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FILED

AUG 10 1983

JOAN SHANGLE,
CLERK

No. 3084

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF EUREKA

WILLIAM E. FOSTER, et al.,

Plaintiffs,

v.

WESTERN GAS, OIL AND MINING,
LTD., et al.,

Defendants.

STIPULATION

All of the signatories of this stipulation (the "Stipulation"), whether parties to the within lawsuit or otherwise, make this Stipulation and agreement.

RECITALS

1. On April 20, 1983, the above-entitled action (the "Foreclosure Action") was commenced in the above-designated court (the "Court") to foreclose a mortgage upon real property (the "Real Property") located in Eureka County, Nevada, commonly known as the "Windfall Mine" and a related security interest in personal property (the "Personal Property") located thereon or incident to it. (The Real and Personal Property are hereinafter referred to together as the "Property.")

2. Previously, by stipulation made on the 2nd day of May, 1983 (the "May 2, 1983 Stipulation"), Plaintiffs and Defendants stipulated that Defendants would have a period of ninety (90) days within which to attempt sell the Property and in the absence of Defendants' successful search for a purchaser, that Plaintiffs could thereafter summarily foreclose their liens, have a receiver appointed and other matters as set forth in the May 2, 1983 Stipulation.

3. Subsequent to the May 2, 1983 Stipulation, the Defendants have been unable to sell the Property or pay off the Plaintiffs and the parties have agreed that Plaintiffs shall take a deed, assignment and bill of sale and other related documents in lieu of foreclosure of Plaintiffs' liens with the parties giving general releases to each other, subject to the conditions and provisions expressed in this Stipulation.

NOW, THEREFORE, the parties to the Foreclosure Action and all signatories hereto stipulate:

1. Hereafter, all signatories to this Stipulation, whether heretofore named parties or not, agree to be bound hereby, submit to the jurisdiction of the Court as party Defendants in the Foreclosure Action and are sometimes collectively referred to as "Defendants."

2. Defendants have conveyed and assigned the Property which is the subject matter of the Foreclosure Action among themselves. Said Defendants are:

WESTERN GAS, OIL & MINING, LTD.,
a Nevada corporation

TRANSWESTERN MINING COMPANY,
a Nevada corporation

WESTERN MINING SERVICES, LTD.,
a Nevada corporation

WESTERN WINDFALL MINING COMPANY,
a Nevada corporation

3. Pursuant to the mortgage identified in the Foreclosure Action, Plaintiffs' consent to the transfer of the Property was required, but such consent was not sought when Defendants underwent a reorganization under Section 351 of the Internal Revenue Code. In order to insure that Plaintiffs shall obtain all of the Defendants' right, title and interest in the Property and

to further insure that the warranties and representations made include all of the Defendants, all Defendants agree to join in this Stipulation and all documents of assignment and conveyance hereafter mentioned.

4. This Stipulation is intended to be a full and complete settlement of all disputes between Plaintiffs and Defendants and, subject to the conditions and provisions hereof, Plaintiffs hereby release and discharge Defendants of and from any and all claims, causes and demands of any kind and nature which have heretofore arisen between Plaintiffs and Defendants as relate to the Property and the Windfall Mine, including but not limited to, any liability for the indebtedness represented by the notes specified in the Complaint in the Foreclosure Action or under the prior note dated March 2, 1981 given by Western Gas, Oil & Mining, Ltd. for the purchase of the Property. Conversely, Defendants hereby release and discharge Plaintiffs of and from any and all claims, causes and demands of any kind and nature which have heretofore arisen between Defendants and Plaintiffs as relate to the Property and the Windfall Mine, similarly subject to the provisions and conditions hereof.

5. The consideration for this Stipulation is the mutual releases specified in Paragraph 4 above, the identification of all Property which shall be assigned and conveyed to Plaintiffs (as specified in the Special Warranty Deed and Assignment and Bill of Sale hereto attached), the release of Defendants' right and equity of redemption, the releases of guarantees given to Plaintiff by parent or affiliated corporations of Defendants, and the release of Defendants of liability for the failure to pay certain royalties which otherwise would be payable by reason of past mineral production by Defendants from the Windfall Mine.

6. Defendants irrevocably designate Charles M. McGee as their true and lawful attorney-in-fact for them and in their name, place and stead to execute any and all documents and do all other things which may be required to effectuate the provisions of this Stipulation and to accomplish the conveyances and assignments herein made and to make the representations and warranties provided herein.

7. Except for ordinary trade debts incurred after May 2, 1983, Defendants represent and warrant that there are no debts owed by them to any firm, person, corporation or public entity by reason of Defendants' ownership and operations of the Windfall Mine. To the extent that any such debts are hereafter discovered, Defendants hereby agree to indemnify and hold Plaintiffs harmless therefrom and Defendants shall cause the same to be promptly and timely paid in order that Plaintiffs shall obtain the Property of the Windfall Mine free and clear of all liens and encumbrances of every kind and nature, save and except for the lien for real and personal property taxes levied by the State of Nevada or its political subdivisions for fiscal year 1983-84.

8. Coincident with the execution of this Stipulation, Defendants shall execute and deliver assignments, bills of sale and special warranty deeds to Plaintiffs for all of the Property. Such documents of conveyance and assignment are taken by Plaintiffs in lieu of foreclosure with respect to the defaulted indebtedness owed by Defendants to Plaintiffs (as specified in the Complaint in the Foreclosure Action) and as a complete discharge of such indebtedness as well as all guarantees thereof, including the Irrevocable Guarantee dated August 10, 1982 by Central Enterprises, Ltd., a Hong Kong corporation, and the Irrevocable Guarantee dated February 28, 1981 by said Central Enterprises,

Ltd. which was given to guarantee the original note dated March 2, 1981 of Western Gas, Oil and Mining, Ltd. for the purchase of the Property.

9. A closing (the "Closing") of the transactions contemplated by this Stipulation shall be held on August 8, 1983 commencing at 9:00 o'clock A.M., at Reno Nevada. At or prior to the Closing, Defendants shall have marshalled all of the items of Personal Property at the Windfall Mine for delivery to Plaintiffs. Plaintiffs' obligation to proceed with the Closing is expressly conditioned on the following:

- (1) All items of Personal Property shall have been delivered to the Windfall Mine for delivery to Plaintiffs;
- (2) Defendants shall not have alienated their title to the Real or Personal Property; and
- (3) At the Closing, title to both the Real and Personal Property are free and clear of any liens or encumbrances other than those held by Plaintiffs.

At the Closing, representatives of Plaintiffs shall be afforded an opportunity to inspect the Personal Property and verify that all items thereof are present and accounted for in order to satisfy condition (1) above, and to verify from the office of the Recorder of Eureka County and of the Secretary of State of Nevada that conditions (2) and (3) above have been satisfied. If each of said conditions have been met, at the Closing, each of the parties shall execute four original copies of this Stipulation and a joint motion to the Court (the "Joint Motion") requesting dismissal of the above-captioned action with prejudice. Promptly thereafter, one copy of the Stipulation and the Joint Motion shall be lodged with the Court, one copy of the Stipulation shall be recorded in the office of the Recorder of Eureka County, Nevada, and a copy of the Stipulation shall be delivered to the representatives of Plaintiffs and Defendants. The Court shall not act upon the Joint Motion until it shall have

received the affidavit from Charles M. McGee that the condition subsequent specified in Paragraph 10 below has expired.

At the Closing, the Defendants shall perform the following:

- (1) Endorse in blank, notarize and deliver to Plaintiffs' representative, titles to all items of Personal Property subject to the motor vehicle title registration laws;
- (2) Deliver possession of the Real and Personal Property to Plaintiffs;
- (3) Execute, acknowledge and deliver to Plaintiffs the following documents, each of which shall be in the form and substance as contained in the copies thereof which are hereto attached:
 - (a) Special Warranty Deed;
 - (b) Assignment and Bill of Sale;
 - (c) Assignment of Bank Account;
 - (d) Assignment of Funds directed to Engelhard Industries West, Inc.
 - (e) Assignment of Funds directed to the Nevada Industrial Commission; and
 - (f) Assignment of Funds directed the Mt. Wheeler Power, Inc.

At the Closing, the Plaintiffs shall execute, acknowledge and deliver to Defendants' representative the following documents each of which shall be in the form and substance as contained in the copies thereof which are hereto attached:

- (1) Release of Guarantee of Central Enterprises, Ltd.; and
- (2) Release of Western Gas, Oil & Mining, Ltd.

In addition to the above, whether at the Closing or subsequent thereto, each of the parties agrees to execute and deliver such additional instruments or papers, take such further actions and give such further assurances as may be reasonably requested by another party in order to carry out the full intents and purposes of this Stipulation.

10. The parties contemplate that a full and complete settlement and release of all claims between them shall occur at the Closing, but they further recognize the possibility that the Federal Bankruptcy Laws and creditors' claims suits in equity might allow a limited period to seek to set aside transactions as being preferential or in fraud of creditors. For this reason the parties agree that irrespective of any other provisions contained herein, the effectiveness of the transactions specified in this Stipulation are expressly subject to the condition subsequent that none of said transactions shall be avoided or set aside by legal or other proceedings. If the effect of the said transactions provided for in this Stipulation should be so avoided or set aside, then this Stipulation shall not be binding upon either party, the Foreclosure Action shall remain in full force and Plaintiffs shall be at liberty to pursue all remedies available to them, including proceeding in the Court in accordance with the provisions of the Stipulation of May 2, 1983 and/or enforcement of any guarantees of the indebtedness by Central Enterprises, Ltd. and/or Western Gas, Oil & Mining, Ltd., to the same extent as if this Stipulation had not been executed nor the Closing had thereunder. If no proceeding under any of the Bankruptcy Laws have been instituted by or against Defendants, nor have any proceeding been commenced by or against Defendants or Plaintiffs under any other laws seeking to set aside or void the transactions contemplated in this Stipulation within 100 days after the Closing, then the condition subsequent specified in this Paragraph 10 shall expire and be of no further force or effect. Upon receipt of an affidavit of Charles M. McGee, filed by him with the Court in the Foreclosure Action, that the 100-day period has expired, that he has made a diligent effort to determine whether any proceedings in bankruptcy or other actions seeking to

avoid the transactions contemplated in this Stipulation have been initiated and that no such proceedings or actions have been initiated, the Court shall proceed to dismiss the Foreclosure with prejudice in accordance with the Joint Motion.

11. Defendants shall terminate all of its employees from further work at or with respect to the Windfall Mine effective as of the close of the day-shift on August 8, 1983. Plaintiffs agree that Defendants shall be reimbursed for ordinary wages and deductions therefrom (hourly or monthly wages, overtime, if any, and deductions for social security contributions and withholding taxes) owing but unpaid to the employees of the Windfall Mine as of the close of the day-shift on August 8, 1983, from the bank account maintained pursuant to the May 2, 1983 Stipulation (checking account No. 51-391-8448 in the First Interstate Bank of Nevada, Eureka, Nevada Branch). Other than as specified in the foregoing sentence, Plaintiffs shall have no responsibility or liability for any amounts due or claimed by employees of Defendants arising in any manner from their employment at or with respect to the Windfall Mine, and Defendants agree to indemnify and save Plaintiffs harmless from any costs or expenses arising from any claims of such employees.

12. The parties intend that Defendants shall convey, assign and deliver unto Plaintiffs all of the Property described in the Bill of Sale and Special Warranty Deed, copies of which are attached, as well as any and all other real and personal property owned, used or enjoyed by Defendants in their operations at the Windfall Mine except those specific articles of personal property identified as an exception on Exhibit C to the Bill of Sale which is attached, and also except articles of personal property owned, used and enjoyed by employees of Defendant at the Windfall Mine.

13. Either party may, upon ex parte application, seek the Court's approval of this Stipulation.

DATED this 27th day of August, 1983.

WILSON & BARROWS

By [Signature]

Attorneys for Plaintiffs

WINDFALL VENTURE,
a Nevada corporation

General Partnership

By W.Z. Wilson

Plaintiff

Charles M. McGee

Charles M. McGee
Attorney for Defendants
Western Gas, Oil and Mining, Ltd.,
Transwestern Mining Company,
Western Mining Services, Ltd., and
Western-Windfall Mining Company

WESTERN GAS, OIL AND MINING, LTD.

By Charles M. McGee *is Attorney in FACT*

TRANSWESTERN MINING COMPANY

By Ernest W. Renshaw

WESTERN-WINDFALL MINING COMPANY,
formerly WESTERN MINING
SERVICES, INC.

By Ernest W. Renshaw

File No. 3084
William E. Foster, et al
vs
Western Gas, Oil and Mining Ltd., et al

STATE OF NEVADA, }
COUNTY OF EUREKA. }^{SS}

I, JOAN SHANGLE ^{Seventh} County Clerk and ex-officio Clerk of the ~~33rd~~ Judicial District Court of the State of Nevada, Eureka County, do hereby certify that the annexed is a full, true and correct copy of STIPULATION as appears as of record and on file in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand officially and affixed the Seal of said Court, at my office in the town of Eureka, this 10th day of August, A. D. 1983.

JOAN SHANGLE County Clerk,
And ex-officio Clerk of the District Court, Eureka County.

By Angela Evans, Deputy.



RECORDED AT REQUEST OF
Bill Wilson
BOOK 112 PAGE 483

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OFFICIAL RECORDS
EUREKA COUNTY, NEVADA
M.N. REBALEATI, RECORDER
FILE NO. 88435
FFE \$ 14.00

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