

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

IN THE MATTER OF THE HEARING CALLED BY)
 THE OIL CONSERVATION DIVISION FOR THE)
 PURPOSE OF CONSIDERING:) CASE NO. 12,601
)
 APPLICATION OF BETTIS, BOYLE AND STOVALL)
 FOR COMPULSORY POOLING, LEA COUNTY,)
 NEW MEXICO)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

April 19th, 2001

Santa Fe, New Mexico

OIL CONSERVATION DIV.
01 MAY -3 AM 9:06

This matter came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, April 19th, 2001, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

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April 19th, 2001
Examiner Hearing
CASE NO. 12,601

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A P P E A R A N C E S

FOR THE APPLICANT:

HOLLAND & HART, L.L.P., and CAMPBELL & CARR
 110 N. Guadalupe, Suite 1
 P.O. Box 2208
 Santa Fe, New Mexico 87504-2208
 By: MICHAEL H. FELDEWERT

* * *

STEVEN T. BRENNER, CCR
 (505) 989-9317

1 WHEREUPON, the following proceedings were had at
2 9:07 a.m.:

3 EXAMINER STOGNER: At this time I'll call Case
4 Number 12,601, which is the Application of Bettis, Boyle
5 and Stovall for compulsory pooling, Lea County, New Mexico.
6 Call for appearances.

7 MR. FELDEWERT: May it please the Examiner,
8 Michael Feldewert with the Santa Fe office of Holland and
9 Hart and Campbell and Carr, for the Applicant in this case.
10 I have two witnesses today.

11 EXAMINER STOGNER: Any other appearances? Will
12 the witnesses please stand to be sworn?

13 (Thereupon, the witnesses were sworn.)

14 EXAMINER STOGNER: Mr. Feldewert?

15 C. MARK MALONEY,
16 the witness herein, after having been first duly sworn upon
17 his oath, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. FELDEWERT:

20 Q. Mr. Maloney, could you please state your full
21 name and address for the record?

22 A. Yes, sir, my name is Mark Maloney. I live in
23 Roswell, New Mexico.

24 Q. And by whom are you employed and in what
25 capacity?

1 A. I am self-employed, independent landman. I have
2 numerous clients but have always been self-employed.

3 Q. And have you been hired by Bettis in this case?

4 A. Yes.

5 Q. And have you previously testified before this
6 Division and had your credentials as an expert accepted and
7 made a matter of record?

8 A. No, I have not.

9 Q. Would you please, then, summarize for the
10 Examiner your educational background?

11 A. I have a degree from the University of Texas at
12 Austin. Work experience?

13 Q. Are you a member of any organization?

14 A. New Mexico Landmans Association, since 1987.

15 Q. Okay, and when did you receive your degree?

16 A. 1975.

17 Q. And why don't you, then, summarize your work
18 experience for the Examiner, please?

19 A. Again, I've been self-employed, independent, for
20 approximately 25 years, numerous oil and gas states but
21 specifically in southeast New Mexico since the early 1980s.
22 I moved to Roswell in 1987 with Hondo Oil and Gas
23 Association, Mr. Anderson, acquiring a number of properties
24 from ARCO, and have been there more or less only in
25 southeast New Mexico properties since then.

1 Q. And you said that was approximately for what?
2 The last 20 years?

3 A. Yeah, Midland since the early 1980s, working
4 primarily in southeast New Mexico and west Texas.

5 Q. And are you familiar with the Application that
6 has been filed by Bettis, Boyle and Stovall in this case?

7 A. Yes.

8 Q. And are you familiar with the status of the lands
9 that is the subject of that Application?

10 A. Absolutely.

11 MR. FELDEWERT: Mr. Examiner, I would tender Mr.
12 Maloney as an expert witness in petroleum land matters.

13 EXAMINER STOGNER: Mr. Maloney is so qualified.

14 Q. (By Mr. Feldewert) Mr. Maloney, would you please
15 briefly state what Bettis, Boyle and Stovall seek with this
16 Application?

17 A. Yes, we'd like an order pooling all of the
18 minerals from the surface to the base of the Bough "C".
19 Primarily our location is in Lot 3, which is northwest-
20 southwest equivalent, Section 30 in 9-33. Also, however,
21 if there should be an 80-acre spacing, have Lots 3 and 4,
22 west half, southwest quarter, dedicated to that well.

23 The primary objective is the Bough "C", however
24 it is possible there is some San Andres production in
25 there, which I believe are on 80-acre spacing, in the

1 Flying "M" San Andres.

2 Q. And do you seek a pooling order for 40-acre
3 spacing?

4 A. Yes, we do.

5 Q. And what pool is involved with your 40-acre
6 spacing?

7 A. That is the South Flying "M" Bough Pool.

8 Q. And which well are these spacing units to be
9 dedicated to?

10 A. To the McGuffin -- Bettis, Boyle and Stovall
11 McGuffin "C" Number 1 well, which will be located in the
12 Lot 3, again northwest-southwest quarter equivalent.

13 Q. Is it to be a standard location?

14 A. Yes, it is.

15 Q. Okay. What is the status of the acreage in the
16 west half of the southwest quarter of Section 30?

17 A. It is all fee, the entire west half of Section 30
18 is fee.

19 Q. Okay, why don't you identify for the Examiner and
20 review Bettis Exhibit Number 1?

21 A. All right. Exhibit Number 1, Mr. Examiner, is
22 our land plat of this area. The yellow outline is our
23 leased fee acreage. The spacing unit for the proposed well
24 is that cross-hatched in red, again Lot 3.

25 Q. And would you identify, then, for the Examiner,

1 Bettis Exhibit Number 2?

2 A. Exhibit Number 2 is the uncommitted acreage
3 breakdown for this west half acreage, and again the west
4 half is common ownership. Sun-West Oil and Gas, Inc., owns
5 an undivided 3/20, 15 percent; and two individuals, one
6 Larry Kent Kirby, owns 1/320 mineral interest in here, and
7 Thomas Wiley Neal, III, Trustee of the Thomas Wiley Neal
8 Revocable Trust, owns undivided 1/80 mineral interest in
9 there. The last two we've been unable to locate.

10 Q. These are the uncommitted, so there's roughly
11 what, 83 percent that are committed to this project?

12 A. That's correct.

13 Q. Okay. So there's only three interest owners who
14 are subject to this pooling Application; is that right?

15 A. Yes, that is correct.

16 Q. And you've indicated that you were unable to
17 contact Mr. Kirby and then the -- Thomas Wiley Neal, III,
18 as Trustee; is that right?

19 A. Yes, it is.

20 Q. Would you please identify for the Examiner the
21 efforts that you undertook to contact Mr. Kirby?

22 A. Yes, Mr. Kirby had not appeared in title before,
23 in leasehold title, although his property has been leased a
24 number of times through the years. I was aware through the
25 title opinion that was rendered for the drilling of this

1 well that he had acquired this interest through heirship.

2 I contacted Dan Girand in Roswell, who was
3 related to Mr. Kirby by marriage, his father, and Dan
4 informed me that he thought he was in Arizona. They'd kind
5 of lost track through the years.

6 I called, got a number for a Larry Kirby in the
7 Tucson area, an address, and sent him an offer December the
8 15th, more or less contemporaneously with the rest of the
9 mineral interest owners, with the exception of the surface
10 owner who owns the surface and undivided one-half.

11 I got a call from Larry Kirby in Tucson informing
12 me that he was not the same Larry Kirby that we had sent
13 this to. Then he did inform me that he knew of another
14 Larry Kirby who had been in the area who he thought might
15 have died.

16 In approximately the middle of January, we went
17 through another attempt here to -- through directory
18 assistance, probate, court clerks, assessors' offices in
19 the Tucson area, to see if there was any Larry Kent Kirby
20 either alive with -- owning property in either Pima or
21 Cochise Counties, or deceased in either of those, could not
22 find them. Again, no listing in Arizona for a Larry Kent
23 Kirby or nationwide search.

24 We did contact through our counsel, Calder Ezzell
25 of the Hinkle firm, to see if there was another address in

1 the title that he had examined, and he gave me another
2 address which again was in the Tucson area, and I sent a
3 letter to that address, and it was returned as
4 undeliverable, so --

5 Q. Did you do a nationwide search as well?

6 A. Yes, we did.

7 Q. Okay. Why don't you summarize for the Examiner
8 your efforts to find Thomas Wiley Neal, III?

9 A. Mr. Neal had leased a couple of times since he
10 had owned this property. I had an address for Mr. Neal, no
11 phone number.

12 We gave, again, the same -- contemporaneously,
13 approximately December 15th, December 16th, sent him an
14 offer letter. His was not returned. We had a number of
15 these that were returned from previous owners, addresses
16 had changed, whatnot. Mr. Neal's was not returned. Again,
17 I could not find a phone listing for him in Albuquerque or
18 in statewide New Mexico.

19 I did, again, do a nationwide search for Thomas
20 Wiley Neal. I found a Thomas W. Neal in Massachusetts
21 which I spoke to, but again it was the wrong person.

22 We sent a certified letter to Mr. Neal. Again, I
23 did not return -- I received the first one as unreturned.
24 Sent a certified letter in the middle of January, and that
25 one was not picked up. It was basically returned as

1 unclaimed by the Post Office.

2 Q. And I think -- Did you testify you couldn't find
3 a telephone listing?

4 A. Yes, that's correct.

5 Q. Okay. Why don't you summarize, then, your
6 efforts to obtain voluntary joinder of the remaining
7 interest owner subject to this pooling Application, which
8 is Sun-West Oil and Gas, Inc.?

9 A. All right. Again, in this instance, I did not
10 have an address. They had not leased -- Sun-West had not
11 leased under this tract in a number of previous go-arounds,
12 but I had an address for them because I had leased them a
13 couple of years before in Eddy County. I sent that offer
14 to the previous address. That one was returned. They had
15 changed their address since 1998. And I spoke with the
16 secretary there, told her we were planning on drilling the
17 wells and an offer was on the way. Changed the address
18 again, sent them the same offer, different address.

19 Mr. Spear, who was now the vice president, Nelson
20 Spear, had been actually the president when I leased them
21 before, and Shane Spear is now the president. We kind of
22 played phone tag there at the end of that week, 16th.

23 The 20th again -- The 23rd, we talked about our
24 offer, our plans out there. And Mr. Spear informed me he
25 needed more -- higher consideration, higher royalty. And I

1 told him this was a fairly wild area, it was not quite the
2 same as some other areas that they had leased in, in Lea
3 County, and again in Eddy, not a multi-pay situation, and
4 we weren't real sure that we could justify the higher
5 royalty, and especially not a higher bonus as well.
6 Indicated that he might wish to join, and again he said no,
7 he didn't think so.

8 He was going to visit with Nelson. This again
9 was right before Christmas. I believe that was on a
10 Saturday. He visited with Nelson over the Christmas
11 holidays and got back with me on the 28th, said that they
12 had discussed it and felt that they would lease, they would
13 prefer to lease, but again they want to stick with their
14 higher royalty and higher bonus. I explained to him I
15 could go a higher bonus -- we had done so with Mrs.
16 McGuffin -- but not the royalty.

17 In again about the middle of January, I sent him
18 a second letter restating our position and asked that they
19 respond because by now we had had a pretty good indication
20 from the rest of the lessors, the mineral owners out there,
21 who was going to be participating, who was going to be
22 leasing, who we were going to be able to find. We did want
23 to get the well drilled as soon as possible, explained
24 that, and I had asked him to give me a response within 30
25 days.

1 I got a letter back the 25th from Mr. Spear,
2 basically reiterating the same.

3 I contacted Mr. Carr's office subsequent to that
4 time, and we filed the pooling Application the 30th, I
5 believe it was, of January.

6 Q. Is Bettis Exhibit Number 3 -- does it contain the
7 letters that you just discussed?

8 A. Yes, it does.

9 Q. Okay, and then you indicated that your pooling
10 Application was filed, then, on January 30th; is that
11 correct?

12 A. That's correct.

13 Q. In your opinion, did you make a good-faith effort
14 to locate the individuals and obtain a voluntary joinder
15 from Sun-West?

16 A. Yes.

17 Q. What did Sun-West do after it received notice of
18 Bettis's pooling Application?

19 A. Well, again, I had asked them to give us a
20 response, in my January 20th letter, within 30 days. They
21 did get the Application, the pooling Application,
22 subsequent to that, February the 1st or 2nd, somewhere in
23 there.

24 On the -- Literally on the 30th day at the 11th
25 hour, they faxed to Mr. Carr and a copy to me of a

1 purported oil and gas lease executed to a company called
2 Gulf Coast Oil in Midland.

3 Q. Is that reflected in Bettis Exhibit Number 4?

4 A. Yes, I believe that is. And that lease,
5 basically -- the initial one that they faxed a copy to Mr.
6 Carr and to me was very hastily done. They had included
7 only the proration unit, and again we had offered to lease
8 all of their minerals in the west half. They included only
9 the proration unit that we had filed for here. One year --
10 Again, it was a 27-1/2-percent royalty lease. They said
11 they had leased it for -- I believe it was \$100 an acre.

12 But they had omitted the section on the
13 description, legal description; it said Lots 3 and 4, 9-33,
14 but no section. I noticed that and I didn't figure it
15 would be recorded. It certainly shouldn't have been
16 recorded. But the next day they did send a corrected one
17 on that.

18 Q. Okay, now this was received after the filing of
19 your pooling Application and after they had received
20 notice; is that correct?

21 A. Absolutely.

22 Q. And it carved out a 27-1/2-percent royalty for
23 Sun-West; is that right?

24 A. That is correct.

25 Q. Is that the royalty percentage that you told them

1 was unacceptable to you?

2 A. Oh, yes, it was in excess of one that -- They had
3 originally asked for 25, and we said we couldn't do that in
4 this particular area, we didn't feel that was justified,
5 and that increased it even over that.

6 Q. Did the receipt of this assignment cause Bettis
7 to continue the hearing on its pooling Application?

8 A. It did.

9 Q. Okay, and during the period of continuance did
10 you investigate the relationship between Sun-West as the
11 lessor and Gulf Coast as the lessee?

12 A. We did.

13 Q. And what did you find out?

14 A. We strongly suspected that there was a
15 relationship, that they may have been the same.
16 Armstrong -- First I was told that by an individual who
17 works for a company in Midland who I do a lot of work for.
18 *Armstrong Oil Directory* showed the same addresses, officers
19 in the companies, phone numbers, et cetera, in 1998. So
20 again we felt that they might have been the same. However,
21 we couldn't absolutely prove that at that point.

22 Q. So what did you then do?

23 A. We then sent them a letter, to Gulf Coast Oil and
24 Gas, basically advising them that in case they were not
25 aware of the Application for pooling, that we had asked for

1 this, went through our efforts with Sun-West, told them
2 basically that we, you know, had asked them to join back in
3 December, they advised us they did not want to, and again
4 sent this to Gulf Coast Oil and Gas at the address on the
5 lease.

6 Q. Is that Bettis Exhibit Number 5?

7 A. It is.

8 Q. Okay. And what happened after you sent this
9 letter?

10 A. Basically, Mr. Spear called the next day after
11 their receipt and said, In answer to your question we are
12 the same, yes, and we understand.

13 However, in my letter I had asked them again, if
14 they did want to join, we'd send them an AFE and operating
15 agreement.

16 And he said, No, we don't need one, we're not
17 interested, we've looked into this, it's just a little bit
18 wild; if you have to pool us, go ahead, we understand, no
19 hard feelings, we'll do business down the road somewhere
20 else.

21 Q. So Mr. Spear is the same person who you spoke
22 with when you were dealing with Sun-West?

23 A. That's correct.

24 Q. And he confirmed that the entities were the same
25 and that this was done after the pooling Application was

1 filed; is that right?

2 A. That's correct too.

3 Q. Okay. In your opinion, is this a transaction
4 that the Division should recognize for purposes -- the
5 pooling Application that you have filed?

6 A. No, I believe that this was an attempt to
7 completely circumvent the process. They were aware of the
8 pooling Application, they were aware of the options. To
9 lease to a related entity or to a spouse or something like
10 that, to me, is an attempt just to get around it. It was
11 not acceptable at 25 percent, it was not acceptable at 27
12 1/2 percent, and...

13 Q. What's the net effect of this transaction if it's
14 recognized by the Division, as it relates to any nonconsent
15 penalty approved by the Division?

16 A. Well, we had asked early on -- Again, I had
17 explained to them we couldn't carry a 15-percent interest
18 in this well with a -- 25 percent or carry them, period,
19 but we certainly couldn't do it with the 27-1/2-percent
20 royalty. It reduces the net revenue available to the
21 working interest participants in the well.

22 Q. And what do you ask the Division to do?

23 A. Basically treat the interest of Sun-West Oil and
24 Gas as unleased, as if this lease had not been entered
25 into. And if it were an unleased mineral interest I

1 believe it would be a 12-1/2-percent royalty and with a
2 risk penalty assessment against that after we recover our
3 costs.

4 Q. Now, let me ask you, have you made an estimate of
5 the overhead and administrative costs while drilling this
6 well and also while producing it if it is successful?

7 A. Yes, we have.

8 Q. And what is that?

9 A. It's \$5000 a month for a drilling well, \$500 a
10 month for producing.

11 Q. Is there a joint operating agreement for this
12 property that has been signed by other interest owners in
13 the well?

14 A. There is.

15 Q. And are these overhead rates set forth in that
16 joint operating agreement?

17 A. Yes, they are.

18 Q. Do you recommend that these figures be
19 incorporated into any order that results from this hearing?

20 A. Yes, we do.

21 Q. Are there COPAS guidelines that are attached to
22 the JOA for this property?

23 A. Yes, sir.

24 Q. Does Bettis, Boyle and Stovall request that the
25 overhead figures approved by the Division be subject to

1 adjustment in accordance with the COPAS guidelines attached
2 to the JOA for this property?

3 A. Yes, we do.

4 Q. Is Bettis Exhibit Number 6 an affidavit which
5 attached letters giving notice of this hearing?

6 A. Yes, it is.

7 Q. And is it missing the green return receipts only
8 for the two individuals that you could not locate?

9 A. Yes.

10 Q. Does Bettis, Boyle and Stovall seek to be
11 designated operator of the proposed well?

12 A. Yes, we do.

13 Q. Were Bettis Exhibits 1 through 6 prepared by you
14 or compiled under your direction and supervision?

15 A. Yes, sir.

16 MR. FELDEWERT: Mr. Examiner, I would move the
17 admission into evidence of Bettis Exhibits 1 through 6.

18 EXAMINER STOGNER: Exhibits 1 through 6 will be
19 admitted into evidence at this time.

20 MR. FELDEWERT: And that concludes my examination
21 of this witness.

22 EXAMINATION

23 BY EXAMINER STOGNER:

24 Q. Who is the royalty interest owner underlying the
25 west half of the section?

1 A. Who is the royalty interest owner?

2 Q. Yes, sir.

3 A. There are a number of them. The two largest, Mr.
4 Examiner, are the surface owner, an elderly lady named
5 Margaret McGuffin who owns the surface and one-half
6 minerals. New Mexico Baptist Foundation, Trustee for the
7 New Mexico Children's Home, is the second largest. They
8 own an undivided one-fourth. So between those two, it's 75
9 percent. The rest of it is pretty well split. Obviously
10 Sun-West Oil and Gas has a considerable interest, though,
11 15 percent.

12 Q. Okay, now the Sun-West interest, is that cost-
13 bearing working interest, or is some of that overriding --

14 A. No, it's --

15 Q. -- I mean royalty interest?

16 A. -- it's unleased mineral interest.

17 Q. Unleased mineral interest.

18 A. Yes, sir. That came in to them through heirship.
19 There was a company by the name of Pattee Royalty
20 Association, acquired this mineral interest way back in the
21 1940s, subject to considerable litigation then, during
22 World War II, after. And Sun-West is a successor to a
23 portion of that interest.

24 Q. As with the Neal and Kirby interest, that's both
25 unleased royalty -- or royalty interest that can't be

1 found; is that correct?

2 A. That's correct.

3 Q. Okay. Your December 15th letter to Sun-West
4 represents the first contact with them; is that correct?

5 A. Yes, sir.

6 Q. And you requested them to lease the whole west
7 half?

8 A. Yes, sir.

9 Q. At what time did you approach them, since you
10 couldn't lease them, to have them join with you in this
11 prospect?

12 A. First time that was probably mentioned was the
13 20th of December, 20th or 23rd, in one of those
14 conversations, Mr. Examiner.

15 Q. Well, was there anything written?

16 A. No, there was not.

17 Q. Nothing written. Why not? Wouldn't that be
18 something you would follow up with as a prudent landman, or
19 am I missing something?

20 A. No, they really again indicated that they really
21 wanted to lease this at a higher royalty and increased
22 bonus. I was still negotiating with other parties in
23 there. But I don't think from the get-go, frankly, they
24 ever considered joining, even though I told them there was
25 going to be a well drilled, that it was in the cards.

1 Q. So you initially offered them a 3/16 royalty?

2 A. That's correct.

3 Q. And what about the royalty for everybody else?

4 Is that 3/16 or 1/8?

5 A. It's the same, 3/16.

6 Q. Three-sixteenths?

7 A. Yes, sir.

8 Q. Okay. Now, Gulf Coast was not notified of the --
9 what you did not know, anything about Gulf Coast, whenever
10 you sent out your notification of the hearing; is that
11 correct?

12 A. That is correct.

13 Q. Okay. But you have determined that Gulf Coast is
14 one and the same or a spinoff of Southwest Oil and Gas,
15 Inc.? I'm still a little confused --

16 A. I think they're just --

17 Q. -- about the association.

18 A. I think they are two different entities owned by
19 the same people, frankly.

20 Q. Okay. When did you -- You sent out notice on
21 February 1st. On February 20th, why didn't you just go
22 ahead and send them out notice of the hearing, since you
23 continued it to today's date?

24 A. I think we probably discussed that. I really
25 can't recall.

1 Q. I don't care if you discussed it, I'm talking
2 about -- I need something in writing here that they might
3 have been notified, because you were aware that -- even
4 though it might be questionable, but you were aware that
5 they had a lease, and I assume that lease is outstanding or
6 is correct, isn't it?

7 A. They did own that mineral interest. They could
8 have leased it.

9 Q. But isn't that your understanding, and that's why
10 you contacted Gulf Coast by mail on March 22nd?

11 A. It was -- We basically asked them -- or stated
12 that we were not sure, we assumed that they were aware of
13 that, since the oil and gas lease that was supposedly
14 entered into was entered into after the date that they had
15 received the notice. We asked them if they were aware of
16 it. We assumed that they were, but we weren't sure of
17 that.

18 And that was, again, sent out. And they
19 acknowledged that, yes, we know.

20 Q. Okay.

21 A. We did get notice, we're the same.

22 Q. Okay, the March 22nd letter, you mention in here
23 about a hearing in here on April 19th, and that was
24 certified mail, return receipt --

25 A. Yes, sir.

1 Q. -- is that correct?

2 A. That's correct.

3 Q. Okay. Now, is that return receipt included in
4 today's affidavit?

5 MR. FELDEWERT: No, it is not, Mr. Examiner.

6 EXAMINER STOGNER: For the record, Mr. Feldewert,
7 why don't you have that submitted --

8 MR. FELDEWERT: Certainly.

9 EXAMINER STOGNER: -- and we'll just attach that
10 to Exhibit Number 5.

11 Q. (By Examiner Stogner) Do you remember what the
12 date showed? Was that sent out on March 22nd or the 23rd
13 or 24th?

14 A. I think it was sent on the 22nd, and if I'm not
15 mistaken he called me even before I got the return receipt
16 back to acknowledge that, yes, we've got it and in response
17 to your letter.

18 Q. Okay, let's make that a part of Exhibit Number 5,
19 because this appears to be adequate notice since it does
20 specifically state the April 19th date, but to make sure,
21 let's --

22 A. Certainly.

23 Q. -- attach it.

24 A. Certainly.

25 Q. Okay. Now, did I hear right, \$5000 drilling,

1 \$500 producing?

2 A. Yes, sir.

3 EXAMINER STOGNER: Okay, I don't believe I have
4 any other questions of Mr. Maloney. You may be excused.

5 THE WITNESS: Thank you, Mr. Examiner.

6 EXAMINER STOGNER: Mr. Feldewert?

7 MR. FELDEWERT: We would then call Mr. Stubbs.

8 BRUCE A. STUBBS,

9 the witness herein, after having been first duly sworn upon
10 his oath, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. FELDEWERT:

13 Q. Mr. Stubbs, could you please state your full name
14 and address for the record?

15 A. My name is Bruce A. Stubbs, I'm from Roswell, New
16 Mexico.

17 Q. And by whom are you employed and in what
18 capacity?

19 A. I'm a consulting petroleum engineer and have been
20 hired by Bettis, Boyle and Stovall to develop AFE and well
21 plan and testify in this case.

22 Q. Have you previously testified before this
23 Division as an engineer and had your credentials accepted
24 and made a matter of record?

25 A. Yes I have, and yes they were.

1 Q. All right, and are you familiar with the
2 Application filed in this case?

3 A. I am.

4 Q. And have you made a technical study of the area
5 which is the subject of that Application?

6 A. Yes, I have.

7 Q. And are you prepared to share the results of your
8 work with the Examiner?

9 A. Yes, I am.

10 MR. FELDEWERT: Are the witness's qualifications
11 acceptable?

12 EXAMINER STOGNER: They are.

13 Q. (By Mr. Feldewert) Would you please tell the
14 Examiner what the primary target is for Bettis, Boyle and
15 Stovall's proposed well?

16 A. The primary target is the Bough "C" formation at
17 approximately 9100 feet.

18 Q. Would you identify for the Examiner Bettis
19 Exhibit Number 7?

20 A. That's the AFE that I prepared back in December
21 for the drilling of this well.

22 Q. Would you review the dryhole costs and the
23 completed costs?

24 A. The dryhole cost is \$459,174, completed well cost
25 is \$767,192.

1 Q. Are these costs in line with what other operators
2 in the area have charged for similar wells?

3 A. Yes, it is.

4 Q. Are you prepared to make a recommendation to the
5 Examiner as to the risk penalty that should be assessed
6 against the nonconsenting interest owners?

7 A. Yes, I am.

8 Q. And what is that recommendation?

9 A. I think it should be the maximum, 200 percent.

10 Q. And would you briefly set forth the reasons for
11 your recommendation?

12 A. Well, this is a moderate- to high-risk well. It
13 has the possibility of encountering no reservoir, it also
14 has the possibility of encountering a reservoir but at some
15 stage of depletion.

16 Q. Okay. And why don't you then identify for the
17 Examiner and review for him Bettis Exhibit Number 8?

18 A. Exhibit Number 8 is the data that I've gathered
19 and the assumptions that I've made and the results that
20 I've determined on this prospect as far as what's gone on
21 in the area and the economics for this particular well.

22 If I can, I'll just run through this real quick
23 for the Examiner.

24 If you'd refer to Exhibit 1, it's just a land
25 plat showing the west half of Section 30 and then all the

1 surrounding wells. It's in a fairly well developed area.
2 The Flying "M" Field is off to the east, northeast, the
3 Flying "M" South Bough Field is located to the north and
4 the northwest.

5 Q. And just for the record, this is page Exhibit 1
6 of Bettis Exhibit Number 8; is that correct?

7 A. That's correct.

8 Q. Okay, go ahead.

9 A. If you turn the page to Exhibit 2-A of Exhibit 8,
10 I did a production study of all the wells in the two
11 townships surrounding this prospect to determine what zones
12 are produced in the area.

13 The two primary zones are the San Andres, which
14 is produced to the east of the west half of Section 30, and
15 the Bough "C" formation that's produced to the north and
16 northwest of the location. There's one inactive Bough "C"
17 well that was drilled on the west half -- it's in the
18 northeast of the northwest -- and that well has produced
19 214,000 barrels, and it's either plugged or inactive at
20 this point.

21 Turning to the next pages, these are all the
22 wells in those two townships, Exhibits 2-B through 2-E of
23 Exhibit 8. That's just the data that those maps were based
24 on.

25 If you turn to Exhibit 3 of Exhibit 8, these are

1 the -- kind of a blow-up of the area surrounding the west
2 half of Section 30, showing the cumulative production from
3 the San Andres wells and also wells that were either tested
4 or dry holes.

5 There's a San Andres test two locations to the
6 north of the proposed location that made 625 barrels of
7 oil.

8 The location just east of it had a DST in the San
9 Andres, recovered some sulfur water, no real show.

10 There's a dry hole that's southwest of the
11 proposed location, and there's another show well two
12 locations to the northwest that made 125 barrels of oil.

13 The real production from the Flying "M" San
14 Andres Pool occurs to the east, and you can tell from the
15 map that as you continue east the wells get better. They
16 range anywhere from 156 barrels to over 68,000 barrels in
17 the east half of Section 30.

18 So I really feel that there's a low probability
19 of encountering commercial San Andres at this proposed
20 location.

21 If you turn the page to Exhibit 4-A of Exhibit 8,
22 these are the Bough "C" wells in the area. There's eight
23 Bough "C" wells that are produced. Those are the solid
24 black squares. These wells have averaged 145,000 barrels
25 of oil and 225 million cubic feet per well, so they've made

1 in excess of 1.1 million barrels out of that pool.

2 The well that's labeled Number 15 in the
3 northeast of the northwest of Section 30 has cum'd 214,000
4 barrels.

5 The well labeled 16 that's in the southwest of
6 the northwest had a drill stem test in the Bough interval,
7 but it was tight and recovered a little bit of sulfur
8 water.

9 And the well located in the southwest of the
10 northeast of 30, labeled Number 17, also had a drill stem
11 test in the Bough "C" and didn't recover any real shows and
12 had depleting shut-in pressure. So it's either limited or
13 tight.

14 I believe it's Well Number 10, located in Section
15 25, had another drill stem test in the Bough "C". It had a
16 show of oil and gas but it had depleting pressures,
17 indicating that it's either limited or somewhat tight.

18 Exhibit 4-B of 8 is just a brief description of
19 each well, how much it's cum'd and what the test results
20 were.

21 You continue on to Exhibit 6 of 8. This is a
22 structure that Mr. Probandt provided me on the structure on
23 top of the Bough "C" formation. There's a small structural
24 high located in the east half of Section 25.

25 Continue on to Exhibit Number 7, this is an

1 isopach map of the Bough "C", and you can see that there's
2 a band of -- algal mound band that falls off to the north
3 flanks of that small structure. Mr. Probandt's theory is
4 that that band of porosity and permeability in that algal
5 mound will extend around to the east side of that
6 structure, to the proposed location.

7 In my analysis, I have determined or I have
8 estimated that there's a 50-50 chance that that reservoir
9 actually does that, so that's where a lot of the risk comes
10 in. It's either there or it isn't. You are cut off from
11 the existing field by one dry hole located one location
12 north of the location, so it's got to thread itself between
13 those two dry holes before it comes around to the proposed
14 location.

15 I've run two cases, I was asked to run two cases
16 back earlier this year, and this is the results of those
17 two cases.

18 If you'll turn to Exhibit 8-B of 8, this is the
19 case using 3/16 overriding royalty interest on \$100 per
20 acre, and the risk-weighted reserves that I would expect
21 from this well is 72,000 barrels and 112 million cubic feet
22 of gas. This provides -- If you look down in the lower
23 left corner, this provides a 28.13-percent rate of return
24 before taxes. After taxes it would be roughly a 20-percent
25 rate of return, which is kind of the low end of acceptable

1 to most operators.

2 I also ran a second case, which is Exhibit 9-B of
3 Exhibit 8. This is assuming a quarter royalty and \$150 per
4 acre. And what happens is, the higher royalty rate causes
5 the economic limit to be reached a little bit quicker. So
6 there's only 71,000 barrels of reserves, and before-tax
7 rate of return is 19.18 percent. After-tax return would be
8 less than 20, and it's not acceptable economics.

9 Q. If the Division recognizes the transaction
10 between Sun-West and Gulf Coast for purposes of whatever
11 nonconsent penalty it imposes, does that change the
12 economics of the project for Bettis?

13 A. If they have a higher overriding royalty
14 interest.

15 Q. Or royalty?

16 A. Higher royalty, yes, it does, it puts that
17 segment of the prospect in unfavorable economics.

18 Q. Okay.

19 A. They'd have essentially the same economics; it
20 would just be a smaller percentage.

21 Q. I think you said your rate of return, that most
22 companies use, is 20 percent as kind of the cutoff point?

23 A. Yeah, 20 percent after tax, which means you have
24 to have about a 30-percent before tax.

25 Q. All right. And I assume if this transaction is

1 not recognized as a sham transaction between Sun-West and
2 Gulf Coast, that the rate of return dips even lower than
3 what your estimate shows; is that correct?

4 A. Right.

5 Q. Okay. Do you believe there's a chance that you
6 could drill a well at the proposed location that would not
7 be a commercial success?

8 A. Yes, I do.

9 Q. But in your opinion, will the granting of this
10 Application be in the best interests of conservation, the
11 prevention of waste and the protection of correlative
12 rights?

13 A. Yes, it will.

14 Q. Were Bettis Exhibits 7 and 8 prepared by you or
15 compiled under your supervision and direction?

16 A. Yes, they were.

17 MR. FELDEWERT: Mr. Examiner, I would move
18 admission into evidence of Bettis Exhibits Numbers 7 and 8.

19 EXAMINER STOGNER: Exhibits 7 and 8 will be
20 admitted into evidence at this time.

21 And I have no questions of Mr. Stubbs.

22 You may be excused.

23 THE WITNESS: Thank you.

24 Is there anything further in Case 12,601?

25 MR. FELDEWERT: The only thing, Mr. Examiner, is,

1 I would just briefly make a statement, and that is, I think
2 what we have here is an effort by Sun-West to completely
3 circumvent the pooling statute here in New Mexico. It's
4 clear that the evidence clearly demonstrates that Sun-West
5 created this lease to Gulf-Coast only after it received
6 Bettis's pooling Application.

7 The evidence also demonstrates that in essence
8 these two companies are owned by the same entities, and the
9 evidence would seem to demonstrate, then, that this is
10 really a sham transaction, and I would submit its sole
11 purpose was to circumvent the pooling statute here in New
12 Mexico and force an increased royalty burden on Bettis,
13 Boyle and Stovall, and in essence decrease the working
14 interest revenue stream that would be subject to the
15 nonconsent penalty as provided by statute.

16 We think that this kind of effort by a party who
17 was subject to a pooling proceeding is completely improper.

18 We ask that the Division, then, ignore that
19 transaction for purposes of the nonconsent penalty and in
20 essence treat the interest that's now held by Gulf Coast as
21 an unleased interest that would be subject to the statutory
22 provisions and in essence then ask the Division to
23 recognize title as it existed at the time that the pooling
24 Application was filed.

25 EXAMINER STOGNER: Thank you, Mr. Feldewert.

1 MR. FELDEWERT: Thank you.

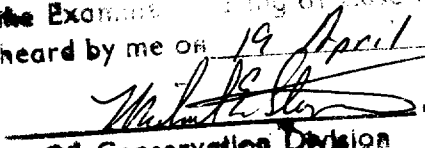
2 EXAMINER STOGNER: I will hold the record open
3 pending your submittal of the return receipt to Gulf Coast.

4 If there's nothing further in this matter, then
5 pending the receipt of that I will then take it under
6 advisement.

7 MR. FELDEWERT: Thank you, Mr. Examiner.

8 (Thereupon, these proceedings were concluded at
9 9:55 a.m.)

10 * * *

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15 I do hereby certify that the foregoing is
a complete and correct transcript of the proceedings in
the Examiner's hearing of Case No. 12601.
16 heard by me on 19 April 1981.
17  Examiner
18 Off Conservation Division
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CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL April 23rd, 2001.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 2002