



**MONTGOMERY
& ANDREWS**
LAW FIRM

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November 21, 2016

HAND-DELIVERED

Florene Davidson
New Mexico Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87505

**Re: 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**

Dear Ms. Davidson:

Enclosed for filing in each of the 7 cases referenced above are the originals and one copy of the Pre-Hearing Statements of James Wesley Welch, Joe Michael Welch and Barbara Grace Parker.

Thank you.

Very truly yours,

J. Scott Hall

Enclosures
cc (via email, w/enc.): James Bruce, Esq.
Ernest L. Padilla, Esq.

REPLY TO:

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STATE OF NEW MEXICO 2015 NOV 21 P 3:07
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
MICHAEL WELCH'S AND BARBARA
GRACE PARKER'S ATTORNEY**

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APPLICANT

MEWBOURNE OIL COMPANY

APPLICANT'S ATTORNEY

James Bruce
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OTHER PARTY

PREMIER OIL AND GAS, INC.

OTHER PARTY'S ATTORNEY

Ernest L. Padilla
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STATEMENT OF THE CASE

Applicant Mewbourne Oil Company seeks seven orders *inter alia* for the compulsory pooling of un-joined interests, and in certain instances approving of non-standard spacing and proration units and unorthodox well locations, all in Eddy County, New Mexico, as follow:

Case No. 15547

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

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

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

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

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. 15552

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.

Case No. 15562

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

BACKGROUND: THE WELCHES' POSITION

James Wesley Welch, Joe Michael Welch and Barbara Grace Parker are heirs of Herbert Welch and Marie G. Welch, who were husband and wife and are now deceased. Within the spacing and proration units dedicated to the Mewbourne wells indicated above, Herbert and Marie Welch owned certain mineral interests in the following lands:

- (a) Township 26 South, Range 27 East, NMPM,
Section 22: SE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$,
- (b) Township 26 South, Range 27 East, NMPM,
Section 23: NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$,
- (c) Township 26 South, Range 27 East, NMPM,
Section 27: W $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$;
- (d) Township 26 South, Range 27 East, NMPM,
Section 28: SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$.

The mineral interests of the Welch family, particularly those that are derived from the community shares of Herbert Welch, are currently the subject of litigation pending before the Eddy County District Court: *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.

On February 6, 1974, Herbert and Marie Welch executed a joint and mutual will (the "Mutual Will") titled "Last Will and Testament of Herbert Welch and Marie G. Welch." In the Mutual Will, Herbert and Marie Welch both made reciprocal devises to the

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.

Hebert 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,

MONTGOMERY & ANDREWS, P.A.

By: 

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

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 21, 2016:

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