

# The Burger Court Opinion Writing Database

*California v. Southland Royalty Co.*  
436 U.S. 519 (1978)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

May 23, 1978

Dear Byron:

Re: 76-1114 California v. Southland Royalty Co.

I will doubtless join John's dissent when he converts  
his earlier draft into the dissent form.

Regards,

*WEB*

Mr. Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

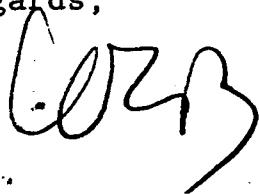
May 25, 1978

Dear John:

Re: 76-1114, 76-1133 and 76-1587 - California  
v. Southland Royalty Co.

Please join me in your dissent.

Regards,



Mr. Justice Stevens

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

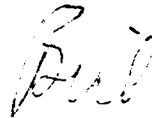
March 20, 1978

RE: Nos. 76-1114, 1133 & 1587 California v. Southland  
Royalty Company, etc.

Dear Byron:

Please join me in the dissenting opinion you have  
prepared in the above.

Sincerely,



Mr. Justice White  
cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 22, 1978

RE: No. 76-1114, 1133 & 1587 State of California, et al.  
v. Southland Royalty Company

Dear Byron:

Please join me.

Sincerely,

*Bill*

Mr. Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

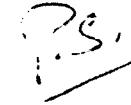
CHAMBERS OF  
JUSTICE POTTER STEWART

March 24, 1978

Re: Nos. 76-1114, 76-1133 & 76-1587  
California v. Southland Royalty Company

Memorandum to the Conference

At the Conference today I indicated that if this case were re-argued I thought I would be able to participate in its consideration and decision. I now find that, to the contrary, I would probably continue to be disqualified from participation.

  
P. S.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

May 22, 1978

Re: Nos. 76-1114, 76-1133 & 76-1587,  
California v. Southland Royalty Co.

Dear Byron,

I should appreciate your adding the following at the foot of your opinion for the Court in this case:

"MR. JUSTICE STEWART took no part in the consideration or decision of this case."

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 12, 1977

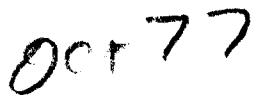
Re: No. 76-1114 - California v. Southland Royalty Co.  
No. 76-1133 - El Paso Natural Gas Co. v.  
Southland Royalty Co.  
No. 76-1587 - FPC v. Southland Royalty Co.

I shall be glad to undertake the dissent in  
these cases.

Sincerely,



Mr. Justice Brennan



✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 27, 1978

Re: Nos. 76-1114, 76-1133 & 76-1587 -  
State of California v. Southland,  
etc.

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Dear John,

Although you have crowded us to the wall,  
I shall try a dissent in this case.

Sincerely yours,



Mr. Justice Stevens  
Copies to the Conference

To: The Chief Justice  
✓ Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 3/17/78

Re: 76-1114, 76-1133 & 76-1587 -

Recirculated: \_\_\_\_\_

California v. Southland Royalty Company, etc.

MR. JUSTICE WHITE, dissenting.

The fundamental purpose of the Natural Gas Act is to assure an adequate and reliable supply of gas at reasonable prices. Sunray Mid-Continent Oil Co. v. Federal Power Commission, 364 U.S. 137, 147, 151-154 (1960); Atlantic Refining Co. v. Public Service Commission of New York, 360 U.S. 378, 388 (1959). To this end, those who would serve the interstate market must not only obtain a certificate of public convenience and necessity but also, under §7(b) of the Act, "no natural gas company shall abandon---any service rendered by means of such facilities" without the permission and approval of the Commission. Thus, a certificate holder may not cease supplying the interstate market with gas until the approval of the Commission is obtained. Here, the Commission held that under this provision neither the lessee under an expiring lease nor the fee owner-lessor was privileged to cease supplying the interstate market without complying with §7.

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

cc'd: Mr. Justice White

1st DRAFT

Circulated: \_\_\_\_\_

Recirculated: 3-21-78

**SUPREME COURT OF THE UNITED STATES**

Nos. 76-1114, 76-1133 AND 76-1587

State of California et al., Petitioners,  
 76-1114 v.

Southland Royalty Company et al.

El Paso Natural Gas Company,  
 Petitioner,  
 76-1133 v.

Southland Royalty Company et al.

Federal Energy Regulatory Commis-  
 sion, Petitioner,  
 76-1587 v.

Southland Royalty Company et al.

On Writs of Certiorari  
 to the United States  
 Court of Appeals for  
 the Fifth Circuit.

[March —, 1978]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN  
 joins, dissenting.

The fundamental purpose of the Natural Gas Act is to assure an adequate and reliable supply of gas at reasonable prices. *Sunray Mid-Continent Oil Co. v. Federal Power Commission*, 364 U. S. 137, 147, 151-154 (1960); *Atlantic Refining Co. v. Public Service Commission of New York*, 360 U. S. 378, 388 (1959). To this end, those who would serve the interstate market must not only obtain a certificate of public convenience and necessity but also, under § 7 (b) of the Act, "no natural gas company shall abandon . . . any service rendered by means of such facilities" without the permission and approval of the Commission. Thus, a certificate holder may not cease supplying the interstate market with gas until the approval of the Commission is obtained. Here, the Commission held that under this provision neither the lessee under an

D R A F T

No. 76-1114) State of California  
v. Southland Royalty Company

No. 76-1133) El Paso Natural Gas Company  
v. Southland Royalty Company

No. 76-1587) Federal Power Commission  
v. Southland Royalty Company

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
XMr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

Circulated: May 19, 1978

Recirculated: \_\_\_\_\_

MR. JUSTICE WHITE delivered the opinion of the Court.

In 1925 the owners of certain acreage in Texas executed a lease which gave to Gulf Oil Company, as lessee, the exclusive right to produce and market oil and gas from that land for <sup>1/</sup> the next fifty years. Gulf was entitled to drill wells, string telephone and telegraph wires, and build storage facilities and pipelines on the land. Gulf would also have "such other privileges as are reasonably requisite for the conduct of such operations." A135. In exchange, the owners were to receive a royalty based on the quantity of natural gas produced and the number of producing wells, as well as other royalties and payments.

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

Circulated:

Recirculated: 5/24

1st PRINTED DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 76-1114, 76-1133 AND 76-1587

State of California et al., Petitioners,  
76-1114 v.  
Southland Royalty Company et al.

El Paso Natural Gas Company,  
Petitioner,  
76-1133 v.  
Southland Royalty Company et al.

Federal Energy Regulatory Commission, Petitioner.

76-1587 v.  
Southland Royalty Company et al.

On Writs of Certiorari  
to the United States  
Court of Appeals for  
the Fifth Circuit.

[May —, 1978]

MR. JUSTICE WHITE delivered the opinion of the Court.

In 1925 the owners of certain acreage in Texas executed a lease which gave to Gulf Oil Company, as lessee, the exclusive right to produce and market oil and gas from that land for the next 50 years.<sup>1</sup> Gulf was entitled to drill wells, string telephone and telegraph wires, and build storage facilities and pipelines on the land. Gulf would also have "such other privileges as are reasonably requisite for the conduct of such

<sup>1</sup> The "Waddell" lease, executed on July 14, 1925, covered 45,771 acres in Crane County, Tex. In the same year Gulf executed an identical lease, the "Goldsmith" lease, with the owners of 19,840 acres in Ector County, Tex. The gas remaining at the expiration of both leases is at issue in this litigation, but because the parties are in agreement that there are no material differences in the language or history of these leases, we shall discuss only the Waddell lease.

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 ✓ Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

STYLISTIC CHANGES THROUGHOUT.  
 SEE PAGES: 3

From: Mr. Justice White

Circulated: \_\_\_\_\_

Recirculated: 5/26

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 76-1114, 76-1133 AND 76-1587

State of California et al., Petitioners,  
 76-1114                    v.  
 Southland Royalty Company et al.  
  
 El Paso Natural Gas Company,  
 Petitioner,  
 76-1133                    v.  
 Southland Royalty Company et al.  
  
 Federal Energy Regulatory Commis-  
 sion, Petitioner,  
 76-1587                    v.  
 Southland Royalty Company et al.

On Writs of Certiorari  
 to the United States  
 Court of Appeals for  
 the Fifth Circuit.

[May —, 1978]

MR. JUSTICE WHITE delivered the opinion of the Court.

In 1925 the owners of certain acreage in Texas executed a lease which gave to Gulf Oil Company, as lessee, the exclusive right to produce and market oil and gas from that land for the next 50 years.<sup>1</sup> Gulf was entitled to drill wells, string telephone and telegraph wires, and build storage facilities and pipelines on the land. Gulf would also have "such other privileges as are reasonably requisite for the conduct of such

<sup>1</sup> The "Waddell" lease, executed on July 14, 1925, covered 45,771 acres in Crane County, Tex. In the same year Gulf executed an identical lease, the "Goldsmith" lease, with the owners of 19,840 acres in Ector County, Tex. The gas remaining at the expiration of both leases is at issue in this litigation, but because the parties are in agreement that there are no material differences in the language or history of these leases, we shall discuss only the Waddell lease.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 6, 1978

MEMORANDUM TO THE CONFERENCE

Re: Cases heretofore held for Nos. 76-1114, 76-1133 &  
76-1587 - California, et al. v. Southland Royalty Co.

Two interrelated cases have been held for our decision in Southland Royalty Co. Both involve leases of gas sold in interstate commerce in which the royalty payments are linked to the "market price" or "market value" of the gas.

In No. 76-1694, Mobil Oil Corp. v. Lightcap, et al., the lessors brought suit in state court to recover royalties based on the intrastate rate rather than on the interstate rate at which the gas was being sold under an FPC (FERC) certificate. The Kansas Supreme Court held that it had jurisdiction to construe the royalty clause of the lease and that "market value" referred to the intrastate rate. The lessee-producer sought certiorari in this Court, arguing that the FPC has jurisdiction to regulate a royalty clause as a "contract affecting such rate" within the meaning of 15 U.S.C. § 717d(a) of the Natural Gas Act, that the field was therefore preempted by federal law, and that the interpretation of the royalty clause adopted by the Kansas court should be rejected as inconsistent with the purposes of the Act. I

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 23, 1978

Re: Nos. 76-1114, 76-1133 & 76-1587 - California v.  
Southland Royalty Co., etc.

Dear Byron:

Please join me in your dissent.

Sincerely,



T. M.

Mr. Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 24, 1978

Re: Nos. 76-1114, 76-1133 & 76-1587, California v.  
Southland Royalty Co., etc.

Dear Byron:

Please join me.

Sincerely,

*JM*

T.M.

Mr. Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

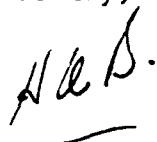
May 22, 1978

Re: No. 76-1114 - State of California  
v. Southland Royalty Co.  
No. 76-1133 - El Paso Natural Gas Co.  
v. Southland Royalty Co.  
No. 76-1587 - Federal Power Commission  
v. Southland Royalty Co.

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 21, 1978

Re: Nos 76-1114, et al. California v. Southland Royalty

Dear John:

Please join me.

Sincerely,



Mr. Justice Stevens

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

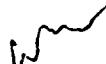
May 24, 1978

Re: Nos. 76-1114, 76-1133 and 76-1587 - California  
v. El Paso Natural Gas Co.

Dear John:

Please join me in your dissent in this case.

Sincerely,



Mr. Justice Stevens

Copies to the Conference

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist

From: Mr. Justice Stevens  
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 Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_

**2nd DRAFT**

**SUPREME COURT OF THE UNITED STATES**

Nos. 76-1114, 76-1133 AND 76-1587

State of California et al., Petitioners,  
 76-1114 v.

Southland Royalty Company et al.

El Paso Natural Gas Company,  
 Petitioner,  
 76-1133 v.

Southland Royalty Company et al.

Federal Energy Regulatory Commis-  
 sion, Petitioner,  
 76-1587 v.

Southland Royalty Company et al.

On Writs of Certiorari  
 to the United States  
 Court of Appeals for  
 the Fifth Circuit.

[February —, 1978]

MR. JUSTICE STEVENS delivered the opinion of the Court.

The disparity between the regulated price of natural gas in the interstate market and the unregulated price in the Texas market gives this case its importance.<sup>1</sup> The legal issue depends on the meaning of § 7 (b), the abandonment provi-

<sup>1</sup> At the time the Court of Appeals for the Fifth Circuit delivered its opinion in this case, there was a "gross imbalance between controlled prices at which interstate natural gas [was] sold and the substantially higher values set by the free market for gas. . . ." 543 F. 2d, at 1135 (citation omitted). Although the Federal Power Commission [now the Federal Energy Regulatory Commission] has taken some action to correct this imbalance, see F. P. C. Opinion No. 770 (issued July 27, 1976), aff'd *sub nom. American Public Gas Association v. Federal Power Comm'n*, — U. S. App. D. C. —, No. 76-2000 (June 16, 1977), a "substantial disparity" still exists. Brief for the Federal Power Commission, at 6-7, n. 9.

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist

From: Mr. Justice Stevens

MAY 24 '78

Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 76-1114, 76-1133 AND 76-1587

State of California et al., Petitioners,  
 76-1114 v.

Southland Royalty Company et al.

El Paso Natural Gas Company,  
 Petitioner,

76-1133 v.

Southland Royalty Company et al.

Federal Energy Regulatory Commis-  
 sion, Petitioner,

76-1587 v.

Southland Royalty Company et al.

On Writs of Certiorari  
 to the United States  
 Court of Appeals for  
 the Fifth Circuit.

[May —, 1978]

MR. JUSTICE STEVENS, dissenting.

The disparity between the regulated price of natural gas in the interstate market and the unregulated price in the Texas market gives this case its importance.<sup>1</sup> The legal issue depends on the meaning of § 7 (b), the abandonment provi-

<sup>1</sup> At the time the Court of Appeals for the Fifth Circuit delivered its opinion in this case, there was a "gross imbalance between controlled prices at which interstate natural gas [was] sold and the substantially higher values set by the free market for gas. . . ." 543 F. 2d, at 1135 (citation omitted). Although the Federal Power Commission [now the Federal Energy Regulatory Commission] has taken some action to correct this imbalance, see F. P. C. Opinion No. 770 (issued July 27, 1976), aff'd *sub nom. American Public Gas Association v. Federal Power Comm'n*, — U. S. App. D. C. —, No. 76-2000 (June 16, 1977), a "substantial disparity" still exists. Brief for the Federal Power Commission, at 6-7, n. 9.