

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

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2017 NOV -2 P 1: 52

APPLICATION OF MEWBOURNE OIL COMPANY
FOR COMPULSORY POOLING AND AN
UNOROTHODOX GAS WELL LOCATED
IN EDDY COUNTY, NEW MEXICO.

Case No. 15547

APPLICATION OF MEWBOURNE OIL COMPANY
FOR COMPULSORY POOLING AND AN
UNOROTHODOX GAS WELL LOCATED
IN EDDY COUNTY, NEW MEXICO.

Case No. 15548

APPLICATION OF MEWBOURNE OIL COMPANY
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Case No. 15549

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Case No. 15550

APPLICATION OF MEWBOURNE OIL COMPANY
FOR COMPULSORY POOLING AND AN
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Case No. 15551

APPLICATION OF MEWBOURNE OIL COMPANY
FOR COMPULSORY POOLING AND AN
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Case No. 15552

APPLICATION OF MEWBOURNE OIL COMPANY
FOR COMPULSORY POOLING AND AN
UNOROTHODOX GAS WELL LOCATED
IN EDDY COUNTY, NEW MEXICO.

Case No. 15562

PRE-HEARING STATEMENT

This Pre-hearing Statement is submitted by Premier Oil & Gas, Inc. by and through its undersigned counsel, Ernest L. Padilla, PADILLA LAW FIRM, P.A., as required by the Oil Conservation Division.

APPEARANCES OF PARTIES

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James Wesley Welch, Joe Michael
Welch, Barbara Welch Parker, Tuffy
Oil Co. LLC

ATTORNEY:

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PADILLA LAW FIRM, P.A.

/s/ Ernest L. Padilla

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following counsel of record by electronic mail on November 2, 2017:

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Case No. 15562

**RESPONSE TO MOTION TO AMEND ORDERS NO. R-13879-A, R-13814-A,
R-13749-A, R-13751-A, R-13959-A, R-14018-A, and R-14415**

For its response to the instant motion, Premier Oil & Gas, Inc. (“Premier”), by and through its undersigned counsel, Ernest L. Padilla, PADILLA LAW FIRM, P.A., states:

A. Introduction.

In these consolidated compulsory pooling proceedings Premier has consistently taken the position that it committed to participate in the drilling of the oil and gas wells that Applicant Mewbourne Oil Company proposed. With respect to each well at issue, Premier has either signed a Joint Operating Agreement (“JOA”), has farmed out its mineral interest, or committed to the wells an oil and gas lease covering an applicable portion of the minerals. As Premier understands it, Mewbourne has not sought to force pool Premier’s interest in the wells and the Division has not entered any order purporting to force pool Premier’s already committed interests.

The ownership of the mineral interest Mewbourne seeks to force pool in these consolidated proceedings has been the subject of litigation in the Fifth Judicial District Court, Eddy County, New Mexico in Cause No. D-503-PB-2012-36 WBS, entitled: In the Matter of the Last Will and Testament of Marie G. Welch, Deceased; Premier Oil & Gas Company, et al v. Samuel G. Alderman et al. The Eddy County case has been the central issue in these proceedings and has raised questions regarding whether and how contingent interests should be force pooled. Premier has not (in these cases) contested the issue of whether contingent interests should or may be pooled through compulsory pooling because it participated, as noted above, in drilling the wells. Its interests have been committed to drilling the wells, and its contractual relationship with Mewbourne governs its participation in drilling the wells. Thus, to the extent any party has sought to do so, force pooling of Premier’s interest is improper.

The Welches now seek changes to the Division's orders in these cases, even though they never presented evidence or testimony to the Division. And, even if they had presented evidence or testimony to which the Division could conform its findings in the orders, the issues are now largely moot in light of the Eddy County District Court's recent final order affirming title in the mineral interest at issue in the Welch Case in favor of Premier and against Blaire Seaton Croke and the Welches. In light of the Eddy County Court's determination of title in favor of Premier and its participation in all of the wells, Premier is not a proper "respondent" and its interest is not subject to compulsory pooling.

As often happens, Premier has participated as an interested party in these proceedings in order to prevent parties from urging the Division to include language in orders that purports to adjudicate title –which language may then be used for purposes of argument in the district court.¹ Because it was not subject to force pooling, Premier did not present testimony or offer evidence before the Division. Instead, it appeared in the cases to guard against back-door encroachments to the title dispute in the District Court.

Like Premier, the Welch Parties committed their contingent and unconfirmed interests to the wells and, therefore, were not subject to force pooling. Like Premier, the Welch Parties did not present evidence or testimony before the Division. Now, the Welch Parties seek to "clarify the record" with their motion asking that the Division's Orders be amended to "conform" to the evidence presented at the hearing. The problem with the Welches position is that they presented no evidence to the Division, to which the Orders may be conformed.² Their effort to have the

¹ The Division's developed jurisprudence makes clear that its decisions shall not be construed as adjudications of title in one party or another.

² Indeed, Premier has no objection to the orders truly being corrected based upon evidence actually in the record – such as the evidence presented by Mewbourne showing that Premier's interests are committed and subject to a JOA. It is only the modification of the orders based upon evidence not previously presented to the Division to which Premier objects.

Orders modified is, in effect, an attempt to offer new evidence in the cases that they failed to present at the hearing. The Welches' request is improper and should be rejected. .

B. Specific Objection to the Proposed Amendments to the Orders.

1. At page 3 of the motion, the motion states:

...The "Welch Heirs", Tuffy Oil Co., Premier Oil & Gas and Blair Seaton Crooke are identified as "Respondents". (Findings ¶ 8). These orders also find that "Respondents" have not agreed to pool their interests in each case. (Findings ¶ 12) They also recite that "[n]one of the Respondents except Blair Seaton Crooke ("Crooke") claims a working interest or unleased mineral interest in the Unit. (Findings ¶ 13). Findings 12 and 13 are inaccurate as to the Welch heirs and result in confusion.

To the extent that these findings include Premier as a "respondent" and that it "has not agreed to pool their interests in each case," Premier agrees with the Welches that this language is wrong and does not match the evidence Mewbourne did put in the record. Thus, the Order should be modified to show that Premier is not a "respondent" and to reflect that is has agreed to pool its interests in each case.

To the extent the Welches argue that their position is incorrectly described in the Applications, their concerns are resolved by Decretory Paragraph No. 9 of the "A" orders and Decretory Paragraph 11 of Order R-14415, which cures the erroneous findings with respect to any party whose interest was dependent on the ultimate outcome of the District Court litigation.

Also at Pages 3-4 of the motion, the motion states:

...In that quiet title proceeding, the Welches, as heirs and devisees of Joe H. Welch and Grace Welch Phelan, claim ownership of the Herbert Welch community interests, being a net 145 mineral acres under the lands affected by Mewbourne's compulsory pooling Applications. The mineral interests are unleased." **Pre-Hearing Statement; James Wesley Welch, Joe Michael Welch, and Barbara Grace Parker**, (November 21, 2016), pg. 4. The Eddy County quiet title proceeding remains unresolved, but there has been no determination that the Welches do not own the unleased mineral interests they claim.

On August 31, 2017, the Eddy County District Court entered an Order finding that the Welches own no minerals. The district court's order effectively mooted this statement because the quiet title case is no longer unresolved. The contention that the Welches claim a net 145 mineral acres, is of no moment in light of the Court's ruling that the Welches do not own the mineral interest they claimed in these proceedings.

2. The requested prayer for relief has been addressed by the decretory provisions of the orders. It suffices to say that whether or not parties have committed their interests, or whether they are consenting or non-consenting working interest or mineral owners, the compulsory pooling orders, at the time that the orders were issued, offered a method for participation to non-consenting contingent interest owners like the Welches. Furthermore, the District Court judgment resolved all claims of ownership and standing in these compulsory pool cases. As a result of the District Court's order, the Welches have no interest, contingent or otherwise, that can be force pooled and they have no standing to further participate in this case. To the extent the Welches have a remote contingent interest based upon their ability to appeal the district court's order, the remedy fashioned by the Division protected such remote and speculative contingent interest claimants whether or not findings of claims of ownership and consenting or non-consenting owners are precisely stated. Certainly, the title litigation was not within the purview of the Division.

Finally, due to the District Court ruling there are no longer any contingent interests. For this reason, there is no reason to grant the relief sought by the Welches.

WHEREFORE, the Division:

A. In its discretion, may correct findings that parties are or are not "respondents;"

B. In its discretion, may correct findings that certain parties are consenting interest owners to the drilling of the oil and gas wells proposed under the compulsory pooling applications.

C. Deny any requested relief seeking to amend the orders to reflect claimed ownership that has now been decided by the District Court.

Respectfully submitted,

PADILLA LAW FIRM, P.A.

/s/ ERNEST L. PADILLA

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/s/ ERNEST L. PADILLA
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**STATE OF NEW MEXICO
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES
OIL CONSERVATION DIVISION**

**APPLICATION OF MEWBOURNE OIL COMPANY FOR [*Inter Alia*]
NON-STANDARD SPACING AND PRORATION UNITS,
COMPULSORY POOLING, AND UNORTHODOX
GAS WELL LOCATIONS, EDDY COUNTY, NEW MEXICO**

**CASE NOS. 15547,
15548, 15549, 15550,
15551, 15552, 15562
Consolidated**

PRE-HEARING STATEMENT

James Wesley Welch, Joe Michael Welch and Barbara Grace Parker (“the Welches”), provisionally provide this Pre-Hearing Statement in these consolidated cases as required by the rules of the Division.

APPEARANCES

OPPONENT:

JAMES WESLEY WELCH, JOE
MICHAEL WELCH, BARBARA GRACE
PARKER and TUFFY OIL CO., LLC

**JAMES WESLEY WELCH’S, JOE
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STATEMENT OF THE CASE

Welch, et al. will present their Motion to Amend Orders No. R-13879-A, R-13814-A, R-13749-A, R-13751-A, R-13959-A, R-14018-A and R-14415, copy attached. Also, please refer to our original Pre-Hearing Statement dated November 21, 2016, copy attached.

PROPOSED EVIDENCE

OPPONENT: JAMES WESLEY WELCH, JOE MICHAEL WELCH AND BARBARA GRACE PARKER EST. TIME EXHIBITS

WITNESSES: None at this time. Counsel may make certain statements and request the examiners take administrative notice of certain matters.

APPLICANT: MEWBOURNE OIL COMPANY EST. TIME EXHIBITS

WITNESSES:

PROCEDURAL MATTERS

The seven compulsory pooling cases should be consolidated for hearing, with separate orders issued for each case.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

By: J. Scott Hall

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Seth C. McMillan
Post Office Box 2307

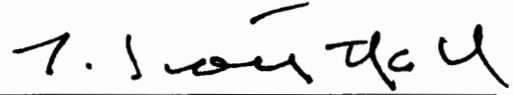
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J. Scott Hall

other and named the other the executor or executrix of the deceased's estate. Both agreed in paragraph 6 that the "survivor **shall** divide our estate, which is community property, in the following manner, to-wit: the community interest of HERBERT WELCH **shall** be equally divided between Joe H. Welch, his brother, and Grace Welch Phelan, his sister; the community interest of MARIE G. WELCH **shall** be equally divided between Judge H. D. Griffin, her brother, Ralph S. Griffin, a nephew, and S. G. Alderman, a cousin, each to share and share alike therein" (emphasis added). The Mutual Will, therefore, expressed Herbert and Marie Welch's intention that the mineral interests they held in Eddy County, be distributed among the Welch family, Judge H. D. Griffin, Ralph S. Griffin, and Samuel G. Alderman.

Herbert Welch died on May 2, 1974. That same year, Marie Welch caused the Mutual Will to be admitted to probate in Eddy County. The Eddy County Probate Court admitted the Mutual Will to probate, qualified Marie Welch as executrix of Herbert Welch's estate, and ordered that the properties inventoried as part of Herbert Welch's estate (including the Eddy County mineral interests) be "distributed to Marie G. Welch as provided by the decedent's Last Will and Testament".

The Welches, as heirs and devisees of Joe H. Welch and Grace Welch Phelan, claim ownership of the Herbert Welch community interests under the 1974 Mutual Will, being a net 145 mineral acres under the above described lands which are unleased. The Welches, claim that the 1974 Mutual Will resulted in an intermediary estate in Marie Welch during her lifetime, and a remainder interest in Joe H. Welch and Grace Welch Phelan which automatically vested upon Herbert Welch's death.

Alternatively, if the Court in the pending title controversy, for any reason, does not confirm the vested future interest in the Welches as claimed, then the Welches claim the same interest under the 1974 Mutual Will through the irrevocable, contractual obligations of Marie Welch under the Will, whereby they obtained an equitable remainder interest in Herbert Welch's community property which became fully vested in possession upon Marie Welch's demise in 1988.

Finally, if the proceeding claims of the Welches are not confirmed by the Court, for any reason, the Welches are still entitled to the same interests in the property under a supplemental will of Marie Welch dated July 3, 1980, which left Herbert Welch's community share of the subject property to Joe H. Welch, the Welches' predecessor-in-interest and title.

The adverse claims in the pending title litigation have a genesis in a 2007 Heirship Determination case filed in the Fifth Judicial District Court in Eddy County, New Mexico, by Ralph S. Griffin, a devisee under the 1974 Will and the 1980 Will of Marie Welch. The Petition alleged "No Last Will and Testament by Marie (Welch) has been located", and to the best of Ralph's knowledge, information and belief, Marie died intestate. The sworn affidavit was false; Marie Welch died testate. No notice of the Heirship Determination case was served on any of the Welches. Instead, Griffin published notice addressed solely to the "unknown heirs of Marie Griffin Welch." The Court relied on Ralph Griffin's false petition and on March 30, 2007 adopted verbatim Griffin's proposed Final Judgment providing "No Last Will and Testament by Marie (Welch) has been located. Marie died intestate." Accordingly, the entire property owned by Herbert and

Marie Welch was declared to be owned by Ralph Griffin, Marie Welch's sole heir. The Welches claim the 2007 Heirship proceeding and Judgment are void for lack of jurisdiction, the result of failing to provide notice to the Welches in derogation of their right to due process under the New Mexico Probate Code and the United States Constitution. Griffin's interest acquired in the Heirship Determination was sold, and successors in interest acquired leasehold title claims adverse to the unleased mineral ownership claims of the Welches. These adverse leasehold interests are currently owned by Premier Oil & Gas, Inc. and other parties.

Mewbourne Oil Company submitted well proposals and AFE's to the Welches, seeking their voluntary participation in each of the wells identified on pages 2 and 3, above. The Welches, through their operating company, Tuffy Oil Co., LLC, returned Mewbourne's executed Well Proposal Election Forms indicating their election to participate in the following wells:

Case No. 15548

Owl Draw "22-27" B2AP Federal Com. No. 1H

Case No. 15550

Owl Draw "23" DM Federal Com. No. 2H

Case No. 15551

Owl Draw "22-27" B2BO Federal Com. No. 2H

Case No. 15552

Owl Draw "22-27" B2MD Federal Com. No. 1H

Case No. 15562

Owl Draw 27/22 W2NC Fed. Com. #2H

The Welches have informed Mewbourne of their elections not to participate in these wells:

Case No. 15547

Owl Draw "22" W1AP Federal Com. No. 1H

Case No. 15549

Owl Draw "23" DM Federal Com. No. 1H

Pursuant to Division Rule 19.15.13.8.D NMAC, the Welches contend that no risk penalty should be recovered from production proceeds attributable to their interests if pooled into these two wells.

PROPOSED EVIDENCE

OPPONENT: JAMES WESLEY WELCH, JOE MICHAEL WELCH AND BARBARA GRACE PARKER **EST. TIME** **EXHIBITS**

WITNESSES: None at this time. Counsel may make certain statements and request the examiners take administrative notice of certain matters.

APPLICANT: MEWBOURNE OIL COMPANY **EST. TIME** **EXHIBITS**

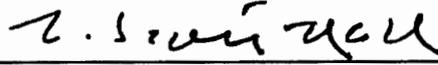
WITNESSES:

PROCEDURAL MATTERS

The seven compulsory pooling cases should be consolidated for hearing, with separate orders issued for each case.

Respectfully submitted,

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Attorneys for James Wesley Welch, Joe Michael Welch, and Barbara Grace Parker

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**MOTION TO AMEND ORDERS NO. R-13879-A, R-13814-A,
R-13749-A, R-13751-A, R-13959-A, R-14018-A and R-14415**

James Wesley Welch, Joe Michael Welch, Barbara Grace Parker and Tuffy Oil Co. LLC (“the Welches”) move the Division to amend certain findings in each of the orders referenced above to conform with the pleadings and the evidence presented at hearing. In support of their motion, the Welches state:

In each of the cases referenced above, the Applicant Mewbourne Oil Company sought and obtained substantially similar orders for *inter alia* the compulsory pooling of un-joined interests, and in certain instances approving of non-standard spacing and proration units and unorthodox well locations, for seven wells in Eddy County, New Mexico. All cases were consolidated for hearing before the Division’s Examiners on May 25, 2017 and on July 17, 2017, the Division entered orders in each case for specific wells, lands and locations as follow:

Case No. 15547; Order No. R-13879-A, Wolfcamp formation.

Owl Draw “22” W1AP Federal Com. No. 1H
Surface Location – 230’ FSL & 660” FEL (Section 15)
Bottom Hole Location – 333’ FSL & 650’ FEL (Section 22)
Sections 22, T26S, R27E, N.M.P.M.

Case No. 15548; Order No. R-13814-A, Bone Spring formation.

Owl Draw "22-27" B2AP Federal Com. No. 1H
Surface Location- 200' FSL & 600' FEL (Section 15)
Bottom Hole Location – 336' (or 333' per AFE) FSL & 572' FWL (Section 27)
Sections 22 and 27, T26S, R27E, N.M.P.M.

Case No. 15549; Order No. R-13749-A, Wolfcamp formation.

Owl Draw "23" DM Federal Com. No. 1H
Surface Location – 375' FSL & 990" FWL (Section 14)
Bottom Hole Location – 344' FSL & 625' FWL (Section 23)
Sections 23, T26S, R27E, N.M.P.M.

Case No. 15550; Order No. R-13751-A, Wolfcamp formation.

Owl Draw "23" DM Federal Com. No. 2H
Surface Location – 370' FSL & 1055' FWL (Section 14)
Bottom Hole Location – 334' FSL & 661' FWL (Section 23)
Sections 23, T26S, R27E, N.M.P.M.

Case No. 15551; Order No. R-13959-A, Bone Spring formation.

Owl Draw "22-27" B2BO Federal Com. No. 2H
Surface Location – 330' FNL & 1585' FEL (Section 22)
Bottom Hole Location – 330' FSL & 1980' FEL (Section 27)
Sections 22 and 27, T26S, R27E, N.M.P.M.

Case No. 15562; Order No. R-14415, Wolfcamp formation.

Owl Draw 27/22 W2NC Fed. Com. No. 2H
Surface Location – 170' FSL & 2230' FWL (Section 27)
Bottom Hole Location – 330' FNL & 2310' FWL (Section 22)
Section 27 and Section 22, T26S, R27E, N.M.P.M.

Case No. 15552; Order No. R-14018-A, Wolfcamp formation.

Owl Draw "22-27" B2MD Federal Com. No. 1H
Surface Location- 170' FSL & 330' FWL (Section 27)
Bottom Hole Location – 330' FNL & 330' FWL (Section 22)
Sections 27 and 22, T26S, R27E, N.M.P.M.

In each case, the orders pooled "all uncommitted interests, whatever they may be" within the spacing units for each of the formations indicated. Those orders with a "-A" suffix supplement

previous orders entered by NMOCD pursuant to earlier hearings that proceeded without proper notice to all the claimants to title involved. Except for the wells, locations, formations and lands, all of the “-A” orders appear to be identical. The “Welch Heirs”, Tuffy Oil Co., Premier Oil & Gas and Blair Seaton Crooke are identified as “Respondents”. (Findings ¶ 8) These orders also find that “Respondents” have not agreed to pool their interests in each case. (Findings ¶ 12) They also recite that “[n]one of the Respondents except Blair Seaton Crooke (“Crooke”) claims a working or unleased mineral interest in the Unit. (Findings ¶ 13). Findings ¶¶ 12 and 13 are inaccurate as to the Welch heirs and result in confusion.

Case No. 15562 was initiated following the other cases and had not been previously heard by NMOCD. Therefore, Order No. R-14415 does not reflect an “-A” suffix. It effectively provides the same relief as the other orders, but refers to the Respondents as “contingent owners”. Order No. R-14415 does not contain findings like Findings ¶¶ 12 and 13 in the (“-A”) orders.

All of the Division’s orders referenced above refer to the pendency of quiet title litigation. (*In The Matter Of The Last Will And Testament Of Marie G. Welch, Deceased; Premier Oil and Gas, Inc. v. Mewbourne Oil Company, et. al.; 5th Judicial District Cause No. D-503-PB-2012-00036-LBR.*) In that quiet title proceeding, the Welches, as heirs and devisees of Joe H. Welch and Grace Welch Phelan, claim ownership of the Herbert Welch community interests, being a net 145 mineral acres under the lands affected by Mewbourne’s compulsory pooling Applications. These mineral interests are unleased. **Pre-Hearing Statement; James Wesley Welch, Joe Michael Welch and Barbara Grace Parker**, (November 21, 2016), pg. 4. The Eddy County quiet title proceeding remains unresolved, but there has been no determination that the Welches do not own the unleased mineral interests they claim. To the

extent that Findings ¶¶ 13 in each of the “-A” orders indicate that the Welches do not claim unleased mineral interests, those findings are incorrect.

Mewbourne Oil Company submitted well proposals and AFE’s to the Welches, seeking their voluntary participation in each of the wells identified above. The Welches, through their operating company, Tuffy Oil Co., LLC, returned Mewbourne’s executed Well Proposal Election Forms indicating their election to participate in the following wells:

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Case No. 15562

Owl Draw 27/22 W2NC Fed. Com. #2H

Pre-Hearing Statement; James Wesley Welch, Joe Michael Welch and Barbara Grace Parker, (November 21, 2016), pg. 6. Accordingly, Findings ¶¶ 12 stating that “Respondents” have not agreed to pool their interests, to the extent the Welches are included within that definition, are incorrect in the following orders: R-13841-A, R-13751-A, R-13959-A, and R-14018-A. Order No. R-14415 does not include language like that in Finding ¶¶ 12 in the “-A” orders, making reference to “contingent owners” instead. For the reason that the Welches voluntarily agreed to

participate in the Owl Draw 27/22 W2NC Fed Com No. 2H, Order No. R-14415 should be clarified.

The Welches informed Mewbourne of their elections not to participate in these wells:

Case No. 15547

Owl Draw “22” W1AP Federal Com. No. 1H

Case No. 15549

Owl Draw “23” DM Federal Com. No. 1H

Pre-Hearing Statement; James Wesley Welch, Joe Michael Welch and Barbara Grace Parker, (November 21, 2016), pg. 7. Correspondingly, as to these wells Finding ¶¶ 12 in Orders R-13879-A and R-13749-A are not inaccurate and do not require correction.

WHEREFORE, the Welches request that the following changes be made by way of the issuance of *nunc pro tunc* orders amending the orders entered on June 27, 2017 as follow:

(1) As to all of the “-A” orders, Findings ¶¶ 13 should be changed to reflect that the Welches do own or claim unleased mineral interests.

(2) As to Orders R-13841-A, R-13751-A, R-13959-A and R-R-14018-A, Findings ¶¶ 12 should be changed to clarify that certain parties other than the Welches have not agreed to pool their interests.

(3) As to Order No. R-14415, Finding ¶ 12 should be changed to clarify that interest owners other than the Welches have not agreed to pool their interests.

Counsel for Mewbourne Oil Company and Blair Seaton Croke do not oppose this motion. Premier Oil & Gas, Inc. is undecided at this time.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following counsel of record by electronic mail on September 21, 2017:

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