  
801 Leroy Place  
Socorro, New Mexico 87801

Sealy H. Cavin, Esq.  
Stephen D. Ingram, Esq.  
Cavin & Stratton, P.A.  
40 First Plaza, Suite 610  
Albuquerque, New Mexico 87102

Mr. C. Mark Maloney  
Post Office Box 2627  
Roswell, New Mexico 88202-2627

# HOLLAND & HART, LLP AND CAMPBELL & CARR

ATTORNEYS AT LAW



PARTNERING LAW AND TECHNOLOGY TO MEET YOUR NEEDS  
110 NORTH GUADALUPE, SUITE 1,  
P.O. BOX 2208, SANTA FE, NEW MEXICO 87501-6525

Tuesday, November 27, 2001

To: Sealy H. Cavin, Jr.  
Stephen D. Ingram Esq.  
Stratton & Cavin, P.A.

Fax: 505.243.1700  
Phone: 505.243.5400

To: Stephen C. Ross  
Assistant General Counsel  
Energy, Minerals and Natural Resources Dept.

Fax: 476-3220  
Phone: 476-3200

From: William F. Carr, Esq.

Fax: 505-983-6043  
Phone: 505.988.4421

## Message:

Following is a copy of the Pre-hearing Statement in OCD Case No. 12601 *de novo*, Application of Bettis, Boyle & Stovall for Compulsory Pooling, Lea County, New Mexico.

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No Confirmation Copy

Number of pages including cover sheet: 11

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Attorney Number: 5101

Client/Matter Number: 44525.0001

Time Deadline: \_\_\_\_\_

Operator Initials: KEH

Date Transmitted: 11.27.01

Time: \_\_\_\_\_

HOLLAND & HART LLP  
AND  
CAMPBELL & CARR  
ATTORNEYS AT LAW

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November 27, 2001

**HAND DELIVERED**

Oil Conservation Commission  
New Mexico Department of Energy,  
Minerals and Natural Resources  
1220 South Saint Francis Drive  
Santa Fe, New Mexico 87505

Attention: Florene Davidson

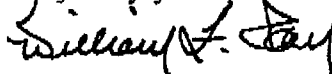
Re: New Mexico Oil Conservation Division Case 12601:  
Application of Bettis Boyle & Stovall to re-open compulsory pooling order no.  
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By copy of this letter, I have provided copies of this Pre-Hearing Statement to Commissioners Lori Wrottenbery, Jamie Bailey, and Robert Lee and to Scaly H. Cavin, Esq., and Stephen D. Ingram, Esq. attorneys for Sun-West Oil and Gas, Inc.

Very truly yours,



William F. Carr  
Attorney for Bettis, Boyle & Stovall.

Lori Wrottenbery, Chairman  
Oil Conservation Commission  
1220 South Saint Francis Drive  
Santa Fe, New Mexico 87505

**Letter to Oil Conservation Commission  
November 27, 2001  
Page 2**

**Jami C. Bailey, Commissioner  
Oil Conservation Commission  
New Mexico State Land Office  
310 Old Santa Fe Trail  
Santa Fe, New Mexico 87504**

**Dr. Robert Lee, Commissioner  
Oil Conservation Commission  
c/o New Mexico Petroleum Recovery Research Center  
801 Leroy Place  
Socorro, New Mexico 87801**

**Sealy H. Cavin, Esq.  
Stephen D. Ingram, Esq.  
Cavin & Stratton, P.A.  
40 First Plaza, Suite 610  
Albuquerque, New Mexico 87102**

**Mr. C. Mark Maloney  
Post Office Box 2627  
Roswell, New Mexico 88202-2627**



**STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION COMMISSION**

**IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
COMMISSION FOR THE PURPOSE OF  
CONSIDERING:**

**CASE NO. 12601 DE NOVO  
ORDER NO. R-11573-A**

**APPLICATION OF BETTIS, BOYLE & STOVALL TO RE-OPEN  
COMPULSORY POOLING ORDER NO. R-11573 TO ADDRESS THE  
APPROPRIATE ROYALTY BURDENS ON THE WELL FOR THE PURPOSES  
OF THE CHARGE FOR RISK INVOLVED IN DRILLING SAID WELL, LEA  
COUNTY, NEW MEXICO.**

**PRE-HEARING STATEMENT**

This pre-hearing statement is submitted by Holland & Hart LLP as required by Oil Conservation Division Rule 1208.B.

**APPEARANCES OF PARTIES**

**APPLICANT:**

Bettis, Boyle & Stovall  
Attention: C. Mark Maloney  
Post Office Box 2627  
Roswell, New Mexico 88202-2627  
(505) 622.9907

**ATTORNEY:**

William F. Carr, Esq.  
Holland & Hart LLP  
Post Office Box 2208  
Santa Fe, New Mexico 87504  
(505) 988.4421

**OPPOSITION:**

Sun-West Oil and Gas, Inc.

**ATTORNEY:**

Sealy H. Cavin, Jr., Esq.  
Stephen D. Ingram, Esq.  
Stratton & Cavin, P.A.  
40 First Plaza, Suite 610  
Albuquerque, New Mexico 87102  
(505) 243-5400

Pre-Hearing Statement  
NMOCD Case No. 12601 (De Novo)  
Page 2

### STATEMENT OF THE CASE

On April 26, 2001 the Oil Conservation Division entered Order No. R-11573 granting the application of Bettis, Boyle & Stovall for the compulsory pooling of all uncommitted mineral interests under Lots 3 and 4 (W/2 SW/4 equivalent) of Section 30, Township 9 South, Range 33 East, NMPM, Lea County, New Mexico. This order imposed on non-participating interest owners a 200% charge for risk involved in the drilling of a well on this pooled unit.

At the examiner hearing, Bettis, Boyle & Stovall asked the Division to order that the interest of Sun-West Oil and Gas, Inc. ("Sun-West") be treated as it was on the date the pooling application was filed -- as an unleased mineral interest -- not as it was on the date of the pooling order after Sun-West, with a private contract, had carved out of its interest a large non-cost bearing royalty burden. Order No. R-11573 was silent on this request and Bettis, Boyle & Stovall asked the Division to re-open the case to address this issue.

On September 24, 2001 the Division entered Order No. R-11573-A which found that the interest of Sun West should be treated as an unleased mineral interest.

With this appeal, Sun-West does not challenge the pooling of these lands nor the amount of the risk penalty. Instead, it challenges the Division's determination that Sun-West cannot defeat the Commission's statutory pooling authority with a private contract.

### FACTS:

The undisputed facts in this case show that commencing on December 15, 2000, Bettis, Boyle & Stovall attempted to reach a voluntary agreement with Sun-West for the development of the W/2 SW/4 of Section 30. Sun-West owned an unleased 15% undivided mineral interest in this acreage. Since no agreement could be reached on an appropriate royalty burden for the Sun-

**Pre-Hearing Statement  
NMOCD Case No. 12601 (De Novo)  
Page 3**

West tract, on January 30, 2001, Bettis, Boyle & Stovall filed an application with the Oil Conservation Division seeking an order pooling the W/2 SW/4 of Section 30 for a well to be drilled to test the San Andres and Pennsylvanian formations.

After Sun-West received notice of Bettis, Boyle & Stovall's pooling application, it leased its interest to Gulf Coast Oil and Gas Company ("Gulf Coast"). Gulf Coast and Sun-West have the same directors and representatives and share the same address and telephone number. When Bettis, Boyle & Stovall contacted Gulf Coast about this pooling application, the person who responded was the same person who had previously responded for Sun-West. The Sun-West lease to Gulf Coast contained a royalty rate in excess of the burden which Bettis, Boyle & Stovall had advised Sun-West would make the drilling of the proposed well uneconomic.

A chronology of relevant events which have resulted in this dispute was admitted into evidence at the May 31, 2001 Division hearing as Bettis, Boyle & Stovall Exhibit No. 3. A copy of this exhibit is attached to this Pre-hearing Statement.

**ARGUMENT:**

Bettis, Boyle & Stovall asserts that the Sun-West lease to Gulf Coast is an attempt by Sun-West through a private contract to avoid the provisions of the Oil and Gas Act and defeat the Oil Conservation Division's pooling authority.

In carrying out its statutory duties, the Oil and Gas Act confers on the Oil Conservation Commission "...jurisdiction, authority, and control of and over all persons, matters, or things necessary or proper to enforce effectively the provisions of this act or any other law of this state relating to the conservation of oil or gas...."

Pre-Hearing Statement  
NMOCD Case No. 12601 (De Novo)  
Page 4

NMSA 1978 Section 70-2-6. In carrying out its statutory duties, the Commission has been granted broad authority. See, Santa Fe Exploration Co. v. Oil Conservation Commission, 114 N.M. 103, 835 P.2d 819 (1992); Continental Oil Company v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962).

The New Mexico Oil and Gas Act authorizes the Oil Conservation Division to pool oil and gas interests where the owners "...have not agreed to pool their interests, and where one such separate owner, or owners,...has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply." This statute also provides that a Division pooling order "...may include a charge for risk...which charge for risk shall not exceed two hundred percent of the non-consenting working interest owner or owner's prorata share of the cost of drilling and completing the well." NMSA 1978 Section 70-2- 17.C.

Although the Oil and Gas Act provides that the owner who pays for the drilling of the well is entitled to all non-participating interest owners share of production from the well "...after payment of royalty as provided in the lease, if any, applicable to each tract or interest...." until the owners who drilled or paid for the drilling have paid the amount due under the pooling order. The Oil and Gas Act also provides that "All orders effecting such pooling shall . . . be upon such terms and conditions as are just and reasonable and will afford to the owner or owners of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil and gas, or both." NMSA 1978, Section 70-2-17.C.

The Oil and Gas Act also provides that "If the interest of any owner or owners of any unleased mineral interest is pooled by virtue of this act, seven-eighths or such

Pre-Hearing Statement  
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interest shall be considered as a working interest and one-eighth shall be considered a royalty interest...." NMSA 1978 Section 70-2-17.C

In the past the Division has been presented by other situations where operators have attempted to create burdens on tracts which are subject to a pooling application.<sup>1</sup> The Division has not permitted private agreements to defeat its pooling orders. See, Order No. R-11573-A, Finding 14.

In answering questions concerning the exercise of its statutory duties, the Commission acts on a case-to-case basis and upon the particular facts of each case. See, Viking Petroleum, Inc. v. Oil Conservation Commission, 100 N.M. 451, 672 P.2d 280,284 (1983). The Division reviewed the particular facts of this case and found in Order No. R-11573-A:

-

"It would circumvent the purpose of the New Mexico Oil and Gas Act (NMSA 1978 Sections 70-2-1 to 72-2-38, NMSA, as amended) to allow a party owning an unleased mineral interest in the spacing unit at the time said party was served with a compulsory pooling application to avoid the cost recovery and risk charge provisions of the Act by leasing or otherwise burdening or reducing that interest through a transaction with an affiliated entity after the application and notice of hearing are filed with the Division and served on the party." (Finding 13)

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<sup>1</sup> In Case No. 12087, Order No. R-11109, dated November 19, 1998, Nearburg Exploration Company, L.L.C. sought an order pooling certain lands in Lea County, New Mexico. The evidence showed that Merit Energy Company has an internal "net profits interest" which might unnecessarily burden Merit's working interest. Since this net profits interest would not be subject to bear any costs of drilling or completing the well nor be subject to the risk penalty imposed by a pooling order, The Division ordered that this net profits interest be liable for its share of the drilling and completion costs and that it be subject to the risk factor penalty. Order No. R-11109, Findings (7) through (9), December 11, 1998.

In Case No. 8640, Order No. R-7998, dated August 8, 1985, Caulkins Oil Company obtained an order which required the "voluntary reduction" of the overriding royalty interest which was considered excessive.

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"In order to effect pooling of the subject unit on terms that are just and reasonable under the circumstances of this case, and to allow Applicant the opportunity to recover or receive without unnecessary expense its just and fair share of the oil underlying the subject unit, the interest of Sun-West should be treated as an unleased interest for the purpose of applying the cost recovery and risk charge provisions of Division Order No. R-11573." (Finding 16)

In this appeal, Sun-West challenges these findings of the Division and seeks a new review of the facts of this particular case. Bettis, Boyle & Stovall contends that to permit Sun-West to assign its interest to Gulf Coast, after being notified of Bettis Boyle & Stovall's compulsory pooling application, to carve out a royalty interest for itself in an amount which puts the drilling of the well in jeopardy is nothing more than an attempt by Sun-West to defeat the compulsory pooling power of the Commission through a private contract with an affiliated entity.

Bettis, Boyle & Stovall asks the Commission exercise the powers conferred on it by the Oil and Gas Act in Sections 70-2-11.A and 70-2-17.C quoted above and enter its order directing that the interest of Sun-West shall be treated for the purpose of this pooling order as an unleased mineral interest. Bettis, Boyle & Stovall asks the Commission reject the attempt of Sun-West to carve create new cost free interests in its land after a pooling application has been filed and Commission jurisdiction has attached. It asks the Commission to disallow for the purpose of this pooling order interests which can defeat the Commission's pooling authority. Bettis, Boyle & Stovall asks the Commission to provide for pooling upon terms which are fair and reasonable to all owners in the pooled unit.

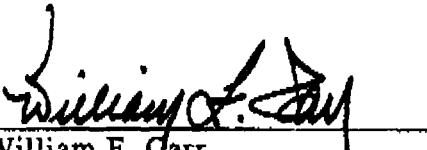
The issue presented by this appeal is of importance to the parties. The Commission's decision in this case is also of importance to the oil and gas industry for

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it will set the precedent which interest owners will follow in future negotiations and applications to pool spacing units in the State of New Mexico.

**PROPOSED EVIDENCE -- PROCEDURAL MATTERS:**

Pursuant to agreement between counsel the record will comprise the transcripts and exhibits from the April 19 and May 31, 2001, Oil Conservation Division hearings in Case No. 12601. No additional evidence or testimony will be presented at the December 4, 2001 Oil Conservation Commission hearing. Each party requests an opportunity to argue the case to the Commission.

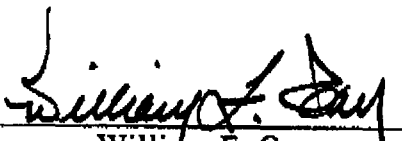
  
\_\_\_\_\_  
William F. Carr  
Attorney for Bettis, Boyle & Stovall

**CERTIFICATE OF SERVICE**

I certify that on November 27, 2001, I delivered by facsimile and U. S. Mail a copy of this Pre-Hearing Statement to the following counsel of record:

Sealy H. Cavin, Jr., Esq.  
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Energy, Minerals and Natural Resources  
Department  
1220 South Saint Francis Drive  
Santa Fe, New Mexico 87505  
(505) 476-3200  
(505) 476- 3220 (Facsimile)

  
\_\_\_\_\_  
William F. Carr

**CHRONOLOGY**

- December 15, 2000 Letter to Sun-West Oil & Gas, Inc. from Bettis, Boyle & Stovall proposing to lease its interest for the drilling of a well in the W/2 of Section 30, Township 9 South, Range 33 East, NMPM, Lea County, New Mexico.
- January 20, 2001 Letter to Sun-West Oil & Gas, Inc. from Bettis, Boyle & Stovall referencing prior conversations and advising that a 25% royalty was unacceptable. Bettis, Boyle & Stovall expressed interest in drilling as soon as possible to take advantage of current high product prices.
- January 30, 2001 Application for compulsory pooling filed at Oil Conservation Division by Bettis, Boyle & Stovall.
- January 25, 2001 Letter to Bettis, Boyle & Stovall from Sun-West Oil & Gas, Inc. offering to lease for a 25% royalty.
- February 6, 2001 Application for compulsory pooling and notice of hearing received by Sun-West Oil & Gas, Inc.
- February 15, 2001 Lease by Sun-West Oil & Gas, Inc. to Gulf Coast Oil & Gas Company of Sun-West interest in Spacing units at a 27.5% royalty.
- February 20, 2001 Letter to William F. Carr, attorney for Bettis Boyle and Stovall, from Sun-West Oil & Gas, Inc. acknowledging receipt of the application for compulsory pooling and advising that their interest had been leased for a 27.5% royalty.
- February 21, 2001 Gulf Coast Oil & Gas Company lease recorded in Lea County, New Mexico.
- March 22, 2001 Letter to Gulf Coast Oil & Gas Company from Bettis, Boyle & Stovall offering them an opportunity to join in the well and advising them that Bettis, Boyle & Stovall cannot carry a 27.5% royalty.
- March 23, 2001 Telephone from Shane Spear advising Mark Maloney that Sun-West Oil & Gas, Inc. and Gulf Coast Oil & Gas, Company were essentially the same entities.

BEFORE THE OIL CONSERVATION DIVISION  
Santa Fe, New Mexico  
Case No. 12601 Exhibit No. 3  
Submitted by:  
Bettis, Boyle & Stovall  
Hearing Date: May 31, 2001





# NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

GARY E. JOHNSON  
Governor  
Jennifer A. Salisbury  
Cabinet Secretary

Lori Wrotenbery  
Director  
Oil Conservation Division

November 9, 2001

*Via Facsimile and First Class Mail*

Sealy H. Cavin, Jr.  
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40 First Plaza, Suite 610  
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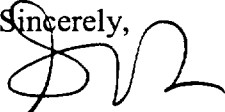
Re: Case No. 12601, Application of Bettis, Boyle and Stovall, *de novo*

Dear Counsel,

Because of scheduling problems, the Commission has rescheduled its December meeting to **December 4**. The Commission members are also available on December 5 should the evidentiary presentations in this case not be completed on December 4

Accordingly, please provide copies of exhibits and your pre-hearing statements to the Commission Secretary no later than Tuesday, November 27.

As always, if you have any questions, please do not hesitate to give me a call at 476-3451.

Sincerely,  


Stephen C. Ross  
Assistant General Counsel

Cc: Florene Davidson, Commission Secretary



# NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

**GARY E. JOHNSON**

Governor

**Jennifer A. Salisbury**

Cabinet Secretary

**Lori Wrotenbery**

Director

**Oil Conservation Division**

October 26, 2001

Sealy H. Cavin, Jr.  
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40 First Plaza, Suite 610  
Albuquerque, New Mexico 87102

William F. Carr  
Holland & Hart and Campbell & Carr  
P.O. Box 2208  
Santa Fe, New Mexico 87504

Re: Case No. 12601, Application of Bettis, Boyle and Stovall, *de novo*

Dear Counsel,

The Commission members have requested that copies of each exhibit which is to be offered during the hearing of this matter be provided to the Commission Secretary no later than one week prior to the date set for hearing in this matter. As the matter is now set for hearing on December 14, exhibits should be submitted to Florene Davidson no later than Friday, December 7. If an agreed continuance results in the matter being set in a subsequent month, exhibits should be submitted no later than one week prior to the re-scheduled hearing.

It would also helpful if you could provide a more detailed statement of your positions in the pre-hearing statement than is customary.

The Commission members believe that review of detailed pre-hearing statements and the documentary evidence to be offered will help them to be better prepared for the issues and testimony. As always, if you have any questions, please do not hesitate to give me a call at 476-3451.

Sincerely,

A handwritten signature in black ink, appearing to be "S. Ross".

Stephen C. Ross  
Assistant General Counsel

Cc: Florene Davidson, Commission Secretary