

Note: this lawsuit rolled into #5, action # 1001-06764

ACTION NO. 1001- 02577

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

TWIN BUTTE ENERGY LTD. ✓

Plaintiff

- and -

SUTTON ENERGY LTD. and PENN WEST PETROLEUM LTD. ✓

Defendants

STATEMENT OF CLAIM

1. The Plaintiff is a body corporate, duly incorporated pursuant to the laws of the Province of Alberta and having an office at the City of Calgary, in the said Province.
2. The Defendant, Sutton Energy Ltd. ("Sutton"), is a body corporate, duly incorporated pursuant to the laws of the Province of Alberta and having an office at the City of Calgary, in the said Province.
3. The Defendant, Penn West Petroleum Ltd. ("Penn West"), is a body corporate, duly incorporated pursuant to the laws of the Province of Alberta and having an office at the City of Calgary, in the said Province.
4. The Plaintiff and Defendants are parties to an agreement entitled "Participation Agreement Sawn Lake Area, Alberta" dated December 4, 2002, ("the Participation Agreement").
5. Pursuant to the terms of the Participation Agreement, at all times material hereto, the Plaintiff and Defendants were each working interest owners in a well known as Sawn Lake 102/01-35-090-13W5M ("the 1-35 Well").
6. The parties hold the working interests as follows:
 - (a) Plaintiff - 20%;
 - (b) Penn West - 65%;
 - (c) Sutton - 15%.

7. At all times material hereto, the Plaintiff has acted as operator of the 1-35 Well pursuant to the terms of the Participation Agreement.
8. On August 24, 2008, the Plaintiff was required to undertake efforts to repair a serious surface casing vent flow which was encountered in the 1-35 Well. Pursuant to the terms of the Participation Agreement, the Plaintiff issued Authorization For Expenditure ("AFE") #08W008 in which it requested authority to expend the funds necessary to repair the casing failure in the 1-35 Well.
9. The Plaintiff states that the total costs incurred pursuant to AFE 08W008 was in the amount of \$912,347.44. The Plaintiff, as Operator, paid these costs.
10. The Plaintiff states that, pursuant to the terms of the Participation Agreement, on March 16, 2009, it issued AFE # 09F003 in which it requested funds to remove and return the rental compressor from the 1-35 Gas Plant.
11. The Plaintiff states that the total costs incurred in respect of AFE #09F003 were in the amount of \$60,142.30. The Plaintiff, as operator, paid those costs.
12. The Plaintiff states that the expenses incurred under AFE #08W008 and AFE #09F003 were expenses properly incurred for the joint account pursuant to the terms of the Participation Agreement.
13. The Plaintiff states that the Defendant, Penn West, was obliged to pay the Plaintiff 65% of the \$972,489.74 incurred for the joint interest pursuant to the AFEs or the total of \$632,118.33. The Plaintiff states that the said Defendant is indebted to it in the amount of \$632,118.33.
14. The Plaintiff states that Sutton was obliged to reimburse it for 15% of the total costs in the amount of \$145,873.46. The Plaintiff states that the said Defendant is indebted to it in the amount of \$145,873.46
15. The Plaintiff states that the Participation Agreement incorporates the provisions of the 1990 CAPL Operating Procedure and 1988 PASC Accounting Procedure and, accordingly, the Defendants are obliged to pay interest on the amounts outstanding at the rate of 2% per annum higher than the average prime rate charged by the principal bank in Canada used by the Plaintiff during the period with respect to which such interest is payable.
16. In the alternative, the Plaintiff claims entitlement to interest on the amounts outstanding at the rate stipulated by the *Judgment Interest Act*, c. J-1, R.S.A. 2000.

✓ 17. The Plaintiff proposes that the trial of the within Action be held at the Court House, in the City of Calgary, in the Province of Alberta. The Plaintiff estimates that the Trial of the within Action will take less than 25 days to conclude.

✓ WHEREFORE THE PLAINTIFF CLAIMS AGAINST THE DEFENDANTS AS FOLLOWS:

Penn West

- (a) Judgment against Penn West in the amount of \$632,118.33;
- (b) Further Judgment for interest at the contractual rate or, alternatively, the rate set by the *Judgment Interest Act*;
- (c) Costs on a party and party basis.

Sutton

- (a) Judgment against Sutton in the amount of \$145,873.46;
- (b) Further Judgment for interest at the contractual rate or, alternatively, the rate set by the *Judgment Interest Act*;
- (c) Costs on a party and party basis.

✓ DATED at the City of Calgary, in the Province of Alberta, this 17th day of February, 2010, AND DELIVERED by Messrs. Burstall Winger, LLP, Barristers & Solicitors, 1600, 333 - 7 Avenue SW, Calgary, Alberta, T2P 2Z1, solicitors for the within Plaintiff whose address for service is in care of the said solicitors.

✓ ISSUED out of the office of the Clerk of the Court of Queen's Bench of Alberta, Judicial District of Calgary, this 17 day of February, 2010.



CLERK OF THE COURT

NOTICE:

ACTION NO. 1001 - 02577

TO THE DEFENDANTS:

SUTTON ENERGY LTD. and PENN WEST PETROLEUM LTD.

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

You have been sued. You are the Defendant. You have only 15 days to file and serve a Statement of Defence of Demand of Notice. You or your lawyer must file your Statement of Defence or Demand of Notice in the office of the Clerk of the Court of Queen's Bench in Calgary, Alberta. You or your lawyer must also leave a copy of your Statement of Defence or Demand of Notice at the address for service for the Plaintiff named in this Statement of Claim.

BETWEEN:

TWIN BUTTE ENERGY LTD.

Plaintiff

- and -

SUTTON ENERGY LTD. and PENN WEST PETROLEUM LTD.

Defendants

WARNING: If you do not do both things within 15 days, you may automatically lose the law suit. The Plaintiff may get a Court judgment against you if you do not file, or do not give a copy to the Plaintiff, or do either thing late.

8200 SCJ 632 118 P1-D2
SCJ 145873 P1-D1

STATEMENT OF CLAIM

ENTERED
FEB 18 2010

JUDICIAL DISTRICT OF CALGARY
FILED
FEB 17 2010
CLERK OF THE COURT

THIS STATEMENT OF CLAIM IS ISSUED BY:
BURSTALL WINGER, LLP
Solicitors for the Plaintiff, who reside at:
1600, 333 - 7 Avenue SW,
Calgary, AB T2P 2Z1
ALAN J. McCONNELL
Phone No. (403) 234-3329
Fax No. (403) 265-8565

WHOSE ADDRESS FOR SERVICE IS IN CARE OF THE SAID SOLICITORS AT: (same as above) AND IS ADDRESSED TO THE DEFENDANT(S) WHOSE ADDRESS AS FAR AS KNOWN TO THE PLAINTIFF IS:

Calgary, AB

No. 34895 AJM

28.

TOTAL \$200.00
CHECK \$200.00
Item counts: 1
Trans: 206070

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QUEEN'S BENCH FEES

\$200.00

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Action No. 1001-02577

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

TWIN BUTTE ENERGY LTD.

Plaintiff

- and -

SUTTON ENERGY LTD. and PENN WEST PETROLEUM LTD.

Defendants

STATEMENT OF DEFENCE

1. The Defendants, Sutton Energy Ltd. ("Sutton") and Penn West Petroleum Ltd. ("Penn West"), deny the allegations contained in the Statement of Claim except those admitted herein.
2. The Defendants admit the allegations set out in paragraphs 1 to 3 of the Statement of Claim.
3. In response to paragraphs 4 and 5 of the Statement of Claim, the Defendants admit the existence and validity of the Participation Agreement. The Defendants further admit that the Defendants and the Plaintiff, Twin Butte Energy Ltd. ("Twin Butte"), were working interest owners in a natural gas well known as Sawn Lake 102/01-35-090-13W5M (the "1-35 Well") but deny that any amounts are due or owing by the Defendants, or either of them, to Twin Butte under the Participation Agreement or otherwise.
4. In response to paragraph 6 of the Statement of Claim, the Defendants state, and it was well known to Twin Butte and Twin Butte acted at all material times, that under the terms of the Participation Agreement, the beneficial working interest owners and their respective ownership interests in the 1-35 Well were the following:

- (a) Twin Butte 20%

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- (b) Penn West 25%
- (c) Sutton 25%
- (d) GeoCap Energy Corporation 25%
- (e) EurOmax Resources Ltd. 5%

5. In response to paragraph 7 of the Statement of Claim, the Defendants admit that Twin Butte was at the material time the operator of the 1-35 Well under the Participation Agreement (the "Operator") and further state that Twin Butte, as Operator, owed contractual, fiduciary and other duties to the working interest owners, including the Defendants, which duties included but were not limited to the following:

- (a) those duties and responsibilities as set out in the provisions of the 1990 Canadian Association of Petroleum Landmen Operating Procedure (the "1990 CAPL Operating Procedure") the terms of which were incorporated into the Participation Agreement;
- (b) to operate the 1-35 Well in a reasonable and prudent fashion and in the interests of all of the working interest owners, including the Defendants;
- (c) to perform any work on or in connection to the 1-35 Well in a reasonable, safe and diligent fashion and in accordance with good engineering practice and accepted industry standards;
- (d) to expressly refrain from any action or perform any work to or in connection with the 1-35 Well that poses serious risk:
 - (i) to the safety of any person working on the 1-35 Well;
 - (ii) to the safety of any person in the vicinity of the 1-35 Well,
 - (iii) of harm to the environment; or
 - (iv) of harm or damage to the 1-35 Well;

- (e) to provide full, complete and timely information as to the operations of the 1-35 Well to the working interest owners, including the Defendants;
- (f) to account to all working interest owners, including the Defendants, for all revenues derived from and expenditures incurred in connection with the 1-35 Well;
- (g) to not incur nor commit any expenditures in excess of \$25,000 on behalf of the working interest owners without the express written authorization of the working interest owners;
- (h) to promptly advise the working interest owners, including the Defendants, of the nature of any event or regulatory requirement necessitating the Operator to incur an expenditure without obtaining the approval for expenditure of the working interest owners and to promptly advise of the anticipated cost associated with such action; and
- (i) such other duties as may be established at trial.

6. In response to paragraph 8 of the Statement of Claim, the Defendants state that the alleged surface casing vent flow and the alleged casing failure at the 1-35 Well, was the direct, obvious and foreseeable result of wrongful actions taken by Twin Butte immediately prior to August 24, 2008, those actions specifically being the attempt by Twin Butte to empty the 1-35 Well of any liquids in the 1-35 Well by injecting high pressure natural gas through the annulus between the tubing and production casing in an effort to lift the liquid through the tubing to surface and allow the natural gas to flow (such actions being referred to hereinafter as "Unloading the 1-35 Well"). Twin Butte's actions as described were in direct breach of the duties owed to the working interest owners, including the Defendants, in that:

- (a) Twin Butte knew or ought to have known that the 1-35 Well had previously undergone a casing repair and that the 1-35 Well was equipped with a casing patch;

- (b) Twin Butte knew or ought to have known that its procedure for Unloading the 1-35 Well would never have worked given the depth of the 1-35 Well and the pressure that would have been required to Unload the 1-35 Well;
- (c) Twin Butte knew or ought to have known that its procedure for Unloading the 1-35 Well was not accepted standard practice in any circumstance, especially in the case of a well equipped with a casing patch;
- (d) Twin Butte knew or ought to have known that its procedure for Unloading the 1-35 Well constituted a serious risk to the life and safety of its workers undertaking the procedure;
- (e) Twin Butte knew or ought to have known that its procedure for Unloading the 1-35 Well constituted a serious risk to the life and safety of any person in the vicinity of the 1-35 Well;
- (f) Twin Butte knew or ought to have known that its procedure for Unloading the 1-35 Well constituted serious risk of harm to the environment;
- (g) Twin Butte knew or ought to have known that its procedure for Unloading the 1-35 Well constituted serious risk to the future life and viability of 1-35 Well itself; and
- (h) Twin Butte knew or ought to have known that its procedure for Unloading the 1-35 Well constituted serious risk of harm and damage to the working interest owners.

7. In further response to paragraph 8 of the Statement of Claim, the Defendants state that the repairs undertaken by Twin Butte were not undertaken out of necessity or for the benefit of the working interest owners. Instead, the Defendants state that Twin Butte further breached its duties to the working interest owners, including the Defendants, in Twin Butte's assessment of the need for the repair work having regard to all of the circumstances and specifically the following:

- (a) Twin Butte was fully aware that the 1-35 Well never had a surface casing vent flow history;

- (b) Twin Butte was fully aware that prior to any surface casing vent flow appearing, its workers had injected high pressure gas down the annulus of the 1-35 Well which was equipped with a casing patch;
- (c) Twin Butte either knew or failed to recognize that the injected high pressure gas was the actual cause of the surface casing vent flow;
- (d) Twin Butte failed to critically assess the surface casing vent flow and misdiagnosed a failed casing patch;
- (e) Twin Butte performed unnecessary repairs and operations; and
- (f) Twin Butte failed to advise the working interest owners of any of its wrongful actions leaving them to wrongly believe that there was in fact a surface casing vent flow issue in need of emergency repair.

8. Ultimately, the Defendants state and the fact is that Twin Butte did not respond in a prudent technical way and in such a manner as to reduce unnecessary downhole operations and to return the 1-35 Well to production at minimum cost and with minimum delay but instead was grossly negligent in its conduct and is not entitled as such to any recovery from the Defendants, or other working interest owners, for the expenditures claimed to have been incurred on the 1-35 Well.

9. In specific response to paragraphs 10 and 11 of the Statement of Claim, the Defendants state that these charges claimed by Twin Butte also arise from and are connected with the gross negligence of Twin Butte and the breach of Twin Butte's duties to the working interest owners and the Defendants deny any liability to Twin Butte for or in respect of the compressor.

10. In response to the entirety of the Statement of Claim, the Defendants expressly deny that either AFE #08W008 or AFE #09F003 were properly issued and further state that the working interest owners, including the Defendants, were not properly advised of the actual circumstances giving rise to these AFE's. More specifically, Twin Butte further breached its duties to the working interest owners, including the Defendants, was grossly negligent and misled the working interest owners, including the Defendants, in the following manner:

- (a) By failing to disclose in advance of the expenditure of the claimed funds the fact that Twin Butte injected high pressure natural gas through the annulus between

tubing and production casing on August 24, 2008, causing a surface casing vent flow; and

- (b) By representing that the certain repairs being undertaken were required for regulatory compliance, even after the surface casing vent flow dissipated and Twin Butte knew that the surface casing vent flow had been downgraded to "Non-Serious" and would only require annual monitoring and reporting to the ERCB.

11. In response to the entirety of the Statement of Claim, the Defendants expressly deny that AFE #08W008 or AFE # 09F003 were accurate, properly issued or valid and further deny that any expenses incurred by Twin Butte under AFE #08W008 and AFE #09F003 were properly incurred for the joint account pursuant to the terms of the Participation Agreement or otherwise.
12. In response to the entirety of the Statement of Claim, the Defendants state that they did not grant authorization for expenditures related to either AFE #08W008 or AFE #09F003, or alternatively, if authorization was granted it was given as a result of false and misleading information given to the Defendants by Twin Butte or by the concealment of relevant and material information from the Defendants by Twin Butte.
13. In the alternative, if any part of the expenditures incurred by Twin Butte under AFE#08W008 or AFE#09F003 was properly incurred for the joint account and for the benefit of the working interest owners of the 1-35 Well, those expenditures are to be shared in proportion to the working interests determined by the Participation Agreement as set out in paragraph 4 of this Statement of Defence, and not as alleged in paragraphs 13 and 14 of the Statement of Claim.
14. Furthermore, Penn West has already paid Twin Butte the sum of \$219,375.92 towards its share of any amount properly owed to Twin Butte in respect of expenditures under one or both of AFE#08W008 or AFE#09F003.
15. In response to the entirety of the Statement of Claim, the Defendants state that Twin Butte, as Operator, breached both its fiduciary duties and its duties to the working interest owners, including the Defendants, under the Participation Agreement and the 1990 CAPL Operating Procedure, in conducting operations in a grossly negligent manner, failing to seek

proper authority for expenditures on the 1-35 Well and in failing to keep the working interest owners informed of the operations in respect of such well.

16. In response to the entirety of the Statement of Claim, the Defendants expressly deny being indebted to Twin Butte for the amount as alleged or for any amount at all.

17. As a result of Twin Butte's breach of its duties and its gross negligence, the Defendants suffered damages including:

- (a) loss of the 1-35 Well and all costs incurred to drill the Well;
- (b) loss of production and revenue from the 1-35 Well;
- (c) the costs to be incurred to drill a well to replace the 1-35 Well;
- (d) the costs to abandon the 1-35 Well; and
- (e) such further damages and losses as may be proven at trial

and the Defendants claim that they are entitled to set off their damages against any sum claimed by Twin Butte.

18. In response to paragraphs 13 and 14 of the Statement of Claim, the Defendants state that they have repeatedly requested that Twin Butte provide proper supporting documentation with respect to the operations of the 1-35 Well and the amounts allegedly owed, and Twin Butte has neglected, omitted or refused to do so.

19. In response to paragraph 17 of the Statement of Claim, the Defendants agree with the proposal to have the trial held in Calgary, Alberta and with the estimate that the trial is likely to take less than 25 days.

WHEREFORE THE DEFENDANTS PRAY THAT THE WITHIN ACTION BE DISMISSED AS AGAINST THEM WITH COSTS.

AND BETWEEN:

SUTTON ENERGY LTD. and PENN WEST PETROLEUM LTD.

Plaintiffs by Counterclaim

- and -

TWIN BUTTE ENERGY LTD.

Defendant by Counterclaim

COUNTERCLAIM

20. The Plaintiffs by Counterclaim repeat and adopt the allegations set out in the Statement of Defence as part of this Counterclaim.
21. Further, the Plaintiffs by Counterclaim state that the Defendant by Counterclaim ("Twin Butte") first acted unreasonably, imprudently and dangerously in Unloading the 1-35 Well, and then, unreasonably, imprudently and without providing the working interest owners with full and complete information, directed authorization for expenditure for operations to the 1-35 Well which were neither warranted nor necessary. The Plaintiffs by Counterclaim state that Twin Butte conducted such operations in a manner that was far from consistent with the actions of a good and prudent operator.
22. The Plaintiffs by Counterclaim state that but for Twin Butte's breach of its duties owed to the Plaintiffs by Counterclaim and Twin Butte's gross negligence in wrongfully injecting high pressure gas into the 1-35 Well and its conduct thereafter, the 1-35 Well would still have been capable of production and would still have been producing and generating revenue for the Plaintiffs by Counterclaim.
23. As a result of Twin Butte's conduct described in this Counterclaim and in the Statement of Defence, no amounts were properly owing to Twin Butte in respect of expenditures to repair the 1-35 Well. Accordingly, there was no basis for the payment by the Plaintiff by Counterclaim

Penn West Petroleum Ltd. ("Penn West") towards its share of those expenses and therefore the funds are required to be reimbursed to Penn West. Alternatively, Twin Butte has been enriched by that payment in the amount of \$219,375.92, Penn West has been correspondingly deprived, and there is no juristic reason for the enrichment.

24. As a result of Twin Butte's breach of its duties and its gross negligence, the Plaintiffs by Counterclaim suffered damages including:

- (a) loss of the 1-35 Well and all costs incurred to drill and equip the Well;
- (b) loss of production and revenue from the 1-35 Well;
- (c) the costs to be incurred to drill a well to replace the 1-35 Well;
- (d) the costs to abandon the 1-35 Well; and
- (e) such further damages and losses as may be proven at trial.

WHEREFORE THE PLAINTIFFS BY COUNTERCLAIM CLAIMS AGAINST THE DEFENDANT BY COUNTERCLAIM AS FOLLOWS:

- (a) Damages in the sum of \$2,400,000.00 representing the loss of the 1-35 Well and all costs incurred to drill and equip the Well;
- (b) Damages in the sum of \$1,500,000.00 representing loss of production and revenue of from the 1-35 Well;
- (a) Damages in the sum of \$1,250,000.00 representing the cost to drill a well to replace the 1-35 Well;
- (a) Damages in the sum of \$100,000.00 representing the costs to abandon the 1-35 Well;
- (a) Damages in the sum of \$219,735.92 to recover amounts paid by Penn West as its proportionate share of the expenses of repair to the 1-35 Well;

- (b) Set-off of any such damages against any amounts properly owing to Twin Butte in the main action;
- (c) Such other damages and losses as may be proven at trial;
- (a) Interest pursuant to the Judgment Interest Act, R.S.A. 2000, c.J-1 and amendments thereto and regulations thereunder;
- (a) Costs; and
- (a) Such further and other relief as this Honorable Court may deem necessary.

DATED at the City of Calgary, in the Province of Alberta, this 19 day of ~~February~~^{March}, 2010; AND DELIVERED BY FLEMING LLP, Barristers and Solicitors, Solicitors for the Defendants/Plaintiffs by Counterclaim, whose address for service is in care of the said solicitors at 900, 926 – 5th Avenue SW, Calgary, Alberta, T2P 0N7 Attention: Predrag Anic.

TO: THE PLAINTIFF

TWIN BUTTE ENERGY LTD.

This Statement of Defence is filed by FLEMING LLP, Solicitors for the Defendants.

The Defendants carry on business at the City of Calgary, in the Province of Alberta.

The Defendants' address for service is in care of its said Solicitors, at which address subsequent proceedings in this action may be served as effectively as if served upon the Defendants personally.

AND TO: THE DEFENDANT BY COUNTERCLAIM:

TWIN BUTTE ENERGY LTD.

You have been sued. You are the Defendant by Counterclaim. You have only 15 days to file and serve a Statement of Defence or Demand of Notice. You or your lawyer must file your Statement of Defence or Demand of Notice in the office of the Clerk of the Court of Queen's Bench in Calgary, Alberta. You or your lawyer must also leave a copy of your Statement of Defence or Demand of Notice at the address for service for the Plaintiff by Counterclaim named in this Counterclaim.

WARNING: If you do not do both things within 15 days, you may automatically lose the law suit. The Plaintiffs by Counterclaim may get a Court judgment against you if you do not file, or do not give a copy to the Plaintiffs by Counterclaim, or do either thing late.

This Counterclaim is issued by the Solicitors for the Plaintiffs by Counterclaim whose name and address for service is:

c/o FLEMING LLP
Barristers and Solicitors
900, 926 - 5th Avenue SW
Calgary, Alberta T2P 0N7

The Plaintiff by Counterclaim's address is:
CALGARY, ALBERTA

The Defendant by Counterclaim's address so far as is known to the Plaintiff by Counterclaim is:
CALGARY, ALBERTA

Action No.: 1001-02577

**IN THE COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

BETWEEN:

TWIN BUTTE ENERGY LTD.
Plaintiff
- and -

**SUTTON ENERGY LTD.
and PENN WEST PETROLEUM LTD.**
Defendants

AND BETWEEN:

**SUTTON ENERGY LTD. and PENN WEST
PETROLEUM LTD.**

Plaintiffs by Counterclaim
(Defendants)

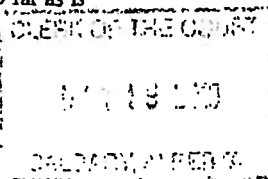
- and -

TWIN BUTTE ENERGY LTD.
Defendant by Counterclaim
(Plaintiff)

**STATEMENT OF DEFENCE
AND COUNTERCLAIM**

FLEMING LLP
Barristers and Solicitors
900, 926 - 5th Avenue SW
Calgary, Alberta T2P 0N7
Attention: Predrag Anic
Tel: 403.266-7627
Fax: 403.265-6910

File No.: 35346PA



ACTION NO. 1001-02577

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

BETWEEN:

TWIN BUTTE ENERGY LTD.

Plaintiff

- and -

SUTTON ENERGY LTD. and PENN WEST PETROLEUM LTD.

Defendants

AND BETWEEN:

SUTTON ENERGY LTD. and PENN WEST PETROLEUM LTD.

Plaintiffs by Counterclaim

- and -

TWIN BUTTE ENERGY LTD.

Defendant by Counterclaim

STATEMENT OF DEFENCE TO COUNTERCLAIM

1. The Defendant by Counterclaim hereby repeats the allegations set out in the Statement of Claim as if separately set out herein.
2. The Defendant by Counterclaim denies each and every material allegation of fact contained in the Counterclaim.
3. The Defendant by Counterclaim states that all operations which were conducted on the 1-35 Well were carried out properly and in compliance with the obligations or duties which the Defendant by Counterclaim, as Operator, owed to the Plaintiffs by Counterclaim.
4. The Defendant by Counterclaim specifically denies that Penn West has made payment of any expenditures as alleged in paragraph 23 of the Counterclaim.

WHEREFORE THE DEFENDANT BY COUNTERCLAIM prays that the within Counterclaim be dismissed with costs.

DATED at the City of Calgary, in the Province of Alberta, this 31st day of March, 2010, **AND DELIVERED** by Burstall Winger LLP, Barristers & Solicitors for the Defendant by Counterclaim whose address for service is in care of the said solicitors at 1600, 333 - 7 Avenue SW, Calgary, Alberta, T2P 2Z1.

ACTION NO. 1001-02577

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

TWIN BUTTE ENERGY LTD.

Plaintiff

- and -

**SUTTON ENERGY LTD. and
PENN WEST PETROLEUM LTD.**

AND BETWEEN:

**SUTTON ENERGY LTD. and
PENN WEST PETROLEUM LTD.**

Plaintiffs by Counterclaim

- and -

TWIN BUTTE ENERGY LTD.

Defendant by Counterclaim

STATEMENT OF DEFENCE TO COUNTERCLAIM

BURSTALL WINGER LLP
Barristers & Solicitors
1600, 333 - 7 Avenue SW
Calgary, AB T2P 2Z1

Alan J. McConnell
Telephone (403)234-3329
Fax (403) 265-8565

File No. 34895 AJM

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