

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

CASE NO. 12,601

AWAITING FINAL COMMISSION ACTION

NO EVIDENCE OR TESTIMONY TAKEN

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: LORI WROTENBERY, CHAIRMAN  
JAMI BAILEY, COMMISSIONER  
ROBERT LEE, COMMISSIONER

February 15th, 2002

Santa Fe, New Mexico

These matters came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Friday, February 15th, 2002, 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.

\* \* \*

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

02 MAR -7 AM 8:06  
02 MAR -7 AM 8:06

## I N D E X

October 16th, 2002  
Commission Hearing  
CASE NO. 12,601  
(Awaiting final Commission Action -  
No evidence or testimony taken)

PAGE

REPORTER'S CERTIFICATE

5

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## A P P E A R A N C E S

FOR THE COMMISSION:

STEPHEN ROSS  
Deputy General Counsel  
Energy, Minerals and Natural Resources Department  
2040 South Pacheco  
Santa Fe, New Mexico 87505

\* \* \*

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

1           WHEREUPON, the following proceedings were had at  
2   9:42 a.m.:

3           CHAIRMAN WROTENBERY: We do have one action we  
4   need to take, and that is in Case 12,601. This is the  
5   Application of Bettis, Boyle and Stovall to reopen  
6   compulsory pooling Order Number R-11,573 to address the  
7   appropriate royalty burdens on the well for the purposes of  
8   the charge for risk involved in drilling said well in Lea  
9   County, New Mexico.

10           We do have a draft order of the Commission in  
11   this case. It's Order Number R-11,573-B.

12           And Commissioners, I believe you've had a chance  
13   to review the draft order?

14           COMMISSIONER BAILEY: Yes, I have, and I intend  
15   to sign it.

16           CHAIRMAN WROTENBERY: And I'll entertain a motion  
17   that we approve this Order as drafted?

18           COMMISSIONER BAILEY: I so move.

19           COMMISSIONER LEE: Second.

20           CHAIRMAN WROTENBERY: All in favor say aye.

21           COMMISSIONER BAILEY: Aye.

22           COMMISSIONER LEE: Aye.

23           CHAIRMAN WROTENBERY: Okay, got it here. Do I  
24   have a -- Oh, here it is, signature page. I found the  
25   original.

1           That order is signed.

2           And I believe that concludes our business for  
3 today.

4           Florene, do we have anything else that we need to  
5 take up?

6           MS. DAVIDSON: No, not that I know of.

7           CHAIRMAN WROTENBERY: Okay, do we have a motion  
8 to adjourn?

9           COMMISSIONER BAILEY: I move we adjourn.

10          CHAIRMAN WROTENBERY: And do you second it?

11          COMMISSIONER LEE: Second.

12          CHAIRMAN WROTENBERY: Okay, all in favor say aye.

13          COMMISSIONER BAILEY: Aye.

14          COMMISSIONER LEE: Aye.

15          CHAIRMAN WROTENBERY: Thank you very much.

16          (Thereupon, these proceedings were concluded at  
17 9:44 a.m.)

18                           \* \* \*

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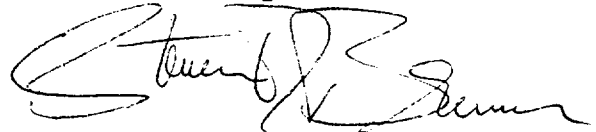
## CERTIFICATE OF REPORTER

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 Commission 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 February 18th, 2002.



STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 14, 2002

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

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

CASE NOS. 12,635, 12,605 and 12,587, 12,601 and 12,698

(Closing of Session for Deliberation)

TRANSCRIPT OF PROCEEDINGS

BEFORE: LORI WROTENBERY, CHAIRMAN  
JAMI BAILEY, COMMISSIONER  
ROBERT LEE, COMMISSIONER

December 5th, 2001

Santa Fe, New Mexico

01 DEC 20 PM 3:13  
OIL CONSERVATION COMMISSION

These matters came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Tuesday, December 4th, 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.

\* \* \*

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

## I N D E X

December 5th, 2001  
Commission Hearing  
CASE NOS. 12,635, 12,605 and 12,587, 12,601 and 12,698  
(Closing of Session for Deliberation)

## PAGE

REPORTER'S CERTIFICATE

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## A P P E A R A N C E S

FOR THE COMMISSION:

STEPHEN ROSS  
Deputy General Counsel  
Energy, Minerals and Natural Resources Department  
2040 South Pacheco  
Santa Fe, New Mexico 87505

\* \* \*

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

1           WHEREUPON, the following proceedings were had at  
2   9:06 a.m.:

3           CHAIRMAN WROTENBERY: And at this point we  
4   probably need to close the meeting to deliberate on several  
5   pending cases before the Commission.

6           I'll entertain a motion.

7           CHAIRMAN WROTENBERY: I move that we close the  
8   meeting to consider several issues.

9           COMMISSIONER LEE: Second.

10          CHAIRMAN WROTENBERY: All in favor say aye.

11          COMMISSIONER BAILEY: Aye.

12          COMMISSIONER LEE: Aye.

13          CHAIRMAN WROTENBERY: Aye. Okay, thank you then.  
14   We'll take a short break here.

15          (Off the record at 9:05 a.m.)

16          (The following proceedings had at 10:55 a.m.)

17          CHAIRMAN WROTENBERY: Okay, I'll entertain a  
18   motion that we conclude our closed session and go back on  
19   the record.

20          COMMISSIONER BAILEY: I so move.

21          COMMISSIONER LEE: Second.

22          CHAIRMAN WROTENBERY: All in favor say aye.

23          COMMISSIONER BAILEY: Aye.

24          COMMISSIONER LEE: Aye.

25          CHAIRMAN WROTENBERY: Aye. And for the record,



1 I'll just note that the Commission has deliberated several  
2 cases while in closed session. The cases specifically were  
3 Case 12,635, the Application of McElvain Oil and Gas  
4 Properties, Inc., for compulsory pooling in Rio Arriba  
5 County, New Mexico; Cases 12,605 and 12,587, the two  
6 Applications of Sapient Energy Corporation that we took  
7 testimony in yesterday; Case 12,601, the Application of  
8 Bettis, Boyle and Stovall to re-open Case 12,601 and amend  
9 Order Number R-11,573; and finally Case 12,698, the re-  
10 opened Application of Mewbourne Oil Company for compulsory  
11 pooling in Eddy County, New Mexico.

12 And we do have two final orders to act upon at  
13 this time. One of these is in Case Number 12,635 and Case  
14 Number 12,705. These are the Applications of McElvain Oil  
15 and Gas Properties, Inc., for compulsory pooling and the  
16 Application of D.J. Simmons, Inc., for compulsory pooling  
17 in Rio Arriba County, New Mexico.

18 Commissioners, I believe you've had a chance to  
19 review the draft order that Steve Ross has prepared for our  
20 consideration?

21 COMMISSIONER BAILEY: Yes, I have, and it's my  
22 intent to sign both orders.

23 CHAIRMAN WROTENBERY: And at this time I will  
24 entertain a motion that we adopt the order as drafted.

25 COMMISSIONER BAILEY: I so move.

1 COMMISSIONER LEE: Second.

2 CHAIRMAN WROTENBERY: All in favor say aye.

3 COMMISSIONER BAILEY: Aye.

4 COMMISSIONER LEE: Aye.

5 CHAIRMAN WROTENBERY: And we can sign this order  
6 now, while Commissioner Lee gets out his special pen, we'll  
7 wait just a second.

8 Okay, we've disposed of that matter.

9 And the other draft order is in Case Number  
10 12,698. This is the Application of Mewbourne Oil Company  
11 for compulsory pooling, Eddy County, New Mexico. We heard  
12 the request today of the Applicant in that case for an  
13 amendment to that order.

14 Commissioners, have you had a chance to review  
15 the draft amendment?

16 COMMISSIONER BAILEY: Yes, I have, and I move  
17 that we sign off on it.

18 COMMISSIONER LEE: Second.

19 CHAIRMAN WROTENBERY: All in favor say aye.

20 COMMISSIONER BAILEY: Aye.

21 COMMISSIONER LEE: Aye.

22 CHAIRMAN WROTENBERY: Aye. Okay, that one is  
23 taken care of.

24 Are there any other items of business for today,  
25 Florene?

1 MS. DAVIDSON: Did you want to talk about your  
2 hearing dates for next year?

3 CHAIRMAN WROTENBERY: You have a list of proposed  
4 hearing dates, right? And I would think what we would do,  
5 maybe, is just provide those to the other Commissioners.  
6 And is everybody okay with those dates?

7 MS. DAVIDSON: As far as I know.

8 CHAIRMAN WROTENBERY: Okay, good. In fact, Steve  
9 Brenner was asking about those earlier. So we will just  
10 publish, then, these proposed hearing dates for 2002. And  
11 it may be, especially toward the last half of the year,  
12 that we might need to make some adjustments once some of  
13 the other meetings of various organizations are scheduled  
14 more definitely. But certainly for the first half of the  
15 year, we probably should be able to stick pretty close to  
16 this proposed schedule.

17 COMMISSIONER LEE: I think in realty, probably,  
18 we -- I probably would have a possi- -- a probability to  
19 change one of them. But I will --

20 CHAIRMAN WROTENBERY: Oh, there might be one date  
21 on here you might have to make an adjustment on later?  
22 Okay. I think just --

23 COMMISSIONER LEE: But I'll try to schedule  
24 everything around it --

25 CHAIRMAN WROTENBERY: Okay, great, yeah --

1 COMMISSIONER LEE: -- because --

2 CHAIRMAN WROTENBERY: -- any Commissioner --

3 COMMISSIONER LEE: -- there's some conflicts --

4 CHAIRMAN WROTENBERY: -- that has a conflict that  
5 crops up, if they can just bring it to our attention early  
6 on, we can usually make an adjustment that will work for  
7 everybody.

8 Okay, great. Thank you, Florene.

9 Anything else? Okay, I'll entertain a motion to  
10 adjourn.

11 COMMISSIONER BAILEY: I move we adjourn.

12 CHAIRMAN WROTENBERY: Second, I'll second it.

13 (Laughter)

14 CHAIRMAN WROTENBERY: You were a little slow on  
15 that.

16 All in favor say aye.

17 COMMISSIONER BAILEY: Aye.

18 COMMISSIONER LEE: Aye.

19 CHAIRMAN WROTENBERY: We're adjourned. Thank  
20 you, everybody.

21 (Thereupon, these proceedings were concluded at  
22 11:00 a.m.)

23 \* \* \*

24

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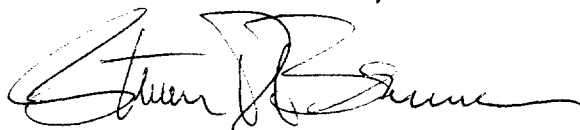
## CERTIFICATE OF REPORTER

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  
Commission 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 December 17th, 2001.



STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 14, 2002

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

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. 12,601  
)  
APPLICATION OF BETTIS, BOYLE & STOVALL )  
TO REOPEN CASE 12,601 AND AMEND ORDER )  
NO. R-11,573 TO ADDRESS THE APPROPRIATE )  
ROYALTY BURDENS ON THE PROPOSED WELL )  
FOR THE PURPOSES OF THE CHARGE FOR RISK )  
INVOLVED IN DRILLING SAID WELL, LEA )  
COUNTY, NEW MEXICO )  
\_\_\_\_\_ )

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: LORI WROTENBERY, CHAIRMAN  
JAMI BAILEY, COMMISSIONER  
ROBERT LEE, COMMISSIONER

December 4th, 2001

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Tuesday, December 4th, 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.

\* \* \*

STEVEN T. BRENNER, CCR  
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## I N D E X

December 4th, 2001  
 Commission Hearing  
 CASE NO. 12,601

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\* \* \*

## A P P E A R A N C E S

## FOR THE COMMISSION:

STEPHEN ROSS  
 Deputy General Counsel  
 Energy, Minerals and Natural Resources Department  
 2040 South Pacheco  
 Santa Fe, New Mexico 87505

## FOR BETTIS, BOYLE AND STOVALL:

HOLLAND & HART, L.L.P., and CAMPBELL & CARR  
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 P.O. Box 2208  
 Santa Fe, New Mexico 87504-2208  
 By: WILLIAM F. CARR

## FOR SUN-WEST OIL AND GAS:

STRATTON & CAVIN, P.A.  
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 Albuquerque, New Mexico 87102  
 P.O. Box 1216  
 Albuquerque, New Mexico 87103  
 By: STEPHEN D. INGRAM

\* \* \*

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

1           WHEREUPON, the following proceedings were had at  
2   9:00 a.m.:

3           CHAIRMAN WROTENBERY: We'll get started here.  
4   It's nine o'clock on December 4th, 2001, and this is a  
5   meeting of the Oil Conservation Commission. We're here in  
6   Porter Hall in Santa Fe, New Mexico.

7           I'm Lori Wrotenbery, and I am the Director of the  
8   Oil Conservation Division, and I serve as chair of the Oil  
9   Conservation Commission.

10          To my right is Commissioner Jami Bailey. She  
11   represents Land Commissioner Ray Powell on to the  
12   Commission.

13          And to my left is Commissioner Robert Lee.

14          We also have up here Florene Davidson, to my far  
15   right, who serves as the Commission secretary.

16          And then to Commissioner Lee's left is Steve  
17   Ross, the Commission's legal counsel.

18          And Steve Brenner will be recording these  
19   proceedings for us here today.

20          We've got several cases on the agenda. I think  
21   we'll skip over several of the preliminary matters and get  
22   right into the cases in the interest of time.

23          And we thought we'd take up Case 12,601 first.  
24   This is the application of Bettis, Boyle and Stovall to  
25   reopen Case 12,601 and amend Order Number R-11,573 to

STEVEN T. BRENNER, CCR  
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1 address the appropriate royalty burdens on the proposed  
2 well for the purposes of the charge for risk involved in  
3 drilling said well. This is in Lea County, New Mexico.

4 We're hearing this case on the Application of  
5 Sun-West Oil and Gas, Inc., and it's being heard *de novo*  
6 under the provisions of Division Rule 1220.

7 This, Commissioners, is the case in the back of  
8 your books, I think, if you need that information, the very  
9 last one in your packet of materials.

10 And at this point we'll call for appearances.

11 MR. CARR: May it please the Examiner, my name is  
12 William F. Carr with the Santa Fe office of Holland and  
13 Hart, L.L.P. We represent Bettis, Boyle and Stovall in  
14 this matter.

15 MR. INGRAM: And Ms. Wrotenbery, my name is Steve  
16 Ingram from Stratton and Cavin in Albuquerque, and I'm here  
17 representing Sun-West Oil and Gas.

18 CHAIRMAN WROTENBERY: Anybody else? Okay.

19 Mr. Carr, would you like to get it started here?

20 MR. CARR: May it please the Commission, as we  
21 indicated in the prehearing statements that were filed in  
22 this matter, the parties have agreed not to present new  
23 witnesses today. The record in this case consists of the  
24 record made before the Division in April and May of this  
25 year, the exhibits offered at that time, and I believe a

1 post-hearing memorandum filed in the case on behalf of Sun-  
2 West Oil and Gas.

3 We are here today because when Bettis, Boyle and  
4 Stovall attempted to compulsory pool certain tracts of land  
5 in Lea County, New Mexico under the provisions of the Oil  
6 and Gas Act, another party, a party subject to pooling,  
7 Sun-West Oil and Gas, through a private contract, increased  
8 the burdens on their lease, they converted working interest  
9 to non-cost-bearing royalty interest. And we submit the  
10 purpose of this action was to avoid the provisions of the  
11 Oil and Gas Act to defeat the pooling application.

12 Now, in this case there is no issue as to the  
13 pooling of the subject spacing units, nor the 200-percent  
14 risk penalty that was imposed by the original order. What  
15 we are talking about is whether or not a party, through a  
16 private contract, can convert cost-bearing interest to non-  
17 cost-bearing interest once they are aware they are going to  
18 have their interest subject to a compulsory pooling action.

19 The facts in this case are fairly simple.  
20 Chronologically, they are these:

21 In December of 2000, Bettis, Boyle and Stovall  
22 wrote Sun-West Oil and Gas, the owner of a 15-percent  
23 undivided oil and gas interest in the west half of a  
24 section, and they solicited a lease from Sun-West.

25 Again in January of this year, Bettis, Boyle and

1 Stovall made a second offer. They offered an 18.75-percent  
2 royalty, and they advised Sun-West that a royalty rate  
3 above this level would make the drilling of the proposed  
4 well uneconomic.

5 The parties were unable to reach a voluntary  
6 agreement, and so on January 30th of 2001, Bettis, Boyle  
7 and Stovall filed its application for compulsory pooling.  
8 And on the date the application was filed, Sun-West was the  
9 owner of an unleased 15-percent mineral interest.

10 This application for compulsory pooling was  
11 received by Sun-West on February the 6th. And thereafter,  
12 on February the 15th, Sun-West leased these oil and gas  
13 interests to Gulf Coast Oil and Gas Company and reserved a  
14 27.5-percent royalty. They had been advised that the well  
15 couldn't be drilled if it was increased above 18.75  
16 percent. They conveyed it, or leased it, to Gulf Coast at  
17 a 27.5-percent royalty.

18 They thereby increased the share of the  
19 production from the Sun-West tract that would be paid to  
20 them cost-free in the event a compulsory pooling hearing or  
21 order was entered following hearing.

22 The hearing was on April the 19th, and the  
23 evidence in that hearing showed that Gulf Coast and Sun-  
24 West had the same address, they have the same telephone  
25 number, they have the same officers, and when you call Sun-

1 West or Gulf Coast, the same person will answer the  
2 telephone.

3 On April the 26th, the Division entered its order  
4 pooling the lands and imposing a 200-percent risk penalty,  
5 but that order was silent on Bettis, Boyle and Stovall's  
6 request that this royalty interest be disallowed and it be  
7 treated -- the property interest be treated as an unleased  
8 mineral interest would be treated, a one-eighth royalty and  
9 a seven-eighths working interest. But the order was silent  
10 on that.

11 And so on May 3rd of this year, we filed an  
12 application to re-open the case to address that particular  
13 issue, and the hearing was held on May 31st. At that time,  
14 no additional evidence was presented, there was -- Well,  
15 there was evidence, actually, from Bettis, Boyle and  
16 Stovall; there was none from Sun-West. But there were  
17 legal arguments from both parties.

18 And I think it's important to realize as you look  
19 at this, the only evidence in the record in this case is  
20 the evidence presented to the Division by Bettis, Boyle and  
21 Stovall.

22 On September 24th of this year, the Division  
23 entered its order, it granted the application of Bettis,  
24 Boyle and Stovall. And in that order it declared that the  
25 interest of Sun-West should be treated as it was on the day

1 the pooling application was filed, as an unleased mineral  
2 interest. Therefore, one eighth of it would be treated as  
3 a royalty interest, seven eighths as a working interest.  
4 And Sun-West appealed, and that's why we're here today.

5 This case presents, I believe, an important issue  
6 to the Oil Conservation Commission. We believe the issue  
7 is simply this: Can a party, through a private contract,  
8 take its interest, carve out non-cost-bearing burdens to  
9 avoid compulsory pooling, to improve their position, at the  
10 same time put at risk or defeat the statutory pooling  
11 authority of the Oil Conservation Division? We believe  
12 that is the issue that is before you.

13 I think it's important to briefly look at the  
14 Division's pooling authority. It's an exercise of the  
15 police power of the State, and you do this to conserve oil  
16 and gas and to ensure that minerals are developed. It  
17 isn't a taking, but what you do when you pool is, you  
18 qualify or you restrict the property interests to assure  
19 that they are, in fact, developed.

20 In our statute there are certain preconditions  
21 that must be met before you can get a pooling order.  
22 You've got to have, obviously, more than one interest owner  
23 in a spacing unit. One of them has to have a right to  
24 drill and proposes to drill.

25 And then the statute provides that parties have

1 in New Mexico. And it says, "Since the participating  
2 parties generally bear the non-cost-bearing burdens,  
3 parties that anticipate compulsory pooling of their  
4 interests may want to consider carving out or conveying a  
5 non-cost-bearing burden prior to compulsory pooling. In  
6 this way, the parties being pooled can enhance their  
7 position."

8 What you have is a case which is a follow-up on  
9 this very statement. You have attorneys, you have parties,  
10 who are trying to enhance their position by changing the  
11 character of the property interest to improve their  
12 position in pooling and to put at risk the very authority  
13 of this agency when it attempts to force pool lands.

14 What does it mean, when you carve out a royalty  
15 interest? Well, it means two things: A larger percentage  
16 of your interest is free of cost; and it also means that  
17 there is a smaller interest against which the 200-percent  
18 risk penalty will apply. It means that the risk is being  
19 borne by the person drilling the well in a larger  
20 percentage, and that less risk falls on the person whose  
21 interest is being carried, the party who isn't taking the  
22 risk, the party who isn't paying for the well.

23 We ask you in this case to do what the Division  
24 has done in the past and say no to this kind of conduct, to  
25 say no to attorneys who advocate this type of effort to

1 subvert oil and gas regulation, to say no to Sun-West, to  
2 say that when you try to reach a voluntary agreement for  
3 the development of lands as you are required to do by  
4 statute, it means you talk with the other interest owners,  
5 you don't just cut a deal with yourself.

6 We think it's time for you to say that under the  
7 compulsory pooling statutes of this state, if someone has  
8 to carry your interest in the development of the oil and  
9 gas rights, you cannot get the benefit of that effort and  
10 at the same time, through a private contract, either with  
11 yourself or, I submit, with a stranger, prevent them from  
12 recovering the Division-authorized risk penalty, what they  
13 would have been entitled to had they not taken this  
14 unilateral action and in the process put at risk your  
15 order.

16 This is an important issue. It's an important  
17 issue to the parties in this case, but it also will set a  
18 very important precedent because I will tell you in my own  
19 practice I represent Yates Petroleum Corporation, and their  
20 affiliated companies, Abo, Myco, Yates Drilling, Agave,  
21 Nearburg Producing, Nearburg Exploration, McMillan  
22 Production Company, David Petroleum Company and these  
23 related entities, and if this is the way you want to go I  
24 think it's unlikely you'll ever see any of those people  
25 being pooled again.

1           We ask you to do what the Division did, not  
2           overturn the lease but restrict and qualify it, do what  
3           they did. They found that for the purpose of the pooling  
4           order this interest will be treated as it was on the day  
5           the Application was filed, as a one-eighth royalty and a  
6           seven-eighths working interest.

7           CHAIRMAN WROTENBERY: Thank you, Mr. Carr.

8           Mr. Ingram?

9           MR. INGRAM: May it please the Commission, I'm  
10          not going to go over the chronology. I don't think there's  
11          any need to. I think Mr. Carr has basically stated  
12          essentially what happened. We, of course, dispute -- and  
13          I'll get to that in a little bit -- the affiliate nature  
14          and the evidence underlying that between Sun-West and Gulf  
15          Coast, the parties to whom interests were conveyed after  
16          the pooling application was filed.

17          Sun-West, at the time the pooling application was  
18          filed in January, owned a 15-percent mineral interest. It  
19          did subsequently lease that interest or reserved unto  
20          itself a 27-1/2-percent royalty interest.

21          In its amended order, the Division took upon  
22          itself to declare the interest as being unleased for the  
23          purpose of the cost recovery and the risk penalty. It did  
24          so, as stated in the amended order, under the authority of  
25          its general authority and its pooling authority.



1           Sun-West is here to submit that the statutes upon  
2           which the amended order was based confer no such authority  
3           to essentially determine title to real property by  
4           retroactively declaring this royalty interest to not exist.

5           The first point, then, I'd like to go to is the  
6           statutory authority of the Division to do what it did. I  
7           think it's undisputed that the declaration of this interest  
8           doesn't exist, which is what happened here. It's not  
9           within the enumerated powers under Section 70-2-12.  
10          70-2-17.C does allow the pooling of a royalty interest but  
11          doesn't allow the taking away of that royalty interest.

12          We are here to have a *de novo* hearing of the  
13          Division's amended order because we believe this order just  
14          goes too far. It goes beyond your pooling, and it does  
15          constitute a taking of the interest. This royalty interest  
16          has been declared to not exist. It does exist, it was  
17          conveyed at the time of the pooling application.  
18          Nonetheless, at the time the order was entered, at the time  
19          the proceedings were carried forth, this royalty interest  
20          was in existence. And by determining that this conveyance  
21          was of no effect, the Division in effect determined title  
22          to real property, something which we submit is beyond the  
23          jurisdiction and beyond the statutory authority of the  
24          Division to do.

25          Now, Bettis in its prehearing statement claims

1 that the OCD has the power to reduce the burdens imposed to  
2 circumvent its jurisdiction. We deny that this was done to  
3 circumvent the Division's jurisdiction. However, we also  
4 submit that the order exceeds both the explicit authority  
5 of the Division to protect the correlative rights of the  
6 parties and to prevent waste, and it exceeds the implicit  
7 powers attendant thereto.

8 This substantially reduced the royalty interest  
9 possessed by Sun-West, and it resulted in a complete taking  
10 of the Gulf Coast interest.

11 We're asking here that there be some standards in  
12 the Division's consideration of pooling applications, and  
13 we would submit that the effect of this amended order was  
14 an arbitrary one. It is very difficult for parties such as  
15 Sun-West to know how best to proceed, how best to protect  
16 their interests in light of this amended order.

17 Now, there's no reported New Mexico cases on  
18 point on this discrete issue. Bettis has claimed in its  
19 prehearing statement and its memorandum submitted to the  
20 Division that the prior OCD orders in the Nearburg and  
21 Caulkins matters did have the effect of reducing excessive  
22 royalty burdens. Those both can be fairly readily  
23 distinguished, and I think both on the basis of them being  
24 very extreme facts that are not present in this case.

25 In the Nearburg case, Merit had a working

1 interest and had reserved to itself a net profits interest.

2 Caulkins was a very extreme case where the  
3 override held by Meridian resulted in a negative daily  
4 return.

5 I should note that in that case the Division  
6 presented Meridian with two options. One, they could  
7 voluntarily reduce their override to 12 1/2 percent, or  
8 they could exclude their acreage from the unit.

9 Now, in this amended order the Division recited  
10 the availability of both of those options to Sun-West but  
11 only considered one, which was excluding them from the  
12 acreage, but because this was undivided interest in the  
13 whole unit, determined that that wasn't available and  
14 didn't consider the other option. It wasn't further  
15 addressed in the amended order.

16 Instead, the Division took the leap to declaring  
17 that interest to be unleased, and I think the effect is  
18 arbitrary and not considering other options and considering  
19 the availability of that to Sun-West in this case.

20 And in Nearburg and Caulkins I would also note  
21 that in neither case was the royalty interest just removed  
22 involuntarily in its entirety, as is the case here.

23 So my point with regard to this is that the two  
24 Nearburg and Caulkins cases cited by Mr. Carr in his  
25 briefing to the Division and to the Commission both present

1 very extreme cases that just simply aren't present in this  
2 case.

3 I'm jumping a little bit of myself, but Bruce  
4 Stubbs, the expert presented by Mr. Carr at the -- I  
5 believe the April hearing in this matter, did not testify  
6 that the effect of the royalty interest reserved to Sun-  
7 West would make this uneconomic. He said that in his  
8 opinion it would make it undesirable. We submit that that  
9 falls short of saying it's uneconomic and that it would  
10 frustrate the drilling of this well in this case.

11 Therefore, it's distinguishable again from the  
12 Caulkins situation. Mr. Stubbs did testify that even in  
13 the presence of this 27-1/2-percent royalty interest to  
14 Sun-West, there still would be a positive rate of return to  
15 be recovered.

16 Sun-West does submit in this case that this does  
17 constitute a taking. There is an interest that has been  
18 removed, has been taken away. The Division, by this order,  
19 said it doesn't exist for the purpose of this pooling  
20 Application. There were property rights that have been  
21 taken away from Sun-West and from Gulf Coast.

22 Even if the police power of the State can be  
23 exercised to abrogate a private contract, we submit that it  
24 was not reasonably exercised here. It just went too far.  
25 It doesn't extend to declaring a vested property interest

1 to be a nullity. It can affect that property interest.

2 Again, we submit that it has gone to an extreme  
3 extent in this case, and it goes beyond the authority -- it  
4 goes beyond the statutory authority of the Division, it  
5 goes beyond the reasonable exercise of its police power to  
6 declare that this interest does not exist, to declare that  
7 this mineral interest is unleased. It is a deprivation of  
8 that property interest.

9 I don't believe that the -- Well, it appears that  
10 the retroactivity of this order is problematic. We submit  
11 the operative time frame is the time of the actual pooling,  
12 not the time of the filing of the pooling application. The  
13 pooling order is not effective until productive, yet this  
14 mineral interest is, according to the amended orders, being  
15 fixed on the date of the Application, and we submit that's  
16 inconsistent and doesn't support retroactivity of this  
17 order.

18 We don't believe there was substantial evidence  
19 for the finding by the Division that Sun-West and Gulf  
20 Coast are affiliates and therefore that this was not an  
21 arm's-length transaction, the leasing of this interest.

22 There's no regulatory presumption available to  
23 the Division in this case that I'm aware of as to an  
24 affiliate relationship based on a certain level of  
25 ownership. There certainly wasn't any evidence presented

1 by Bettis at the previous hearings of any common ownership  
2 between Sun-West and Gulf Coast. The testimony was, Mr.  
3 Maloney, a landman, heard from a friend of his in a  
4 telephone conversation that they had the same address and  
5 same phone number.

6 Absent further evidence than that, we submit that  
7 is wholly insufficient for the Division to then make a  
8 finding that these are affiliated parties, and therefore a  
9 contract between them was not an arm's-length contract.  
10 There's -- I believe it would be -- It would be reasonable  
11 to expect that there would be further evidence and more  
12 weighty evidence than that, to make such a finding that any  
13 contracts entered into between those two parties are not  
14 arm's length.

15 And again on a substantial evidence point, as  
16 I've mentioned before, we don't believe that there's  
17 substantial evidence to support a finding that this project  
18 was not economically viable in light of the royalty  
19 interest retained by Sun-West.

20 I think that's the basic points we have with  
21 regard to the amended order. Again, the issue as we see it  
22 is that this was not such an extreme case so as to warrant  
23 such an extreme finding by the Division that the interest  
24 should be declared unleased.

25 There is, based on -- there are -- Well, previous

1 cases that have dealt with this haven't gone as far as to  
2 declare unleased, and the facts on which those cases were  
3 based are very distinguishable from the one at hand.

4 Sun-West acted to protect its interests, it did  
5 not act to circumvent the Division's authority. We believe  
6 that the Division simply went too far in the remedy that it  
7 provided in its amended order and would respectfully ask  
8 the Commission to reconsider that and to reverse the  
9 amended order.

10 CHAIRMAN WROTENBERY: Thank you, Mr. Ingram.

11 Just for the record, let me clarify for all of us  
12 what it is that we have agreed to include as part of the  
13 record of this case. The transcript and the exhibits  
14 presented at the April 19th and May 31st hearings, we will  
15 treat those as evidence for purposes of this *de novo*  
16 proceeding --

17 MR. CARR: Correct, and Mr. --

18 CHAIRMAN WROTENBERY: -- correct?

19 MR. CARR: -- Ingram also indicated they had a  
20 post-hearing memorandum they filed after the May hearing  
21 that they would like to include. We have no objection to  
22 that.

23 CHAIRMAN WROTENBERY: Okay, so we will include  
24 that post-hearing memorandum as part of the record.

25 Do you have the date on that particular

1 memorandum?

2 MR. INGRAM: I believe it's June 13th, 2001.

3 CHAIRMAN WROTENBERY: Thank you.

4 Okay, so that along with the presentations you've  
5 made here today will be --

6 MR. CARR: Yes, and I have --

7 CHAIRMAN WROTENBERY: -- the record --

8 MR. CARR: -- just a couple of additional things  
9 I'd like to say in response to --

10 CHAIRMAN WROTENBERY: Okay, okay. Go ahead,  
11 then, please.

12 MR. CARR: Mr. Ingram has talked about the  
13 authority of the Oil Conservation Division and Oil  
14 Conservation Commission. And I think it's important to  
15 realize that in the Oil and Gas Act you're not just  
16 authorized to pool lands. It says when the statutory  
17 preconditions are met, you shall enter an order pooling  
18 those lands.

19 And then it talks about what is your authority to  
20 implement this statute? And the general authority says  
21 you, the Commission, shall have jurisdiction, authority and  
22 control of and over all persons, matters or things  
23 necessary or proper to enforce effectively the provisions  
24 of this Act or any other law of this State relating to the  
25 conservation of oil and gas.



1           You have very broad authority, and what you have  
2       done is certainly within that authority.

3           And compulsory pooling is simply not a taking.  
4       You can go back to early cases interpreting oil and gas  
5       conservation laws, you can go back to, I think, the  
6       landmark case, *Patterson vs. Stanolind Oil*. It's an  
7       Oklahoma case dating 1938. In that case it was concluded  
8       that it was an exercise of the police power, that it didn't  
9       amount or go as far as being a taking. That's where the  
10      language comes up that what you do is, you restrict and  
11      qualify property interest to enable you to carry out  
12      conservation statutes.

13           And so that's what you're doing. I don't know  
14      what you want to characterize an extreme case or not an  
15      extreme case. I think you have to look at those on the  
16      facts. But the facts here are, we in the negotiation  
17      process went to 18.75 percent, said we couldn't go more,  
18      and they quickly turned around and leased it to Gulf Coast  
19      for 27 1/2 percent.

20           And I don't know if they're exactly the same  
21      entity or not, I don't know if that makes any difference.  
22      If I take my interest because Ms. Wrotenbery is about to  
23      pool me and lease it to Ms. Bailey and put a royalty burden  
24      on it more than the parties trying to pool and Ms.  
25      Wrotenbery says she could bear, it sounds to me like that

1 might be an extreme case.

2 But I think you look at them on the facts, and  
3 you can take the Nearburg and the Caulkins case, and you  
4 can try and distinguish them on particular issues and  
5 particular remedies that were discussed, but the bottom  
6 line is, and the point of the cases, is that when  
7 individuals started with contracts to interfere with  
8 pooling authority, the Division said no.

9 And that's what we think you should do here.  
10 Because if you don't what you're saying is, it's all right  
11 for Sun-West to take the property and Bettis, Boyle and  
12 Stovall to take the risk. And I think that's not the  
13 purpose of the Conservation Act.

14 CHAIRMAN WROTENBERY: Thank you, Mr. Carr.  
15 Anything else, Mr. Ingram?

16 MR. INGRAM: No.

17 CHAIRMAN WROTENBERY: Let me ask the  
18 Commissioners if they have any questions.

19 COMMISSIONER BAILEY: I do.

20 Has Sun-West drilled any wells in this area?

21 MR. INGRAM: Not to my knowledge.

22 COMMISSIONER BAILEY: Is Sun-West an operator in  
23 this area?

24 MR. INGRAM: I don't know that, Ms. Bailey.

25 COMMISSIONER BAILEY: Is Gulf-Coast an operator

1 or a drilling company?

2 MR. INGRAM: I'm not -- And I'm not trying to  
3 dodge your question, Ms. Bailey, I'm not real familiar with  
4 what Gulf Coast has been doing.

5 COMMISSIONER BAILEY: Has either company filed a  
6 competing compulsory pooling order?

7 MR. INGRAM: Competing with who?

8 COMMISSIONER BAILEY: With anybody in this area,  
9 in order to get wells drilled?

10 MR. INGRAM: Not that I'm aware of, Ms. Bailey.

11 COMMISSIONER BAILEY: I'm interested in the field  
12 standards for royalty interests in this area. How did you  
13 determine 27 1/2 was a reasonable royalty rate to assign to  
14 Gulf Coast?

15 MR. INGRAM: We did not make that determination,  
16 Sun-West did. I could not speak to their economics in  
17 doing so.

18 COMMISSIONER BAILEY: Are you aware of what field  
19 standards there are for royalty interests in this area?

20 MR. INGRAM: I'm not, Ms. Bailey.

21 COMMISSIONER BAILEY: Are you aware of what  
22 federal or state lands in this area are charging for  
23 royalty interests?

24 MR. INGRAM: No, Ms. Bailey.

25 COMMISSIONER BAILEY: So you can't answer any of

1 my questions?

2 MR. INGRAM: Well, Ms. Bailey, I apologize. I'm  
3 here speaking more to the legal issues involved in this,  
4 and my preparation has been directed in that way, so I'm  
5 not going to be able to speak as much to the underlying  
6 facts involved in this. I think the record has been  
7 developed to the extent it has and has been presented to  
8 the Commission, and so I'm here speaking to the effect of  
9 the order primarily.

10 COMMISSIONER BAILEY: No point in asking any more  
11 questions, then.

12 CHAIRMAN WROTENBERY: Would you like to ask the  
13 parties to supplement the record with additional  
14 information?

15 COMMISSIONER BAILEY: Yes. Yes, I would.

16 CHAIRMAN WROTENBERY: Because I think we could do  
17 that.

18 MR. INGRAM: I would be happy to do so, Ms.  
19 Bailey.

20 CHAIRMAN WROTENBERY: So you might want to run  
21 down your list again, if you wouldn't mind, to make sure  
22 that we've got a clear idea of what additional  
23 information --

24 COMMISSIONER BAILEY: I'd like to know the  
25 relationship between Sun-West and Gulf Coast. I'd like to

1 know if Sun-West or Gulf Coast have drilled any wells in  
2 the area or are operators in the area. I would like to  
3 know what the standard is for royalty interests and what  
4 other royalty rates they have within their own company that  
5 they have charged and received. That should do it.

6 MR. INGRAM: I would be happy to provide that.

7 COMMISSIONER BAILEY: Thank you.

8 CHAIRMAN WROTENBERY: Steve Lee [sic], do you  
9 have recommendations on how we should proceed? I would  
10 suggest that maybe Sun-West submit that information in the  
11 form of a letter with a copy to Bettis, Boyle and Stovall,  
12 and Bettis, Boyle and Stovall would have an opportunity to  
13 respond.

14 MR. CARR: We'd like to do it quickly. We're  
15 sitting at the rig, we keep bumping back and bumping back  
16 and could drill during the first quarter next year, so  
17 we'll be ready to quickly respond.

18 CHAIRMAN WROTENBERY: Okay. Do you think you  
19 could get that information in by the end of the week?

20 MR. INGRAM: Sure, we can do that, Ms.  
21 Wrotenbery.

22 CHAIRMAN WROTENBERY: Thank you.

23 MR. ROSS: You know, I might suggest that  
24 anything that ends up in the record at least be submitted  
25 over an affidavit or something. To the extent we rely on

1 it, we need to have some form of admissible evidence in the  
2 record, sort of continuing this matter for further  
3 evidentiary proceedings in January, and that's the only  
4 thing I can think of to solve that problem.

5 MR. INGRAM: So it's a suggestion that we submit  
6 by affidavit the information requested by Ms. Bailey?

7 MR. ROSS: Do you see any problem with that?

8 MR. INGRAM: We can do that. Could we maybe have  
9 until Monday, then, to do that, just make sure, because our  
10 person is not local, just for transmission of --

11 CHAIRMAN WROTENBERY: That would be fine.

12 MR. INGRAM: -- papers?

13 CHAIRMAN WROTENBERY: So Monday -- that would be  
14 December 10th, I think it is -- we'll look for that  
15 additional information.

16 COMMISSIONER BAILEY: Were any of those questions  
17 addressed in the Examiner Hearing that --

18 MR. INGRAM: Yes, some of them were. There  
19 was -- Ms. Bailey, there was testimony by Mr. Maloney as to  
20 what information he had on the relationship, and there was  
21 information provided by Mr. Cavin, I believe in his  
22 arguments, at the conclusion of the May hearing, that did  
23 deal with some of those issues.

24 CHAIRMAN WROTENBERY: Commissioner Lee?

25 COMMISSIONER LEE: (Shakes head)

1 CHAIRMAN WROTENBERY: Steve, would you like to --

2 MR. ROSS: (Shakes head)

3 CHAIRMAN WROTENBERY: No? Okay.

4 Thank you very much, then. We'll look for the  
5 additional information next Monday and take this case under  
6 advisement.

7 MR. CARR: Thank you.

8 CHAIRMAN WROTENBERY: Thank you.

9 (Thereupon, these proceedings were concluded at  
10 9:38 a.m.)

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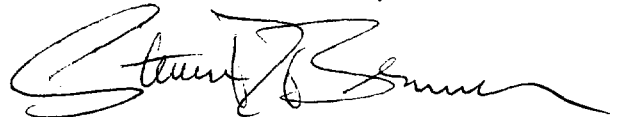
CERTIFICATE OF REPORTER

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 Commission 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 December 8th, 2001.




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STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 14, 2002

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