

S214095

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

<p>TEARLACH RESOURCES LIMITED; TEARLACH RESOURCES (CALIFORNIA) LTD.; MALCOLM FRASER; CHARLES E. ROSS; Cross-complainants and Appellants,</p> <p>vs.</p> <p>WESTERN STATES INTERNATIONAL, INC.; UNITED PACIFIC ENERGY CORPORATION (formerly known as GAS AND OIL TECHNOLOGIES, INC.), INGRID ALIET-GASS,</p> <p>Cross-defendants and Respondents</p>	<p>5th District Court of Appeal No. F065511 (Superior Court No. S-1500-CV- 264931), Kern County</p> <p>(Superior Court No. S-1500-CV- 266707), Kern County</p>
<hr/> <p>WEATHERFORD ARTIFICIAL LIFT SYSTEMS, INC.,</p> <p>Plaintiff,</p> <p>vs.</p> <p>GAS AND OIL TECHNOLOGIES, INC., et al.,</p> <p>Defendants</p>	

ANSWER AND OBJECTION TO PETITION FOR REVIEW

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1. INTRODUCTION

Answering and Objecting Parties object to the Petition for Review on several grounds. Among others, detailed herein, the Petition is untimely, having been presented far more than ten days after the Appellate decision became final. [The petition for review must be served and filed within 10 days after the Court of Appeal decision becomes final, as explained in California *Rules of Court*, rules 8.500(e) and 8.264.] Moreover, nothing in the Court of Appeal’s unanimous decision was inconsistent with prior appellate decisions, so no action of this Court is necessary to secure a uniformity of decisions, and there are no unsettled important questions of law raised by this straightforward case.

The question before the Court of Appeals was a simple one: did the California Superior Court have subject matter jurisdiction over the Respondents’ Cross-complaint for alleged contractual breaches and related torts, and Appellant’s Cross-complaint for alleged contractual breaches and related torts, which proceeded through trial? The answer rendered by the Court of Appeals was an unqualified “yes.” The Court of Appeals unanimously and properly held that “in this case, the United States was not an indispensable party.” It further concluded “This action was not within the exclusive jurisdiction of the federal courts.” [Opinion, page 18.]

The trial court had improperly set the Appellant’s Judgment aside and dismissed the entire case sixteen (16) months after trial, solely on the basis that the

case involved, in part, an undisputed assignment of a working interest in a federal lease and thus held that “Federal courts have exclusive jurisdiction over federal lands.” [Appellants’ Appendix (hereafter “Appendix”) 895.] Mistakenly relying on a finding that “A working interest is an interest in realty and, in this case, federal realty,” the trial court took the extraordinary step of dismissing Appellants’ entire case, a year and a half after it heard the case through trial and awarded Appellants Declaratory Relief and Judgment in the amount of \$18,724,901.58. As a matter of law, the Court of Appeal held that the lower court erred in later setting the Judgment aside and dismissing the action. Thus, the Court of Appeals reversed the Trial Court’s Order setting aside the previously-entered Amended Judgment, and reinstated the Superior Court Judgment of March 2, 2011.

2. STATEMENT OF THE CASE

A. Nature of Action and Relief Sought

In the primary Superior Court case which is the subject of this appeal (originally Superior Court case number S-1500-CV-266707 SPC), Respondents GAS AND OIL TECHNOLOGIES, INC. and WESTERN STATES INTERNATIONAL, INC., on March 16, 2009 filed a complaint against Appellants TEARLACH RESOURCES LIMITED, TEARLACH RESOURCES (CALIFORNIA), LTD., MALCOLM FRASER, and CHARLES ROSS alleging “claims for relief” for “(1) Rescission of Agreement Due to Fraud; (2) Rescission of Agreement Due to Failure of Consideration; (3) Fraud and Deceit—Intentional

Misrepresentation; (4) Breach of Agreement; and (5) Punitive Damages.”

[Appendix 71.]¹ Following a demurrer, Respondents filed a First Amended Complaint in September, 2009. [Appendix 255.] Appellants TEARLACH RESOURCES LIMITED, TEARLACH RESOURCES (CALIFORNIA), LTD., MALCOLM FRASER, and CHARLES ROSS, in turn, filed a Cross-complaint against Respondents WESTERN STATES INTERNATIONAL, INC., UNITED PACIFIC ENERGY CORPORATION (formerly known as GAS AND OIL TECHNOLOGIES, INC. and INGRID ALIET-GASS, and others, alleging causes of action for Breach of Written Contracts, Breach of the Implied Covenant of Good Faith and Fair Dealing, Fraud, Negligence and Negligent Misrepresentation, Declaratory Relief, Accounting, Declaration of Constructive Trust, and Conversion. [Appendix 279.] The case was fiercely litigated for more than three years, despite Appellants’ repeated demurrers and motions to have the action dismissed. [Appendix 209, 234, Register of Actions, Appendix 897 through 943.] Ultimately, after the trial court received and considered a mountain of documentary evidence and declarations, in addition to the oral testimony of witnesses at trial, and awarded Judgment in favor of the Appellants herein in the amount of \$18,724,901.58. [Appendix 552.] In addition (in an subsequently

¹ In the subsequently consolidated case number S-1500-CV-264931-AEW (later S-1500-CV-264931-DRL), Gas and Oil Technologies, Inc. and Western States International, Inc. had filed a cross-complaint for (1) Breach of Agreement; (2) Breach of Covenant of Good Faith and Fair Dealing; (3) Indemnity; and (4) Unjust Enrichment against Tearlach Resources (California) Ltd. only. [Appendix 66.]

Amended Judgment), the Trial Court granted declaratory relief, confirming that “Defendant WESTERN STATES INTERNATIONAL, INC. transferred, effective on or before December 13, 2006, to Claimant TEARLACH RESOURCES (CALIFORNIA) LTD. a sixty percent (60%) working interest in the oil and gas property known as the Kern Front Field described in the TEARLACH RESOURCES (CALIFORNIA), LTD. Cross-complaint in Kern County Superior Court case number Case No. S-1500-CV-264931-DRL (Consolidated with S-1500-CV-266707, SPC) (and Exhibit T to the Charles Ross Declaration signed on February 18, 2010 and filed in that case on February 22, 2010), including the Witmer A, B West and Sentinal A Lease (CACA 045619) and the Mitchel Lease (CACA 045618).” [See, Amended Judgment, Appendix 558.]

Nearly a year later, Respondents filed a Motion to Set Aside the Amended Judgment in favor of Appellants [Appendix 642], contending that the entire judgment was “void” for lack of jurisdiction, despite the fact that it was Moving Parties themselves who chose to litigate the matter in the Superior Court, and who opposed all efforts to have the matter heard elsewhere. Over Appellants’ opposition, the trial court set aside its own Amended Judgment, on the grounds that it never had subject matter jurisdiction, merely because a single issue in the case tangentially involved an undisputed interest in a federal lease.

Appellants argued, and the Court of Appeals agreed, that the trial court erred in setting aside the Amended Judgment in its entirety and dismissing the

case, and thus vacated the Order Setting aside the Amended Judgment, allowing the original Amended Judgment of March 2, 2011 to remain intact.

B. Summary of Material Facts

Long after judgment had been entered against them at trial, Defendants and Cross-complainants and Respondents herein, WESTERN STATES INTERNATIONAL, INC., UNITED PACIFIC ENERGY CORPORATION, (formerly known as GAS AND OIL TECHNOLOGIES, INC.), and INGRID ALIET-GASS (hereafter occasionally referred to as “Respondents”), belatedly sought to set aside the Trial Court’s March 2, 2011 Amended Judgment After Trial on the basis that the Trial Court’s Judgment was “void.” [Appendix 642 at 646.] Appellants opposed the Respondents’ motion to set aside the Amended Judgment, and sought to have sanctions imposed for a frivolous motion. [Appendix 664 through 705 and 760 through 768.]

Appellants opposed the Respondents’ (also occasionally “Moving Parties”) Motion to Set Aside the Amended Judgment on the following grounds, among others:

- “The Moving Parties’ arguments are based on false and misleading assertions;
- Moving Parties repeatedly hire and dismiss attorneys, in an effort to circumvent this and other Judgments;
- The Motion is unsupported by competent evidence;
- Judgment was entered, after trial, against Moving Parties, nearly one year earlier;

- Judgment was entered on its merits, after factual presentation at trial, at which Moving Parties chose not to appear;
- Until shortly before trial, all of the Moving Parties were represented by counsel, who substituted out on the eve of trial;
- Moving Parties' claim of exclusive jurisdiction of the Federal courts is a "smokescreen," unsupported by the facts and rejected by this Court and a separate Federal Court;
- Moving Parties have been intimately aware of the Judgment of this Court since January, 2011, and have done nothing to challenge it or set it aside;
- The Motion is untimely;
- Moving Parties themselves filed this action, and fought to preserve the jurisdiction of this Court;
- The jurisdiction of this Court was never heretofore challenged by the Moving Parties;
- The Moving Parties aggressively fought to resist Tearlach's efforts to change venue or contest the jurisdiction of this Court;
- This Court's ruling has already been scrutinized and affirmed in another United States District Court action, in which Moving Parties participated;
- Moving Parties cannot demonstrate any meritorious claims or defenses;
- Moving Parties' Motion has no merit, factually or legally"
[Appendix 664 at 665, 666.]

C. Judgment/Ruling of Superior Court and the Court of Appeal

On May 21, 2012 (following Appellants' Motion for Reconsideration), the Trial Court dismissed its own Amended Judgment of March 2, 2011 on the basis that it lacked subject matter jurisdiction over the entire matter, despite the fact that it had heard the case through its inception, in September 2008, all the way through trial in January, 2011, more than two years later. [Appendix 895.] Based on its conclusion that it lacked subject matter jurisdiction over the case, the Trial Court dismissed the entire action. [Appendix 895.] Appellants appealed from the Trial Court's May 21, 2012 final Order of Dismissal as erroneous as a matter of law. The Court of Appeal agreed, and unanimously reversed the Trial Court's dismissal.

3. ARGUMENT

A. PROCEDURAL BACKGROUND

After Tearlach Resources, Ltd. initiated an action against Western States International, Inc. and Gas & Oil Technologies, Inc. in the Supreme Court of British Columbia (the "Canadian Action") [Appendix 56], **Plaintiffs and Moving Parties (Respondents herein)** filed a Complaint [Appendix 66; see also 71], and later a First Amended Complaint in the California Superior Court for "Claims of Relief" for "(1) Breach of Agreement; (2) Fraud and Deceit-Intentional Misrepresentation; (3) Fraud and Deceit—Negligent Misrepresentation; (4) Concert of Action; (5) Alter Ego; and (6) Declaratory Relief" (even though these

are remedies, not causes of action or “claims for relief”).² [Appendix 225; see also 255.] These purported “causes of action” were brought against Defendants TEARLACH RESOURCES LIMITED, a Canadian Corporation; TEARLACH RESOURCES (CALIFORNIA), LTD., a California Corporation; MALCOLM FRASER, an individual, and CHARLES E. ROSS, an individual (both of whom reside in Canada), all of whom filed a cross-complaint, and “DOES 1 through 10, inclusive.” The substance of the claims in the Appellants’ Cross-complaint is detailed in footnote 6, below.

Prior to the initiation of this action, Cross-complainant TEARLACH RESOURCES, LTD. had initiated and successfully concluded a separate action in the Supreme Court of British Columbia, Vancouver Registry entitled TEARLACH RESOURCES, LTD., Plaintiff, and WESTERN STATES INTERNATIONAL, INC. and GAS & OIL TECHNOLOGIES, INC. (“G&O”), case number S088666 (the “Canadian Action”). [Appendix 56.] In the California Superior Court action (the subject of this appeal), Defendants and Cross-complainants (Appellants herein) previously—but unsuccessfully—moved, by way of demurrer, motion to abate, and motion for summary judgment to have the Superior Court action abated or dismissed because of the Canadian filing. [Appendix 209, 355.] In the

² The “claims for relief” in Respondents’ original complaint were for “(1) Rescission of Agreement Due to Fraud; (2) Rescission of Agreement Due to Failure of Consideration; (3) Fraud and Deceit—Intentional Misrepresentation; (4) Breach of Agreement; and (5) Punitive Damages.” [Appendix 71.] Moving Parties/Respondents herein vigorously fought to maintain jurisdiction in the Superior Court, and never raised issues requiring Federal consideration.

Canadian Action, judgment was entered in favor of TEARLACH RESOURCES, LTD., and against WESTERN STATES INTERNATIONAL, INC. and GAS & OIL TECHNOLOGIES, INC. in the sum of \$18,043,691.74 [Appendix 254], and remains intact and unpaid. Respondents made no attempt to vacate or set aside the Canadian Judgment.

B. FACTUAL BACKGROUND.

Tearlach Resources Limited (“Tearlach” or “the “Company”) is a Canadian public company whose shares are listed on the TSX Venture Exchange (“TSX-V”). [Complaint ¶5, Appendix 71]; First Amended Complaint ¶5; Appendix 257; Ross Declaration, Appendix 369 at 371, para. 3.] Tearlach is engaged in the business of exploration and development of natural resource properties directly and through its wholly owned subsidiary Tearlach Resources (California) Ltd. (“Tearlach California”). [Appendix 369 at 371.]

Commencing in early 2006, the Company entered into discussions with Western States International, Inc. (“WSI,” a Plaintiff and Respondent herein) and its affiliate company, Gas & Oil Technologies, Inc. (“G&O,” the other Plaintiff and a Respondent in this case), represented by their senior officers and principal shareholders, including Cross-defendants Ingrid ALIET-GASS and Glen MORINAKA (collectively, “Western States”).³ Tearlach was represented by

³ Ingrid Aliet-Gass, the principal of Western States, apparently filed for Chapter 13 bankruptcy protection on August 9, 2010 (case number 2:10-bk-43110-VZ). [Appendix 471.] That case was dismissed on August 30, 2010, because she

Malcolm Fraser (“FRASER,” an Appellant herein, who resides in Canada) and Chuck Ross (“ROSS,” another individual Canadian Appellant in this action), both of whom are directors and officers of Tearlach, and the Company’s legal counsel, Leschert & Company, represented by Allen D. Leschert, an individual lawyer who resides in Canada as well. (Mr. Ross, traveling from Canada, testified at the trial in the Superior Court action; Moving Party and Respondent Ingrid Aliet-Gass called this Court on the telephone during the trial presentation, claiming she was “on her way” to the courthouse with new counsel; she never appeared, nor did any attorney for her or her entities.)⁴

Western States represented that it was developing a number of resource projects in the US, Russia and Indonesia, including an oil and gas project located near Bakersfield, California known as the “Kern Front Property” (the “Property”) with a value U.S. \$10 to \$60 million and wanted to find a Canadian public company such as Tearlach to acquire the properties in exchange for public company shares.

“failed to file all of the documents required” under the *Federal Rules of Bankruptcy Procedure*.

⁴ Respondents confusingly argued to the Trial Court that “this Court either held a trial or a default hearing” and that “it is immaterial how the hearing was characterized.” [Motion to Set Aside Judgment, page 4, line 25 through page 5, line 1. Appendix 642 at 645.] In their Petition for Review, they falsely state they “were unable to attend” and that the “Amended Judgment was entered based on untested Affidavits and Declarations.” [Petition for Review, page 11.]

Defendants/Cross-complainants/Appellants herein demonstrated at trial that, as a result of various inducements and false representations by the Plaintiffs/Respondents herein (outlined in the action filed in Canada, which resulted in a \$18,043,691.74 judgment in favor of Tearlach [Appendix 254]), Tearlach entered into an agreement (hereafter, the “Letter Agreement”) dated for reference April 21, 2006 among Tearlach, as purchaser, WSI, G&O as vendors (the “Vendors”) and certain direct or indirect principal shareholders of WSI and G&O as covenanters (the “Shareholders”) which provided for the purchase and sale of a 60% working interest in the Property in exchange for the issuance by Tearlach of common shares of Tearlach stock and warrants, subject to the conditions set out in the agreement including approval of the Canadian Stock Exchange, TSX-V, a copy of which was attached to the original Plaintiffs’ complaint [Appendix 29] as Exhibit “B”.⁵ [Appendix 99.]

Various disputes and differences arose between the Respondents herein and Tearlach (and the other defendants/Appellants herein), which led Tearlach to file a lawsuit against the Respondents herein. [Appendix 56.] This lawsuit was filed in Canada, because the Letter Agreement provided for venue in Canada with the application of Canadian law.⁶ Judgment in the Canadian action was entered by the

⁵ There were at least two amendments to the Letter Agreement, neither of which, Tearlach had unsuccessfully argued, would provide for jurisdiction of this matter in California.

⁶ All of the allegations of the Canadian action filed by Tearlach are complex, and need not be fully developed and documented within this Objection to the Petition

for Review. Essentially, Tearlach, its subsidiary and its principals maintained that the Respondents herein deliberately and fraudulently:

- a. Mised Tearlach to believe WSI had wells in production on the Property when it did not;
- b. Purported to cause WSI and G&O to sell an interest in three leases – Judkins, Witmer B East and Sentinal B – which they knew they did not then own;
- c. Grossly overstated oil production from the Property;
- d. Grossly understated lifting costs and management costs on the Property;
- e. Concealed the fact that WSI had received formal notice of termination on the Judkins lease and had received formal notice of cancellation of the Witmer B East and Sentinal B leases prior to Closing;
- f. Concealed the fact that WSI did not have proper surface rights or access agreements on the Property sufficient to authorize the work required to be done thereon;
- g. Concealed the fact that the agreements WSI did have were all ready in default due to serious arrears in payments;
- h. Concealed the fact that they were not were not able to produce oil from the Property on an economic basis using the methods they were employing;
- i. Concealed the fact that they had not met the requirements for maintaining the Snow lease and were in danger of losing the lease, until after it had already been lost;
- j. Withheld accurate accounting and production information from Tearlach, in spite of repeated requests, in order to prevent or delay Tearlach in its attempts to discover the true state of affairs with respect to the Property;
- k. Misrepresented their level of skill and experience in operating oil fields like the Property or at all.

Tearlach also maintained, in the Canadian action that led to the \$18,043,691.74 judgment in favor of Tearlach, that the Plaintiffs in this subsequently-filed case engaged in gross mismanagement of the Property, as evidenced by, among other things:

- a. Failing to prepare and deliver accounting and production reports;
- b. Failing to consult with Tearlach prior to commencing operations on the Property;
- c. Failing to prepare and deliver any AFE's for proposed or completed work on the Property;
- d. Failing to file required reports with government authorities;
- e. Failing to achieve economic production;
- f. Failing to maintain good title to the Property;
- g. Failing to obtain surface rights and access agreements that permitted the type of operations carried on by them on the Property and failing to maintain such agreements;
- h. Failing to keep equipment in proper repair;
- i. Failing to advise Tearlach of pending difficulties, including potential loss of leases due to non-payment or other action or inaction by them;
- j. Failing to make government rental payments including, in particular, a \$420 payment that resulted in the termination of an important lease which, but for corrective action taken by Tearlach and its staff, would have been lost permanently;
- k. Failure to pay operating expenses as and when due;
- l. Conducting themselves in a manner so as to attract litigation affecting, not only Western States and its principals, but the Property and Tearlach and its principals also;
- m. Selecting production methods they knew or ought to have known would be uneconomic for the type of hydrocarbons and oil bearing formations located on the Property;
- n. Continuing to focus substantially all of the efforts and expenditures on the Property on the Judkins lease even after receiving formal notice of

Canadian court (for \$18,043,691.74) and, pursuant to the Uniform Foreign-Country Money Judgments Recognition Act (“UFCMJRA” or “Revised Act”), California *Code of Civil Procedure* §§ 1713-1724, Tearlach previously asserted that Judgment should have been entered against Cross-Defendants/Respondents in the California Superior Court action based upon the Canadian action; this was presented as a separate Motion before the Trial Court, but denied without prejudice due to concerns about service of process. [Appendix 343.]

Thereafter, on the evidence presented at trial in this Court (including the facts enumerated in footnote 6, above), Defendants/Cross-complainants/Appellants prevailed at the California Superior Court trial against the Cross-defendants/Respondents, including Ingrid ALIET-GASS and her corporate entities (separately-represented Glenn MORINAKA⁷ settled the case against him prior to trial).⁸ [Appendix 552, 558.]

termination, resulting in a complete loss of the work, effort and expenditures, including Tearlach’s share thereof, and continuing to do so (and attempting to coerce Tearlach to contribute to the cost of such efforts) even after final judgment confirming effectiveness of that termination had been granted. [Appendix 279 at 284, footnote 2.]

⁷ Cross-defendant MORINAKA had previously asserted that he had essentially nothing to do with these transactions. However, the evidence demonstrated, among other things, that the Judkins lease was not valid. He filed false lease/affidavits in the Judkins case, he knew the Witmer B and Sentinel B leases were not valid, he knew the surface leases were not paid up to date, he knew 51,000 barrels were not in tanks, he knew production figures were not real, he knew equipment, pumps did not work, and he knew property reports were out of date. Moreover, he accepted Tearlach shares knowing representations made to Tearlach were not true, and that cash flows were false. He took part in discussions

Until immediately before the trial in the Superior Court, Respondents were represented by counsel (an oil & gas expert, who presented an *ex parte* motion to be relieved on the eve of trial [Appendix 524], which was granted in chambers), and the case was fiercely litigated. [See, e.g., extensive Register of Actions, Appendix 897 through 943.] Contrary to what they state in their Petition for Review (at page 11), judgment was rendered after presentation of evidence at the scheduled trial. The trial court received and considered a mountain of documentary evidence and declarations, in addition to the oral testimony of Richard Farkas and Charles Ross at trial, which incorporated and reaffirmed their previously-submitted written declarations and exhibits. [Appendix 539; see also, Appendix 355, 399, 369, 489.] Moreover, the Superior Court did not rely upon Tearlach's Canadian foreign judgment, but rather awarded a separate judgment in favor of Tearlach and other parties (not parties to the Canadian action), later

on the transaction between Plaintiffs and Defendants, and he acted as CFO, so he would have known about undisclosed transactions which led to separate litigation against the Plaintiffs herein.

⁸ Tearlach also discovered that G&O, Ingrid Aliet-Gass and Glen Morinaka had previously been subject to proceedings by the U.S. Securities and Exchange Commission (the "SEC") arising from preparation of misleading disclosure documents resulting in various sanctions, including cease and desist orders against each of G&O, Ingrid Aliet-Gass and Glen Morinaka and termination of GM's right to appear or practice as an accountant before the SEC. In noting that registration statements they prepared "contained affirmative material misrepresentations," the SEC stated "Gass and Morinaka assisted in the preparation and drafting of the disclosures in the registration statement. They were intimately familiar with the company's business and knew very well that it had no factories, no sales of product, no cash and no operations." [SEC Cease and Desist Order, File No. 3-10858.]

amended to include the judicial declaration that the subject property had been transferred to Tearlach in 2006. [Appendix 552, 558.]

In addition, at the trial in the Kern County Superior Court case number Case No. S-1500-CV-264931-DRL (Consolidated with S-1500-CV-266707, SPC), based on the evidence presented, Judgment was granted in favor of the Tearlach parties (Appellants herein), with the Court specifically declaring, as part of the Amended Judgment, that “Defendant WESTERN STATES INTERNATIONAL, INC. transferred, effective on or before December 13, 2006, to Claimant TEARLACH RESOURCES (CALIFORNIA) LTD. a sixty percent (60%) working interest in the oil and gas property known as the Kern Front Field described in the TEARLACH RESOURCES (CALIFORNIA), LTD. Cross-complaint in Kern County Superior Court case number Case No. S-1500-CV-264931-DRL (Consolidated with S-1500-CV-266707, SPC) (and Exhibit T to the Charles Ross Declaration signed on February 18, 2010 and filed in that case on February 22, 2010), including the Witmer A, B West and Sentinal A Lease (CACA 045619) and the Mitchel Lease (CACA 045618).” [Amended Judgment, Appendix 558.]

Tearlach maintained that it was an insult to the judicial system for Moving Parties/Respondents herein to read the clear language of the Superior Court Judge’s declaratory judgment and call it “void” for lack of jurisdiction, when **it was Moving Parties themselves (Respondents herein) who chose to litigate the matter in the Superior Court, and who opposed all efforts to have the matter**

heard elsewhere.⁹ As the Court of Appeal ruled, the United States was not a party to the Superior Court cases, and no one ever suggested or argued that it should be; neither was the Bureau of Land Management or any other federal entity or agency.¹⁰

C. JUDGMENT WAS ENTERED AFTER TRIAL, AND MOVING PARTIES NEVER MADE ANY EFFORT TO SET IT ASIDE.

In the Amended Judgment entered in the Kern County Superior Court case number Case No. S-1500-CV-264931-DRL (Consolidated with S-1500-CV-266707, SPC), dated March 2, 2011, it was adjudicated that “WESTERN STATES

⁹ Nothing renders the Superior Court’s judgment “void,” as argued by the Respondents/Moving Parties. The United States was not a party to the Superior Court litigation, and is not affected by it. Similarly, the Bureau of Land Management was not involved; its role, if any, is merely to review and approve leases involving Federal lands. Moving parties/Respondents initiated the state court litigation in the Superior Court, and fought to maintain jurisdiction in State Court, never previously challenging the Superior Court’s jurisdiction. The Court of Appeal properly held “the United States was not an indispensable party.... The Court did not adjudicate the rights or obligations of the United States with respect to the leases.” [Opinion, page 18.]

¹⁰ Registration by the Bureau of Land Management (“BLM”), moreover, has no bearing on the validity of the transfers in 2006. In addition, one of Tearlach’s Trial Exhibits was a signed Declaration of Trust, part of the Tearlach closing documents, which memorializes that “the Trustee (Western States) “has no interest whatsoever in the Trust Property other than that of a bare trustee...” [Tearlach Eastern Dist. Ex. U, page 1; Appendix 833 at 841, footnote 5], and that the Trustee shall “hold and stand possessed of the Trust Property fully on behalf of the Beneficiary (Tearlach Resources (California), Ltd.), and receive and hold all proceeds, benefits, and advantages accruing in respect of the Trust Property fully for the benefit, use and ownership of the Beneficiary, without entitlement at any time to commingle any of them with its own or any other property....” [Tearlach Trial Exhibit U, page 2, paragraph 3(a). Appendix 833 at 841, footnote 5.]

INTERNATIONAL, INC. transferred, effective on or before December 13, 2006, to Claimant TEARLACH RESOURCES (CALIFORNIA) LTD. a sixty percent (60%) working interest in the oil and gas property known as the Kern Front Field described in the TEARLACH RESOURCES (CALIFORNIA), LTD. Cross-complaint in Kern County Superior Court case number Case No. S-1500-CV-264931-DRL (Consolidated with S-1500-CV-266707, SPC) (and Exhibit T to the Charles Ross Declaration signed on February 18, 2010 and filed in that case on February 22, 2010), including the Witmer A, B West and Sentinal A Lease (CACA 045619) and the Mitchel Lease (CACA 045618).” [See, Amended Judgment. Appendix 558.] Notice of Judgment Lien was recorded with the California Secretary of State, and an Abstract of Judgment was issued on June 8, 2011. [Appendix 561, 563.] Monetary Judgment was also granted in favor of Claimant Tearlach in the amount of \$18,724,901.58. [Appendix 558.] This interest was granted in 2006, years before Moving Parties’/Respondents’ lawsuit.

Moving Parties/Respondents had never made any effort to set this Judgment aside, although they have known about it since the day it was entered.

D. IN A SEPARATE, FEDERAL ACTION, IN WHICH MOVING PARTIES PARTICIPATED, THE DISTRICT COURT ALSO UPHELD THE VALIDITY OF THE SUPERIOR COURT’S JUDGMENT.

In a separate action, United Pacific Energy Operations and Consulting, Inc. (hereafter “UPEOC,” not a party to this case) obtained, by stipulation, a monetary

(not property¹¹) judgment against Western States International, Inc. (Western States) in May, 2008. It thereafter sought—unsuccessfully—to attach assets of Western States but, in so doing, also sought to attach property that had been transferred to Tearlach Resources (California), Ltd. in 2006, a fact well-known to UPEOC at all times.

In a successfully-opposed [Appendix 623, 636] petition filed with the United States District Court, UPEOC sought to execute against properties which it knew (and previously acknowledged in court pleadings and elsewhere) were properly transferred by its judgment debtor to Tearlach Resources (California) Ltd. years before UPEOC obtained its purported stipulated judgment (executed by Ingrid Aliet-Gass). In so doing, UPEOC disregarded the facts and further ignored the valid declaratory judgment in this Kern County Superior Court, which ruled that Defendant “WESTERN STATES INTERNATIONAL, INC. transferred, effective on or before December 13, 2006, to ... TEARLACH RESOURCES (CALIFORNIA) LTD. a sixty percent (60%) working interest in the oil and gas property known as the Kern Front Field.”¹² Moreover, the Superior Court ruling

¹¹ In its final September 30, 2011 Order, the Court specifically noted: the 2008 Consent Judgment does not adjudicate any interest in real property. To the contrary, the only claims on which judgment was entered under the 2008 Consent Judgment are claims for money damages.” [Order, page 11, line 27 to page 12, line 2. Appendix 623 at 633.]

¹² Tearlach is not relying solely upon this Superior Court’s Judgment that Tearlach acquired its 60% interest in 2006. Irrespective of the Superior Court’s Judgment, there never has been a dispute as to the facts of Tearlach’s acquisition of this interest in 2006. Not even Western States ever questioned Tearlach’s interest.

was consistent with the position acknowledged by UPEOC long before it obtained its monetary judgment.

Trial in the UPEOC case established that UPEOC's underlying (stipulated) money Judgment was obtained in May 2008. The Federal court acknowledged, however, that the lease interests claimed by Tearlach were acquired by Tearlach in 2006. [Appendix 623, 636.]

Near the conclusion of the Federal trial in *UPEOC vs. Tearlach*, **which Moving Party/Respondent Ingrid Aliet-Gass attended and in which she participated as a party**, the trial judge stated, on the record, "Well, let me say this. What you haven't proved, Mr. Draper [then-counsel for UPEOC], is you haven't proved that the Kern County judgment is void, unenforceable or otherwise improper." [Reporter's Transcript of Proceedings, August 3, 2011, page 333, lines 16-18. Appendix 750 at 754-A (this page was omitted from Respondent's pleading (Appendix 730) that incorporated the exhibit).]

Thereafter, on September 30, 2011, the Federal court issued its Orders denying the Petition of UPEOC to invalidate Tearlach's claim. [Appendix 623, 636.] In its Order, the Federal judge acknowledged that "Tearlach's judgment against WSI adjudicated that WSI transferred a sixty-percent working interest in Federal Leases which produced the oil subject to UPEOC's levy." [Order, page 8,

This Kern County Superior Court Judgment further memorialized the fact that Tearlach acquired its interest in 2006, and resolved the myriad of other state court issues in Tearlach's favor.

lines 25-27. Appendix 630.] In addition, the Federal court's Order decidedly rejected UPEOC's argument (and Moving Parties'/Respondents' argument) that Tearlach's state court judgment should be set aside:

“UPEOC attempts to collaterally attack the Kern County Superior Court's judgment by arguing that it does not mean what it says. UPEOC also contends that the judgment was entered in excess of the Superior Court's jurisdiction. Federal district courts have no authority to review the validity of state court judgments. *See, e.g., Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 859 (9th Cir. 2008) (noting that federal district courts are prohibited from exercising subject matter jurisdiction over a suit that is a *de facto* appeal from a state court judgment). The court may not disturb the Kern County Superior Court's judgment based on UPEOC's arguments. *See, e.g., id.* (“A federal action constitutes such a *de facto* appeal where ‘claims raised in the federal court action are “inextricably intertwined” with the state court's decision such that the adjudication of the federal claims would undercut the state ruling or require the district court to interpret the application of state laws or procedural rules.’”). This is not the appropriate forum for UPEOC's collateral challenge to the findings expressed in the Kern County Superior Court's judgment.” [Order, page 9, lines 2-19. Appendix 631.]

The Court then concluded, after the trial in which Moving Parties/Respondents herein participated: “Because UPEOC has not carried its burden of establishing that Tearlach California's interest is inferior to UPEOC's interest, the petition to invalidate must be denied. *See, e.g., Whitehouse*, 40 Cal. App. 4th at 535.” [Order Denying Petition to Invalidate Third Party Claim, 9/30/11, page 12, lines 15-20, Appendix 634.] The Federal Court also stated, “This is not the appropriate forum for UPEOC's challenge to Tearlach California's interest as established by the Kern County Superior Court's judgment.” [Order

Denying Petition to Invalidate Third Party Claim, 9/30/11, page 9, lines 17-19.

Appendix 631 (emphasis added).]

E. THE COURT OF APPEAL UNANIMOUSLY HELD THAT THE TRIAL COURT HAD CONCURRENT JURISDICTION WITH RESPECT TO THE CLAIMS ASSERTED IN BOTH CROSS-COMPLAINTS.

Cutting to the core of this case, the Court of Appeal unanimously concluded “This action was not within the exclusive jurisdiction of the federal courts. As this was the only ground proffered for vacating the amended judgment, the motion to vacate the judgment should not have been granted, and the matter should not have been dismissed.” [Opinion, page 18.]

In determining whether state courts are allowed to entertain jurisdiction over federally created causes of action, the Supreme Court has applied a presumption of concurrency. [*See, e.g., Robb v. Connolly*, 111 U.S. 624 (1884); *Clafin v. Houseman*, 93 U.S.130, 136 (1876). *See generally* Martin H. Redish & John Muench, *Adjudication of Federal Causes of Action in State Court*, 75 Mich. L. Rev. 311 (1976).] Under this presumption, state courts may exercise jurisdiction over federally created causes of action as long as Congress has not explicitly or implicitly made federal court jurisdiction exclusive. [*Yellow Freight Sys., Inc. v. Donnelly*, 494 U.S. 820, 822 (1990).] “In considering the propriety of state-court jurisdiction over any particular federal claim, the Court begins with the presumption that state courts enjoy concurrent jurisdiction.” [*Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 478 (1981).]

The Court of Appeal followed this line of cases, noting that “The Western States parties cited nothing in the MLA making jurisdiction of the federal district courts exclusive.” [Opinion, pages 6, 7.]

As noted in the Appellants’ opposition papers, with which the Court of Appeals explicitly agreed, the United States was not a party to the Superior Court case, and no one ever suggested or argued that it should be; neither was the Bureau of Land Management or any other federal entity or agency.¹³ [Appendix 679 at 685, para. 15.] Indeed, the existence and propriety of the lease assignment was not even a disputed issue being litigated. Since the United States had no interest in the Superior Court matter, and because it was not a party to the case, none of the authorities cited by Moving Parties / Respondents mandate exclusive Federal jurisdiction over the claims as asserted in either cross-complaint. The Court of Appeal correctly noted that “the validity of a transfer or assignment of an interest in a lease as between the parties to that transaction is a separate question from its

¹³ Registration by the Bureau of Land Management (“BLM”), moreover, has no bearing on the validity of the transfers in 2006. In addition, one of Tearlach’s Trial Exhibits was a signed Declaration of Trust, part of the Tearlach closing documents, which memorializes that “the Trustee (Western States) “has no interest whatsoever in the Trust Property other than that of a bare trustee...” [Tearlach Eastern Dist. Ex. U, page 1; Appendix 833 at 841, footnote 5], and that the Trustee shall “hold and stand possessed of the Trust Property fully on behalf of the Beneficiary (Tearlach Resources (California), Ltd.), and receive and hold all proceeds, benefits, and advantages accruing in respect of the Trust Property fully for the benefit, use and ownership of the Beneficiary, without entitlement at any time to commingle any of them with its own or any other property....” [Tearlach Trial Exhibit U, page 2, paragraph 3(a). Appendix 833 at 841, footnote 5.]

validity with respect to the United States and whether the Secretary consented to the assignment.”¹⁴

4. CONCLUSION.

Nothing in the Court of Appeal’s unanimous Opinion merits review by this Supreme Court. In an extremely detailed and well-reasoned Opinion, the Court of Appeals determined “this action was not within the exclusive jurisdiction of the federal courts.” This holding is consistent with all of the cases cited in all briefs and in the Appellate Opinion.

Based on a consistent application of the law, the Court of Appeals unanimously reversed the lower court’s decision to dismiss the Superior Court action in its entirety, and thus reinstated the Amended Judgment of March 2, 2011.

In a desperate attempt to obtain review by this Supreme Court, Petitioner again improperly cites from a dissenting opinion in *U.S. v. Fullard-Leo*, 156 F.2d 756 (9th Cir. 1946). [Petition, page 22.] Petitioners’ attorney was essentially chastised for this during oral argument by the Court of Appeal, which noted, in its written opinion, “this proposition, however, comes from the dissent to that

¹⁴ To the contrary, Moving Parties’ own cross-complaint alleged, at paragraph 3: “In or about November November [*sic*] 27, 2006, Cross-Complainants UPEC and WSI executed an ASSIGNMENT OF OIL AND GAS LEASES AND BILL OF SALE which assigned sixty (60) percent of valuable oil properties to Cross Defendant TEARLACH CALIFORNIA.” The fact of this assignment was never contested in this litigation by Moving Parties or the Tearlach parties; the disputes all pertained to monetary issues wholly unrelated to the assignment itself. Thus the entire ruling of this court is based on the erroneous assumption that “The issue presented was an assignment of a leasehold interest.” This was never a contested issue that could remotely have required adjudication in the Federal Court.

opinion, and has no precedential value. (*United States v. Romain* (1st Cir. 2004) 393 F.3d 63, 74.)” [Opinion, page 10.]

The unanimous, reasoned, legally-consistent Opinion of the Court of Appeals does not merit review by this Supreme Court.

DATED: October 23, 2013

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CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California *Rules of Court*, I hereby certify that this brief is proportionately spaced in Times New Roman 13 point type, consisting of 5,291 words, including the footnotes. In making this certification, I have relied on the word count of the computer program (Microsoft Word®) used to prepare the brief.

DATED: October 23, 2013

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CALIFORNIA SUPREME COURT CASE S214095

Western States International, Inc. vs. Tearlach Resources, (California) Ltd. etc., et al.
Superior Court Case No. S-1500-CV-264931-DRL C/W S-1500-CV-266707, SPC
FIFTH APPELLATE DISTRICT CASE NUMBER F065511

PROOF OF SERVICE

I am a resident of the State of California, I am over the age of 18 years, and I am not a party to this lawsuit. My business address is Law Offices of Richard D. Farkas, 15300 Ventura Boulevard, Suite 504, Sherman Oaks, California 91403. On the date listed below, I served the following document(s):

ANSWER AND OBJECTION TO PETITION FOR REVIEW

_ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5 p.m. Our facsimile machine reported the “send” as successful.

XX by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below. I am readily familiar with the firm’s practice of collecting and processing correspondence for mailing. According to that practice, items are deposited with the United States mail on that same day with postage thereon fully prepaid. I am aware that, on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing stated in the affidavit.

_ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, deposited with Federal Express Corporation on the same date set out below in the ordinary course of business; that on the date set below, I caused to be served a true copy of the attached document(s).

_ by personally delivering the document(s) listed above to the person at the address set forth below.

David W.T. Brown, Esq. (SBN 147321) A. Alexander Gorman, Esq. (SBN 158719) HUSKINSON, BROWN & GORMAN, PC 16th Floor, Park Tower 980 9th Street Sacramento, California 95814	California Court of Appeal Fifth Appellate District 2424 Ventura Street Fresno, California 93721
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: October 23, 2013

KERRI CONAWAY