

# Exhibit 4

CAUSE NO. 12-07-U4237-OTH

ESTATE OF	§	IN THE 112 <sup>TH</sup> JUDICIAL
MARJORIE T. CONNELL,	§	DISTRICT COURT OF
DECEASED	§	UPTON COUNTY, TEXAS

**PETITION IN INTERVENTION AND MOTION TO  
SET ASIDE "ORDER PROBATING FOREIGN WILL AND  
APPOINTING INDEPENDENT ADMINISTRATOR"**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Intervenor Eleanor Ahern, f/k/a Eleanor Marguerite Connell Hartman, in her capacity as Trustee of The W.N. Connell and Marjorie T. Connell Living Trust, under the Trust Agreement dated May 18, 1972, including Trust No. 2 created under such trust agreement, and files this Petition In Intervention and Motion to Set Aside the "Order Probating Foreign Will and Appointing Independent Administrator" entered by this Court on or about August 7, 2012 for lack of subject matter jurisdiction, respectfully showing as follows:

1.

Intervenor is an individual who is the successor Trustee of The W.N. Connell and Marjorie T. Connell Living Trust, under the Trust Agreement dated May 18, 1972, and is the daughter and only surviving child of Marjorie T. Connell, Deceased. Intervenor's daughter Jacqueline Montoya has already appeared in this litigation and may be served by service upon her Texas resident agent, Ms. Mary Lou Cassidy, of Stubbeman, McRae, Sealy, Laughlin & Browder, Inc., 550 West Texas, Suite 800, Midland, Texas 79701. Intervenor's daughter Kathryn Anne Bouvier has waived issuance of service and citation and entered her appearance in this matter, and may be served by mail

7.12.2013 FILED AT 1:28 PM  
CLERK OF COURT  
*[Signature]*

ECA155

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AA 2428

addressed to Ms. Kathryn A. Bouvier, 8461 Purple Sage Road, Middleton, Idaho 83644.

## II.

Intervenor Eleanor Ahern, in her capacity as Trustee of The W.N. Connell and Marjorie T. Connell Living Trust, under the Trust Agreement dated May 18, 1972, including Trust No. 2, has a justiciable interest in this matter because the Trust holds legal title to certain surface interests and oil and gas interests in Upton County, Texas, which Intervenor has a fiduciary duty to administer, and the "Application for Original Probate of Foreign Will and Issuance of Letters of Independent Administration" filed by Applicant Jacqueline Montoya on July 7, 2012, and the subsequent "Order Probating Foreign Will and Appointing Independent Administrator" entered by this Court on August 7, 2012, cloud title to the trust assets that Intervenor has a responsibility to administer. Moreover, the Order signed by this Court on August 7, 2012 admitting the foreign will of Marjorie T. Connell, Deceased to probate in Texas is void for lack of subject matter jurisdiction, and must be set aside for this reason.

## III.

This Petition in Intervention is timely filed. Intervenor was not personally served with process in this proceeding and has never entered an appearance in this cause, and only recently learned that an application to probate her mother's will had been filed in Texas. At that time, Intervenor was shocked to discover that this Court had been told by Applicant Jacqueline Montoya that: "No child was ever born to or adopted by . . ." Marjorie T. Connell. (Paragraph 5, page 1, "Application for Original Probate of Foreign Will and Issuance of Letters of Independent Administration.") Intervenor is the adopted daughter of Marjorie T. Connell, and a copy of the decree of adoption dated November 24, 1976 is attached to this Petition as Exhibit "A."

#### IV.

The "Application for Original Probate of Foreign Will and Issuance of Letters of Independent Administration" filed by Applicant Jacqueline Montoya on July 7, 2012, alleges that this Court has jurisdiction to admit the foreign will of Marjorie T. Connell to probate in Texas, although Marjorie T. Connell was domiciled in Nevada, because "... the Decedent owned property in Texas upon which her Will may operate ..." and "... Decedent owned oil, gas and mineral interests located in Upton County, Texas, of a probable value in excess of \$100,000.00." Petitioner would show that Decedent Marjorie T. Connell individually owned no surface interests or oil, gas and mineral interests in Upton County, Texas, at any time prior to her death, and that all such Upton County properties were the separate property of her husband, W.N. Connell, and were conveyed to The W.N. Connell and Marjorie T. Connell Living Trust, under the Trust Agreement dated May 18, 1972. Copies of the relevant deeds are attached to this Petition as Exhibit "B." Further, no Upton County real property has ever been conveyed to the Trustee or Trustees of Trust No. 3, which is the only trust affected by the foreign will of Marjorie T. Connell now erroneously admitted to probate by this Court. Because Decedent Marjorie T. Connell never owned oil and gas interests or any other real property interests in Upton County, and because the power of appointment exercised by her will did not affect title to oil and gas interests or other real property in Upton County, Texas, this Court has no subject matter probate jurisdiction over the probate of the foreign will of Marjorie T. Connell, Deceased.

#### V.

Lack of subject matter jurisdiction renders a judgment or order void, rather than merely voidable, and such a judgment or order may be challenged either directly or collaterally. Subject matter jurisdiction is never presumed to exist, and lack of subject matter jurisdiction cannot be

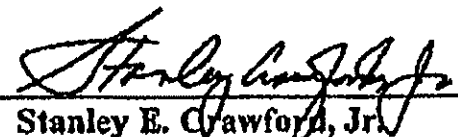


waived. When a trial court lacks subject matter jurisdiction, it has no discretion and must dismiss the case that has been filed as a ministerial act.

WHEREFORE, PREMISES CONSIDERED, Intervenor respectfully prays that this Court vacate its "Order Probating Foreign Will and Appointing Independent Administrator," and dismiss this litigation for lack of subject matter jurisdiction.

Respectfully submitted,

JOHNSTON & ASSOCIATES, P.C.  
400 W. Illinois, Suite 1600  
Midland, Texas 79701  
P. O. Box 2890  
Midland, Texas 79702-2890  
(432) 683-8844  
(432) 683-8855 - Fax

BY:   
Stanley E. Crawford, Jr.  
State Bar No. 05040500  
Jeffrey M. Johnston  
State Bar No. 10838480


ATTORNEYS FOR INTERVENOR,  
ELEANOR AHERN F/K/A ELEANOR  
MARGUERITE CONNELL HARTMAN

**CERTIFICATE OF SERVICE**

I hereby certify that on this the \_\_\_\_ day of July, 2013, I complied with TEX. R. CIV. P. 21 and 21a by mailing a copy of the above and foregoing instrument by certified mail, return receipt requested, to:

Ms. Jacqueline Montoya  
c/o Ms. Mary Lou Cassidy  
STUBBEMAN, MCRAE, SEALY, LAUGHLIN & BROWDER, INC.  
550 West Texas, Suite 800  
Midland, Texas 79701

Ms. Kathryn Anne Bouvier  
8461 Purple Sage Road  
Middleton, Idaho 83644

  
Stanley E. Crawford, Jr.

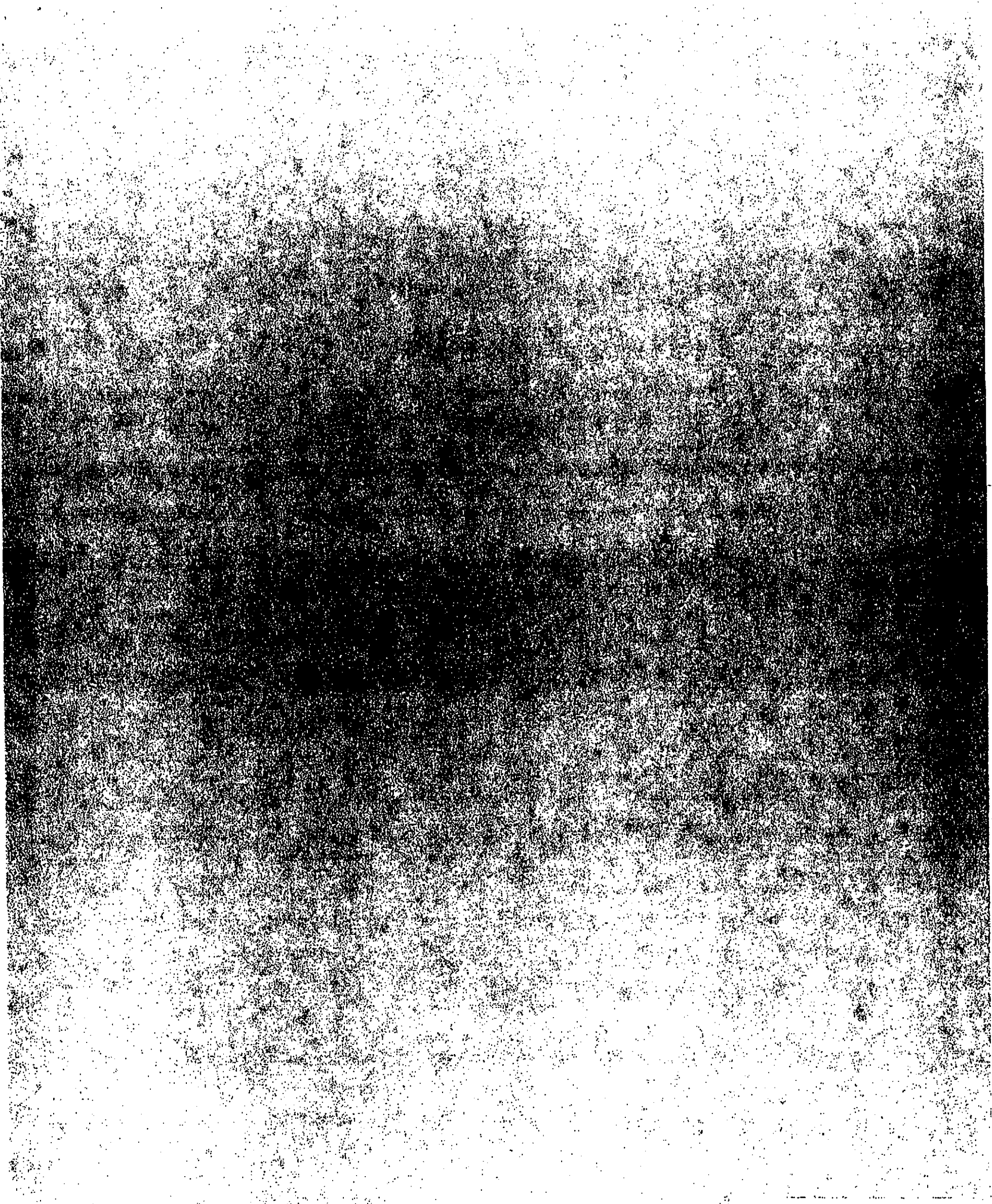


EXHIBIT L

AHERN 000591

CAUSE NO. 12-07-U4237-OTH

ESTATE OF	§	IN THE 112 <sup>TH</sup> JUDICIAL
MARJORIE T. CONNELL,	§	DISTRICT COURT OF
DECEASED	§	UPTON COUNTY, TEXAS

**SUPPLEMENTAL MOTION TO DISMISS**  
**FOR LACK OF JURISDICTION**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Eleanor Ahern, in her capacity as Successor Trustee of The W.N. Connell and Marjorie T. Connell Living Trust, under the Trust Agreement dated May 18, 1972, and files and serves this Supplemental Motion to Dismiss for Lack of Jurisdiction, respectfully showing as follows:

I.

This motion is filed in supplementation of the previous motion filed by this Movant to dismiss and/or vacate the "Order Probating Foreign Will and Appointing Independent Administrator" entered by this Court on or about August 7, 2012, for the additional reason that the record of these proceedings affirmatively shows that the only citation issued and served in this cause was issued in connection with the "Notice of Intention to Take the Deposition of Josefina C. Jones," and no citation that complied with Section 128 of the Texas Probate Code was ever issued or served in this proceeding.

II.

According to the Court's file in this cause, Jacqueline Montoya's "Application for Original

Probate of Foreign Will and Issuance of Letters of Independent Administration" was filed on July 12, 2012 at 2:55 p.m. Also on July 12, 2012 at 2:55 p.m., counsel for Applicant Jacqueline Montoya filed a "Notice of Intention to Take Deposition on Written Questions" of Josefina C. Jones, residing in Las Vegas, Nevada. A citation to serve the deposition notice was issued on July 12, 2012 at 3:15 p.m., and according to the sheriff's return, was executed by posting on July 12, 2012 at 3:14 p.m. No citation was issued or is in the file that gives notice that an application for probate has been filed, the name of the applicant seeking to probate the will, the time when the application will be acted upon, or notifying all persons interested in the probate that they might appear at that time to contest the application, as required by Section 128 of the Texas Probate Code. Nor is there any sheriff's return in the file reflecting service of any citation issued with respect to the probate application itself.

### III.

Section 88 of the Texas Probate Code requires that an applicant seeking to probate a will in Texas must prove that citation has been served and returned in the manner and for the length of time required by the Code. Absent proof of issuance and service of citation substantially in compliance with the statute, no court may act upon any application for the probate of a will. *Marrs v. Marquis*, 927 S.W.2d 304, 306 (Tex. App. – El Paso 1996, no writ); *Watson v. Dingler*, 831 S.W.2d 834, 839 (Tex. App. – Houston [14<sup>th</sup> Dist.] 1992, writ denied); *Williams v. White*, 105 S.W.2d 1105, 1106 (Tex. App. – Waco 1937, no writ). Even a defect as slight as failing to specify the name of the county where citation is to be posted renders any judgment admitting the will to probate void. *Green v. White*, 32 S.W.2d 488, 489-90 (Tex. Civ. App. – Waco 1930, no writ).

### IV.

Applicant Jacqueline Montoya completely failed to issue and serve citation with respect to her application to admit the foreign will of Marjorie T. Connell to probate in Texas. Accordingly,

the Court's August 7, 2012 "Order Probating Foreign Will and Appointing Independent Administrator" is void and must be dismissed and/or vacated and set aside.

WHEREFORE, PREMISES CONSIDERED, Eleanor Ahern, in her capacity as Successor Trustee of the 1972 Living Trust of William N. Connell and Marjorie Connell, requests this Court to vacate its August 7, 2012 order admitting the will of Marjorie Connell to probate in Texas because this Court had no jurisdiction to enter that order, both because Decedent Marjorie Connell did not own oil and gas interests in Upton County upon which her will might have operated, and because citation was not served and returned as required by Sections 88 and 128 of the Texas Probate Code.

Respectfully submitted,

JOHNSTON & ASSOCIATES, P.C.  
400 W. Illinois, Suite 1600  
Midland, Texas 79701  
P. O. Box 2890  
Midland, Texas 79702-2890  
(432) 683-8844  
(432) 683-8855 - Fax

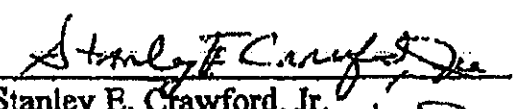

BY: Stanley E. Crawford, Jr.  
Stanley E. Crawford, Jr.  
State Bar No. 05040500  
Jeffrey M. Johnston  
State Bar No. 10838480

ATTORNEYS FOR INTERVENOR,  
ELEANOR AHERN F/K/A ELEANOR  
MARGUERITE CONNELL HARTMAN

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 3 day of October, 2013, I complied with TEX. R. CIV. P. 21 and 21a by mailing a copy of the above and foregoing instrument by certified mail, return receipt requested, to:

Ms. Mary Lou Cassidy  
Mr. Sean Guerrero  
STUBBEMAN, MCRAE, SEALY, LAUGHLIN & BROWDER, INC.  
550 West Texas, Suite 800  
Midland, Texas 79701

  
Stanley E. Crawford, Jr. 

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ESTATE OF	§	IN THE 112 <sup>TH</sup> JUDICIAL
MARJORIE T. CONNELL,	§	DISTRICT COURT OF
DECEASED	§	UPTON COUNTY, TEXAS

**SUPPLEMENTAL MOTION TO DISMISS**  
**FOR LACK OF JURISDICTION**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Eleanor Ahern, in her capacity as Successor Trustee of The W.N. Connell and Marjorie T. Connell Living Trust, under the Trust Agreement dated May 18, 1972, and files and serves this Supplemental Motion to Dismiss for Lack of Jurisdiction, respectfully showing as follows:

**I.**

This motion is filed in supplementation of the previous motion filed by this Movant to dismiss and/or vacate the "Order Probating Foreign Will and Appointing Independent Administrator" entered by this Court on or about August 7, 2012, for the additional reason that the record of these proceedings affirmatively shows that the only citation issued and served in this cause was issued in connection with the "Notice of Intention to Take the Deposition of Josefina C. Jones," and no citation that complied with Section 128 of the Texas Probate Code was ever issued or served in this proceeding.

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WHEREFORE, PREMISES CONSIDERED, Eleanor Ahern, in her capacity as Successor Trustee of the 1972 Living Trust of William N. Connell and Marjorie Connell, requests this Court to vacate its August 7, 2012 order admitting the will of Marjorie Connell to probate in Texas because this Court had no jurisdiction to enter that order, both because Decedent Marjorie Connell did not own oil and gas interests in Upton County upon which her will might have operated, and because citation was not served and returned as required by Sections 88 and 128 of the Texas Probate Code.

Respectfully submitted,

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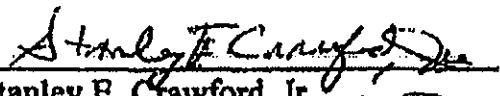

BY: *Stanley E. Crawford, Jr.*  
Stanley E. Crawford, Jr.  
State Bar No. 05040500  
Jeffrey M. Johnston  
State Bar No. 10838480

**ATTORNEYS FOR INTERVENOR,  
ELEANOR AHERN F/K/A ELEANOR  
MARGUERITE CONNELL HARTMAN**

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Mr. Sean Guerrero  
STUBBEMAN, MCRAE, SEALY, LAUGHLIN & BROWDER, INC.  
550 West Texas, Suite 800  
Midland, Texas 79701

  
Stanley E. Crawford, Jr. 

# Exhibit 5

**STUBBEMAN, McRAE, SEALY, LAUGHLIN & BROWDER, INC.**  
ATTORNEYS AT LAW

FASKEN CENTER • TOWER TWO  
550 WEST TEXAS AVENUE, SUITE 800  
MIDLAND, TEXAS 79701  
432.682.1616  
FACSIMILE 432.682.4884  
www.stubbemanlawfirm.com

SEAN GUERRERO  
Direct Dial: 432.688.0242  
ALSO LICENSED IN NEW MEXICO  
sguerrero@stubbemanlawfirm.com

September 30, 2013

Via facsimile (713)646-4371  
and CMRRR#7003 3110 0002 5180 6836

Plains Marketing, L.P.  
Attn: Division Orders Dept.  
P.O. Box 4648  
Houston, Texas 77210

Re: William and Marjorie Connell Living Trust, Marjorie Connell and Eleanor  
Hartman, Co Trustees

Owner Numbers: 0782216  
0488845

To Whom It May Concern:

I write on behalf of our client, Jaqueline M. Montoya, individually and in her capacity as trustee of the MCT Living Trust, Plaintiff in Cause No. P-09-066425-1; *In the Matter of the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972*. The lawsuit referenced concerns oil and gas royalty and interest payments into the W. N. Connell and Marjorie T. Connell Living Trust, Eleanor Ahern, Trustee. I enclose a copy of the filed petition and confirmation of filing for your reference. We will follow up with a file-marked copy of the petition once we have received it.

Due to the dispute regarding the distribution of payments, a portion of which has been made by your company, we request that Plains Marketing hold in suspense all payments to the W. N. Connell and Marjorie T. Connell Living Trust until this lawsuit has been resolved. We request that you take action immediately so that no further payments are distributed until this suit is resolved. Please let me know if you have any questions. We appreciate your cooperation and look forward to working with you.

Very truly yours,

  
Sean Guerrero

SMG:mg  
Enclosure

AHERN 000780

## E-Filing Details

Page 1 of 2

**Details of filing:** *Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 163.031(1)(E), and NRS 164.033(1)(A)*  
**Filed in Case Number:** P-09-066425-T

**E-File ID:** 4825009**Lead File Size:** 7436895 bytes**Date Filed:** 2013-09-27 13:33:35.0**Case Title:** P-09-066425-T**Case Name:** In the Matter of the Trust of The W.N. Connell and Marjorie T. Connell Living Trust, dtd May 18, 1972**Filing Title:** *Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 163.031(1)(E), and NRS 164.033(1)(A)***Filing Type:** EFO**Filer's Name:** Layne Rushforth**Filer's Email:** office@rushforth.net**Account Name:** lrushforth**Filing Code:** PET**Amount:** \$ 3.50**Court Fee:** \$ 0.00**Card Fee:** \$ 0.00**Payment:** Filing still processing, Payment not yet captured.**Comments:****Courtesy Copies:** probate@rushforthfirm.com**Firm Name:** The Rushforth Firm, Ltd.**Your File Number:** 7242/dld**Status:** Submitted - (B)**Date Accepted:****Review  
Comments:****Reviewer:****File Stamped  
Copy:****Cover Document:****Documents:****Lead Document:** Petition for Declaratory Judgment.pdf 7436895 bytes**Data Reference  
ID:****Credit Card System Response:** VQEC9F024854**Response: Reference:**

PETN  
THE RUSHFORTH FIRM, LTD.  
JOSEPH J. POWELL  
State Bar No. 8875  
P. O. Box 371655  
Las Vegas, NV 89137-1655  
Telephone (702) 255-4552  
fax: (702) 255-4677  
e-mail: probate@rushforthfirm.com  
Attorneys for Jacqueline M. Montoya

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

In re the Matter of the

THE W.N. CONNELL and MARJORIE  
T. CONNELL LIVING TRUST, dated  
May 18, 1972

A non-testamentary trust.

Case No.: P-09-066425-T  
Department: 26 (Probate)

**PETITION FOR DECLARATORY JUDGMENT REGARDING LIMITED INTEREST OF TRUST**  
**ASSETS PURSUANT TO NRS 30.040, NRS 153.031(1)(E), AND NRS 164.033(1)(A)**

Date of Hearing: October 11, 2013  
Time of Hearing: 9:30 a. m.

JACQUELINE M. MONTOYA ("Jacqueline"), as both an individual and also in her capacity as the trustee of the "MTC Living Trust" dated December 6, 1995, by and through her counsel of record, JOSEPH J. POWELL, Esq., of THE RUSHFORTH FIRM, LTD., hereby respectfully seeks a declaration that ELEANOR C. AHERN, also known as Eleanor Marguerite Connell Hartman, both individually and in her capacity as the trustee of "The W.N. Connell and Marjorie T. Connell Living Trust" ("Trust"), dated May 18, 1972, is

Page 1

THE RUSHFORTH FIRM, LTD.  
Telephone: 702-255-4552 / Fax: 702-255-4677  
9505 Hillwood Drive, Suite 100  
Las Vegas, Nevada 89134-0514

AHERN 000782

1 entitled to only a 35% proportion of all income generated from gas, oil, and mineral leases,  
2 which are owned partially by the Trust and partially owned by another trust established by  
3 Marjorie T. Connell and in turn a declaration that Jacqueline and her sister, KATHRYN A.  
4 BOUVIER ("Kathryn") are entitled to the other 65% proportionate share of the income  
5 generated from these same gas, oil, and mineral leases. Jacqueline respectfully declares as  
6 follows:  
7

#### 8 A. OVERVIEW

9 Recently, Mrs. Ahern has asserted, without providing any logic or authority to  
10 support such assertion, that she is entitled to 100% of the proceeds from the leases for  
11 the Texas property and has refused to distribute the 65% proportion that has been  
12 distributed to Jacqueline and Kathryn since Mrs. Connell's death in May of 2009, and  
13 was previously distributed to Marjorie for the previous 29 years.  
14

#### 15 B. JURISDICTION OVER TRUST

16 B.1 This Court already has jurisdiction over "The W.N. Connell and Marjorie T.  
17 Connell Living Trust", dated May 18, 1972 ("Trust") and in turn Ms. Ahern. Pursuant to the  
18 "Order Assuming Jurisdiction Over Trust, Confirm Trustee, and for Construction of and  
19 Reform of Trust Instrument", dated September 4, 2009, this Court assumed jurisdiction  
20 over the Trust and confirmed Ms. Ahern as trustee of the Trust.  
21

22 B.2 Additionally, on information and belief, Ms. Ahern has continued to serve in  
23 the role as trustee of the Trust from that point in time through the present.  
24

25 B.3 There is nothing that has been discovered after review of the court file which  
26 indicates that any petition to remove this Court's jurisdiction over the Trust was ever filed  
27 subsequent to the September 4, 2009 Order.  
28

Page 2

THE RUSSELL FIRM, L.L.C.  
Telephone: 702-253-4552 / Fax: 702-253-4677  
9505 Hillwood Drive, Suite 100  
Las Vegas, Nevada 89134-0514

AHERN 000783



**C. BACKGROUND HISTORY**

C.1 W.N. Connell, also known as William N. Connell, and Marjorie T. Connell ("Marjorie") established "The W.N. Connell and Marjorie T. Connell Living Trust" on May 18, 1972.

C.2 By the express terms found on page one of the Trust instrument, the Trust revoked and entirely replaced a previous trust that was executed by the Connells on December 1, 1971, which was described as a "revocable living trust".

C.3 A copy of the Trust is attached hereto as Exhibit "A" and is hereby incorporated by this reference.

C.4 During the joint lifetimes of the Connells, all of the Trust assets were to be administered as prescribed under "Trust No. 1", which was a general, undivided "pot" trust.

C.5 After the death of the predeceased grantor, the Trust was to be divided into two subtrusts, known respectively as "Trust No. 2" and "Trust No. 3".

C.6 In describing the subtrusts in general, yet not entirely completely precise terms, Trust No. 2 was what would commonly be referred to as the "Decedent's Trust", while Trust No. 3 was what would commonly be referred to as the "Survivor's Trust". However, Trust No. 3 was also to serve as a "marital" trust as well. As to this marital trust component of Trust No. 3, Section Third of the Trust, titled "Marital Deduction" contains the following clause:

*The Trustee shall allocate to Trust No. 3 from the Decedent's separate property the fractional share of the said assets which is equal to the maximum marital deduction allowed for federal estate tax purposes reduced by the total of any other amounts allowed under the Internal Revenue Code as a Marital Deduction which are not a part of this trust estate. In making the computations and allocations of the said property to Trust No. 3 as herein required, the determination of the character and*

THE RUSIFORTH FIRM, L.T.D.  
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9505 Hillwood Drive, Suite 100  
Las Vegas, Nevada 89134-0514

1 *ownership of the said property and the value thereof shall be as finally*  
2 *established for federal estate tax purposes. This distribution is being made*  
3 *without regard to the death taxes payable by reason of the Decedent's death,*  
4 *which taxes shall be paid from Trust No. 2 only.*

5 C.7 As to the Texas property, and more precisely the acreage and accompanying  
6 rights in minerals, gas, and oil on such acreage, which is the focus of this Petition, there is  
7 certainly a reference to that land and those rights being Mr. Connell's separate property.

8 C.8 As outlined on schedule A for the Trust, which was executed the same day as  
9 the Trust, there is clear reference to real property in Upton County, Texas and oil, gas, and  
10 mineral rights/leases being the separate property of Mr. Connell. A copy of Schedule A of  
11 the Trust is attached hereto as Exhibit "B" and is hereby incorporated by this reference.

12 C.9 W.N. Connell died on November 24, 1979. Mr. Connell died as a resident of  
13 Boulder City, Nevada.

14 C.10 Therefore, Trust No. 3 became Marjorie's trust, meaning that she was free to  
15 amend the provisions of it or to revoke it entirely as she saw fit. Specifically, Marjorie was  
16 given a power of appointment over Trust No. 3.

17 C.11 As to Trust No. 2, it became irrevocable upon Mr. Connell's death. The  
18 provisions of Trust No. 2 expressly state that all income generated from it shall be paid to  
19 the "Residual Beneficiary" which was/is Ms. Ahern. As it relates to income distributions,  
20 Trust No. 2 also contained the following statement:

21 *In the event that any of the real property located in Upton County, Texas,*  
22 *as listed on the original Schedule "A" attached hereto, forms a part of the*  
23 *corpus of this Trust, the Residual Beneficiary shall be paid an additional*  
24 *payment from the income received from the Decedent's half of the*  
25 *community property, which forms a part of the corpus of this Trust from the*  
26 *real property located in Upton County, Texas.*

27 C.12 Trust No. 2 also stated that "All other income received by this Trust shall be  
28

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3505 Hillwood Drive, Suite 100  
Las Vegas, Nevada 89134-0514

1 distributed to the Survivor".

2 C.13 As to principal distributions from Trust No. 2, Marjorie, as the surviving  
3 Trustor, had various powers over principal distributions.

4 C.14 On May 6, 1980, Marjorie and Ms. Ahern executed a document titled  
5 "Substitution of Trustee". A copy of the "Substitution of Trustee" is attached hereto as  
6 Exhibit "C" and is hereby incorporated by this reference.

7 C.15 The purpose of the "Substitution of Trustee" was to add Ms. Ahern as a co-  
8 trustee with Mrs. Connell of the "separate property of W.N. Connell presently held in the  
9 above-entitled Trust" in accordance with the terms of Trust No. 2.

10 C.16 On December 16, 1980, a state of Texas "Inheritance Tax Return----Non-  
11 Resident" was executed by the tax preparer, Darrell Knight of Darrell Knight Assoc. Inc.-PC,  
12 out of Abilene, Texas, and Mrs. Connell, in her capacity as executrix of the Estate of Mr.  
13 Connell, for Mr. Connell. A copy of the Texas Return is attached hereto as Exhibit "D" and  
14 is hereby incorporated by this reference.

15 C.17 In the schedules attached to the Texas Return, there is reference to land in  
16 Upton County, Texas and also mineral rights on that same land being split in a proration  
17 close to 65%/35% (the precise split was 64.493% and 35.507%), with the schedules  
18 reflecting "ownership" by Marjorie of the larger amount and "ownership" by Ms. Ahern of  
19 the smaller amount.

20 C.18 A Federal Estate Tax Return, Form 706, was also prepared and filed in 1980  
21 for Mr. Connell as well. In fact, the Form 706 was prepared prior to the Texas Return and  
22 was the basis for the allocation and figures reflected on the Texas Return. It was a Nevada  
23 accountant who calculated the applicable allocations, including the marital deduction  
24

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1 percentage. Therefore, all of the intricate calculations, including the allocations between  
2 Trust No. 2 and Trust No. 3, were done for purposes of the Form 706. As such, Mr. Knight  
3 simply took those percentages from the Form 706 and in turn applied them to the appraised  
4 value of the surface and minerals in Upton County, Texas.  
5

6 C.19 Both the Form 706 and the Texas Return were submitted together to both the  
7 IRS and the state of Texas. A closing letter was later received from the IRS approving of the  
8 Form 706 and the amount that had been submitted as owing tax. Similarly, the State of  
9 Texas, via the State Comptroller, also accepted the Texas Return as well. Copies of both of  
10 those documents can be submitted upon request of this Court.  
11

12 C.20 Unfortunately, a copy of the Form 706 that was filed for Mr. Connell's estate  
13 cannot be located. Despite the diligent efforts of Jacqueline to locate a copy of the Form  
14 706 she has simply had no success in finding it. These efforts have included Jacqueline, in  
15 her capacity as the personal representative of Marjorie's estate, making a request to the  
16 Internal Revenue Service. After searching their records, the IRS informed Jacqueline that  
17 they were unable to locate a copy of the Form 706 that was filed. A copy of the letter from  
18 the IRS which informed Jacqueline of this fact can be provided upon the request of this  
19 Court. In addition, to seeking a copy of the Form 706 directly from the IRS, Jacqueline has  
20 spent numerous hours looking through all of the records that she has copies of, which has  
21 included looking through storage sheds and safe deposit boxes.  
22

23 C.21 Despite not being able to locate a copy of the Form 706, as noted above, the  
24 proof of the figures reflected therein is evidenced by the those which were in turn reflected  
25 on the Texas Return. Therefore, the Texas Return is the only surviving document that can  
26 be used to establish the proof of the allocations between the No. 2 and No. 3 subtrusts.  
27  
28

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1 C.22 Marjorie died on May 1, 2009. Marjorie died as a resident of Clark County,  
2 Nevada.

3 C.23 Up to the date of her death, Marjorie was receiving approximately 65% of the  
4 income generated by the various oil, gas, and mineral rights' leases that had been signed  
5 over the years from the time of Mr. Connell's death. Therefore, she had been receiving  
6 distributions from these income sources for approximately 29 years. At no time did Ms.  
7 Ahern ever dispute that allocation of the income distributions between herself and Marjorie.  
8 In fact, Ms. Ahern, in her capacity as a co-trustee of the Trust, signed every document,  
9 including oil and gas leases, division orders, and tax returns, etc.  
10

11 C.24 Even Ms. Ahern's divorce documentation from 1984 acknowledges and  
12 documents the 65%/35% split. For purposes of privacy, such documentation can be  
13 provided to this Court for *in camera* review should this Court request it.  
14

15 C.25 In the Last Will and Testament of Marjorie T. Connell, which was executed  
16 by Marjorie on January 7, 2008, which is attached hereto as Exhibit "E" and is incorporated  
17 herein by this reference, Marjorie exercised her power of appointment over Trust No. 3 of  
18 the Trust. Specifically, under section 4.1 of her Will, which was titled "Exercise of Power  
19 of Appointment Granted by William N. Connell", Marjorie declared the following:  
20

21  
22 *In the W.N. Connell and Marjorie T. Connell Living Trust dated May 18,*  
23 *1972, Article Fifth Trust No. 3 Paragraph B(2) of the Trust, I was granted*  
24 *a testamentary power of appointment. I hereby exercise that power of*  
25 *appointment and appoint the entire principal and the undistributed income*  
26 *in Trust No. 3, if any, on my death to JACQUELINE MONTOYA and*  
*KATHRYN ANNE BOUVIER to be distributed in trust in accordance with*  
*the provisions of the MTC LIVING TRUST dated December 6, 1995, as*  
*restated on January 7, 2008.*

27 C.26 To ensure that Marjorie's exercise of the power of appointment was  
28



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1 recognized by Ms. Ahern, in her capacity as the now sole trustee of the Trust due to  
2 Marjorie's passing, a letter dated May 21, 2009 was sent to Ms. Ahern by Marjorie's estate  
3 planning attorney, David A. Strauss, notifying her of the such action being taken by  
4 Marjorie under the terms of her Will. A copy of the Attorney Strauss' letter to Ms. Ahern  
5 is attached hereto as Exhibit "F" and is incorporated herein by this reference.  
6

7 C.27 Marjorie executed the MTC Living Trust on December 6, 1995. Mrs. Connell  
8 subsequently executed a restatement of the MTC Living Trust on January 7, 2008. A copy  
9 of the MTC Living Trust is attached hereto as Exhibit "G" and is incorporated herein by this  
10 reference.  
11

12 C.28 The current beneficiaries of the MTC Living Trust are Jacqueline and Kathryn,  
13 with Jacqueline serving as the sole trustee.  
14

15 C.29 As noted above, on September 4, 2009, Ms. Ahern, as trustee of the Trust,  
16 obtained the "Order Assuming Jurisdiction Over Trust, Confirm Trustee, and for  
17 Construction of and Reform of Trust Instrument". As can be seen from the title of the  
18 Order, the Order had the effect of confirming the intended construction of Trust No. 2 in  
19 compliance with the stated intent of Mr. Connell, while at the same time reforming Trust  
20 No. 2.  
21

22 C.30 As to Trust No 2, the Order, in part, confirmed that following the death of Ms.  
23 Ahern, the beneficiaries of Trust No. 2 would be Jacqueline and Kathryn, in equal shares.  
24 The Order also had the effect of establishing that upon the resignation or incapacity of Ms.  
25 Ahern that the trustee of Trust No. 2 would be Jacquellno, or, if she was unable to serve,  
26 then Kathryn.  
27

28 C.31 As will be detailed further herein, since Marjorie's death, Jacqueline and

1 Kathryn have been receiving approximately 65% of the income generated from the various  
2 leases that have been signed regarding the Texas properties, with Ms. Ahern continuing to  
3 receive the remaining 35% as she has been for approximately the last 33 years.

4  
5 **D. PETITION FOR DECLARATORY RULING REGARDING INTERESTS IN TEXAS**  
6 **PROPERTY AND INCOME GENERATED FROM LEASES**

7 D.1 This Petition is brought pursuant to NRS 30.040, NRS 153.031(1)(e), and NRS  
8 164.033(1)(a).

9 D.2 NRS 30.040 provides for the following:

10 1. Any person interested under a deed, written contract or other writings  
11 constituting a contract, or whose rights, status or other legal relations are  
12 affected by a statute, municipal ordinance, contract or franchise, may have  
13 determined any question of construction or validity arising under the  
14 instrument, statute, ordinance, contract or franchise and obtain a  
15 declaration of rights, status or other legal relations thereunder.

16 2. A maker or legal representative of a maker of a will, trust or other  
17 writings constituting a testamentary instrument may have determined any  
18 question of construction or validity arising under the instrument and obtain  
19 a declaration of rights, status or other legal relations thereunder. Any  
20 action for declaratory relief under this subsection may only be made in a  
21 proceeding commenced pursuant to the provisions of title 12 or 13 of NRS,  
22 as appropriate.

23 D.3 NRS 153.031(1)(e) provides for the following:

24 1. A trustee or beneficiary may petition the court regarding any aspect of  
25 the affairs of the trust, including:

26 (e) Ascertaining beneficiaries and determining to whom property is to pass  
27 or be delivered upon final or partial termination of the trust, to the extent  
28 not provided in the trust instrument;

D.4 NRS 164.033(1)(a) provides for the following:

1. The trustee or an interested person may petition the court to enter an  
order;

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1 (a) If the trustee is in possession of, or holds title to, property and the  
2 property or an interest in it is claimed by another.

3 D.5 As stated out the outset of this Petition, within the last few months Ms. Ahern  
4 has asserted, without providing any logic or authority to support such assertion, that she  
5 is entitled to 100% of the proceeds from the leases for the Texas property and has refused  
6 to distribute the 65% proportion that has been distributed to Jacqueline and Kathryn since  
7 Mrs. Connell's death in May of 2009, and was previously distributed to Marjorie for the  
8 previous 29 years.  
9

10 D.6 Specifically, Jacqueline and Kathryn have not received distributions for the  
11 months of July, August, and September of 2013. Previous distributions had been averaging  
12 in the range of \$30,000 to each for Jacqueline and Kathryn. Therefore, as of the date of  
13 this filing, Jacqueline and Kathryn have experienced losses in excess of approximately  
14 \$100,000 each.  
15

16 D.7 As noted, there has been absolutely no explanation from Ms. Ahern as to why  
17 and under what authority she feels justified in undoing 33 years of precedent and now  
18 believes that she is entitled to 100% of the income from the leases. It seems as though the  
19 only answer being offered by Ms. Ahern is "because".  
20

21 D.8 As noted above, the allocation of a 65%/35% of the ownership of the Texas  
22 land and the leases involving the land, and more specifically what is actually in the soil and  
23 beneath it, was done in 1980. There is nothing to indicate that this allocation was done  
24 improperly at the time that it was done. Furthermore, there were professionals advising  
25 Marjorie as to how to accomplish this task as evidenced by the Form 706 as reflected in the  
26 Texas Estate tax return.  
27  
28



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1 D.9 Therefore, Jacqueline and Kathryn are extremely perplexed as to what has  
2 occurred in Ms. Ahern's mindset that would prompt her to believe that she is now entitled  
3 to 100% of the income from these leases despite 33 years of established precedent without  
4 complaint or assertion of mistake.  
5

6 D.10 As established, the allocation of the 65%/35% split occurred a very long time  
7 ago and under the supervision and expertise of professionals. There is absolutely nothing  
8 to suggest that this allocation was inappropriately done in 1980 and Ms. Ahern has never  
9 once asserted anything to this effect, either during the 29 years following the death of Mr.  
10 Connell in which Marjorie was receiving 65% of the income, nor the past 4 years since  
11 Marjorie's death in which the 65% has been equally divided between Jacqueline and  
12 Kathryn.  
13

14 D.11 Furthermore, this allocation was accepted by both the state of Texas, via the  
15 Comptroller, and the IRS. If either entity felt that the allocation being made was being done  
16 improperly, then both of these entities would surely have voiced concern. Likewise, as a co-  
17 trustee, Ms. Ahern had ample opportunity to voice a belief that the allocation was done  
18 improperly and to seek its redress. However, no such action was ever taken and no proof  
19 of mistake or error has ever been documented. Therefore, it must be determined that the  
20 allocation was properly made in 1980, which is why it is also logical that for the past 33  
21 years the allocation has been accepted and followed by Ms. Ahern without incident.  
22

23 D.12 Even in the off chance that the allocation was not done with complete  
24 precision, it is simply too late to question and relash the issue, as returns have been filed  
25 and accepted and rights have become vested under numerous equitable principles. Just as  
26 with statutes of limitations, or even with the offering of subsequently discovering a will of  
27  
28

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1 a decedent years after a probate has been conducted and concluded, there simply becomes  
2 a point in time when it is simply too late to seek redress of an issue.

3 D.13 As to why Ms. Ahern has only recently chosen to assert that she is entitled to  
4 100% of the income derived from the leases, only she herself knows the motivation behind  
5 this. However, the exponential increase in the value of the leases/royalties derived from  
6 them may have played a significant role in her unwarranted determination.  
7

8 D.14 To get full appreciation of what has occurred here, and why the actions of Ms.  
9 Ahern are so reprehensible and unacceptable, it is necessary to look back at the relevant  
10 factors that are at play and what has transpired over the last 33 years.  
11

12 D.15 Marjorie managed the 1972 Connell Trust properties until her death in 2009.  
13 She did the active negotiating with oil companies and surface users and consulted other  
14 relatives on decisions on the properties.  
15

16 D.16 Around the year 2000, Marjorie's health began to fail. She was still a resident  
17 of Las Vegas, as was Jacqueline. Marjorie requested that Jacqueline help her with the  
18 record keeping, deposits, and other aspects of managing the Texas oil and gas properties.

19 In respecting Marjorie's instructions, Jacqueline checked the mail, kept the records, and  
20 deposited the run checks. Marjorie and Ms. Ahern handled the leases and division orders,  
21 and the signing and copying of all documents. At no time did, Jacqueline ever act as trustee,  
22 but instead she acted at the direction of Marjorie who was a co-trustee. Again, Jacqueline  
23 was an aide to her grandmother and acted at her grandmother's direction.  
24

25 D.17 The money from the 1972 Connell Trust continued to be divided between Ms.  
26 Ahern and the MTC Living Trust in the same manner in which it had been divided since  
27 1980: 65% and 35%. The routine administrative duties followed by Jacqueline each month  
28

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1 included gathering the checks from the trust post office box and depositing them into an  
2 account in the name of Marjorie Connell and Ms. Ahern, which has been a longstanding  
3 account that was originally opened by Marjorie and Ms. Ahern in 1980. This account has  
4 always been referred to and commonly known by the parties as the "oil and gas account."

5  
6 D.18 As soon as all the income checks were in the bank from the various leases in  
7 effect, at approximately the first of the month, Jacqueline would proceed to divide the  
8 money, with 35% going to Ms. Ahern, and 65% going to Marjorie. Following Marjorie's  
9 passing, the 65% that previously went to Marjorie would now be divided between  
10 Jacqueline and Kathryn equally. Within the first few days of each month, the two parties,  
11 Ms. Ahern and Marjorie, which became three parties at the death of Marjorie, were able to  
12 rely on their share of the previous month's income from the various leases being reflected  
13 in their own individual bank accounts.  
14

15  
16 D.19 As part of this process, Jacqueline routinely and faithfully put the financial  
17 records on computer concerning the leases and the associated business expenses in tracking  
18 this information, allocated the money from the leases, and gave updates to Ms. Ahern and  
19 Kathryn.  
20

21 D.20 In recent times, Jacqueline, with the assistance of other professionals, has put  
22 in a tremendous amount of time and energy in negotiating new leases for the Texas  
23 properties, which, as noted above, was a task that had previously been done by Marjorie.  
24 Once the terms of a new lease, or the renewal of a previous lease, had been agreed upon and  
25 reviewed by professionals specializing in the field, Jacqueline gave Ms. Ahern the original  
26 documents and Ms. Ahern would sign them in the presence of a notary, and return the  
27 original and copies to Jacqueline. When production was developed in any well, Jacqueline  
28

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1 would get the division order from the mail and deliver it to Ms. Ahern to be signed and then  
2 returned the document to the oil and gas purchaser for payment.

3 D.21 Once the proceeds from the various leases were received and deposited in the  
4 "oil and gas account", Jacqueline divided the net income in the exact percentages that they  
5 had followed since 1980. Additionally, Jacqueline also dealt with an accountant in  
6 California, Corey Haina of Fast Tax, who had done the income taxes for approximately 8 to  
7 9 years for Marjorie, furnishing him with the 1099's and Jacqueline's records reflect the  
8 amount of money received from each purchaser of the oil and gas. Following Marjorie's  
9 passing, Ms. Ahern was agreeable to continue to have Mr. Haina continue to prepare the  
10 necessary returns.  
11

12 D.22 In addition to these tasks, Jacqueline also kept all of the check stubs and  
13 totaled them at year end for tax purposes. Jacqueline reconciled the income with the 1099's  
14 and gave all interested parties a three page summary at year end.  
15

16 D.23 As a matter of habit, the only time Jacqueline did not issue 100% of the  
17 income from the oil and gas account was when she started withholding a percentage of the  
18 income around the July runs so that there would be sufficient funds to pay the *ad valorem*  
19 taxes due in Upton County, Texas when that bill was received in October. Ms. Ahern was  
20 aware of this hold back for this purpose and verbally approved of such practice on multiple  
21 occasions. All expenses, income tax, accounting and legal fees, *ad valorem* taxes, and any  
22 miscellaneous expenses, such as office supplies, were dutifully deducted from distributions.  
23

24 All expenditures were reported to Ms. Ahern annually on the year-end report from  
25 Jacqueline. So that there is no confusion as to what capacity Jacqueline was acting since  
26 Marjorie's passing, it is necessary to keep in mind that Jacqueline has been serving as the  
27  
28

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1 sole trustee of the MTC Trust since Marjorie's death.

2 D.24 As stated above, a significant increase in value derived from the leases, and  
3 one in particular, occurred in 2012. In this time frame, a very lucrative lease was entered  
4 into with Apache Corporation covering part of the property in Upton County, Texas. The  
5 total bonus on this lease totaled in the millions, and Ms. Ahern, Jacqueline and Kathryn  
6 together received a total of \$1.7 million. This bonus was divided in the usual 65%/35% ratio.  
7

8 D.25 The signing of the lease leading to the bonus occurred in approximately April  
9 of 2013. On approximately July 4<sup>th</sup> and July 5<sup>th</sup> of 2013, a fair amount of time after the \$1.7  
10 million bonus was received, without any warning or explanation, Ms. Ahern had the post  
11 office box closed where income checks generated by the leases were mailed to.  
12 Additionally, at this same point in time, Ms. Ahern subsequently instructed the bank where  
13 the "oil and gas" account was located to take no direction from Jacqueline and to refuse to  
14 speak with her. For purposes of clarification, Jacqueline had been given signatory rights  
15 on the account by Marjorie to act on her behalf and as such access to the funds of the  
16 account to carry out the tasks that Jacqueline had performed at Marjorie's request, as has  
17 been detailed above.  
18  
19

20 D.26 The monthly payments from the income generated from the leases continued  
21 to be received from Ms. Ahern after the above actions were taken towards Jacqueline and  
22 Kathryn. The checks were smaller than they should have been and were distributed later  
23 than they had been when Jacqueline was making the distributions to each of the personal  
24 accounts. However, as noted above, all distributions stopped in July of 2013, when no  
25 checks were received by either Jacqueline or Kathryn.  
26  
27

28 D.27 Given the actions that were occurring, counsel based in Texas for Jacqueline



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1 and Kathryn contacted the Texas counsel for Ms. Ahern to attempt to get an understanding  
2 of why Ms. Ahern was taking these actions. The explanation from Ms. Ahern's counsel was  
3 that Ms. Ahern was entitled to 100% of the income from the leases and that any further  
4 distributions to Jacqueline and Kathryn would be gifts to them given by Ms. Ahern. To  
5 cement this position, the June 2013 distributions to Jacqueline and Kathryn were smaller  
6 than they otherwise should have been. On the deposit slip with the checks it was noted that  
7 the amounts were "gifts". To reiterate, following the June 2013 distributions, no additional  
8 distributions have been forthcoming to Jacqueline and Kathryn.  
9

10  
11 D.28 As stated above, there is no justification for what is occurring and as such it  
12 is crucial that this Court render an order declaring that Ms. Ahern has only a 35% interest  
13 in the proceeds generated from the oil, gas, mineral leases and that the remaining 65%  
14 belongs to the MTC Trust. As established, a 65%/35% split has been occurring for 33 years  
15 now and there is no reason nor justification for upsetting this long standing precedent and  
16 practice.  
17

18 D.29 Therefore, Jacqueline respectfully requests that this Court take all necessary  
19 action and make such rulings as are appropriate to force the status quo back into place.  
20

#### 21 E. DAMAGES

22 Jacquie and Kathryn have incurred substantial attorney's fees and costs in having  
23 to seek this declaratory judgment based on the unwarranted actions of Ms. Ahern. As such,  
24 Jacquie, on both her behalf and on behalf of Kathryn, hereby requests that this Court hold  
25 Ms. Ahern responsible for the damages that she has triggered by her unjustifiable and  
26 unwarranted actions. This request is made based on the provisions of NRS 153.031(3)(b),  
27 based on the applicability of that provision through NRS 164.005. However, the amount  
28

1 of damages will be discussed and set forth in an additional related petition that will be filed  
2 shortly hereafter. Therefore, for the sake of clarity, the request for damages is hereby made  
3 and preserved, but topic will be addressed in great detail in a related petition so as not to  
4 distract or confuse the straightforward declaration of rights and interests that is sought  
5 herein.  
6

7 **F. PRAYER**

8 JACQUELINE M. MONTOYA hereby prays for an Order of this Court:

9 **F.1 Declaring that:**

10 (a) ELEANOR C. AHERN, also known as Eleanor Marguerite Connell  
11 Hartman, both individually and in her capacity as the trustee of "The W.N. Connell  
12 and Marjorie T. Connell Living Trust", dated May 18, 1972, is entitled to only a 35%  
13 proportion of all real property located in Upton County, Texas, including the income  
14 generated from gas, oil, and mineral leases relating to such Upton County, Texas real  
15 property; and  
16

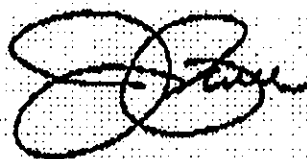
17 (b) JACQUELINE M. MONTOYA, in her capacities as a beneficiary and  
18 as the trustee of "MTC Living Trust" dated December 6, 1995, and in her capacity as  
19 a beneficiary of the power of appointment exercised by Marjorie T. Connell over  
20 Trust No. 3 of the "The W.N. Connell and Marjorie T. Connell Living Trust", dated  
21 May 18, 1972, and KATHRYN A. BOUVIER, in her capacity as a beneficiary of the  
22 "MTC Living Trust" dated December 6, 1995, and in her capacity as a beneficiary of  
23 the power of appointment exercised by Marjorie T. Connell over Trust No. 3 of the  
24 "The W.N. Connell and Marjorie T. Connell Living Trust", dated May 18, 1972, are  
25 entitled to a 65% proportionate share of all income generated from gas, oil, and  
26  
27  
28

1 mineral leases relating to Upton County, Texas real property.

2 F.2 Granting such other and further relief as the Court shall deem appropriate.

3  
4 Respectfully submitted,

5 THE RUSHFORTH FIRM, LTD.

6  
7  
8 

9  
10 JOSEPH J. POWELL  
11 State Bar No. 8875

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**JOHNSTON & ASSOCIATES, P.C.**

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*Board Certified in Civil Trial Law*  
MICHAEL A. SHORT

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(432) 683-8855 (Fax)

October 25, 2013

*Via E-Mail [smswindoll@paalp.com]*

PLAINS MARKETING, L.P.  
Plains Marketing GP Inc., General Partner  
P.O. Box 4648  
Houston, Texas 77210-4648  
*Attn: Ms. Susan M. Swindoll*

***Re: Your Correspondence of October 14, 2013 and the W.N. Connell and Marjorie T. Connell Living Trust, Dated May 18, 1972 (the "Trust").***

Dear Ms. Swindoll:

We represent Ms. Eleanor Ahern, Trustee of the W.N. Connell & Marjorie T. Connell Living Trust, dated May 18, 1972, and have been asked to respond to your letter of October 14, 2013, concerning the suspension of payments by Plains Marketing, L.P. for mineral production from the Upton County, Texas interests owned by the Trust. Plains has indicated that the suspension of payment is due to the petition for declaratory judgment filed by Jacqueline M. Montoya in Case No. P-09-066425-T, styled *In the Matter of the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972*, pending in the District Court of Clark County, Nevada forwarded to you by Sean Guerrero of the Stubbeman law firm. What Mr. Guerrero's letter fails to state is that in her Clark County petition, Ms. Montoya seeks a declaratory ruling that the 1972 Living Trust is entitled "only" to 35% of the income from mineral production on the Upton County, Texas interests in issue, because she claims that the 1995 MTC Living Trust is entitled to the other 65%. See the Prayer in the Petition for Declaratory Relief, at page 17. (Another copy of this petition is enclosed, for your ease of reference.)

The right of the W.N. Connell & Marjorie T. Connell 1972 Living Trust to receive at least a 35% share of all income from mineral production from the Upton County property is not disputed or questioned in the lawsuit filed by Ms. Montoya. There is no legitimate title dispute or "reasonable doubt" under Texas law that would justify suspending the payment by Plains Marketing,

*M:\Aherne\Plains Marketing.ltr.wpd*

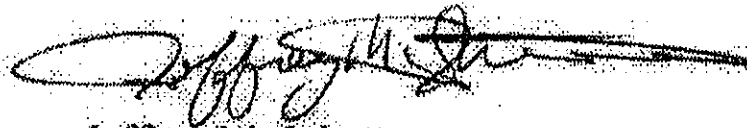
AHERN 000800

Ms. Susan M. Swindoll  
October 23, 2013  
Page 2

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L.P. of oil revenue attributable to the uncontested 35% interest. Please confirm that Plains Marketing, L.P. will continue to pay at least 35% of all revenue from the Trust's record interest in oil and gas production from the Upton County, Texas leases to Ms. Ahern, as Trustee of the Trust. If this is not immediately confirmed, we will advise our client to pursue recovery of the prejudgment interest authorized under Section 91.403, attorneys' fees and all other statutory remedies available under Section 91.401, *et seq.* of the Texas Natural Resources Code for the untimely payment of proceeds from mineral production.

Very truly yours,



Jeffrey M. Johnston

JMJ/tem

cc: Mr. Jeril Benedict, Esq. – Via E-Mail [jrbenedict@paalp.com]  
Ms. Eleanor Ahern – Via E-Mail  
Mr. Jeffrey Burr – Via E-Mail  
Ms. John Mugan – Via E-Mail  
Ms. Michael Lum – Via E-Mail

THE RUSHFORTH FIRM, LTD.  
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2 **JOSEPH J. POWELL**  
3 **State Bar No. 8875**  
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9 **e-mail: probate@rushforthfirm.com**  
10 **Attorneys for Jacqueline M. Montoya**

11  
12  
13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 **In the Matter of**

16 **THE W.N. CONNELL and MARJORIE**  
17 **T. CONNELL LIVING TRUST, dated**  
18 **May 18, 1972,**

19 **A non-testamentary trust.**

20 **Case No. P-09-066425-T**  
21 **Department: 26 (Probate)**

22 **NOTICE OF HEARING ON PETITION FOR DECLARATORY JUDGMENT**  
23 **REGARDING LIMITED INTEREST OF TRUST ASSETS PURSUANT TO**  
24 **NRS 30.040, NRS 153.031(1)(E), AND NRS 164.033(1)(A)**

25 **Date of Hearing: October 11, 2013**  
26 **Time of Hearing: 9:30 a.m.**

27 **Notice is hereby given that:**

28 **1. Jacqueline M. Montoya filed a "Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 153.031(1)(E), and NRS 164.033(1)(A)".**


**2. We are requesting a declaratory ruling on the W.N. Connell and Marjorie T. Connell Living Trust", dated May 18, 1972, is entitled to only a 35% proportion of all real property located in Upton County, Texas, including the income generated from gas, oil, and mineral leases relating**

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1 relating to such Upton County, Texas real property, while the MTC Living Trust dated December  
2 6, 1995, is entitled to the other 65% proportionate share of all income generated from gas, oil, and  
3 mineral leases relating to Upton County, Texas real property.

4 3. A hearing on this petition is scheduled in Dept. PC1, Family Court, Courtroom 9, 601  
5 North Pecos, Las Vegas, Nevada, on October 11, 2013 at 9:30 a.m. in the courtroom or hearing  
6 room designated for probate cases on that day.

7 4. All persons interested in this proceeding are hereby notified that if they have an  
8 objection to the petition, they must appear and show cause why the petition should not be granted.  
9 **YOU DO NOT NEED TO APPEAR UNLESS YOU WISH TO RAISE AN OBJECTION.**

10   
11 \_\_\_\_\_  
12 **JOSEPH J. POWELL**  
13 State Bar No. 8875  
14 P. O. Box 371655  
15 Las Vegas, NV 89137-1655

**SEP 27 2013**

Date

26  
27  
28  
**Notice of Probate Hearing**

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PETN  
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Attorneys for Jacqueline M. Montoya

DISTRICT COURT  
CLARK COUNTY, NEVADA

In re the Matter of the

THE W.N. CONNELL and MARJORIE  
T. CONNELL LIVING TRUST, dated  
May 18, 1972

A non-testamentary trust.

Case No.: P-09-066425-T  
Department: 26 (Probate)

PETITION FOR DECLARATORY JUDGMENT REGARDING LIMITED INTEREST OF TRUST  
ASSETS PURSUANT TO NRS 30.040, NRS 153.031(1)(E), AND NRS 164.033(1)(A)

Date of Hearing: October 11, 2013  
Time of Hearing: 9:30 a. m.

JACQUELINE M. MONTOYA ("Jacqueline"), as both an individual and also in her capacity as the trustee of the "MTC Living Trust" dated December 6, 1995, by and through her counsel of record, JOSEPH J. POWELL, Esq., of THE RUSHFORTH FIRM, LTD., hereby respectfully seeks a declaration that ELEANOR C. AHERN, also known as Eleanor Marguerite Connell Hartman, both individually and in her capacity as the trustee of "The W.N. Connell and Marjorie T. Connell Living Trust" ("Trust"), dated May 18, 1972, is

1 entitled to only a 35% proportion of all income generated from gas, oil, and mineral leases,  
2 which are owned partially by the Trust and partially owned by another trust established by  
3 Marjorie T. Connell and in turn a declaration that Jacqueline and her sister, KATHRYN A.  
4 BOUVIER ("Kathryn") are entitled to the other 65% proportionate share of the income  
5 generated from these same gas, oil, and mineral leases. Jacqueline respectfully declares as  
6 follows:  
7

#### 8 A. OVERVIEW

9  
10 Recently, Mrs. Ahern has asserted, without providing any logic or authority to  
11 support such assertion, that she is entitled to 100% of the proceeds from the leases for  
12 the Texas property and has refused to distribute the 65% proportion that has been  
13 distributed to Jacqueline and Kathryn since Mrs. Connell's death in May of 2009, and  
14 was previously distributed to Marjorie for the previous 29 years.  
15

#### 16 B. JURISDICTION OVER TRUST

17 B.1 This Court already has jurisdiction over "The W.N. Connell and Marjorie T.  
18 Connell Living Trust", dated May 18, 1972 ("Trust") and in turn Ms. Ahern. Pursuant to the  
19 "Order Assuming Jurisdiction Over Trust, Confirm Trustee, and for Construction of and  
20 Reform of Trust Instrument", dated September 4, 2009, this Court assumed jurisdiction  
21 over the Trust and confirmed Ms. Ahern as trustee of the Trust.  
22

23 B.2 Additionally, on information and belief, Ms. Ahern has continued to serve in  
24 the role as trustee of the Trust from that point in time through the present.

25 B.3 There is nothing that has been discovered after review of the court file which  
26 indicates that any petition to remove this Court's jurisdiction over the Trust was ever filed  
27 subsequent to the September 4, 2009 Order.  
28

### C. BACKGROUND HISTORY

C.1 W.N. Connell, also known as William N. Connell, and Marjorie T. Connell ("Marjorie") established "The W.N. Connell and Marjorie T. Connell Living Trust" on May 18, 1972.

C.2 By the express terms found on page one of the Trust instrument, the Trust revoked and entirely replaced a previous trust that was executed by the Connells on December 1, 1971, which was described as a "revocable living trust".

C.3 A copy of the Trust is attached hereto as Exhibit "A" and is hereby incorporated by this reference.

C.4 During the joint lifetimes of the Connells, all of the Trust assets were to be administered as prescribed under "Trust No. 1", which was a general, undivided "pot" trust.

C.5 After the death of the predeceased grantor, the Trust was to be divided into two subtrusts, known respectively as "Trust No. 2" and "Trust No. 3".

C.6 In describing the subtrusts in general, yet not entirely completely precise terms, Trust No. 2 was what would commonly be referred to as the "Decedent's Trust", while Trust No. 3 was what would commonly be referred to as the "Survivor's Trust". However, Trust No. 3 was also to serve as a "marital" trust as well. As to this marital trust component of Trust No. 3, Section Third of the Trust, titled "Marital Deduction" contains the following clause:

*The Trustee shall allocate to Trust No. 3 from the Decedent's separate property the fractional share of the said assets which is equal to the maximum marital deduction allowed for federal estate tax purposes, reduced by the total of any other amounts allowed under the Internal Revenue Code as a Marital Deduction which are not a part of this trust estate. In making the computations and allocations of the said property to Trust No. 3 as herein required, the determination of the character and*

ownership of the said property and the value thereof shall be as finally established for federal estate tax purposes. This distribution is being made without regard to the death taxes payable by reason of the Decedent's death, which taxes shall be paid from Trust No. 2 only.

C.7 As to the Texas property, and more precisely the acreage and accompanying rights in minerals, gas, and oil on such acreage, which is the focus of this Petition, there is certainly a reference to that land and those rights being Mr. Connell's separate property.

C.8 As outlined on schedule A for the Trust, which was executed the same day as the Trust, there is clear reference to real property in Upton County, Texas and oil, gas, and mineral rights/leases being the separate property of Mr. Connell. A copy of Schedule A of the Trust is attached hereto as Exhibit "B" and is hereby incorporated by this reference.

C.9 W.N. Connell died on November 24, 1979. Mr. Connell died as a resident of Boulder City, Nevada.

C.10 Therefore, Trust No. 3 became Marjorie's trust, meaning that she was free to amend the provisions of it or to revoke it entirely as she saw fit. Specifically, Marjorie was given a power of appointment over Trust No. 3.

C.11 As to Trust No. 2, it became irrevocable upon Mr. Connell's death. The provisions of Trust No. 2 expressly state that all income generated from it shall be paid to the "Residual Beneficiary" which was/is Ms. Ahern. As it relates to income distributions, Trust No. 2 also contained the following statement:

*In the event that any of the real property located in Upton County, Texas, as listed on the original Schedule "A" attached hereto, forms a part of the corpus of this Trust, the Residual Beneficiary shall be paid an additional payment from the income received from the Decedent's half of the community property, which forms a part of the corpus of this Trust from the real property located in Upton County, Texas.*

C.12 Trust No. 2 also stated that "All other income received by this Trust shall be



1 distributed to the Survivor".

2 C.13 As to principal distributions from Trust No. 2, Marjorie, as the surviving  
3 Trustor, had various powers over principal distributions.

4 C.14 On May 6, 1980, Marjorie and Ms. Ahern executed a document titled  
5 "Substitution of Trustee". A copy of the "Substitution of Trustee" is attached hereto as  
6 Exhibit "C" and is hereby incorporated by this reference.

7 C.15 The purpose of the "Substitution of Trustee" was to add Ms. Ahern as a co-  
8 trustee with Mrs. Connell of the "separate property of W.N. Connell presently held in the  
9 above-entitled Trust" in accordance with the terms of Trust No. 2.

10 C.16 On December 16, 1980, a state of Texas "Inheritance Tax Return----Non-  
11 Resident" was executed by the tax preparer, Darrell Knight of Darrell Knight Assoc. Inc.-PC,  
12 out of Abilene, Texas, and Mrs. Connell, in her capacity as executrix of the Estate of Mr.  
13 Connell, for Mr. Connell. A copy of the Texas Return is attached hereto as Exhibit "D" and  
14 is hereby incorporated by this reference.

15 C.17 In the schedules attached to the Texas Return, there is reference to land in  
16 Upton County, Texas and also mineral rights on that same land being split in a proration  
17 close to 65%/35% (the precise split was 64.493% and 35.507%), with the schedules  
18 reflecting "ownership" by Marjorie of the larger amount and "ownership" by Ms. Ahern of  
19 the smaller amount.

20 C.18 A Federal Estate Tax Return, Form 706, was also prepared and filed in 1980  
21 for Mr. Connell as well. In fact, the Form 706 was prepared prior to the Texas Return and  
22 was the basis for the allocation and figures reflected on the Texas Return. It was a Nevada  
23 accountant who calculated the applicable allocations, including the marital deduction  
24  
25  
26  
27  
28

1 percentage. Therefore, all of the intricate calculations, including the allocations between  
2 Trust No. 2 and Trust No. 3, were done for purposes of the Form 706. As such, Mr. Knight  
3 simply took those percentages from the Form 706 and in turn applied them to the appraised  
4 value of the surface and minerals in Upton County, Texas.  
5

6 C.19 Both the Form 706 and the Texas Return were submitted together to both the  
7 IRS and the state of Texas. A closing letter was later received from the IRS approving of the  
8 Form 706 and the amount that had been submitted as owing tax. Similarly, the State of  
9 Texas, via the State Comptroller, also accepted the Texas Return as well. Copies of both of  
10 those documents can be submitted upon request of this Court.  
11

12 C.20 Unfortunately, a copy of the Form 706 that was filed for Mr. Connell's estate  
13 cannot be located. Despite the diligent efforts of Jacqueline to locate a copy of the Form  
14 706 she has simply had no success in finding it. These efforts have included Jacqueline, in  
15 her capacity as the personal representative of Marjorie's estate, making a request to the  
16 Internal Revenue Service. After searching their records, the IRS informed Jacqueline that  
17 they were unable to locate a copy of the Form 706 that was filed. A copy of the letter from  
18 the IRS which informed Jacqueline of this fact can be provided upon the request of this  
19 Court. In addition, to seeking a copy of the Form 706 directly from the IRS, Jacqueline has  
20 spent numerous hours looking through all of the records that she has copies of, which has  
21 included looking through storage sheds and safe deposit boxes.  
22

23 C.21 Despite not being able to locate a copy of the Form 706, as noted above, the  
24 proof of the figures reflected therein is evidenced by the those which were in turn reflected  
25 on the Texas Return. Therefore, the Texas Return is the only surviving document that can  
26 be used to establish the proof of the allocations between the No. 2 and No. 3 subtrusts.  
27  
28

1 C.22 Marjorie died on May 1, 2009. Marjorie died as a resident of Clark County,  
2 Nevada.

3 C.23 Up to the date of her death, Marjorie was receiving approximately 65% of the  
4 income generated by the various oil, gas, and mineral rights' leases that had been signed  
5 over the years from the time of Mr. Connell's death. Therefore, she had been receiving  
6 distributions from these income sources for approximately 29 years. At no time did Ms.  
7 Ahern ever dispute that allocation of the income distributions between herself and Marjorie.  
8 In fact, Ms. Ahern, in her capacity as a co-trustee of the Trust, signed every document,  
9 including oil and gas leases, division orders, and tax returns, etc.  
10

11 C.24 Even Ms. Ahern's divorce documentation from 1984 acknowledges and  
12 documents the 65%/35% split. For purposes of privacy, such documentation can be  
13 provided to this Court for *in camera* review should this Court request it.  
14

15 C.25 In the Last Will and Testament of Marjorie T. Connell, which was executed  
16 by Marjorie on January 7, 2008, which is attached hereto as Exhibit "E" and is incorporated  
17 herein by this reference, Marjorie exercised her power of appointment over Trust No. 3 of  
18 the Trust. Specifically, under section 4.1 of her Will, which was titled "Exercise of Power  
19 of Appointment Granted by William N. Connell", Marjorie declared the following:  
20

21 *In the W.N. Connell and Marjorie T. Connell Living Trust dated May 18,*  
22 *1972, Article Fifth Trust No. 3 Paragraph B(2) of the Trust, I was granted*  
23 *a testamentary power of appointment. I hereby exercise that power of*  
24 *appointment and appoint the entire principal and the undistributed income*  
25 *in Trust No. 3, if any, on my death to JACQUELINE MONTOYA and*  
26 *KATHRYN ANNE BOUVIER to be distributed in trust in accordance with*  
*the provisions of the MTC LIVING TRUST dated December 6, 1995, as*  
*restated on January 7, 2008.*

27 C.26 To ensure that Marjorie's exercise of the power of appointment was  
28

1 recognized by Ms. Ahern, in her capacity as the now sole trustee of the Trust due to  
2 Marjorie's passing, a letter dated May 21, 2009 was sent to Ms. Ahern by Marjorie's estate  
3 planning attorney, David A. Strauss, notifying her of the such action being taken by  
4 Marjorie under the terms of her Will. A copy of the Attorney Strauss' letter to Ms. Ahern  
5 is attached hereto as Exhibit "F" and is incorporated herein by this reference.  
6

7 C.27 Marjorie executed the MTC Living Trust on December 6, 1995. Mrs. Connell  
8 subsequently executed a restatement of the MTC Living Trust on January 7, 2008. A copy  
9 of the MTC Living Trust is attached hereto as Exhibit "G" and is incorporated herein by this  
10 reference.  
11

12 C.28 The current beneficiaries of the MTC Living Trust are Jacqueline and Kathryn,  
13 with Jacqueline serving as the sole trustee.  
14

15 C.29 As noted above, on September 4, 2009, Ms. Ahern, as trustee of the Trust,  
16 obtained the "Order Assuming Jurisdiction Over Trust, Confirm Trustee, and for  
17 Construction of and Reform of Trust Instrument". As can be seen from the title of the  
18 Order, the Order had the effect of confirming the intended construction of Trust No. 2 in  
19 compliance with the stated intent of Mr. Connell, while at the same time reforming Trust  
20 No. 2.  
21

22 C.30 As to Trust No 2, the Order, in part, confirmed that following the death of Ms.  
23 Ahern, the beneficiaries of Trust No. 2 would be Jacqueline and Kathryn, in equal shares.  
24 The Order also had the effect of establishing that upon the resignation or incapacity of Ms.  
25 Ahern that the trustee of Trust No. 2 would be Jacqueline, or, if she was unable to serve,  
26 then Kathryn.  
27

28 C.31 As will be detailed further herein, since Marjorie's death, Jacqueline and

1 Kathryn have been receiving approximately 65% of the income generated from the various  
2 leases that have been signed regarding the Texas properties, with Ms. Ahern continuing to  
3 receive the remaining 35% as she has been for approximately the last 33 years.  
4

5 **D. PETITION FOR DECLARATORY RULING REGARDING INTERESTS IN TEXAS**  
6 **PROPERTY AND INCOME GENERATED FROM LEASES**

7 D.1 This Petition is brought pursuant to NRS 30.040, NRS 153.031(1)(e), and NRS  
8 164.033(1)(a).

9 D.2 NRS 30.040 provides for the following:

10 1. Any person interested under a deed, written contract or other writings  
11 constituting a contract, or whose rights, status or other legal relations are  
12 affected by a statute, municipal ordinance, contract or franchise, may have  
13 determined any question of construction or validity arising under the  
14 instrument, statute, ordinance, contract or franchise and obtain a  
15 declaration of rights, status or other legal relations thereunder.

16 2. A maker or legal representative of a maker of a will, trust or other  
17 writings constituting a testamentary instrument may have determined any  
18 question of construction or validity arising under the instrument and obtain  
19 a declaration of rights, status or other legal relations thereunder. Any  
20 action for declaratory relief under this subsection may only be made in a  
21 proceeding commenced pursuant to the provisions of title 12 or 13 of NRS,  
22 as appropriate.

23 D.3 NRS 153.031(1)(e) provides for the following:

24 1. A trustee or beneficiary may petition the court regarding any aspect of  
25 the affairs of the trust, including:

26 (e) Ascertaining beneficiaries and determining to whom property is to pass  
27 or be delivered upon final or partial termination of the trust, to the extent  
28 not provided in the trust instrument;

D.4 NRS 164.033(1)(a) provides for the following:

1. The trustee or an interested person may petition the court to enter an  
order:

1                   (a) *If the trustee is in possession of, or holds title to, property and the*  
2                   *property or an interest in it is claimed by another.*

3           D.5   As stated out the outset of this Petition, within the last few months Ms. Ahern  
4   has asserted, without providing any logic or authority to support such assertion, that she  
5   is entitled to 100% of the proceeds from the leases for the Texas property and has refused  
6   to distribute the 65% proportion that has been distributed to Jacqueline and Kathryn since  
7   Mrs. Connell's death in May of 2009, and was previously distributed to Marjorie for the  
8   previous 29 years.  
9

10          D.6   Specifically, Jacqueline and Kathryn have not received distributions for the  
11   months of July, August, and September of 2013. Previous distributions had been averaging  
12   in the range of \$30,000 to each for Jacqueline and Kathryn. Therefore, as of the date of  
13   this filing, Jacqueline and Kathryn have experienced losses in excess of approximately  
14   \$100,000 each.  
15

16          D.7   As noted, there has been absolutely no explanation from Ms. Ahern as to why  
17   and under what authority she feels justified in undoing 33 years of precedent and now  
18   believes that she is entitled to 100% of the income from the leases. It seems as though the  
19   only answer being offered by Ms. Ahern is "because".  
20

21          D.8   As noted above, the allocation of a 65%/35% of the ownership of the Texas  
22   land and the leases involving the land, and more specifically what is actually in the soil and  
23   beneath it, was done in 1980. There is nothing to indicate that this allocation was done  
24   improperly at the time that it was done. Furthermore, there were professionals advising  
25   Marjorie as to how to accomplish this task as evidenced by the Form 706 as reflected in the  
26   Texas Estate tax return.  
27  
28

1 D.9 Therefore, Jacqueline and Kathryn are extremely perplexed as to what has  
2 occurred in Ms. Ahern's mindset that would prompt her to believe that she is now entitled  
3 to 100% of the income from these leases despite 33 years of established precedent without  
4 complaint or assertion of mistake.  
5

6 D.10 As established, the allocation of the 65%/35% split occurred a very long time  
7 ago and under the supervision and expertise of professionals. There is absolutely nothing  
8 to suggest that this allocation was inappropriately done in 1980 and Ms. Ahern has never  
9 once asserted anything to this effect, either during the 29 years following the death of Mr.  
10 Connell in which Marjorie was receiving 65% of the income, nor the past 4 years since  
11 Marjorie's death in which the 65% has been equally divided between Jacqueline and  
12 Kathryn.  
13

14 D.11 Furthermore, this allocation was accepted by both the state of Texas, via the  
15 Comptroller, and the IRS. If either entity felt that the allocation being made was being done  
16 improperly, then both of these entities would surely have voiced concern. Likewise, as a co-  
17 trustee, Ms. Ahern had ample opportunity to voice a belief that the allocation was done  
18 improperly and to seek its redress. However, no such action was ever taken and no proof  
19 of mistake or error has ever been documented. Therefore, it must be determined that the  
20 allocation was properly made in 1980, which is why it is also logical that for the past 33  
21 years the allocation has been accepted and followed by Ms. Ahern without incident.  
22

23 D.12 Even in the off chance that the allocation was not done with complete  
24 precision, it is simply too late to question and rehash the issue, as returns have been filed  
25 and accepted and rights have become vested under numerous equitable principles. Just as  
26 with statutes of limitations, or even with the offering of subsequently discovering a will of  
27  
28

1 a decedent years after a probate has been conducted and concluded, there simply becomes  
2 a point in time when it is simply too late to seek redress of an issue.

3  
4 D.13 As to why Ms. Ahern has only recently chosen to assert that she is entitled to  
5 100% of the income derived from the leases, only she herself knows the motivation behind  
6 this. However, the exponential increase in the value of the leases/royalties derived from  
7 them may have played a significant role in her unwarranted determination.

8  
9 D.14 To get full appreciation of what has occurred here, and why the actions of Ms.  
10 Ahern are so reprehensible and unacceptable, it is necessary to look back at the relevant  
11 factors that are at play and what has transpired over the last 33 years.

12 D.15 Marjorie managed the 1972 Connell Trust properties until her death in 2009.  
13 She did the active negotiating with oil companies and surface users and consulted other  
14 relatives on decisions on the properties.

15  
16 D.16 Around the year 2000, Marjorie's health began to fail. She was still a resident  
17 of Las Vegas, as was Jacqueline. Marjorie requested that Jacqueline help her with the  
18 record keeping, deposits, and other aspects of managing the Texas oil and gas properties.

19 In respecting Marjorie's instructions, Jacqueline checked the mail, kept the records, and  
20 deposited the run checks. Marjorie and Ms. Ahern handled the leases and division orders,  
21 and the signing and copying of all documents. At no time did, Jacqueline ever act as trustee,  
22 but instead she acted at the direction of Marjorie who was a co-trustee. Again, Jacqueline  
23 was an aide to her grandmother and acted at her grandmother's direction.

24  
25 D.17 The money from the 1972 Connell Trust continued to be divided between Ms.  
26 Ahern and the MTC Living Trust in the same manner in which it had been divided since  
27 1980: 65% and 35%. The routine administrative duties followed by Jacqueline each month  
28



1 included gathering the checks from the trust post office box and depositing them into an  
2 account in the name of Marjorie Connell and Ms. Ahern, which has been a longstanding  
3 account that was originally opened by Marjorie and Ms. Ahern in 1980. This account has  
4 always been referred to and commonly known by the parties as the "oil and gas account."  
5

6 D.18 As soon as all the income checks were in the bank from the various leases in  
7 effect, at approximately the first of the month, Jacqueline would proceed to divide the  
8 money, with 35% going to Ms. Ahern, and 65% going to Marjorie. Following Marjorie's  
9 passing, the 65% that previously went to Marjorie would now be divided between  
10 Jacqueline and Kathryn equally. Within the first few days of each month, the two parties,  
11 Ms. Ahern and Marjorie, which became three parties at the death of Marjorie, were able to  
12 rely on their share of the previous month's income from the various leases being reflected  
13 in their own individual bank accounts.  
14

15 D.19 As part of this process, Jacqueline routinely and faithfully put the financial  
16 records on computer concerning the leases and the associated business expenses in tracking  
17 this information, allocated the money from the leases, and gave updates to Ms. Ahern and  
18 Kathryn.  
19

20 D.20 In recent times, Jacqueline, with the assistance of other professionals, has put  
21 in a tremendous amount of time and energy in negotiating new leases for the Texas  
22 properties, which, as noted above, was a task that had previously been done by Marjorie.  
23 Once the terms of a new lease, or the renewal of a previous lease, had been agreed upon and  
24 reviewed by professionals specializing in the field, Jacqueline gave Ms. Ahern the original  
25 documents and Ms. Ahern would sign them in the presence of a notary, and return the  
26 original and copies to Jacqueline. When production was developed in any well, Jacqueline  
27  
28

1 would get the division order from the mail and deliver it to Ms. Ahern to be signed and then  
2 returned the document to the oil and gas purchaser for payment.

3  
4 D.21 Once the proceeds from the various leases were received and deposited in the  
5 "oil and gas account", Jacqueline divided the net income in the exact percentages that they  
6 had followed since 1980. Additionally, Jacqueline also dealt with an accountant in  
7 California, Corey Haina of Fast Tax, who had done the income taxes for approximately 8 to  
8 9 years for Marjorie, furnishing him with the 1099's and Jacqueline's records reflect the  
9 amount of money received from each purchaser of the oil and gas. Following Marjorie's  
10 passing, Ms. Ahern was agreeable to continue to have Mr. Haina continue to prepare the  
11 necessary returns.

12  
13 D.22 In addition to these tasks, Jacqueline also kept all of the check stubs and  
14 totaled them at year end for tax purposes. Jacqueline reconciled the income with the 1099's  
15 and gave all interested parties a three page summary at year end.

16  
17 D.23 As a matter of habit, the only time Jacqueline did not issue 100% of the  
18 income from the oil and gas account was when she started withholding a percentage of the  
19 income around the July runs so that there would be sufficient funds to pay the *ad valorem*  
20 taxes due in Upton County, Texas when that bill was received in October. Ms. Ahern was  
21 aware of this hold back for this purpose and verbally approved of such practice on multiple  
22 occasions. All expenses, income tax, accounting and legal fees, *ad valorem* taxes, and any  
23 miscellaneous expenses, such as office supplies, were dutifully deducted from distributions.

24  
25 All expenditures were reported to Ms. Ahern annually on the year-end report from  
26 Jacqueline. So that there is no confusion as to what capacity Jacqueline was acting since  
27 Marjorie's passing, it is necessary to keep in mind that Jacqueline has been serving as the  
28

1 sole trustee of the MTC Trust since Marjorie's death.

2 D.24 As stated above, a significant increase in value derived from the leases, and  
3 one in particular, occurred in 2012. In this time frame, a very lucrative lease was entered  
4 into with Apache Corporation covering part of the property in Upton County, Texas. The  
5 total bonus on this lease totaled in the millions, and Ms. Ahern, Jacqueline and Kathryn  
6 together received a total of \$1.7 million. This bonus was divided in the usual 65%/35% ratio.  
7

8 D.25 The signing of the lease leading to the bonus occurred in approximately April  
9 of 2013. On approximately July 4<sup>th</sup> and July 5<sup>th</sup> of 2013, a fair amount of time after the \$1.7  
10 million bonus was received, without any warning or explanation, Ma. Ahern had the post  
11 office box closed where income checks generated by the leases were mailed to.  
12 Additionally, at this same point in time, Ms. Ahern subsequently instructed the bank where  
13 the "oil and gas" account was located to take no direction from Jacqueline and to refuse to  
14 speak with her. For purposes of clarification, Jacqueline had been given signatory rights  
15 on the account by Marjorie to act on her behalf and as such access to the funds of the  
16 account to carry out the tasks that Jacqueline had performed at Marjorie's request, as has  
17 been detailed above.  
18

19 D.26 The monthly payments from the income generated from the leases continued  
20 to be received from Ms. Ahern after the above actions were taken towards Jacqueline and  
21 Kathryn. The checks were smaller than they should have been and were distributed later  
22 than they had been when Jacqueline was making the distributions to each of the personal  
23 accounts. However, as noted above, all distributions stopped in July of 2013, when no  
24 checks were received by either Jacqueline or Kathryn.  
25

26 D.27 Given the actions that were occurring, counsel based in Texas for Jacqueline  
27  
28

1 and Kathryn contacted the Texas counsel for Ms. Ahern to attempt to get an understanding  
2 of why Ms. Ahern was taking these actions. The explanation from Ms. Ahern's counsel was  
3 that Ms. Ahern was entitled to 100% of the income from the leases and that any further  
4 distributions to Jacqueline and Kathryn would be gifts to them given by Ms. Ahern. To  
5 cement this position, the June 2013 distributions to Jacqueline and Kathryn were smaller  
6 than they otherwise should have been. On the deposit slip with the checks it was noted that  
7 the amounts were "gifts". To reiterate, following the June 2013 distributions, no additional  
8 distributions have been forthcoming to Jacqueline and Kathryn.  
9

10  
11 D.28 As stated above, there is no justification for what is occurring and as such it  
12 is crucial that this Court render an order declaring that Ms. Ahern has only a 35% interest  
13 in the proceeds generated from the oil, gas, mineral leases and that the remaining 65%  
14 belongs to the MTC Trust. As established, a 65%/35% split has been occurring for 33 years  
15 now and there is no reason nor justification for upsetting this long standing precedent and  
16 practice.  
17

18 D.29 Therefore, Jacqueline respectfully requests that this Court take all necessary  
19 action and make such rulings as are appropriate to force the status quo back into place.  
20

#### 21 E. DAMAGES

22 Jacquie and Kathryn have incurred substantial attorney's fees and costs in having  
23 to seek this declaratory judgment based on the unwarranted actions of Ms. Ahern. As such,  
24 Jacquie, on both her behalf and on behalf of Kathryn, hereby requests that this Court hold  
25 Ms. Ahern responsible for the damages that she has triggered by her unjustifiable and  
26 unwarranted actions. This request is made based on the provisions of NRS 153.031(3)(b),  
27 based on the applicability of that provision through NRS 164.005. However, the amount  
28

1 of damages will be discussed and set forth in an additional related petition that will be filed  
2 shortly hereafter. Therefore, for the sake of clarity, the request for damages is hereby made  
3 and preserved, but topic will be addressed in great detail in a related petition so as not to  
4 distract or confuse the straightforward declaration of rights and interests that is sought  
5 herein.  
6

7  
8 **F. PRAYER**

9 **JACQUELINE M. MONTOYA hereby prays for an Order of this Court:**

10 **F.1 Declaring that:**

11 (a) **ELEANOR C. AHERN, also known as Eleanor Marguerite Connell**  
12 **Hartman, both individually and in her capacity as the trustee of "The W.N. Connell**  
13 **and Marjorie T. Connell Living Trust", dated May 18, 1972, is entitled to only a 35%**  
14 **proportion of all real property located in Upton County, Texas, including the income**  
15 **generated from gas, oil, and mineral leases relating to such Upton County, Texas real**  
16 **property; and**

17  
18 (b) **JACQUELINE M. MONTOYA, in her capacities as a beneficiary and**  
19 **as the trustee of "MTC Living Trust" dated December 6, 1995, and in her capacity as**  
20 **a beneficiary of the power of appointment exercised by Marjorie T. Connell over**  
21 **Trust No. 3 of the "The W.N. Connell and Marjorie T. Connell Living Trust", dated**  
22 **May 18, 1972, and KATHRYN A. BOUVIER, in her capacity as a beneficiary of the**  
23 **"MTC Living Trust" dated December 6, 1995, and in her capacity as a beneficiary of**  
24 **the power of appointment exercised by Marjorie T. Connell over Trust No. 3 of the**  
25 **"The W.N. Connell and Marjorie T. Connell Living Trust", dated May 18, 1972, are**  
26 **entitled to a 65% proportionate share of all income generated from gas, oil, and**  
27  
28

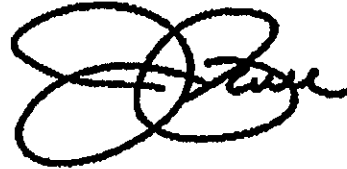
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Las Vegas, Nevada 89134-0514

1 mineral leases relating to Upton County, Texas real property.

2 F.2 Granting such other and further relief as the Court shall deem appropriate.

3  
4 Respectfully submitted,

5 THE RUSHFORTH FIRM, LTD.

6  
7  
8 

9  
10 JOSEPH J. POWELL  
11 State Bar No. 8875

**FACSIMILE**

DATE: 11/11/2013	
TO: Eleanor Connell Hartman	FROM: Courtney Cooper
WN & Marjorie T Connell Liv TR	
COMPANY: 0004557202	COMPANY: Apache Corporation
PHONE: 702-600-0214	PHONE: 713-296-6765
FAX: 432-683-8855	FAX: 713-296-6453
SUBJECT: Case # P-09-066425-T	PAGES: 22*

☐ Urgent    ☐ For Review    ☐ Please Comment    ☐ Please Reply    ☐ Please Recycle

**Comments:**

Ms. Hartman:

Per your request, my landman has asked that I fax the following letter/documentation we received from Ms. Jacqueline M. Montoya's attorney, Sean Guerrero, regarding Case #P-09-066425-T and the WN Connell and Marjorie T. Connell Living Trust.

Sincerely,

Courtney Cooper, DOI Analyst III

(\*The entire documentation that was sent to Apache also included copies of the Trust Agreements for the above mentioned Trust and for the MTC Living Trust dated 12/6/1995. If you would like copies of these documents, please let me know.)

**Cooper, Courtney**

---

**Subject:** FW: Cause No. P-09-066425-T: In the Matter of the W. N. Connell and Marjorie T. Connell Living Trust  
**Attachments:** 2013-09-27 Petition for Declaratory Judgment.pdf, W N & MARJORIE T CONNELL LIV TR-0004557202.pdf

---

**From:** Sean Guerrero [mailto:[sguerrero@stubbemanlawfirm.com](mailto:sguerrero@stubbemanlawfirm.com)]  
**Sent:** Thursday, October 10, 2013 9:31 AM  
**To:** Cooper, Courtney  
**Subject:** re: Cause No. P-09-066425-T: In the Matter of the W. N. Connell and Marjorie T. Connell Living Trust

Courtney,

Thank you for getting back to us. I have attached a file-marked copy of the petition for your records. I appreciate your help and will provide any other information you might need. If you will confirm when Apache places the royalty payments into suspense, I would also appreciate it. Please let me know if you have any questions.

Thank you,

Sean Guerrero  
Stubbeman, McRae, Sealy, Laughlin & Browder, Inc.  
550 W. Texas, Suite 800  
Midland, TX 79701  
Phone: 432.682.1616  
Fax: 432.682.4884  
[sguerrero@stubbemanlawfirm.com](mailto:sguerrero@stubbemanlawfirm.com)

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**STUBBEMAN, McRAE, SEALY, LAUGHLIN & BROWDER, INC.**  
ATTORNEYS AT LAW

FASKEN CENTER - LOWER TWO  
550 WEST TEXAS AVENUE, SUITE 800  
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432.683.1616  
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www.stubbemanlawfirm.com

SEAN GUERRERO  
Direct Dial: 432.589.0242  
ALSO LICENSED IN NEW MEXICO  
sguerrero@stubbemanlawfirm.com

September 30, 2013

Via facsimile (713) 296-6454  
and CMRRRH7103 3110 0002 5180 6H29  
Apache Corporation  
Attn: Division Order Dept.  
2000 Post Oak Blvd, Suite 100  
Houston, Texas 77056

Re: William and Marjorie Connell Living Trust, Marjorie Connell and Eleanor  
Hartman, Co Trustees

Owner Numbers: 47052  
45572

To Whom It May Concern:

I write on behalf of our client, Jaqueline M. Montoya, individually and in her capacity as trustee of the MCT Living Trust, Plaintiff in Cause No. P-09-066425-T; In the Matter of the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972. The lawsuit referenced concerns oil and gas royalty and interest payments into the W. N. Connell and Marjorie T. Connell Living Trust, Eleanor Ahern, Trustee. I enclose a copy of the filed petition and confirmation of filing for your reference. We will follow up with a file-marked copy of the petition once we have received it.

Due to the dispute regarding the distribution of payments, a portion of which has been made by your company, we request that Apache Corporation hold in suspense all payments to the W. N. Connell and Marjorie T. Connell Living Trust until this lawsuit has been resolved. We request that you take action immediately so that no further payments are distributed until this suit is resolved. Please let me know if you have any questions. We appreciate your cooperation and look forward to working with you.

Very truly yours,

  
Sean Guerrero

\*13 OCT 9 PM 4:46

SMG:mg  
Enclosures



AHERN 000834

AA 2487

## E-Filing Details

Page 1 of 2

**Details of filing:** *Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 163.031(1)(E), and NRS 164.033(1)(A)*  
**Filed in Case Number:** P-09-066425-T

**E-File ID:** 4825009**Lead File Size:** 7436895 bytes**Date Filed:** 2013-09-27 13:33:35.0**Case Title:** P-09-066425-T**Case Name:** In the Matter of the Trust of The W.M. Connell and Marjorie T. Connell Living Trust, dtd May 18, 1972**Filing Title:** *Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 163.031(1)(E), and NRS 164.033(1)(A)***Filing Type:** EFO**Filer's Name:** Layne Rushforth**Filer's Email:** office@rushforth.net**Account Name:** trushforth**Filing Code:** PET**Amount:** \$ 3.50**Court Fee:** \$ 0.00**Card Fee:** \$ 0.00**Payment:** Filing still processing. Payment not yet captured.**Comments:****Courtesy Copies:** probate@rushforthfirm.com**Firm Name:** The Rushforth Firm, Ltd.**Your File Number:** 7242/dtd**Status:** Submitted - (B)**Date Accepted:****Review  
Comments:****Reviewer:****File Stamped  
Copy:****Documents:** Cover Document:**Lead Document:** Petition for Declaratory Judgment.pdf 7436895 bytes**Data Reference  
ID:****Credit Card System Response:** VQEC9FD24054  
**Response:** Reference:<http://wiznet.wiznot.com/clarknv/DetailsSubmit.do?efilid=4825009>

9/27/2013

AHEN 000835

AA 2488

Electronically Filed  
09/27/2013 01:33:35 PM



CLERK OF THE COURT

1 PETN  
2 THE RUSHFORTH FIRM, LTD.  
3 JOSEPH J. POWELL  
4 State Bar No. 8875  
5 P. O. Box 371655  
6 Las Vegas, NV 89137-1655  
7 Telephone (702) 255-4552  
8 fax: (702) 255-4677  
9 e-mail: probate@rushforthfirm.com  
10 Attorneys for Jacqueline M. Montoya  
11

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DISTRICT COURT  
CLARK COUNTY, NEVADA

In re the Matter of the

THE W.N. CONNELL and MARJORIE  
T. CONNELL LIVING TRUST, dated  
May 18, 1972

A non-testamentary trust.

Case No.: P-09-066425-T  
Department: 26 (Probate)

**PETITION FOR DECLARATORY JUDGMENT REGARDING LIMITED INTEREST OF TRUST  
ASSETS PURSUANT TO NRS 30.040, NRS 153.031(1)(E), AND NRS 164.033(1)(A)**

Date of Hearing: October 11, 2013  
Time of Hearing: 9:30 a. m.

JACQUELINE M. MONTOYA ("Jacqueline"), as both an individual and also in her capacity as the trustee of the "MTC Living Trust" dated December 6, 1995, by and through her counsel of record, JOSEPH J. POWELL, Esq., of THE RUSHFORTH FIRM, LTD., hereby respectfully seeks a declaration that ELEANOR C. AHERN, also known as Eleanor Marguerite Connell Hartman, both individually and in her capacity as the trustee of "The W.N. Connell and Marjorie T. Connell Living Trust" ("Trust"), dated May 18, 1972, is

1 entitled to only a 35% proportion of all income generated from gas, oil, and mineral leases,  
 2 which are owned partially by the Trust and partially owned by another trust established by  
 3 Marjorie T. Connell and in turn a declaration that Jacqueline and her sister, KATHRYN A.  
 4 BOUVIER ("Kathryn") are entitled to the other 65% proportionate share of the income  
 5 generated from these same gas, oil, and mineral leases. Jacqueline respectfully declares as  
 6 follows:  
 7

#### 8 A. OVERVIEW

9  
 10 Recently, Mrs. Ahern has asserted, without providing any logic or authority to  
 11 support such assertion, that she is entitled to 100% of the proceeds from the leases for  
 12 the Texas property and has refused to distribute the 65% proportion that has been  
 13 distributed to Jacqueline and Kathryn since Mrs. Connell's death in May of 2009, and  
 14 was previously distributed to Marjorie for the previous 29 years.

#### 15 B. JURISDICTION OVER TRUST

16  
 17 B.1 This Court already has jurisdiction over "The W.N. Connell and Marjorie T.  
 18 Connell Living Trust", dated May 18, 1972 ("Trust") and in turn Ms. Ahern. Pursuant to the  
 19 "Order Assuming Jurisdiction Over Trust, Confirm Trustee, and for Construction of and  
 20 Reform of Trust Instrument", dated September 4, 2009, this Court assumed jurisdiction  
 21 over the Trust and confirmed Ms. Ahern as trustee of the Trust.  
 22

23 B.2 Additionally, on information and belief, Ms. Ahern has continued to serve in  
 24 the role as trustee of the Trust from that point in time through the present.

25 B.3 There is nothing that has been discovered after review of the court file which  
 26 indicates that any petition to remove this Court's jurisdiction over the Trust was ever filed  
 27 subsequent to the September 4, 2009 Order.  
 28

**C. BACKGROUND HISTORY**

C.1 W.N. Connell, also known as William N. Connell, and Marjorie T. Connell ("Marjorie") established "The W.N. Connell and Marjorie T. Connell Living Trust" on May 18, 1972.

C.2 By the express terms found on page one of the Trust instrument, the Trust revoked and entirely replaced a previous trust that was executed by the Connells on December 1, 1971, which was described as a "revocable living trust".

C.3 A copy of the Trust is attached hereto as Exhibit "A" and is hereby incorporated by this reference.

C.4 During the joint lifetimes of the Connells, all of the Trust assets were to be administered as prescribed under "Trust No. 1", which was a general, undivided "pot" trust.

C.5 After the death of the predeceased grantor, the Trust was to be divided into two subtrusts, known respectively as "Trust No. 2" and "Trust No. 3".

C.6 In describing the subtrusts in general, yet not entirely completely precise terms, Trust No. 2 was what would commonly be referred to as the "Decedent's Trust", while Trust No. 3 was what would commonly be referred to as the "Survivor's Trust". However, Trust No. 3 was also to serve as a "marital" trust as well. As to this marital trust component of Trust No. 3, Section Third of the Trust, titled "Marital Deduction" contains the following clause:

*The Trustee shall allocate to Trust No. 3 from the Decedent's separate property the fractional share of the said assets which is equal to the maximum marital deduction allowed for federal estate tax purposes, reduced by the total of any other amounts allowed under the Internal Revenue Code as a Marital Deduction which are not a part of this trust estate. In making the computations and allocations of the said property to Trust No. 3 as herein required, the determination of the character and*

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ownership of the said property and the value thereof shall be as finally established for federal estate tax purposes. This distribution is being made without regard to the death taxes payable by reason of the Decedent's death, which taxes shall be paid from Trust No. 2 only.

C.7 As to the Texas property, and more precisely the acreage and accompanying rights in minerals, gas, and oil on such acreage, which is the focus of this Petition, there is certainly a reference to that land and those rights being Mr. Connell's separate property.

C.8 As outlined on schedule A for the Trust, which was executed the same day as the Trust, there is clear reference to real property in Upton County, Texas and oil, gas, and mineral rights/leases being the separate property of Mr. Connell. A copy of Schedule A of the Trust is attached hereto as Exhibit "B" and is hereby incorporated by this reference.

C.9 W.N. Connell died on November 24, 1979. Mr. Connell died as a resident of Boulder City, Nevada.

C.10 Therefore, Trust No. 3 became Marjorie's trust, meaning that she was free to amend the provisions of it or to revoke it entirely as she saw fit. Specifically, Marjorie was given a power of appointment over Trust No. 3.

C.11 As to Trust No. 2, it became irrevocable upon Mr. Connell's death. The provisions of Trust No. 2 expressly state that all income generated from it shall be paid to the "Residual Beneficiary" which was/is Ms. Ahern. As it relates to income distributions, Trust No. 2 also contained the following statement:

*In the event that any of the real property located in Upton County, Texas, as listed on the original Schedule "A" attached hereto, forms a part of the corpus of this Trust, the Residual Beneficiary shall be paid an additional payment from the income received from the Decedent's half of the community property, which forms a part of the corpus of this Trust from the real property located in Upton County, Texas.*

C.12 Trust No. 2 also stated that "All other income received by this Trust shall be

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1 distributed to the Survivor".

2 C.13 As to principal distributions from Trust No. 2, Marjorie, as the surviving  
3 Trustor, had various powers over principal distributions.

4 C.14 On May 6, 1980, Marjorie and Ms. Ahern executed a document titled  
5 "Substitution of Trustee". A copy of the "Substitution of Trustee" is attached hereto as  
6 Exhibit "C" and is hereby incorporated by this reference.

7 C.15 The purpose of the "Substitution of Trustee" was to add Ms. Ahern as a co-  
8 trustee with Mrs. Connell of the "separate property of W.N. Connell presently held in the  
9 above-entitled Trust" in accordance with the terms of Trust No. 2.

10 C.16 On December 16, 1980, a state of Texas "Inheritance Tax Return—Non-  
11 Resident" was executed by the tax preparer, Darrell Knight of Darrell Knight Assoc. Inc.-PC,  
12 out of Abilene, Texas, and Mrs. Connell, in her capacity as executrix of the Estate of Mr.  
13 Connell, for Mr. Connell. A copy of the Texas Return is attached hereto as Exhibit "D" and  
14 is hereby incorporated by this reference.

15 C.17 In the schedules attached to the Texas Return, there is reference to land in  
16 Upton County, Texas and also mineral rights on that same land being split in a proration  
17 close to 65%/35% (the precise split was 64.493% and 35.507%), with the schedules  
18 reflecting "ownership" by Marjorie of the larger amount and "ownership" by Ms. Ahern of  
19 the smaller amount.

20 C.18 A Federal Estate Tax Return, Form 706, was also prepared and filed in 1980  
21 for Mr. Connell as well. In fact, the Form 706 was prepared prior to the Texas Return and  
22 was the basis for the allocation and figures reflected on the Texas Return. It was a Nevada  
23 accountant who calculated the applicable allocations, including the marital deduction  
24

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1 percentage. Therefore, all of the intricate calculations, including the allocations between  
2 Trust No. 2 and Trust No. 3, were done for purposes of the Form 706. As such, Mr. Knight  
3 simply took those percentages from the Form 706 and in turn applied them to the appraised  
4 value of the surface and minerals in Upton County, Texas.  
5

6 C.19 Both the Form 706 and the Texas Return were submitted together to both the  
7 IRS and the state of Texas. A closing letter was later received from the IRS approving of the  
8 Form 706 and the amount that had been submitted as owing tax. Similarly, the State of  
9 Texas, via the State Comptroller, also accepted the Texas Return as well. Copies of both of  
10 those documents can be submitted upon request of this Court.  
11

12 C.20 Unfortunately, a copy of the Form 706 that was filed for Mr. Connell's estate  
13 cannot be located. Despite the diligent efforts of Jacqueline to locate a copy of the Form  
14 706 she has simply had no success in finding it. These efforts have included Jacqueline, in  
15 her capacity as the personal representative of Marjorie's estate, making a request to the  
16 Internal Revenue Service. After searching their records, the IRS informed Jacqueline that  
17 they were unable to locate a copy of the Form 706 that was filed. A copy of the letter from  
18 the IRS which informed Jacqueline of this fact can be provided upon the request of this  
19 Court. In addition, to seeking a copy of the Form 706 directly from the IRS, Jacqueline has  
20 spent numerous hours looking through all of the records that she has copies of, which has  
21 included looking through storage sheds and safe deposit boxes.  
22

23  
24 C.21 Despite not being able to locate a copy of the Form 706, as noted above, the  
25 proof of the figures reflected therein is evidenced by the those which were in turn reflected  
26 on the Texas Return. Therefore, the Texas Return is the only surviving document that can  
27 be used to establish the proof of the allocations between the No. 2 and No. 3 subtrusts.  
28



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1 C.22 Marjorie died on May 1, 2009. Marjorie died as a resident of Clark County,  
 2 Nevada.

3 C.23 Up to the date of her death, Marjorie was receiving approximately 65% of the  
 4 income generated by the various oil, gas, and mineral rights' leases that had been signed  
 5 over the years from the time of Mr. Connell's death. Therefore, she had been receiving  
 6 distributions from these income sources for approximately 29 years. At no time did Ms.  
 7 Ahern ever dispute that allocation of the income distributions between herself and Marjorie.  
 8 In fact, Ms. Ahern, in her capacity as a co-trustee of the Trust, signed every document,  
 9 including oil and gas leases, division orders, and tax returns, etc.  
 10  
 11

12 C.24 Even Ms. Ahern's divorce documentation from 1984 acknowledges and  
 13 documents the 65%/35% split. For purposes of privacy, such documentation can be  
 14 provided to this Court for *in camera* review should this Court request it.  
 15

16 C.25 In the Last Will and Testament of Marjorie T. Connell, which was executed  
 17 by Marjorie on January 7, 2008, which is attached hereto as Exhibit "E" and is incorporated  
 18 herein by this reference, Marjorie exercised her power of appointment over Trust No. 3 of  
 19 the Trust. Specifically, under section 4.1 of her Will, which was titled "Exercise of Power  
 20 of Appointment Granted by William N. Connell", Marjorie declared the following:  
 21

22 *In the W.N. Connell and Marjorie T. Connell Living Trust dated May 18,*  
 23 *1972, Article Fifth Trust No. 3 Paragraph B(2) of the Trust, I was granted*  
 24 *a testamentary power of appointment. I hereby exercise that power of*  
 25 *appointment and appoint the entire principal and the undistributed income*  
 26 *in Trust No. 3, if any, on my death to JACQUELINE MONTOYA and*  
 27 *KATHRYN ANNE BOUVIER to be distributed in trust in accordance with*  
 28 *the provisions of the MTC LIVING TRUST dated December 6, 1995, as*  
*restated on January 7, 2008.*

C.26 To ensure that Marjorie's exercise of the power of appointment was

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1 recognized by Ms. Ahern, in her capacity as the now sole trustee of the Trust due to  
2 Marjorie's passing, a letter dated May 21, 2009 was sent to Ms. Ahern by Marjorie's estate  
3 planning attorney, David A. Strauss, notifying her of the such action being taken by  
4 Marjorie under the terms of her Will. A copy of the Attorney Strauss' letter to Ms. Ahern  
5 is attached hereto as Exhibit "F" and is incorporated herein by this reference.  
6

7 C.27 Marjorie executed the MTC Living Trust on December 6, 1995. Mrs. Connell  
8 subsequently executed a restatement of the MTC Living Trust on January 7, 2008. A copy  
9 of the MTC Living Trust is attached hereto as Exhibit "G" and is incorporated herein by this  
10 reference.  
11

12 C.28 The current beneficiaries of the MTC Living Trust are Jacqueline and Kathryn,  
13 with Jacqueline serving as the sole trustee.  
14

15 C.29 As noted above, on September 4, 2009, Ms. Ahern, as trustee of the Trust,  
16 obtained the "Order Assuming Jurisdiction Over Trust, Confirm Trustee, and for  
17 Construction of and Reform of Trust Instrument". As can be seen from the title of the  
18 Order, the Order had the effect of confirming the intended construction of Trust No. 2 in  
19 compliance with the stated intent of Mr. Connell, while at the same time reforming Trust  
20 No. 2.  
21

22 C.30 As to Trust No 2, the Order, in part, confirmed that following the death of Ms.  
23 Ahern, the beneficiaries of Trust No. 2 would be Jacqueline and Kathryn, in equal shares.  
24 The Order also had the effect of establishing that upon the resignation or incapacity of Ms.  
25 Ahern that the trustee of Trust No. 2 would be Jacqueline, or, if she was unable to serve,  
26 then Kathryn.  
27

28 C.31 As will be detailed further herein, since Marjorie's death, Jacqueline and

1 Kathryn have been receiving approximately 65% of the income generated from the various  
 2 leases that have been signed regarding the Texas properties, with Ms. Ahern continuing to  
 3 receive the remaining 35% as she has been for approximately the last 33 years.

4  
 5 **D. PETITION FOR DECLARATORY RULING REGARDING INTERESTS IN TEXAS**  
 6 **PROPERTY AND INCOME GENERATED FROM LEASES**

7 D.1 This Petition is brought pursuant to NRS 30.040, NRS 153.031(1)(e), and NRS  
 8 164.033(1)(a).

9 D.2 NRS 30.040 provides for the following:

10 1. Any person interested under a deed, written contract or other writings  
 11 constituting a contract, or whose rights, status or other legal relations are  
 12 affected by a statute, municipal ordinance, contract or franchise, may have  
 13 determined any question of construction or validity arising under the  
 14 instrument, statute, ordinance, contract or franchise and obtain a  
 15 declaration of rights, status or other legal relations thereunder.

16 2. A maker or legal representative of a maker of a will, trust or other  
 17 writings constituting a testamentary instrument may have determined any  
 18 question of construction or validity arising under the instrument and obtain  
 19 a declaration of rights, status or other legal relations thereunder. Any  
 20 action for declaratory relief under this subsection may only be made in a  
 21 proceeding commenced pursuant to the provisions of title 12 or 13 of NRS,  
 22 as appropriate.

23 D.3 NRS 153.031(1)(e) provides for the following:

24 1. A trustee or beneficiary may petition the court regarding any aspect of  
 25 the affairs of the trust, including:

26 (e) Ascertaining beneficiaries and determining to whom property is to pass  
 27 or be delivered upon final or partial termination of the trust, to the extent  
 28 not provided in the trust instrument;

29 D.4 NRS 164.033(1)(a) provides for the following:

30 1. The trustee or an interested person may petition the court to enter an  
 order:

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1 (a) *If the trustee is in possession of, or holds title to, property and the*  
2 *property or an interest in it is claimed by another.*

3 D.5 As stated out the outset of this Petition, within the last few months Ms. Ahern  
4 has asserted, without providing any logic or authority to support such assertion, that she  
5 is entitled to 100% of the proceeds from the leases for the Texas property and has refused  
6 to distribute the 65% proportion that has been distributed to Jacqueline and Kathryn since  
7 Mrs. Connell's death in May of 2009, and was previously distributed to Marjorie for the  
8 previous 29 years.  
9

10 D.6 Specifically, Jacqueline and Kathryn have not received distributions for the  
11 months of July, August, and September of 2013. Previous distributions had been averaging  
12 in the range of \$30,000 to each for Jacqueline and Kathryn. Therefore, as of the date of  
13 this filing, Jacqueline and Kathryn have experienced losses in excess of approximately  
14 \$100,000 each.  
15

16 D.7 As noted, there has been absolutely no explanation from Ms. Ahern as to why  
17 and under what authority she feels justified in undoing 33 years of precedent and now  
18 believes that she is entitled to 100% of the income from the leases. It seems as though the  
19 only answer being offered by Ms. Ahern is "because".  
20

21 D.8 As noted above, the allocation of a 65%/35% of the ownership of the Texas  
22 land and the leases involving the land, and more specifically what is actually in the soil and  
23 beneath it, was done in 1980. There is nothing to indicate that this allocation was done  
24 improperly at the time that it was done. Furthermore, there were professionals advising  
25 Marjorie as to how to accomplish this task as evidenced by the Form 706 as reflected in the  
26 Texas Estate tax return.  
27  
28

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1 D.9 Therefore, Jacqueline and Kathryn are extremely perplexed as to what has  
2 occurred in Ms. Ahern's mindset that would prompt her to believe that she is now entitled  
3 to 100% of the income from these leases despite 33 years of established precedent without  
4 complaint or assertion of mistake.  
5

6 D.10 As established, the allocation of the 65%/35% split occurred a very long time  
7 ago and under the supervision and expertise of professionals. There is absolutely nothing  
8 to suggest that this allocation was inappropriately done in 1980 and Ms. Ahern has never  
9 once asserted anything to this effect, either during the 29 years following the death of Mr.  
10 Connell in which Marjorie was receiving 65% of the income, nor the past 4 years since  
11 Marjorie's death in which the 65% has been equally divided between Jacqueline and  
12 Kathryn.  
13

14 D.11 Furthermore, this allocation was accepted by both the state of Texas, via the  
15 Comptroller, and the IRS. If either entity felt that the allocation being made was being done  
16 improperly, then both of these entities would surely have voiced concern. Likewise, as a co-  
17 trustee, Ms. Ahern had ample opportunity to voice a belief that the allocation was done  
18 improperly and to seek its redress. However, no such action was ever taken and no proof  
19 of mistake or error has ever been documented. Therefore, it must be determined that the  
20 allocation was properly made in 1980, which is why it is also logical that for the past 33  
21 years the allocation has been accepted and followed by Ms. Ahern without incident.  
22

23 D.12 Even in the off chance that the allocation was not done with complete  
24 precision, it is simply too late to question and rehash the issue, as returns have been filed  
25 and accepted and rights have become vested under numerous equitable principles. Just as  
26 with statutes of limitations, or even with the offering of subsequently discovering a will of  
27  
28

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1 a decedent years after a probate has been conducted and concluded, there simply becomes  
2 a point in time when it is simply too late to seek redress of an issue.

3 D.13 As to why Ms. Ahern has only recently chosen to assert that she is entitled to  
4 100% of the income derived from the leases, only she herself knows the motivation behind  
5 this. However, the exponential increase in the value of the leases/royalties derived from  
6 them may have played a significant role in her unwarranted determination.

7  
8 D.14 To get full appreciation of what has occurred here, and why the actions of Ms.  
9 Ahern are so reprehensible and unacceptable, it is necessary to look back at the relevant  
10 factors that are at play and what has transpired over the last 33 years.

11  
12 D.15 Marjorie managed the 1972 Connell Trust properties until her death in 2009.  
13 She did the active negotiating with oil companies and surface users and consulted other  
14 relatives on decisions on the properties.

15  
16 D.16 Around the year 2000, Marjorie's health began to fail. She was still a resident  
17 of Las Vegas, as was Jacqueline. Marjorie requested that Jacqueline help her with the  
18 record keeping, deposits, and other aspects of managing the Texas oil and gas properties.

19 In respecting Marjorie's instructions, Jacqueline checked the mail, kept the records, and  
20 deposited the run checks. Marjorie and Ms. Ahern handled the leases and division orders,  
21 and the signing and copying of all documents. At no time did, Jacqueline ever act as trustee,  
22 but instead she acted at the direction of Marjorie who was a co-trustee. Again, Jacqueline  
23 was an aide to her grandmother and acted at her grandmother's direction.

24  
25 D.17 The money from the 1972 Connell Trust continued to be divided between Ms.  
26 Ahern and the MTC Living Trust in the same manner in which it had been divided since  
27 1980: 65% and 35%. The routine administrative duties followed by Jacqueline each month  
28

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1 included gathering the checks from the trust post office box and depositing them into an  
2 account in the name of Marjorie Connell and Ms. Ahern, which has been a longstanding  
3 account that was originally opened by Marjorie and Ms. Ahern in 1980. This account has  
4 always been referred to and commonly known by the parties as the "oil and gas account."  
5

6 D.18 As soon as all the income checks were in the bank from the various leases in  
7 effect, at approximately the first of the month, Jacqueline would proceed to divide the  
8 money, with 35% going to Ms. Ahern, and 65% going to Marjorie. Following Marjorie's  
9 passing, the 65% that previously went to Marjorie would now be divided between  
10 Jacqueline and Kathryn equally. Within the first few days of each month, the two parties,  
11 Ms. Ahern and Marjorie, which became three parties at the death of Marjorie, were able to  
12 rely on their share of the previous month's income from the various leases being reflected  
13 in their own individual bank accounts.  
14

15 D.19 As part of this process, Jacqueline routinely and faithfully put the financial  
16 records on computer concerning the leases and the associated business expenses in tracking  
17 this information, allocated the money from the leases, and gave updates to Ms. Ahern and  
18 Kathryn.  
19

20 D.20 In recent times, Jacqueline, with the assistance of other professionals, has put  
21 in a tremendous amount of time and energy in negotiating new leases for the Texas  
22 properties, which, as noted above, was a task that had previously been done by Marjorie.  
23 Once the terms of a new lease, or the renewal of a previous lease, had been agreed upon and  
24 reviewed by professionals specializing in the field, Jacqueline gave Ms. Ahern the original  
25 documents and Ms. Ahern would sign them in the presence of a notary, and return the  
26 original and copies to Jacqueline. When production was developed in any well, Jacqueline  
27  
28

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1 would get the division order from the mail and deliver it to Ms. Ahern to be signed and then  
2 returned the document to the oil and gas purchaser for payment.

3 D.21 Once the proceeds from the various leases were received and deposited in the  
4 "oil and gas account", Jacqueline divided the net income in the exact percentages that they  
5 had followed since 1980. Additionally, Jacqueline also dealt with an accountant in  
6 California, Corey Haina of Fast Tax, who had done the income taxes for approximately 8 to  
7 9 years for Marjorie, furnishing him with the 1099's and Jacqueline's records reflect the  
8 amount of money received from each purchaser of the oil and gas. Following Marjorie's  
9 passing, Ms. Ahern was agreeable to continue to have Mr. Haina continue to prepare the  
10 necessary returns.  
11

12 D.22 In addition to these tasks, Jacqueline also kept all of the check stubs and  
13 totaled them at year end for tax purposes. Jacqueline reconciled the income with the 1099's  
14 and gave all interested parties a three page summary at year end.  
15  
16

17 D.23 As a matter of habit, the only time Jacqueline did not issue 100% of the  
18 income from the oil and gas account was when she started withholding a percentage of the  
19 income around the July runs so that there would be sufficient funds to pay the *ad valorem*  
20 taxes due in Upton County, Texas when that bill was received in October. Ms. Ahern was  
21 aware of this hold back for this purpose and verbally approved of such practice on multiple  
22 occasions. All expenses, income tax, accounting and legal fees, *ad valorem* taxes, and any  
23 miscellaneous expenses, such as office supplies, were dutifully deducted from distributions.  
24

25 All expenditures were reported to Ms. Ahern annually on the year-end report from  
26 Jacqueline. So that there is no confusion as to what capacity Jacqueline was acting since  
27 Marjorie's passing, it is necessary to keep in mind that Jacqueline has been serving as the  
28



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1 sole trustee of the MTC Trust since Marjorie's death.

2 D.24 As stated above, a significant increase in value derived from the leases, and  
3 one in particular, occurred in 2012. In this time frame, a very lucrative lease was entered  
4 into with Apache Corporation covering part of the property in Upton County, Texas. The  
5 total bonus on this lease totaled in the millions, and Ms. Ahern, Jacqueline and Kathryn  
6 together received a total of \$1.7 million. This bonus was divided in the usual 65%/35% ratio.  
7

8 D.25 The signing of the lease leading to the bonus occurred in approximately April  
9 of 2013. On approximately July 4<sup>th</sup> and July 5<sup>th</sup> of 2013, a fair amount of time after the \$1.7  
10 million bonus was received, without any warning or explanation, Ms. Ahern had the post  
11 office box closed where income checks generated by the leases were mailed to.  
12 Additionally, at this same point in time, Ms. Ahern subsequently instructed the bank where  
13 the "oil and gas" account was located to take no direction from Jacqueline and to refuse to  
14 speak with her. For purposes of clarification, Jacqueline had been given signatory rights  
15 on the account by Marjorie to act on her behalf and as such access to the funds of the  
16 account to carry out the tasks that Jacqueline had performed at Marjorie's request, as has  
17 been detailed above.  
18  
19

20 D.26 The monthly payments from the income generated from the leases continued  
21 to be received from Ms. Ahern after the above actions were taken towards Jacqueline and  
22 Kathryn. The checks were smaller than they should have been and were distributed later  
23 than they had been when Jacqueline was making the distributions to each of the personal  
24 accounts. However, as noted above, all distributions stopped in July of 2013, when no  
25 checks were received by either Jacqueline or Kathryn.  
26  
27

28 D.27 Given the actions that were occurring, counsel based in Texas for Jacqueline

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1 and Kathryn contacted the Texas counsel for Ms. Ahern to attempt to get an understanding  
2 of why Ms. Ahern was taking these actions. The explanation from Ms. Ahern's counsel was  
3 that Ms. Ahern was entitled to 100% of the income from the leases and that any further  
4 distributions to Jacqueline and Kathryn would be gifts to them given by Ms. Ahern. To  
5 cement this position, the June 2013 distributions to Jacqueline and Kathryn were smaller  
6 than they otherwise should have been. On the deposit slip with the checks it was noted that  
7 the amounts were "gifts". To reiterate, following the June 2013 distributions, no additional  
8 distributions have been forthcoming to Jacqueline and Kathryn.  
9

10  
11 D.28 As stated above, there is no justification for what is occurring and as such it  
12 is crucial that this Court render an order declaring that Ms. Ahern has only a 35% interest  
13 in the proceeds generated from the oil, gas, mineral leases and that the remaining 65%  
14 belongs to the MTC Trust. As established, a 65%/35% split has been occurring for 33 years  
15 now and there is no reason nor justification for upsetting this long standing precedent and  
16 practice.  
17

18 D.29 Therefore, Jacqueline respectfully requests that this Court take all necessary  
19 action and make such rulings as are appropriate to force the status quo back into place.  
20

#### 21 E. DAMAGES

22 Jacquie and Kathryn have incurred substantial attorney's fees and costs in having  
23 to seek this declaratory judgment based on the unwarranted actions of Ms. Ahern. As such,  
24 Jacquie, on both her behalf and on behalf of Kathryn, hereby requests that this Court hold  
25 Ms. Ahern responsible for the damages that she has triggered by her unjustifiable and  
26 unwarranted actions. This request is made based on the provisions of NRS 153.031(3)(b),  
27 based on the applicability of that provision through NRS 164.005. However, the amount  
28

1 of damages will be discussed and set forth in an additional related petition that will be filed  
2 shortly hereafter. Therefore, for the sake of clarity, the request for damages is hereby made  
3 and preserved, but topic will be addressed in great detail in a related petition so as not to  
4 distract or confuse the straightforward declaration of rights and interests that is sought  
5 herein.  
6

7 **F. PRAYER**

8 **JACQUELINE M. MONTOYA hereby prays for an Order of this Court:**

9 **F.1 Declaring that:**

10  
11 (a) **ELEANOR C. AHERN, also known as Eleanor Marguerite Connell**  
12 **Hartman, both individually and in her capacity as the trustee of "The W.N. Connell**  
13 **and Marjorie T. Connell Living Trust", dated May 18, 1972, is entitled to only a 35%**  
14 **proportion of all real property located in Upton County, Texas, including the income**  
15 **generated from gas, oil, and mineral leases relating to such Upton County, Texas real**  
16 **property; and**

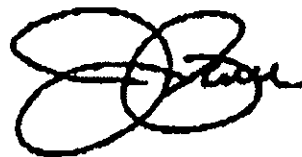
17  
18 (b) **JACQUELINE M. MONTOYA, in her capacities as a beneficiary and**  
19 **as the trustee of "MTC Living Trust" dated December 6, 1995, and in her capacity as**  
20 **a beneficiary of the power of appointment exercised by Marjorie T. Connell over**  
21 **Trust No. 3 of the "The W.N. Connell and Marjorie T. Connell Living Trust", dated**  
22 **May 18, 1972, and KATHRYN A. BOUVIER, in her capacity as a beneficiary of the**  
23 **"MTC Living Trust" dated December 6, 1995, and in her capacity as a beneficiary of**  
24 **the power of appointment exercised by Marjorie T. Connell over Trust No. 3 of the**  
25 **"The W.N. Connell and Marjorie T. Connell Living Trust", dated May 18, 1972, are**  
26 **entitled to a 65% proportionate share of all income generated from gas, oil, and**  
27  
28

mineral leases relating to Upton County, Texas real property.

F.2 Granting such other and further relief as the Court shall deem appropriate.

Respectfully submitted,

THE RUSHFORTH FIRM, LTD.



JOSEPH J. POWELL  
State Bar No. 8875

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# Exhibit 6



2600 Paseo Verde Parkway  
Suite 260  
Henderson, NV 89074  
(702) 433-1040  
Fax (702) 433-3449

October 15, 2014

Eleanor Connell Hartman Ahern, Trustee  
c/o Jeffrey Burr, LTD.  
2600 Paseo Verde Parkway, Suite 200  
Henderson, NV 89074

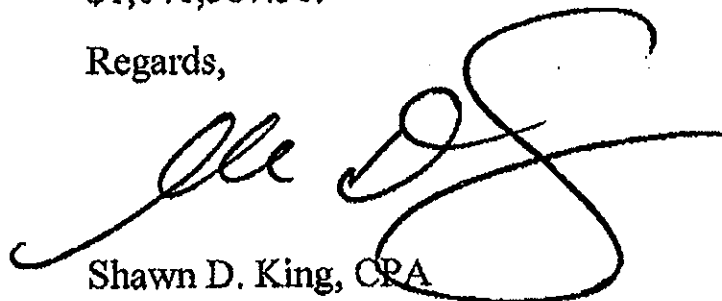
Re: The W.N. Connell and Marjorie T. Connell Living Trust

Dear Ms. Ahern,

I have been provided with Wells Fargo bank statements for the above referenced Trust from November 2013 through September 2014. Deposits representing payments for oil, gas, mineral and interest royalties and surface rents during this time total \$1,600,476.46. An additional royalty deposit was made Monday October 13, 2014 in the amount of \$1,965.87. This would make the total deposits representing payments for oil, gas, mineral and interest royalties and surface rents to the Trust from November 12, 2013, (the date of the hearing), through the date of this letter \$1,602,442.33.

Attached to this letter is a letter from Wells Fargo Bank indicating that there is \$1,306,649.72 in Trust bank accounts as of October 14, 2014. This amount exceeds the 65% of oil, gas, mineral and interest royalties and surface rents required to be held in the Trust accounts according to the court order filed January 6, 2014. The amount that would represent 65% of \$1,602,442.33 is \$1,041,587.51.

Regards,



Shawn D. King, CPA

AHERN 000600

AA 2508



Date: October 15, 2014

To: ELEANOR M AHERN  
8635 W SAHARA AVE # 549  
LAS VEGAS, NV, 89117

Regarding Customer:  
W N CONNELL AND MARJORIE T CONNELL 1972 TRUST  
8635 W SAHARA AVE # 549  
LAS VEGAS, NV, 89117

To Whom It May Concern:

This letter is verification that the customer named above has an account with Wells Fargo.  
This account number ending in            was opened 05/29/2012 and has a current balance of  
\$1,306,649.72.

If you need deposit information, refer to the customer named above. The account holder can  
provide deposit information from their monthly statements.

If you have any questions please call us at 1-800-TO-WELLS (1-800-869-3557). Phone Bankers  
are available to assist you 24 hours a day, 7 days a week.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey T Cook".

JEFFREY T COOK  
Regional Private Banker  
nmisr id: 433583  
(702) 662-6764

# Exhibit 7



Untitled

3

4

5

VIDEO-RECORDED DEPOSITION OF JACQUELINE M. MONTOYA

6

VOLUME I

7

8

TAKEN ON TUESDAY, JANUARY 6, 2015

9

TAKEN AT 9:11 A.M.

10

11

TAKEN AT MARQUIS AURBACH COFFING

12

10001 PARK RUN DRIVE

13

14

LAS VEGAS, NEVADA 89145

15

16

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5

ROUGH DRAFT TRANSCRIPT DISCLAIMER AGREEMENT

6

7

8           This rough draft transcript has been requested  
9 in the form of an ASCII file. This uncertified  
10 transcript is available only to counsel who order a  
certified original transcript or a certified copy of  
the proceedings.

11           This rough draft transcript is for use only by  
12 counsel and their in-office personnel. It may not be  
13 reproduced or distributed to any other party. It may  
14 not be used to impeach or contradict the certified  
original transcript. It is not intended to be quoted in  
any pleading or filed with any court.

15           This rough draft transcript is not a certified  
16 official record. It may contain untranslated or  
17 mistranslated material. It may at times appear  
nonsensical. It may contain misspellings. It may  
contain incorrect punctuation.

18           There will be discrepancies between the rough  
19 draft and the certified original transcript, as the  
20 rough draft transcript has not been completely edited,  
proofread, corrected, finalized, indexed, bound or  
certified. There will be a discrepancy in page numbers  
appearing in the rough draft transcript and the  
certified final transcript.

21           Your acceptance of this rough draft transcript  
22 is your agreement to abide by all the rules and  
23 limitations described above for use of this rough draft  
transcript.

24

25

♀

1

2

8 A. Kindergarten through fourth grade.  
9 Q. And what grade would they be in now?  
10 A. Fifth and sixth we've home schooled.  
11 Q. Fifth and sixth. And what private school did  
12 they go to?  
13 A. Originally they were at Mountain View Lutheran,  
14 and then after that they were at a very small school  
15 named Journey.  
16 Q. Here in Las Vegas?  
17 A. Uh-huh, yes.  
18 Q. What approximately was their annual tuition at  
19 Mountain View Lutheran?  
20 A. Mountain View was -- oh, my goodness, I don't  
21 know. I could maybe give you an estimate. It was maybe  
22 around 3600 per child.  
23 Q. Per year?  
24 A. Uh-huh.  
25 Q. And what about Journey?

11

1 A. I think Journey was 4,000 -- actually, I'm  
2 going to say 6,000 per child.  
3 Q. Per year?  
4 A. Yes.  
5 Q. So how old were your twin boys when you were  
6 working at the Wynn in 2010? Around seven?  
7 A. I think they were six years old when I  
8 retired.  
9 Q. And they were attending school full time at  
10 six years old?  
11 A. They were attending, yeah, yes, they were.

12 Q. Now, when is the last time that your twin boys  
13 visited with their grandmother, Eleanor Ahern?

14 A. It was July 6th of 2012, just before she  
15 disappeared from our lives.

16 Q. And what was the occasion?

17 A. She had invited us over for lunch. She was  
18 running late. She asked me if I would get lunch. I  
19 did. She asked me if I'd bring the movie. I did.  
20 And we watched a movie and had lunch at her house, her  
21 house on Elton.

22 Q. Elton, E-L-T-O-N?

23 A. Correct.

24 Q. Did there ever come a time prior to July 6th,  
25 2012 when you decided that your mother should not be

12

1 left alone with your twin boys?

2 A. Yes.

3 Q. And when was that?

4 A. I don't know that I have a date for you. I  
5 could -- I could explain to you why I chose that, but  
6 I don't have a date. It might have been -- gosh, she  
7 chose not to spend her birthday with us, and she chose  
8 not to spend Mother's Day with us. It might have been  
9 right after May 15th -- actually, I'm sorry, it was  
10 May -- right around there I had a conversation with her  
11 about her behavior and what was happening, and May 12th,  
12 May 15th, somewhere around there.

13 Q. In 2012?

14 A. 2012.

15 Q. And what was your reasoning of not feeling  
16 comfortable letting her watch your twin boys alone?

17 witness is following her counsel's direction of  
18 reading through the entire petition before answering my  
19 question.

20 THE WITNESS: Without reading everything  
21 because I don't want to make the day last for 15 hours  
22 just for me to read this, but I would say that in  
23 September we were -- we had just finished meeting with  
24 my mom in Texas, and we had attempted to do mediation  
25 with her, and we had come back, and I had met with Joey,

27

1 and I believe, if memory serves me correctly, we were  
2 asking the court to make a decision on the interest of  
3 what percent we owned versus my mother.

4 BY MS. WAKAYAMA:

5 Q. Of the oil income?

6 A. Uh-huh.

7 Q. In Upton County, Texas?

8 A. Uh-huh.

9 Q. Yes?

10 A. Yes.

11 Q. So you initiated litigation against your  
12 mother, Eleanor Ahern, to recover potentially the  
13 65 percent in oil income; correct?

14 A. Correct.

15 Q. And eventually your sister Kathryn Bouvier  
16 joined in the litigation against your mother, too;  
17 correct?

18 A. Correct.

19 Q. What is your understanding of why your sister  
20 Kathryn waited to join in the litigation?

21 A. Actually, you're asking me something that  
22 happened about a year ago. I believe we understood that  
23 she needed representation as well.

24 Q. So your sister was involved and had knowledge  
25 of this petition for declaratory judgment at the time?

28

1 A. Yeah, she had got to see everything that I  
2 saw.

3 Q. And is it a fair statement to say that since  
4 the last visit with their grandmother was in -- was on  
5 July 6th, 2012, that since this litigation started,  
6 your children have not seen their grandmother at all;  
7 correct?

8 A. Sadly, no.

9 Q. Is that a correct statement?

10 A. That is correct.

11 Q. Now, describe for me your relationship --

12 A. May I correct that, because they did see her  
13 in court one day. I don't know if that's what you're  
14 alluding to. It wasn't a family gathering or anything  
15 that was on a positive nature, but my children did see  
16 her in court. It might have been February 17th of this  
17 year. I'm not sure if that's the right date, but I  
18 believe that is.

19 Q. Of last year, 2014?

20 A. I'm sorry. Yeah, 2014.

21 Q. So you brought your children to court?

22 A. We did.

23 Q. In relation to this litigation?

24 A. No. It was really so that they could see  
25 their grandmother. My hope was that when she walked

8 on this application?

9 A. I do.

10 Q. Did you sign your mother's name there?

11 A. Absolutely not. That's my mom's signature.

12 Q. So when you were added as a signatory on  
13 the bank account for the oil rights, was this the first  
14 time that you had discovered the value of the oil rights  
15 and the flowing income?

16 A. I don't know that that question makes sense,  
17 because to me I don't know that it was a value that was  
18 perceived at the time. I knew my grandmother needed  
19 help, and I helped her.

20 Keep in mind, too, now with my experience in  
21 business more, I know now that there's an extreme value  
22 or at least there was before the reduction in the oil  
23 prices recently. During that time checks were not what  
24 they were in the last two years. They were maybe 2,000,  
25 3,000 a month at the most.

♀

46

1 So if you're asking if I recognized that as a  
2 huge amount of income, no, I don't remember doing that.  
3 I don't remember it being something that I perceived as  
4 being a huge -- a huge value. I just remember it being  
5 my grandmother's business and my mother's business and  
6 helping them.

7 Q. My question is a little differently.

8 A. Okay.

9 Q. When was the first time that you discovered  
10 the value of the oil rights and the income generated  
11 from the oil rights?

12 A. The value of the oil rights?  
13 Q. And --  
14 A. Probably when I -- probably, and I don't even  
15 know the year that it happened, 2006.  
16 MR. POWELL: Let me just interject. Are you  
17 asking --  
18 MS. WAKAYAMA: No, Joey, I'm sorry, no  
19 gratuitous comments here. You can state your objection  
20 for the record.  
21 MR. POWELL: Okay. I'm going to object as to  
22 an ambiguous and vague question. I'd like clarification  
23 on what we're talking about in terms of oil rights and  
24 valuation.  
25 BY MS. WAKAYAMA:

♀

47

1 Q. Did you understand my question?  
2 A. I understand what you said. I'm going to  
3 try and answer properly.  
4 The year that I think that I recognized that  
5 there was a value to the family business was I believe  
6 in 2006 or '7 when my mom and my grandmother signed  
7 a division order that they paid a bonus, and I don't  
8 remember now what the bonus was. It might have been  
9 around 300,000. But I remember feeling really happy for  
10 my mom and grandmother that their business was doing  
11 well.  
12 Q. So in 1999 when you were added as a signer  
13 of the bank account for the oil and gas income, is it  
14 your testimony that at that time you did not understand  
15 the value of the income being generated?  
16 A. Oh, I saw the checks. I don't want you to



17 think that I'm stupid by any means. I saw the checks  
18 come in, and there was a value. But to understand  
19 the amounts, the checks were maybe at the most 3,000 a  
20 month, which is strong, but it wasn't my money. It was  
21 their money.

22 Q. But you understood what the income was being  
23 generated?

24 A. Sure. I said 3,000 a month was coming in or  
25 8,000 or whatever that amount was.

48

1 Q. Did you know prior to being added as a  
2 signatory on the oil and gas bank account the income  
3 that was being received by the trust?

4 A. Did I know exact amounts, no. I remember my  
5 mom and grandmother would briefly talk about things.  
6 So as children you hear those things. I knew we had a  
7 family business. I knew my grandfather -- his mother  
8 had purchased the property. I knew that they had  
9 moved to Midland, but I didn't know -- I didn't know  
10 the business. I just had heard through the family.

11 Q. Is it a fair statement that you had a better  
12 idea of the family business and the income that was  
13 being generated from the oil rights when you were added  
14 as a signatory on the bank account in 1999?

15 A. Not being added as a signatory but seeing the  
16 checks come in, I would have a better understanding of  
17 what the business would have a value to.

18 Q. In 1999?

19 A. From 1999 moving forward, yes.

20 Q. So what was the approximate yearly income that

21 was being generated from the oil rights in Upton County,  
22 Texas in 1999 and continuing to 2009? You mentioned  
23 \$3,000 a month; correct?

24 A. Yeah, I'm -- I'm thinking that there was  
25 somewhere between 3- to 8,000, maybe. I think 8,000 is

49

1 on the high mark.

2 Q. Per month?

3 A. Per month.

4 Q. When did you notice that there was a  
5 significant increase in the oil income from the \$3,000?  
6 Do you recall what year?

7 A. As the oil prices went up, obviously, the  
8 income checks went up, but everything happens in a very  
9 slow manner. It wasn't one day we would receive 3,000  
10 and then the next day 300,000. So it wasn't a direct  
11 change like that. It was a very slow increase.

12 I do remember one day I was driving to work.  
13 It was after my grandmother had passed. It was, I don't  
14 know, August, September of 2009, maybe in there, and I  
15 called my mom and said, I just picked up the checks and  
16 you're going to be so excited because I think it was  
17 Apache had just come in, and it was 58,000. And I said,  
18 "Mom, you are going to be so excited that we just got  
19 58,000 -- I cannot believe it -- just from one company."  
20 And we were both very excited with that.

21 Q. For the month, 58,000 for that month?

22 A. For one month, right.

23 Q. And about how many companies were paying  
24 royalty checks in August or September of 2009 in  
25 addition to Apache?

♀

64

1 really high. I don't know what salary he earned. I  
2 do know that he has shared with me recently that he and  
3 my mom had only 500 or \$560 in their savings account  
4 upon his divorce.

5 So I don't know -- that doesn't allude to me  
6 that they were wealthy. To me they were young people  
7 trying to make a living with kids and buying property  
8 and getting kind of over their head is what I kind of  
9 assumed from listening to them.

10 Q. When you were growing up as a child, did you  
11 ever observe your parents fighting about money? Was  
12 money a problem?

13 A. Never.

14 Q. Is it your understanding that your mother's  
15 second husband, Mr. Ahern, was a wealthy man?

16 A. Yes.

17 Q. In fact, he was the founder of Ahern Rentals;  
18 correct?

19 A. Correct.

20 Q. How was your relationship with Mr. Ahern?

21 A. I adored him.

22 Q. So you had a good relationship?

23 A. A well-respected man, yes. I liked him very  
24 much.

25 Q. Would you say that Mr. Ahern was a generous

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65

1 man?

2 A. You know, honestly, I didn't live at home

3 in those years. So I don't know on their day-to-day  
4 relationship together if he was generous with her or  
5 not.

6 I know that my mother traded some property  
7 that her parents had given her on Bonanza in order  
8 to have a house with John Ahern out off of Four Views.  
9 I wasn't living there so I don't know all of those  
10 circumstances. I know that my mom at one time said  
11 she had traded this property so she could have this  
12 acreage with him.

13 Q. Would it be a fair statement that as a result  
14 of your mother's marriage to Mr. Ahern, she was wealthy  
15 separate and apart from the oil income?

16 A. No, I don't think so. I never got the  
17 feeling that my mom had so much that she would be  
18 considered wealthy. I think I always looked at her as  
19 being comfortable. If she wanted to take a trip, she  
20 took a trip. If she wanted to buy a car, she bought a  
21 car. I never -- I never intimately knew her finances,  
22 and she never really discussed them intimately with me.

23 Q. Would you say that your mom lived a more  
24 comfortable lifestyle compared to your grandmother?

25 A. Yes.

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66

1 Q. Did your grandmother Marjorie Connell work for  
2 a living after your grandfather passed away?

3 A. No.

4 Q. She did not?

5 A. No, she didn't. He passed away in 1979;  
6 right? Yeah, 1979.

7 No, she didn't work after that. I don't

1 of Decedent's separate property?

2 A. Something he owned before he went into the  
3 marriage.

4 Q. And possibly listed it on Schedule "A";  
5 correct?

6 A. Possibly. I don't know.

7 Q. Okay. If you turn to Article 4, the  
8 next page, Bate AHERN 000247, titled "Trust No. 2,"  
9 Section B, are you there?

10 A. I am.

11 Q. Section B states, "All income received by this  
12 Trust from the separate property of the Decedent shall  
13 be paid to the Residual Beneficiary."

14 Did I read that correctly?

15 A. You did.

16 Q. Do you have any understanding of who the  
17 residual beneficiary is referenced here?

18 A. Since you're talking about Trust No. 2, that  
19 would have been my mom.

20 Q. Eleanor Ahern?

21 A. Because it's only under Trust No. 2, right.

22 Q. Section B goes on to specifically identify  
23 the Upton County real property and oil income; correct?

24 A. Section B goes on -- I'm sorry.

25 MR. WARNICK: Repeat that. I'm sorry, you

1 said Section B.

2 MS. WAKAYAMA: Section B of Article Fourth

17 that's my objection.

18 MS. WAKAYAMA: I'm asking what the  
19 understanding is.

20 Q. And so if you understand the question, you can  
21 answer it.

22 And if you want to -- if you want me to pass  
23 the witness and you want to straighten anything out  
24 with relation to the document, then I'll give you that  
25 opportunity.

97

1 MR. WARNICK: Right now?

2 MS. WAKAYAMA: At the end.

3 Okay. So let me go ahead and go back to the  
4 question. Would you mind reading that, please.

5 (Record read as follows:

6 "So based on that understanding, is  
7 it correct that even if your mother dies  
8 before your grandmother, your grandmother is  
9 still not entitled to the income your mother  
10 was otherwise receiving under Trust No. 2,  
11 instead, the income will go to you and your  
12 sister as living children; correct?")

13 THE WITNESS: Truly, I don't know how to  
14 answer that without just saying that this is under  
15 Trust 2, which would be my mother's income. This is  
16 not, in my understanding, the whole Trust. So I would  
17 have to beg to allow the experienced people in my life  
18 to advise me what that means.

19 BY MS. WAKAYAMA:

20 Q. So under Trust No. 2, Section B, second

21 paragraph, is it your understanding that in the event  
22 that your mother predeceases your grandmother, that  
23 your mother's rights to receive income under Trust  
24 No. 2, you don't know who the beneficiaries would then  
25 be according to this document; correct?

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98

1 A. No, this document states her living children.

2 Q. So you would agree with that statement, then,  
3 it would go to the living children?

4 A. That's all I can state is just what the words  
5 state, because I don't know -- I'm not an attorney so  
6 I'm sorry, I don't have your job.

7 Q. Okay. And so then it goes on to say that  
8 "to or for the benefit of her living children," which  
9 we just discussed, "and the issue of any deceased child  
10 by right of representation; or in the event she dies  
11 without living issue" -- do you understand living issue  
12 to be children?

13 A. I can assume that from the words, yes.

14 Q. Okay.

15 -- "her income," referring to the residual  
16 beneficiary -- would you agree with the reference  
17 to "her" --

18 A. Okay.

19 Q. -- "income rights hereunder shall become those  
20 of the survivor."

21 Did I read that correctly?

22 A. You did read it correctly.

23 Q. And it's your understanding that the survivor  
24 was Marjorie Connell, your grandmother; correct?

25 A. That's my understanding.

12           A.   Overseeing Trusts 2 and 3.  
13           Q.   Okay.  
14           A.   David had explained to me that that was not  
15 what was happening so I wanted to make sure that the  
16 writing was correct.  
17           Q.   Now, how did you know that your Nanna, as you  
18 reference in your e-mail, Marjorie Connell, did not want  
19 Eleanor Ahern to oversee both Trusts No. 2 and No. 3?  
20           A.   I just shared that with you that David was our  
21 attorney --  
22           Q.   I understand you said David, but my question  
23 is how did you know that your Nanna didn't want that?  
24           A.   Because David sat with me after the -- after  
25 her death and explained to me where the clarification

117

1   needed to be, why we were referring my mom to Brian  
2 Steadman of Solomon, and what the goal was. It was  
3 about what David had suggested we do.  
4           Q.   So your reference in your e-mail, Exhibit I,  
5 where it says, "Also, page 16 seems to communicate that  
6 my mom will oversee both trusts which I know Nanna did  
7 not want," is it your testimony, just so I have it  
8 right, that your understanding came from David Straus  
9 and not directly from your grandmother?  
10          A.   Right. David shared with me what she had  
11 included for my sister and I.  
12                He also had shared with me something along the  
13 lines that by sending her to have the reformation done,  
14 she couldn't marry or give away -- somewhere in there  
15 his language had said something like that -- and he was  
16 alluding to the relationships that my mother had had,



17 and by referring her, this would clear up any of those  
18 issues.

19 Q. So is it your understanding, based on your  
20 conversation with David Straus, that your mom was only  
21 the co-trustee over Trust No. 2?

22 A. That's what I understand, I believe.

23 MS. WAKAYAMA: Counsel, do you guys want to  
24 take a break for lunch and reconvene --

25 MR. POWELL: Yeah.

118

1 MR. WARNICK: How much more do you have for  
2 today?

3 MS. WAKAYAMA: Quite a bit.

4 MR. WARNICK: Quite a bit?

5 MS. WAKAYAMA: Quite a bit. Unless -- it's up  
6 to you, unless you want to power through, but I know it  
7 can be taxing.

8 THE WITNESS: Whatever, I'm fine. Whatever  
9 you want to do.

10 MS. WAKAYAMA: Why don't we take a break.

11 MR. POWELL: We should probably take lunch.

12 THE WITNESS: Yeah.

13 MR. POWELL: It's already close to 12:00, and  
14 we've already been doing this for close to three hours.  
15 What time do you want to reconvene?

16 MS. WAKAYAMA: 1:00 o'clock sound good --

17 MR. POWELL: Yeah.

18 MS. WAKAYAMA: -- or do you guys need more  
19 time?

20 MR. POWELL: No, that's fine. Okay. It

1 A. 3010, I see that.

2 Q. -- "3010," okay.

3 A. Uh-huh.

4 Q. So according to the IRS letters that we just  
5 looked at, it appears that Trust No. 2 EIN number ends  
6 in 7338; correct?

7 A. I see that.

8 Q. And Trust No. 3's EIN number ends in 3010;  
9 correct?

10 A. I see that.

11 MS. WAKAYAMA: Let's go to Exhibit O.

12 (Whereupon, Exhibit O was marked  
13 for identification.)

14 BY MS. WAKAYAMA:

15 Q. Do you recognize these bookkeeping records  
16 dated 1994, 1995 and 1999?

17 A. I do, but I don't recognize the "Redacted"  
18 word, but that may or may not have been here.

19 Q. That's fair enough. I'll represent to you  
20 that our firm did redact those just for privacy purposes  
21 and what was filed with the Court.

22 A. Okay.

23 Q. Okay. But other than the "Redacted," do you  
24 recognize these records?

25 A. Yes.

1 Q. And what exactly are these records?

2 A. This looks like the cover page of my  
3 grandmother's ledger where she would note income.

Untitled

4 Q. So is this your grandmother's handwriting?

5 A. It is.

6 Q. Now, in each of these records, it identifies  
7 the Trust number as Trust No. 2's for the Texas Upton  
8 County rights; correct?

9 A. Uh-huh.

10 MR. POWELL: Objection. Where are we talking?  
11 I'm unclear where that is requested.

12 MS. WAKAYAMA: Sure. I'm on AHERN 000340.  
13 It's the first page of this exhibit.

14 MR. POWELL: Okay.

15 BY MS. WAKAYAMA:

16 Q. And you had answered the question. You  
17 understood where I was looking at?

18 A. You're just referencing 7338; is that what  
19 you're saying?

20 Q. Let's be clear. So if we go to the first page  
21 of this exhibit, it's dated 1994; correct?

22 A. Correct.

23 Q. And right below the handwritten "Page 1" has  
24 "Redacted 7338 - Trust Number"; correct?

25 A. I see that.

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1 Q. But in April of 2012, didn't you testify  
2 earlier that you were having concerns about your mother?

3 A. This was when she started acting strange.  
4 This was the day when I left her house, April of 2012 --  
5 April 4th of 2012, and I went out to dinner with my  
6 husband, and she sent me a text or a phone call or a  
7 voicemail -- I can't remember what -- and it said in a  
8 very strange voice, not my mom, "I want the lease; bring  
9 it to me." I was like, that is so strange, that is not  
10 how my mom talks.

11 So I sent her an e-mail back, which I have  
12 copies of -- I don't know if I shared them, but I can --  
13 and it said, "Mom, I think I'm going out to dinner,"  
14 something like that, "here's the lease." So I had it  
15 attached through the e-mail and sent it to her so if she  
16 wanted to read it all night long, she could.

17 The next morning when it was supposed to be  
18 signed, I got a phone call from Jeff Johnston stating,  
19 "What's the deal with your mom?"

20 I said, "I have no idea what's going on with  
21 my mom. What are you alluding to?"

22 He says, "Well, your mom refuses to sign,  
23 and she sent a text or a fax," and she sent me maybe a  
24 voicemail -- I don't remember specifically -- saying,  
25 "I'm not signing this; I need to go through every point;

1 you're no longer allowed to talk to my daughter," and  
2 made me feel like I was a criminal.

3                   So I said, "Jeff, I have no idea what's going  
4 on, let me try and reach her."

5                   And my mom refused to answer phone calls,  
6 refused to respond back, refused texts. So I had no  
7 idea what was going on.

8                   I learned from Jim Walton that she spent the  
9 next two days going over the lease, every single  
10 paragraph, which I understand now why she did it, but  
11 at the time I didn't. And then she inevitably signed  
12 it, and then a day later she sent me a text saying,  
13 "Thinking of you, praying for you, and love you," and  
14 I was very confused by her behavior.

15                  So this was the breaking point of our  
16 relationship, you know, in her pocket \$568,000 broke her  
17 from her daughter. So when you say I testified earlier,  
18 I did not testify earlier that prior to April 2012 we  
19 had any issues. I didn't know that we had any issues.  
20 She obviously had issues. I didn't.

21                  We just got back from a ski trip in  
22 February 14th of 2012 where she went with me on a  
23 ski trip, and we had a wonderful time as far as I was  
24 concerned. So I don't know how you can allude to the  
25 fact that I testified that we had issues by this point.

230

1 I didn't do that.

2                  Q. What did you do when you experienced, as you  
3 said, confused emotions with your mother around the time  
4 this lease was executed?

5                  A. I could do nothing. I did nothing. I  
6 attempted to reach out to her. She wouldn't answer  
7 doors. She wouldn't respond to phone calls. So I

8 couldn't do anything. I had to wait until she decided  
9 that she would respond.

10 And when I got that strange text saying, "I'm  
11 praying for you" or "I'm thinking of you today" and  
12 "You bring a smile" or "You make me happy" or something.  
13 It was the strangest text to receive after such a  
14 strange behavior.

15 I waited a few days, and then I went to her  
16 house, and her caregiver was there because she had  
17 a broken leg, and I sat down, and I talked to her.  
18 And I said, "I have no idea why you behave this way.  
19 I don't understand."

20 Q. So she did answer the door?

21 A. She didn't answer the door. I basically  
22 walked in. It wasn't locked.

23 Q. Okay. And what was your conversation?

24 A. I said, "I cannot believe you did this to me.  
25 I can't believe that you would treat me like this. I am

231

1 confused."

2 And she said, "Well, all I wanted was for you  
3 to let me read it."

4 And I said to her, "I would hope that you  
5 would have said that in our month-long of conversations  
6 before you were due to sign it. If you wanted to read  
7 it, then you should have asked me to read it in a 30-day  
8 or whatever it was, 45-day negotiation period that you  
9 were in the hospital. You should have asked me for  
10 that."

11 And she said, "I'm so sorry. I won't do this

12 again. I apologize. I'll send a letter to Jeff and  
13 Mozelle and the Coudens and apologize for my behavior.

14 And I said, "Mom, it's now, whatever we were,  
15 15 days after it. I said, "That's not necessary. You  
16 don't need to do it," but I'm just -- I was really hurt  
17 by it.

18 And she ended up sending a letter anyway,  
19 and it was strange. Everything was strange about the  
20 letter.

21 I can't explain what she was doing or why she  
22 did it, and this was the cusp of the deterioration of  
23 our family.

24 Q. So let me ask you this question: After your  
25 conversation with your mom about, you know, if you just

232

1 wanted to read it, you could have told me that, and I  
2 would have let you read it, and the fact that you came  
3 to her house with a notary public asking her to sign  
4 the oil and gas lease documents to close the Apache  
5 deal, what would you conclude in relation to who was  
6 authorized to sign the Apache deal?

7 A. What do you mean, what would I conclude?

8 Q. If somebody came to you and said, I need  
9 you to sign this closing document with the Apache deal,  
10 here's a notary, you got to sign this in front of the  
11 notary, and you sign it --

12 A. Right.

13 Q. -- what would you conclude? Would you  
14 conclude that you're the only authorized signer?

15 A. Because I didn't separate interests, I suppose  
16 at the time she was the authorized signer, and I knew

12 this, I'm going to send it over to her."

13 At the time my mom and I were great so I  
14 never took this to be a big deal. It was an error, and  
15 now she's using it as some horrendous issue.

16 Q. You agreed in January 2013?

17 A. I'm sorry, no. We weren't great in January  
18 '13. I'm sorry, when he sent it to me, he sent me the  
19 letter, and I knew that she had already signed it. I'm  
20 sorry. Correction.

21 Q. And can you turn back to the letter, Ahern,  
22 000467, it says, "when I pulled the file to get you a  
23 copy, I saw that was not correct," in reference to you  
24 signing the lease?

25 A. Correct.

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246

1 Q. "Obviously, you need to execute the lease.  
2 I have enclosed a new lease for you to sign and return a  
3 copy to me. Sorry for the oversight. I don't remember  
4 the circumstances."

5 Did I read that correctly?

6 A. You did.

7 Q. Now, would you agree with me that upon  
8 your grandmother's death in May of 2009, Trust No. 2  
9 comprised of the entire family Connell trust?

10 A. Trust No. 2 comprised of the entire family  
11 Connell Trust, when my grandmother died?

12 Q. Right.

13 A. I don't -- I don't -- I don't think so. I  
14 don't know because my understanding, again, from David,  
15 was that my grandmother, upon her passing, had already  
16 executed her -- exercised her Power of Appointment.



17 Q. Correct, under Trust No. 3; right?  
18 A. Right.  
19 Q. So if the Power of Appointment was exercised  
20 for Trust No. 3 to the MTC Living Trust --  
21 A. Correct.  
22 Q. -- upon your grandmother's death in May of  
23 2009?  
24 A. Right.  
25 Q. Would you then agree with me that the family

247

1 Connell Trust, the only Trust that comprised of the  
2 family Connell trust was there for Trust No. 2?  
3 A. I don't know how to answer that, because  
4 I think that's very legal terminology, and I have  
5 attorneys for that.  
6 My understanding is that my mom is in control  
7 of Trust No. 2 and the MTC is now Trust No. 3. That's  
8 my understanding. I don't know if I'm answering your  
9 question.  
10 Q. But that's your understanding?  
11 A. That's my understanding.  
12 Q. So in his letter, January 30th, 2013, would  
13 you agree that Jim Walton is recognizing that the lessor  
14 is Trust No. 2 in relation to the Upton County, Texas,  
15 property?  
16 MR. POWELL: Objection. Calls for  
17 speculation.  
18 THE WITNESS: Well, I think it just stated  
19 that I don't know that Jim was completely aware of the  
20 trusts. I think I said that 10 minutes ago. I don't

21 think he had intimate knowledge of the trusts so I don't  
22 know that. You would have to ask him.

23 BY MS. WAKAYAMA:

24 Q. This is definitely from his letter,  
25 recognizing that you're not the authorized signer;

248

1 correct?

2 A. Correct.

3 Q. And you testified that Jim Walton let you know  
4 that he was going to correct the lease agreement and  
5 have your mother sign; correct?

6 A. Yes, I remember him saying something to that,  
7 "Jacquie, you're not supposed to sign this" or "You  
8 didn't sign it" or "You weren't supposed to sign it,"  
9 something to that effect.

10 Q. And do you recall roughly when that was?

11 A. No, I don't.

12 Q. Sometime in 2013, January?

13 A. It was either January or December of the year  
14 prior. I don't know.

15 Q. Did you ever tell him, "well, wait a minute,  
16 you have to understand that I am an authorized signer  
17 now, because Trust No. 3 is now encompassed in the MTC  
18 Living Trust," and this is a correct lease?

19 A. He and I had conversations about that. Jim  
20 and I talk often, not once a month, but we're friends  
21 with the family, and he and his wife and I talk and  
22 Kathy talks. So we're very friendly and very open with  
23 each other.

24 I don't know that I had that conversation  
25 that we own 65 percent, but I know that he's aware that

21 to keep on top of everything.

22 And then I don't remember what month it was --  
23 it was just before we met -- 2013, September of 2013,  
24 we were meeting to mediate in Texas, and Jeff Johnston  
25 requested documents.

‡

255

1 So my sister flew down, and we went through  
2 our old kind of shed where a lot of my grandmother's  
3 paperwork was being held. My mom and my sister had  
4 gathered all the paperwork so I wasn't completely  
5 familiar with how much she had.

6 They had gathered it up from my grandmother's  
7 house, and we organized it at my house. So my sister  
8 and I went through it, and we actually found two more  
9 boxes that we shipped down to that attorney's office,  
10 and then she gave it to Jeff.

11 Q. So every single check that you did see or  
12 review that was issued from the Apache Royalty Account,  
13 is it fair to say that it was issued to the order of the  
14 family Trust?

15 A. The W.N. Connell --

16 Q. Right.

17 A. -- and Marjorie T. Connell, yes.

18 Q. Not the MTC Living Trust; correct?

19 A. Correct.

20 Q. And all of the royalty checks that were issued  
21 by the Apache Corporation after the 2012 leases were  
22 finalized, were all paid to the family Trust; correct?

23 A. Correct.

24 Q. If you continued -- let me back up.

25 Who received these checks, to your knowledge,

# Exhibit 8

180405

Affix I.R.S. #12,10

Grant, Bargain, Sale Deed

This Indenture, Witnesseth: That N. B. WEBB and BEATRICE WEBB, his wife, in consideration of \$10.00 the receipt of which is hereby acknowledged, do hereby Grant, bargain, sell and convey to WILLIAM N. CONNELL, a married man, as his sole and separate property; and MARQUERITE L. NICHOLSON, a married woman, as her sole and separate property, as joint tenants, all that real property situate in the \_\_\_\_\_ County of Clark State of Nevada, bounded and described as follows:

That portion of the North Half (N $\frac{1}{2}$ ) of the South Half (S $\frac{1}{2}$ ) of the Southwest Quarter (SW $\frac{1}{4}$ ) of Section 28, Township 20 South, Range 61 East, M.D.B. & M., described as follows:

Beginning at the point of intersection of the East line of the Northwest Quarter (NW $\frac{1}{4}$ ) of the Southeast Quarter (SE $\frac{1}{4}$ ) of the Southwest Quarter (SW $\frac{1}{4}$ ) of said Section 28, said Township and Range, (hereinafter called Line 1), with the South boundary line of Clark Avenue produced westerly as the same is now established (hereinafter called Line 2); thence South along said Line 1 a distance of 378 feet; thence North 89° 36' West and parallel to said Line 2 a distance of 100 feet; thence North along a line parallel to said Line 1 a distance of 378 feet to said Line 2; thence East along said Line 2, 100 feet to the point of beginning.

Together with an undivided 1/30th interest of, in and to all water flowing or otherwise produced from that certain artesian well located in the North Half of the South Half of the Southeast Quarter of Section 29, Township 20 South, Range 61 East, M.D.B. & M., known as the New Russell Well. Together with an undivided 1/30th interest in and to that certain pipe line connected to and running from said well Easterly to a point 100 feet West from said Line 1 above described; together with an easement for said pipe line in common with all the other owners of said pipe line along a strip of ground three feet in width, the center line of which is located approximately 150 feet South of and running parallel with said Line 2, and which strip extends from said well to a point 100 feet West from said Line 1; together with the right to enter thereon for the purpose of repairing, replacing, and renewing said pipe line.

Subject to: 1. Taxes for the fiscal year 1944.

Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

Witness our hands this 18th day of April, 1944.

N. B. Webb

(\$12.10 Internal Revenue Stamps attached and cancelled.)

Beatrice Webb

STATE OF NEVADA ....)

) ss.

COUNTY OF CLARK ....)

On this 18th day of April, 1944, personally appeared before me, a Notary Public, in and for said County and State, N. B. WEBB and BEATRICE WEBB known to me to be the persons described in and who execute the foregoing instrument, who acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

(Notarial Seal)

J. E. McManis

Notary Public.

Recorded Filed at Request of Pioneer Title Insurance & Trust Co. May 2- 1944 At 05 min. past 2 P.M. In Book File 35 Page 159-160 of Deeds Clark County, Nevada, Records

1mm

David Farnsworth, Recorder

IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \*

IN THE MATTER OF: THE W.N.  
CONNELL AND MARJORIE T.  
CONNELL LIVING TRUST, DATED  
MAY 18, 1972,

ELEANOR C. AHERN A/K/A  
ELEANOR CONNELL HARTMAN  
AHERN,

Appellant,

vs.

JACQUELINE M. MONTOYA; AND  
KATHRYN A. BOUVIER,

Respondents.

Supreme Court No.: 66231  
Consolidated with: 6782, 68046  
Electronically Filed  
Nov 20 2015 04:18 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

District Court Case No.:  
P-09-066425-T

Appeal from the Eighth Judicial  
District Court, The Honorable Gloria  
Sturman Presiding

**APPELLANT'S APPENDIX**

**(VOLUME 11 OF 17)**

**(PAGES AA 2313 - 2540)**

KIRK B. LENHARD, ESQ., Nevada Bar No. 001437  
TAMMY BEATTY PETERSON, ESQ., Nevada Bar No. 005218  
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*ATTORNEYS FOR APPELLANT  
ELEANOR CONNELL HARTMAN AHERN*

## INDEX TO APPELLANT'S APPENDIX

<b>Description</b>	<b>Date Filed</b>	<b>Vol. No.</b>	<b>Page No.</b>
Addendum To Petition To Compel Trustee To Distribute Accrued Income And Future Income From Oil, Gas, And Mineral Leases And Declaration Of The Applicability Of The Doctrine Of Laches	03/06/14	4	AA 736-748
Affidavit Of Service (Motion For Leave To Amend)	01/13/15	12	AA 2646-2647
Amended Certificate Of Mailing (Motion To Dismiss)	03/20/14	5	AA 1086-1087
Amended Notice Of Appeal	07/29/15	17	AA 3602-3613
Answer Of Trustee Eleanor C. Ahern To Jacqueline M. Montoya's Petition For Declaratory Judgment Regarding Limited Interest Of Trust Assets Pursuant To NRS 30.040, NRS 153.031(E), And NRS 164.033(1)(A) And Counterclaims Against Jacqueline M. Montoya	02/10/14	3	AA 609-627
Brief Regarding Accounting, Fiduciary Duties And Trust Administration Filed Under Seal	03/13/15	14-15	AA 2926-3192
Brief Regarding Pending Issues Filed Under Seal	03/12/15	13	AA 2891-2925
Certificate Of Mailing (Petition For Construction)	03/28/14	5	AA 1149-1150
Certificate Of Mailing (Petition For Declaratory Judgment)	09/27/13	1	AA 205-206
Certificate Of Mailing (Petition For Determination)	03/31/14	5	AA 1151-1152
Certificate Of Mailing (Petition To Assume)	08/17/09	1	AA 62-63
Certificate Of Mailing (Petition To Compel)	12/03/13	2	AA 302-303



<b>Description</b>	<b>Date Filed</b>	<b>Vol. No.</b>	<b>Page No.</b>
Certificate Of Mailing (Petition To Compel)	03/06/14	4	AA 749-750
Certificate Of Mailing (Response To Objection)	05/08/14	7	AA 1430-1431
Certificate Of Mailing Regarding Opposition Of Eleanor C. Ahern To Jacqueline M. Montoya's Petition For Construction And Effect Of Probate Court Order	05/12/14	7	AA 1533
Court Minutes Hearing Motion to Dismiss 01/14/14	01/14/14	3	AA 579-580
Court Minutes Re All Pending Motions 05/13/14	05/13/14	7	AA 1534-1536
Court Minutes Re Bench Trial	02/18/14	3	AA 672
Court Minutes Re Evidentiary Hearing On Pending Motions 01/30/15	01/30/15	12	AA 2687-2689
Eleanor C. Ahern's (1) Reply In Support Of Eleanor C. Ahern's Motion To Dismiss Petition For Declaratory Judgment For Failure To State Of Claim Upon Which Relief Can Be Granted; (2) Opposition To Countermotion Of Kathryn A. Bouvier And Jacqueline M. Montoya For Summary Judgment On Petition For Declaratory Judgment, For Damages, And Assessment Of Penalties And For Other Relief; And (3) Reply In Support Of Countermotion For Summary Judgment	01/09/15	11	AA 2362-2540
Errata To Objection Of Trustee Eleanor C. Ahern To Jacqueline M. Montoya's Petition And Addendum To Petition To Compel Trustee To Distribute Accrued Income And Future Income From Oil, Gas, And Mineral Leases And Declaration Of The Applicability Of The Doctrine Of Laches	05/07/14	5	AA 1153-1164

<b>Description</b>	<b>Date Filed</b>	<b>Vol. No.</b>	<b>Page No.</b>
Motion For Leave To Amend Pleadings Of Jacqueline M. Montoya And Kathryn A. Bouvier For Claims, Defenses, Damages And Assessment Of Penalties, And For Other Relief Against Eleanor Connell Hartman Ahern	01/12/15	12	AA 2635-2645
Motion In Support Of Award Of Attorney's Fees And Costs	04/01/15	16	AA 3276-3406
Motion To Dismiss And Motion To Strike Counterclaims Raised By Eleanor C. Ahern Pursuant To NRCP 15 And NRCP 12(B)	02/14/14	3	AA 667-671
Motion To Dismiss Counterclaims Of Eleanor C. Ahern	03/18/14	5	AA 1058-1085
Motion To Dismiss Petition For Declaratory Judgment Regarding Limited Interest Of Trust Assets Pursuant To NRS 30.040, NRS 153.031(E), And NRS 164.033(1)(A) For Failure To State A Claim Upon Which Relief Can Be Granted Per NRCP 12(B)(5)	10/09/14	8	AA 1617-1756
Notice Of Appeal	07/31/14	7	AA 1615-1616
Notice Of Appeal	05/18/15	17	AA 3570-3601
Notice Of Appeal Regarding Order Appoint New Temporary Trustee	04/07/15	16	AA 3411-3417
Notice Of Entry Of Order (Appointing New Temporary Trustee)	04/06/15	16	AA 3407-3410
Notice of Entry of Order and Stipulation and Order to File Under Seal	02/17/15	13	AA 2886-2890
Notice Of Entry Of Order Compelling Eleanor Ahern To Turn Over Trust Records To Acting Successor Trustee	04/24/15	16	AA 3471-3474
Notice Of Entry Of Order Confirming Acting Successor Trustee	04/24/15	16	AA 3475-3478

<b>Description</b>	<b>Date Filed</b>	<b>Vol. No.</b>	<b>Page No.</b>
Notice Of Entry Of Order On Summary Judgment	04/17/15	16	AA 3435-3454
Notice Of Entry Of Order Regarding The Accounting, Breach Of Fiduciary Duty Claims And Award Of Attorney Fees	04/20/15	16	AA 3464-3470
Notice Of Entry Of Order: Re Pending Motions And Scheduling	07/08/14	7	AA 1605-1614
Notice Of Hearing On Petition For Declaratory Judgment Regarding Limited Interest Of Trust Assets Pursuant To NRS 30.040, NRS 153.031(1)(E), And NRS 164.033(1)(A)	09/27/13	1	AA 203-204
Objection Of Trustee Eleanor C. Ahern To Jacqueline M. Montoya's Petition To Compel Trustee To Distribute Accrued Income And Future Income Received From Oil, Gas, And Mineral Leases And Declaration Of The Applicability Of The Doctrine Of Laches	01/03/14	2-3	AA 326-560
Objection Of Trustee Eleanor C. Ahern To Jacqueline M. Montoya's Petition And Addendum To Petition To Compel Trustee To Distribute Accrued Income And Future Income From Oil, Gas, And Mineral Leases And Declaration Of The Applicability Of The Doctrine Of Laches	03/13/14	4-5	AA 751-1057
Objection To Motion To Dismiss Petition For Declaratory Judgment Regarding Limited Interest Of Trust Assets Pursuant To NRS 30.040, NRS 153.031(E), And NRS 164.033(1)(A) For Failure To State A Claim Upon Which Relief Can Be Granted Per NRCP 12(B)(5)	12/11/13	2	AA 304-325

<b>Description</b>	<b>Date Filed</b>	<b>Vol. No.</b>	<b>Page No.</b>
Omnibus Opposition To (1) Petition For Determination Of Construction And Interpretation Of Language Relating To Trust No. 2 And (2) Petition For Construction And Effect Of Probate Court Order; And Countermotion For Summary Judgment	01/02/15	9-11	AA 1850-2361
Opposition Of Eleanor C. Ahern To Jacqueline M. Montoya's Petition For Construction And Effect Of Probate Court Order	05/12/14	7	AA 1432-1532
Opposition Of Eleanor C. Ahern To Motion To Dismiss Counterclaims Of Eleanor C. Ahern	05/07/14	6	AA 1165-1386
Opposition To Eleanor C. Ahern's Motion To Dismiss Petition For Declaratory Judgment For Failure To State A Claim Upon Which Relief Can Be Granted; And, Countermotion Of Kathryn A. Bouvier And Jacqueline M. Montoya For Summary Judgment On Petition For Declaratory Judgment, For Damages And Assessment Of Penalties, And For Other Relief	12/23/14	8	AA 1757-1849
Opposition To Motion For Leave To Amend Pleadings	01/27/15	12	AA 2673-2686
Opposition To Motion In Support Of Award Of Attorney's Fees And Costs	05/04/15	16	AA 3479-3497
Order Appointing New Temporary Trustee	04/01/15	15	AA 3274-3275
Order Compelling Eleanor Ahern To Turn Over Trust Records To Acting Successor Trustee	04/20/15	16	AA 3460-3461
Order Confirming Acting Successor Trustee	04/20/15	16	AA 3462-3463

<b>Description</b>	<b>Date Filed</b>	<b>Vol. No.</b>	<b>Page No.</b>
Order Regarding The Accounting, Breach Of Fiduciary Duty Claims And Award Of Attorney Fees	04/20/15	16	AA 3455-3459
Order: Re Pending Motions And Scheduling	07/07/14	7	AA 1597-1604
Petition For Construction And Effect Of Probate Court Order	03/26/14	5	AA 1088-1127
Petition For Declaratory Judgment Regarding Limited Interest Of Trust Assets Pursuant To NRS 30.040, NRS 153.031(1)(E), And NRS 164.033(1)(A)	09/27/13	1	AA 64-200
Petition For Determination Of Construction And Interpretation Of Language Relating To Trust No. 2	03/27/14	5	AA 1130-1146
Petition To Assume Jurisdiction Over Trust; Confirm Trustee; And Construe And Reform Trust	08/17/09	1	AA 1-61
Petition To Compel Trustee To Distribute Accrued Income And Future Income Received From Oil, Gas, And Mineral Leases And Declaration Of The Applicability Of The Doctrine Of Laches	12/03/13	2	AA 277-299
Petition To Compel Trustee To Distribute Accrued Income And Future Income From Oil, Gas, And Mineral Leases And Declaration Of The Applicability Of The Doctrine Of Laches	03/06/14	4	AA 713-735
Pre-Trial Memorandum	02/11/14	3	AA 628-666
Recorder's Transcript Motions Hearing 01/14/14	01/24/14	3	AA 581-608
Recorder's Transcript Of Proceedings Civil Bench Trial – Day 1 02/18/14	02/26/14	4	AA 673-712

<b>Description</b>	<b>Date Filed</b>	<b>Vol. No.</b>	<b>Page No.</b>
Reply In Support Of Countermotion Of Kathryn A. Bouvier And Jacqueline M. Montoya For Summary Judgment On Petition For Declaratory Judgment, For Damages And Assessment Of Penalties, And For Other Relief; And, Opposition To Eleanor's Countermotion For Summary Of Judgment	01/09/15	12	AA 2541-2588
Reply In Support Of Motion For Award Of Attorney's Fees And Costs And Supplement To Motion In Support Of Award Of Attorney's Fees And Costs	05/08/15	17	AA 3498-3531
Response To Objection Of Eleanor C. Ahern To Jacqueline M. Montoya's Petition And Addendum To Petition To Compel Trustee To Distribute Accrued Income And Future Income From Oil, Gas, And Mineral Leases And Declaration Of The Applicability Of The Doctrine Of Laches	05/08/14	7	AA 1387-1429
Response To Objection Of Trustee Eleanor C. Ahern To Jacqueline M. Montoya's Petition To Compel Trustee To Distribute Accrued Income And Future Income Received From Oil, Gas, And Mineral Leases And Declaration Of The Applicability Of The Doctrine Of Laches	01/09/14	3	AA 561-578
Second Supplement To Brief Regarding Pending Issues Filed Under Seal	03/19/15	15	AA 3267-3273
Summary Judgment	04/16/15	16	AA 3418-3434
Supplement To Brief Regarding Accounting, Fiduciary Duties And Trust Administration Filed Under Seal	03/18/15	15	AA 3253-3266
Supplement To Brief Regarding Pending Issues Filed Under Seal	03/18/15	15	AA 3193-3252

<b>Description</b>	<b>Date Filed</b>	<b>Vol. No.</b>	<b>Page No.</b>
Supplement To Motion To Amend Pleadings	01/20/15	12	AA 2648-2672
Supplement To Reply In Support Of Countermotion Of Kathryn A. Bouvier And Jacqueline M. Montoya For Summary Judgment On Petition For Declaratory Judgment, For Damages, And Assessment Of Penalties, And For Other Relief; And, Opposition To Eleanor's Countermotion For Summary Judgment	01/12/15	12	AA 2589-2634
Sur-Reply To Montoya And Bouvier's Reply In Support Of Motion For Award Of Attorneys' Fees And Costs	05/12/15	17	AA 3532-3536
Transcript Of Proceedings Hearing On Petition For Declaratory Judgment Regarding Limited Interest Of Trust Assets Pursuant To NRS 30.040, NRS 153.031(1)(E), And NRS 164.033(1)(A) 11/12/13	12/06/13	2	AA 207-276
Transcript Of Proceedings Motion For Attorney Fees 05/13/15	06/12/15	17	AA 3537-3569
Transcript Of Proceedings: Hearing 01/30/15	03/02/15	13	AA 2690-2885
Transcript Re: All Pending Motions 05/13/14	05/20/14	7	AA 1537-1596
Verification For Petition For Construction And Effect Of Probate Court Order	03/26/14	5	AA 1128-1129
Verification For Petition For Declaratory Judgment Regarding Limited Interest Of Trust Assets Pursuant To NRS 30.040, NRS 153.031(1)(E), And NRS 164.033(1)(A)	09/27/13	1	AA 201-202
Verification For Petition For Determination Of Construction And Interpretation Of Language Relating To Trust No. 2	03/27/14	5	AA 1147-1148

<b>Description</b>	<b>Date Filed</b>	<b>Vol. No.</b>	<b>Page No.</b>
Verification For Petition To Compel Trustee To Distribute Accrued Income And Future Income Received From Oil, Gas, And Mineral Leases And Declaration Of The Applicability Of The Doctrine Of Laches	12/03/13	2	AA 300-301

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IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \*

IN THE MATTER OF: THE W.N.  
CONNELL AND MARJORIE T.  
CONNELL LIVING TRUST, DATED  
MAY 18, 1972,

ELEANOR C. AHERN A/K/A  
ELEANOR CONNELL HARTMAN  
AHERN,

Appellant,

vs.

JACQUELINE M. MONTOYA; AND  
KATHRYN A. BOUVIER,

Respondents.

Supreme Court No.: 66231

Consolidated with: 67782, 68046

District Court Case No.:  
P-09-066425-T

Appeal from the Eighth Judicial  
District Court, The Honorable Gloria  
Sturman Presiding

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRAP 25(c) and (d), I caused a true and correct copy of the foregoing **APPELLANT'S APPENDIX (Volume 11 of 17) (Pages AA 2313-2540)** by using the Court's Electronic Filing System on November 20, 2015, upon the following:

WHITNEY B. WARNICK, ESQ.  
ALBRIGHT, STODDARD,  
WARNICK & ALBRIGHT  
801 South Rancho Drive, Suite D-4  
Las Vegas, NV 89106  
*Attorneys for Kathryn A. Bouvier*

JOSEPH J. POWELL, ESQ.  
THE RUSHFORTH FIRM, LTD.  
P.O. Box 371655  
Las Vegas, NV 89137-1655  
*Attorneys for Jacqueline M. Montoya  
and Kathryn A. Bouvier*

I hereby certify that on November 20, 2015, I served a copy of this document by mailing a true and correct copy, postage prepaid, via U.S. Mail, addressed to the following:

MICHAEL K. WALL, ESQ.  
HUTCHISON & STEFFEN, LLC  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145  
*Attorneys for Fredrick P. Waid, Court-*  
*appointed Trustee*

/s/ Erin Parcels  
an employee of Brownstein Hyatt Farber Schreck, LLP

# Exhibit 31

**ADDENDUM TO:  
OIL AND GAS LEASE**

Replace addresses in paragraph 33 Notices on Page 14.

**SIGNED 4-4-2012**

Notices to Lessor and Lessee(s), respectfully, shall be addressed as follows:

If to Lessor:

Eleanor C. Hartman, Individually and as Trustee of the  
W. N. Connell and Marjorie T. Connell  
Living Trust under Trust Agreement dated May 18, 1972  
8635 West Sahara Avenue, #549  
The Lakes, Nevada 89117-5858

If to Lessee:

Apache Corporation 303 Veterans Airpark Lane, Suite 3000 Midland, Texas 79705

**LESSEE**

**APACHE CORPORATION**

BY: Timothy R. Custer

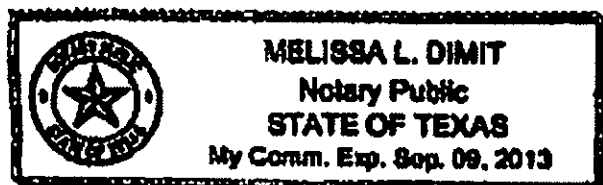
(m) NAME: TIMOTHY R. CUSTER  
Title: ATTORNEY IN FACT

State of TEXAS  
County of MIDLAND

The foregoing instrument was acknowledged before me  
this 10<sup>th</sup> day of July, 2012, by Timothy R. Custer, Attorney  
In Fact of Apache Corporation, a Delaware corporation, on  
behalf of said corporation.

Melissa L. Dimit

Notary Public in and for the State of Texas  
Printed Name of Notary: Melissa L. Dimit  
My commission expires: 9/9/2013



**LESSOR**

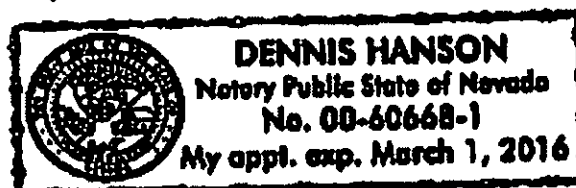
BY: Eleanor C. Hartman, Individually and as Trustee

Eleanor C. Hartman, Individually and as Trustee of the  
W. N. Connell and Marjorie T. Connell  
Living Trust Agreement dated May 18, 1972  
8635 West Sahara Avenue, #549  
The Lakes, Nevada 89117-5858

**NOTARY Nevada**

State of Nevada  
County of Clark  
this Document was Acknowledged  
before me this May 23rd 2012, by  
Eleanor C. Hartman

Dennis Hanson  
Notary Public



## OIL AND GAS LEASE

STATE OF TEXAS

COUNTY OF UPTON

§  
§  
§

THIS AGREEMENT, made and entered into as of the 4<sup>th</sup> day of April, 2012, by and between the undersigned party or parties designated as Lessor on the signature page of this Lease (such party or parties hereinafter called "Lessor") and the undersigned party or parties designated as Lessee on the signature page of this Lease (such party or parties hereinafter called "Lessee").

1. **Definitions.** As used in this Lease, the following words and phrases shall have the meaning set forth below:

A. "commence a well", "commencement of a well", "commence actual drilling operations", "commencement of actual drilling operations", "actual drilling" or "actual drilling of a well" shall be deemed to occur at such time as there has been erected on the leased premises at the location for the well, a derrick, a rig and machinery capable of drilling to the base of the objective formation, the well has been "spudded-in" and the machinery for drilling is rotating under power.

B. "completion" or "completion of a well" shall be deemed to occur on (i) the date which is ninety (90) days after the production casing and/or liner has been run in the hole, (ii) the date which is ninety (90) days after total depth of the well in question has been reached, or (iii) the date indicated in the completion report for the well which is filed with the Railroad Commission, whichever is the earliest date.

C. The date of abandonment of a dry hole is the date indicated on the Texas Railroad Commission plugging report for the well or thirty (30) days after total depth is reached, whichever is the earlier date.

D. "production", "producing", "production in paying quantities", "commercial production", "production in commercial quantities", "producing in paying quantities" and "producing in commercial quantities" shall have the same meaning for purposes of this Lease, namely production in quantities sufficient to yield a return to the holders of the working interest excluding severance taxes, in excess of operating expenses, royalties and expenses of equipment beyond the wellhead and costs including depreciation of assets ("depreciation of assets" shall be the actual loss of fair market value of salvable equipment on the leased premises during the relevant period), even though drilling costs may never be recouped by working interest owners. The review period for purposes of determining whether production is in paying or commercial quantities shall be one hundred twenty (120) consecutive days. There shall be no review period when production ceases. Production in less than paying or commercial quantities shall never be considered as production for purposes of this Lease.

E. "operations for reworking", "reworking operations", "commencement of reworking operations", "commence reworking operations", "commence reworking operations" and "actual reworking operations" shall have the same meaning being the actual re-entry into an existing wellbore with a drilling or workover rig capable of re-entering and reworking such well and the timely prosecution of such actual reworking operations in good faith and with reasonable diligence and without cessation of more than sixty (60) days, toward the re-establishment of commercial production of oil or gas from such previously producing zone or zones.

F. "Producing Unit" means the following:

(i) With respect to vertical wells:

[a] A tract of land designated in writing by Lessee, as provided in this Lease,

containing no more than 80 acres on which Lessee has drilled and completed an oil well pursuant to the terms of this Lease and which is producing in paying quantities (provided that if the field rules of the Texas Railroad Commission applicable to wells which are completed in each of the Wolfcamp, Dean and Spraberry formations are modified or amended after the date of this Lease to provide that the standard proration unit for such wells shall be 40 acres, then and in that event, each Producing Unit for oil wells drilled by Lessee after the effective date of such modification or amendment of the applicable field rules shall contain no more than 40 acres, plus a tolerance of ten percent);

(b) A tract of land designated in writing by Lessee as provided in this Lease containing no more than 320 acres on which Lessee has drilled a gas well pursuant to the terms of this Lease and which is producing in paying quantities.

(ii) With respect to horizontal wells:

(a) As to horizontal wells, which are not drilled or produced pursuant to a pooled unit created under the terms of this Lease, a tract of land designated in writing by Lessee containing no more than the lesser of:

(I) Forty (40) acres plus the minimum additional acreage allowed for horizontal drain holes, as set forth in Rule 86 of the Texas Railroad Commission utilizing the Additional Acreage Assignment Table of Rule 86 for fields with a density rule of forty (40) acres or less, as set forth in Section 3.86, Chapter 3, Part 1, Title 16, of the Texas Administrative Code; or

(II) 320 acres.

(b) As to horizontal wells which are located within a valid pooled unit created under the terms of this Lease, the Producing Unit for purposes of this Lease shall be the portion of the leased premises comprising a part of such pooled unit.

A Producing Unit, whether for a vertical well or for a horizontal well, shall include only those depths and horizons from one hundred feet (100') above the top of the shallowest formation producing in the well for such Producing Unit down to one hundred feet (100') below the base of the deepest producing formation in such well.

G. "Surface Owner" shall mean the record owner of the fee interest in the surface estate of the tract of land described in Section 2 of this Lease.

H. "Disposition" shall mean when used in reference to Lessee's handling of production; the transaction, place and point in time whereby Lessee and its Affiliates finally and fully relinquish any beneficial ownership, rights or enjoyment of any substance produced under the terms of this Lease.

I. "Affiliate" or "affiliate" as used herein means and shall include each and every one of the following:

- (i) each individual, corporation, joint venture, trust, estate, partnership, limited liability company or other entity that owns or controls more than one percent (1%) of the outstanding voting securities or interest of Lessee; and
- (ii) each corporation, joint venture, trust, partnership, limited liability company or other entity in which Lessee or any current or past officer or director of Lessee owns or controls more than one percent (1%) of the outstanding voting

securities or interest.

**2. Grant of Interest/Description.**

A. Lessor, in consideration of a cash bonus in hand paid, of the royalties herein provided, and of the agreements of Lessee hereinafter contained, hereby grants, leases, and lets unto Lessee for the sole purpose of exploring for, drilling, operating, and producing oil and/or gas and of laying pipelines, temporarily storing oil, building one or more tank batteries, power lines, and roads thereon necessary to produce, save, care for, treat and transport the oil and/or gas produced from the land leased hereunder, the following described land situated in Upton County, Texas, (sometimes referred to hereinafter as the "leased premises") to wit:

Tract A: All depths lying below a depth of 9300 feet below the surface in the NE/4 and SW/4 of Section 32, Block 39, T-5-S, T&P Ry. Co. Survey.

Tract B: All depths lying below the base of the Dean Sand Formation in the NW/4 and SE/4 of Section 32, Block 39, T-5-S, T&P Ry. Co. Survey.

Tract C: All depths lying below the base of the Dean Sand Formation in the SW/4 NE/4 of Section 40, Block 39, T-5-S, T&P Ry. Co. Survey.

Tract D: All depths lying below the base of the Dean Sand Formation in the SW/4 NW/4 of Section 40, Block 39, T-5-S, T&P Ry. Co. Survey.

Tract E: All depths lying below the base of the Dean Sand Formation in the SW/4 of Section 41, Block 39, T-5-S, T&P Ry. Co. Survey.

Tract F: All depths lying below the base of the Dean Sand Formation in the N/2 of Section 44, Block 39, T-5-S, T&P Ry. Co. Survey.

Tract G: All depths lying below a depth of 9300 feet below the surface in the S/2 of Section 44, Block, 39, T-5-S, T&P Ry. Co. Survey.

Tract H: All depths lying below the base of the Dean Sand Formation in the NE/4 and SW/4 of Section 45, Block 39, T-5-S, T&P Ry. Co. Survey.

Tract I: All depths lying below a depth of 9250 feet below the surface in the NW/4 and SE/4 of Section 45, Block 39, T-5-S, T&P Ry. Co. Survey.

B. This Lease is made subject to any and all easements, rights of way and other encumbrances burdening any part of the leased premises as shown of record in Upton County, Texas or apparent from a reasonable inspection of the leased premises.

C. By this Lease, Lessee acquires no right to construct, operate or maintain any treating or processing plant, dwelling house, lease house, camp, pipe yard, equipment yard, warehouse or similar structure on the leased premises and acquires no easement, express or implied, with respect to any land other than the leased premises.

D. Lessee specifically covenants and agrees that with respect to its performance of obligations (both express and implied) and exercise of rights and privileges arising under this Lease that Lessee shall conduct itself with respect to Lessor and the Surface Owners with the utmost good faith and fair dealing. Lessee further covenants and agrees to comply with all applicable local, state and federal laws, rules, and regulations.

3. **Term.** Subject to the provisions contained herein, this Lease shall be for a term of three (3) years from this date (called "primary term"), and for so long thereafter as oil and gas, or either of them, is produced in paying quantities from the leased premises.

4. **Surface Use Agreement.** Lessee's rights to utilize the surface estate in the leased premises as elsewhere described in this Oil and Gas Lease are expressly made subject to that certain Surface Use Agreement dated April 4, 2012, entered into by and between Cornell-Cowden Ranch, LP, as Owner, and Apache Corporation, as Operator. It is understood and agreed that the execution and delivery of this Oil and Gas Lease is made conditional upon the execution and delivery of the Surface Use Agreement.

5. **Reservations.** There is EXCEPTED from this Lease and Lessor RESERVES unto Lessor and Lessor's heirs, successors, administrators and assigns:

A. all minerals except oil, gas and other liquid and gaseous substances and sulphur that are necessarily produced with such oil or gas;

B. equal and concurrent rights of occupancy, use and possession of the surface estate by (1) Lessor, (2) the Surface Owner and (3) Lessor's or the Surface Owner's other mineral, surface, grazing, agricultural and recreational lessees or assignees, together with the right of ingress to and egress from the leased premises for all purposes including exploring, developing and operating said leased premises for oil, gas and other minerals of whatever nature which are not covered by this Lease or which may hereafter be released from this Lease and, the sole and exclusive right, as between Lessor and Lessee, to complete water source wells on the leased premises and in any reservoir not productive of oil or gas for the purpose of obtaining water for domestic and agricultural use and consumption and for the exploration, development and operation of Lessor's reserved rights; provided, however, Lessor and Surface Owner agree not to use the surface of the premises affected hereby in any manner that will interfere unduly with any of Lessee's rights in exploring, developing, producing, transporting, and marketing oil, gas and other hydrocarbons under leased premises. As between mineral, surface, and agricultural lessees, access to the surface shall be based on the principle of first-in-time, first-in-right, but as between Lessee herein and subsequent mineral lessees, the leasehold estate created by this Lease shall be considered dominant;

C. all rights granted to Lessee in this Lease shall be limited to the leased premises and depths described and covered by this Lease together with such ingress to and egress from leased premises as designated by Lessor and shall not extend to and Lessor expressly reserves all rights, privileges and usage which relate to land not described herein or which may be released herefrom. It is understood and agreed that to the extent Lessee establishes roads, flowlines, pipelines or power lines across the leased premises in accordance with the terms and provisions of the Surface Use Agreement to service its operations on any of the following described tracts of land (the "Jointly Operated Acreage"), prior to any partial or total termination of this Lease, then and in that event, Lessee may nevertheless continue to use such established roads, flowlines, pipelines and power lines as originally configured for as long as any of the existing oil and gas leases (including this Lease and any oil and gas leases executed by Lessor to Lessee within (30) days from and after the date of this Lease) covering any portion of the Jointly Operated Acreage remains in force and effect; provided however it is expressly understood and agreed that Lessee's limited right to use the surface estate of the leased premises for roads, flowlines, pipelines and power lines across the leased premises for the benefit of Lessee's other leasehold operations on the Jointly Operated Acreage shall never be extended or construed to extend or be utilized by Lessee for the use or benefit of or as a convenience to Lessee in operating on lands not within the Jointly Operated Acreage, regardless of whether such lands not included within the Jointly Operated Acreage are owned by Lessor or any one or more of the Surface Owner or third parties:

- (i) W/2 of Section 48, Block 40, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.
- (ii) SE/4 of Section 43, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.
- (iii) Section 42, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.
- (iv) Section 32, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.



- (v) SW/4 NE/4 of Section 40, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.
- (vi) SW/4 NW/4 of Section 40, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.
- (vii) SW/4 of Section 41, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.
- (viii) Section 44, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.
- (ix) Section 45, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.

**6. Partial Termination: Continuous Development: Retained Acreage and Depths.**

A. At the later to occur of the following: (i) the expiration of the primary term of this Lease, or (ii) the conclusion of the Lessee's continuous development program undertaken and prosecuted in accordance with the provisions of this Lease; this Lease shall terminate as to all of the leased premises not theretofore released, save and except the acreage and depths included in the Producing Unit(s) established by Lessee.

B. Each Producing Unit shall be in the form of a square or rectangle as nearly as is practicable with the well at a legal location on such Producing Unit and as nearly as possible in the center of such Producing Unit.

C. Lessee shall designate each Producing Unit in recordable form with such designation containing a metes and bounds description or other sufficient legal description of the Producing Unit's exterior boundaries and relevant depth limitations. Lessee shall place each designation of a Producing Unit of record in Upton County, Texas within sixty (60) days after the completion of the well for such Producing Unit and promptly provide to Lessor a certified copy of such recorded designation of Producing Unit; provided, however that during the existence (if any) of Lessee's continuous development program, Lessee may defer filing such designations until the continuous development program has been concluded at which time Lessee may file a single instrument which identifies and designates each Producing Unit situated on the leased premises.

D. Lessee shall, within sixty (60) days after termination of this Lease, as to any part of the leased premises, execute and furnish to Lessor a recordable release describing the acreage and/or depths as to which this Lease has terminated.

E. Subject to the provisions of Section 6.G. below, if at the expiration of the primary term of this Lease, Lessee is then engaged in drilling a well on the leased premises or if Lessee has completed a well as a commercial producer on the leased premises and such well is then still producing in paying quantities upon the expiration of the primary term of this Lease, Lessee shall have the right and option (but not obligation) to engage in a continuous development program on the leased premises by conducting a program of continuous drilling of new wells on the leased premises allowing no more than one hundred eighty (180) days to elapse between (i) the completion of one well as a well producing in paying quantities or as a dry hole, and (ii) the commencement of actual drilling operations on the next succeeding well. If a continuous development program is undertaken by the Lessee it shall be deemed to have been concluded on the earlier to occur of the following: (x) at such time as Lessee allows more than one hundred eighty (180) days to pass from the most recent completion of a new well on the leased premises without having commenced actual drilling operations on another new well; or (y) upon the date which is the tenth (10th) anniversary of the date on which the primary term of this Lease expired. It is understood and agreed that commencement of reworking operations or drilling, side tracking or deepening operations on a well previously completed pursuant to this Lease shall not constitute "commencement of actual drilling on the next succeeding well" so as to constitute continuous development.

F. If after the expiration of the primary term of this Lease or the conclusion of Lessee's continuous development program, whichever occurs later, any Producing Unit shall cease to produce

continuous development program, whichever occurs later, any Producing Unit shall cease to produce in paying quantities this Lease shall terminate as to such Producing Unit unless Lessee, within sixty (60) days after such cessation of production in paying quantities, commences reworking operations or commences actual drilling operations and thereafter diligently prosecutes the same or different reworking or actual drilling operations on such Producing Unit with no cessation of more than thirty (30) days until production in paying quantities is restored.

G. Notwithstanding anything herein to the contrary, on the date which is the tenth (10th) anniversary of the date on which the primary term of this Lease expires, this Lease shall terminate as to all acreage not then located within a Producing Unit.

H. Although this Lease may have terminated in part or may have been partially released, Lessee shall have and retain easements over and across the terminated portion or portions of the surface of the leased premises as shall be reasonably necessary for ingress and egress so as to enable Lessee to develop and operate the portion or portions of the leased premises as to which this Lease continues in effect and Lessee shall not be required to relocate any pipelines or roads solely because of the partial termination or partial release of this Lease.

7. **Royalties.** As royalty, Lessee covenants and agrees:

A. **Oil.** To deliver free of cost to Lessor at the location of the disposition of Lessee's oil and liquid hydrocarbons or to the credit of Lessor at the pipelines to which the wells may be connected, one-fourth (1/4) of all oil and other liquid hydrocarbons (recovered or separated on the leased premises) produced and saved from the leased premises; or, at the Lessor's option, which may be exercised from time to time, Lessee shall pay to Lessor the same percentage of the market value at the point of Lessee's disposition of its oil and liquid hydrocarbons for such oil and other liquid hydrocarbons of like grade and gravity prevailing in the area on the day such oil and other hydrocarbons are run; provided, however, there shall be no deduction from the value of Lessor's royalty by reason of any processing, treatment, trucking, transportation or other cost to market such oil and other liquid hydrocarbons. If Lessee or any Affiliate of Lessee engages in any "downstream marketing" of oil or other liquid hydrocarbons, from the leased premises, including receiving payments for aggregating such substances with oil or liquid hydrocarbons produced from other tracts of land, then and in that event, Lessee shall fully disclose any such contractual or other marketing arrangements and shall include in its payment of royalties on oil the share of the payments or value of any other consideration received in connection with or for such arrangements on the basis that the production from and attributable to this lease bears to the total volume of production the disposition for which Lessee or any of its Affiliates received any "bonuses", "marketing fees", "aggregation fees" or the like.

B. **Gas.** To pay the Lessor:

(i) On gas produced from the leased premises which is processed in a processing plant in which Lessee or any parent, subsidiary or affiliate of Lessee has a direct or indirect interest, Lessor shall receive the higher of (a) one-fourth (1/4) of the market value of such gas at the inlet to the processing plant, or (b) one-fourth (1/4) of the market value of all processed liquids saved from said gas at the point of disposition for Lessee's share of processed liquids, plus one-fourth (1/4) of the market value of all residue gas at the point of sale, use or other disposition.

(ii) On gas produced from the leased premises, which is processed in facilities other than a processing plant in which Lessee or any parent, subsidiary or affiliate of Lessee has a direct or indirect interest, Lessor shall receive one-fourth (1/4) of the market value at the point of disposition of Lessee's liquids of all processed liquids credited to the account of Lessee and attributable to such gas, plus one-fourth (1/4) of the market value of all residue gas at the point of sale, use or other disposition.

(iii) On all gas produced from the leased premises, and sold by Lessee or used on or off the leased premises, and to which the preceding subparagraphs (i) and (ii) above do not apply, Lessor shall receive one-fourth (1/4) of the market value at the point of use or other disposition of all such gas.

C. The market value of all gas shall be determined at the specified location and by reference to the gross heating value (measured in British thermal units) and quality of the gas. The market value used in the calculation of all royalty under this Lease shall never be less than the total proceeds received by Lessee in connection with the sale, use or other disposition of oil or gas produced or sold from the leased premises. If Lessee receives from a purchaser of oil or gas any reimbursement for all or any part of severance or production taxes, the proportionate part of such reimbursement amount shall be added to the total proceeds received by Lessee for purposes of this subsection. If Lessee realizes proceeds of production after deduction of any expenses of production, gathering, dehydration, separation, compression, transportation, treatment, processing, storage or marketing, then the proportionate part of such deductions shall be added to the total proceeds received by Lessee for purposes of this Section 7.C.

D. Notwithstanding anything to the contrary, Lessor's royalty shall never bear, either directly or indirectly, any part of the costs or expenses of production, separation, gathering, dehydration, compression, transportation, trucking, processing, treatment, storage or marketing of the oil or gas produced from the leased premises, nor any part of the costs of construction, operation or depreciation of any plant or other facilities or equipment used in the handling of oil or gas produced from the leased premises. Royalty shall be payable on oil, gas and other products produced from the leased premises and consumed by Lessee on the leased premises, whether for compression, dehydration, fuel or other uses. It is understood and agreed that as to gas volumes produced from the leased premises which are re-injected by Lessee into a producing formation in the leased premises for the purpose of pressure maintenance or re-pressuring such formation with Lessee having the good faith belief that such re-injection will result in the enhancement of the overall recovery of royalty-bearing hydrocarbons from this Lease, then and in that event Lessee shall not be required to pay royalties on such re-injected gas volumes.

E. If the gas produced from the leased premises is sold by Lessee pursuant to an arms-length contract with a purchaser which is not an affiliate of Lessee, and the contract provides for (i) net proceeds to be paid to Lessee which equal or exceed the market value of the gas at the point of delivery to such purchaser at the time such contract is entered into, and (ii) a term no longer than that which is usual and customary in the industry at the time the contract is made and such contract provides for redetermination of price to reflect increases in the market value of natural gas not less frequently than annually, then the market value of the gas sold pursuant to such contract shall be the total proceeds received by Lessee in such sale, subject to the provisions of Section 7.C. and 7.D. above.

8. Payment of Royalties. With respect to each well on the leased premises, initial royalty payments for oil and/or gas shall be made on or before the end of the fourth (4th) calendar month following the month of first production. Thereafter, all royalties which are required to be paid hereunder to Lessor shall be due and payable in the following manner: Royalty on oil shall be due and payable on or before the fifth (5<sup>th</sup>) day of the second (2<sup>nd</sup>) calendar month following the month production is sold, and royalty on gas shall be due and payable on or before the fifteenth (15<sup>th</sup>) of the third (3<sup>rd</sup>) calendar month following the month of production. Each royalty payment shall be accompanied by a check stub, schedule, summary or remittance advice identifying the Lease and showing the gross amount and disposition of all oil and gas produced and the market value of the oil and gas. A copy of all contracts under which gas is sold or processed and all subsequent agreements and amendments to such contracts shall be delivered to Lessor within thirty (30) days after entering into or making such contracts, agreements or amendments. The books, accounts and all other records pertaining to production, transportation, sale and marketing of oil or gas from the leased premises shall at any time during normal business hours be subject to inspection and examination by Lessor. If payments to be made by Lessee to Lessor are not made when due for whatever reason, the unpaid portion shall bear interest at the lower of Twelve Percent per annum (12%) or the highest rate allowed by law. If Lessee is in default hereunder and this matter is turned over to an attorney for collection, or is collected by suit, Lessee agrees to pay all reasonable attorney's fees and litigation expenses incurred by Lessor. Payments may be remitted to Lessor annually for the aggregate of up to twelve (12) months' accumulation of proceeds if the total amount owed is \$25.00 or less.

9. Limitation of Oil and Gas. This Lease is intended to cover only oil and gas, but some other substances (including helium and sulphur) may be produced necessarily with and incidental to the

production of oil or gas from the leased premises; and, in such event, this Lease shall also cover all such other substances so produced. On all such substances produced under and by virtue of the terms of this Lease, Lessor shall receive a royalty of one-fourth (1/4) of all such substances so produced and saved, same to be delivered to Lessor, free of all costs; or, at Lessor's election, Lessor's one-fourth (1/4) of such substances shall be sold by Lessee with Lessee's portion of such substances and at the same price realized by Lessee in its disposition of its portion of such substances.

**10. Gas Contracts: Contracts for Sale or Other Disposition of Production.**

A. Each and every contract or agreement entered into by Lessee for or relating to the sale, processing or other disposition of production from or attributable to this Lease shall contain provisions sufficient to accommodate the Lessor's full exercise of its rights and privileges with respect to its royalty share of production including, but not limited to, those set forth in Section 12 of this Lease.

B. In the event Lessee enters into a contract for the sale of gas produced from or attributable to this Lease (including the Lessor's royalty share of gas) which contract contains what is commonly referred to as a "take or pay provision" (such provision meaning that the gas purchaser agrees to take delivery of a specified minimum volume or quantity of gas over a specified term at a specified price or to make minimum periodic payments to the producer for gas not taken by purchaser) and the purchaser under such gas purchase contract makes payments to Lessee by virtue of such purchaser's failure to take delivery of such minimum volume or quantity of gas, then Lessor shall be entitled to one-fourth (1/4) of all sums paid to producer under the provisions of such contract. Such royalty payments shall be due and owing to Lessor within sixty (60) days after Lessee's receipt of such payments from its purchaser. Any royalty payments made to Lessor under the "pay" obligation of any "take or pay" gas contract shall be applied as a credit toward Lessee's minimum royalty obligation. If the gas purchaser which has made any such "take or pay" payments to Lessee is entitled to and does "make-up" volumes of gas within the recoupment period called for in the gas contract and Lessee is required to give such purchaser a credit for those volumes of gas previously paid for but not taken, then Lessor shall not be entitled to royalty on such "make-up" gas, except to the extent necessary for Lessor to receive its full royalty share of the market value of such gas in accordance with Section 7.

C. To the extent Lessor's royalty share of oil, gas, natural gas liquids or any other substance produced and saved from the leased premises is covered or included by Lessee in any contract for the sale, processing or other disposition of production from or attributable to this Lease, Lessor shall be an intended third-party beneficiary of any such contract regardless of any provision of such contract(s) to the contrary. Further, Lessor shall be entitled to one-fourth (1/4) of the value of any benefits obtained by or granted to Lessee in connection with the Lessee's execution, amendment, modification, extension, cancellation, waiver, or settlement of any such contract.

**11. Separation of Liquids.** All gas produced from the leased premises shall, before the same is sold or used for any purpose or is transported from the leased premises be passed through a mechanical separator system situated on the leased premises designed and operated to effect the maximum economical recovery of liquid hydrocarbons therefrom. All condensate, distillate, natural gasoline, kerosene and all other liquid hydrocarbons and mixtures thereof produced with gas from the leased premises and separated from such shall be considered oil for all purposes of Section 7.A. above.

**12. Right to Take Production in Kind.** Lessor shall always have the right, at any time and from time to time, upon reasonable written notice to Lessee, to take Lessor's share of oil, gas and processed liquids in kind. Lessor may elect to take Lessor's gas in kind at the well, or at the point of delivery where Lessee delivers Lessee's gas to any third party. If gas is processed, Lessor may elect to take Lessor's share of residue gas attributable to production from the leased premises, at the same point of delivery where Lessee receives its share of residue gas or has its share of residue gas delivered to a third party. Lessor may elect to have its royalty share of processed liquids stored in tanks at the plant or delivered into pipelines on the same basis as Lessee's share of liquids is stored or delivered. Lessor shall reimburse Lessee for all reasonable costs incurred by Lessee in operating or maintaining additional facilities necessary for Lessor's royalty gas and processed liquids to be separately metered,

accounted for, and delivered to a third party, but Lessor shall not be charged for any expense in the production, gathering, dehydration, separation, compression, transportation, treatment, processing or storage of Lessor's share of gas and processed liquids along with Lessee's share of gas and processed liquids.

**13. Shut-in Gas Well Payments.** If after the expiration of the primary term there is a gas well on the leased premises capable of producing in paying quantities but the production thereof is shut-in, shut-down or suspended for lack of a market, available pipelines, or because of government restrictions or, if it is economically inadvisable for both the Lessor and Lessee to sell gas for a time as evidenced by a written agreement signed by both parties, then, and in any such event, Lessee may pay as shut-in royalty on or before sixty (60) days after the date on which (a) production from any such well is shut-in, shut-down or suspended; or (b) this Lease is no longer maintained by compliance with one of the other preservation provisions hereof, whichever is the later date and thereafter at annual intervals the sum of Twenty Five Dollars (\$25.00) per net mineral acre per Producing Unit per well, or Five Hundred Dollars (\$500.00) per well which ever is greater, for each and every shut-in, shut-down or suspended well. If such payment is made in accordance with the terms hereof, this Lease shall not terminate, but shall continue in force for a period of one (1) year from the date of making such shut-in payment (subject to the exceptions set out hereafter) and it will be considered that gas is being produced from the leased premises in paying quantities within the meaning of each pertinent provision of this Lease. Provided, however, in no event shall shut-in well payments maintain this Lease in force for any single period exceeding two (2) years nor shall Lessee be entitled to utilize shut-in gas well payments to maintain any part of this Lease if this Lease has theretofore been maintained in whole or in part by the payment of shut-in gas well payments for a cumulative length of time exceeding four (4) years. Any shut-in royalty payment shall not be a credit against production nor be credited with prior production royalty. In the event that production is begun or resumed during the year following the payment of a shut-in royalty payment and is subsequently shut-in, during such year the second annual shut-in payment shall be due and payable on the anniversary date of the first payment. If there is production on such first anniversary date and the well is subsequently shut-in, shut-down or suspended, then the second shut-in payment shall be made on or before sixty (60) days after such new shut-in date or the Lease shall terminate. Notwithstanding anything to the contrary set out above, a proper shut-in gas well payment will maintain the rights granted by this Lease only to the Producing Unit(s) of such gas well(s) as if they were producing gas in paying quantities pursuant to Section 2 above. Should such shut-in gas well payments not be made in a timely manner as provided for above, then, in that event, it shall be considered for all purposes that there is no production of gas from any such well or wells and, unless this Lease is being maintained by another preservation provision hereof, this Lease shall terminate automatically at midnight on the last day provided for the payment of such shut-in royalties, and Lessee shall thereupon furnish to Lessor a release of all of its interest in and to the Producing Units containing a shut-in gas well.

**14. Pooling.**

**Vertical Wells.** Unless Lessee obtains the prior written consent of Lessor, Lessee shall have no authority under this Lease to pool all or any portion of the leased premises with other acreage, tracts, interests or leases for the purposes of drilling or producing from a vertical well.

**Horizontal Wells.** Lessee, at its option, is granted the right and power to pool or combine Lessor's interest in the leased premises, or any portion thereof, as to oil and gas, or either of them, with other contiguous land, lease or leases, to form a pooled unit for a horizontal well, when in Lessee's judgment it is necessary or advisable to do so in order to properly explore, develop and operate the leased premises in compliance with the spacing and density rules of the Railroad Commission of Texas, or other lawful authority, or when to do so would, in the judgment of Lessee, promote the conservation of the oil and/or gas in and under and that may be produced from the portion of the leased premises to be included in such a pooled unit for a horizontal well.

A pooled unit created for a horizontal well under this Lease may contain no more than the lesser of:

- (a) Forty (40) acres plus the minimum additional acreage allowed for horizontal

drain holes, as set forth in Rule 86 of the Texas Railroad Commission utilizing the Additional Acreage Assignment Table of Rule 86 for fields with a density rule of forty (40) acres or less, as set forth in Section 3.86, Chapter 3, Part 1, Title 16, of the Texas Administrative Code; or

(b) 320 acres.

Lessee shall execute in writing an instrument identifying and describing the pooled acreage, the leases and interests so pooled, the zones, substances, formations and depths covered by the pooled unit and record such instrument in the county or counties in which the pooled land is situated. The pooled unit shall be effective on the date such instrument is filed of record. A copy of such recorded instrument, and all amendments thereof, shall be furnished to Lessor within thirty (30) days from and after the respective effective date of such instrument(s).

Production from or drilling or reworking operations on any horizontal well on such pooled unit shall be treated as production from or drilling or reworking operations on the portion of the leased premises included in such pooled unit, provided, however, notwithstanding anything else in this Lease to the contrary, production from or drilling or reworking operations on any pooled unit established hereunder shall not be treated as or constitute production from, or drilling or reworking operations on any portion of the leased premises not included within such pooled unit. This Lease may be continued in force and effect as to portions of the leased premises not included in a pooled unit only as provided elsewhere in this Oil and Gas Lease.

Unless otherwise stated herein, there shall be allocated to this Oil and Gas Lease the proportion of the total production from the pooled unit that the number of surface acres covered by this Oil and Gas Lease and included in the pooled unit bears to the total number of surface acres in such pooled unit; and royalties shall be paid hereunder only upon that portion of total pooled unit production so allocated.

Any pooled unit designated by Lessee in accordance with the provisions of this Lease shall automatically terminate upon the completion of a dry hole on the pooled unit or upon the cessation of production in commercial quantities from said pooled unit unless Lessee commences additional operations or restores production on the pooled unit within the applicable time period required for operations provided in Section 6.F. of this Lease. Lessee may dissolve a pooled unit designated in accordance with this Lease at any time after the completion of a dry hole or cessation of production in commercial quantities from such pooled unit.

**15. Assignability.** The rights of either party hereunder may be assigned in whole or in part and the provisions hereof extend to the heirs, executors, administrators, successors and assigns of the parties hereto; provided, however, that any such assignment by Lessee shall require the prior written consent of Lessor, provided further, however that such consent shall not be unreasonably withheld. Lessor's consent to any assignment shall not constitute consent to any other assignment. Lessee shall furnish Lessor a copy of any assignment made pursuant to this section, with the recording data reflected thereon (if recorded). Assignment of this Lease or any part thereof shall not relieve Lessee, its assignees, or any subassignees of any obligations hereunder, theretofore accrued or to accrue in the future; and any assignee of Lessee shall, by acceptance of such assignment, be bound by all terms and provisions hereof. The term "assignment" as used herein, shall include, without limitation, any sublease, farmout, or any other agreement by which any share of the operating rights granted by this Lease are assigned or conveyed, or agreed to be assigned or conveyed, to any other party.

No change or division in ownership of the leased premises, rentals or royalties however accomplished shall operate to enlarge the obligations or diminish the rights of Lessee, nor shall any such change or division be binding upon Lessee for any purpose until the person acquiring any interest has furnished Lessee with a true and correct copy of the instrument or instruments constituting his chain of title from Lessor.

**16. Duty to Develop.** The drilling of a well or wells within the broad language of this Lease shall not be construed as an agreement or construction on the part of Lessor that such drilling would constitute reasonable development of the leased premises, or such portion or portions thereof as may



be in force from time to time, as may be necessary to reasonably explore and develop the same for the production of oil and gas. In the event a well or wells producing oil or gas should be brought in on adjacent land and draining the leased premises, Lessee agrees to drill such offset wells as a reasonable prudent operator would drill under the same or similar circumstances. If oil and/or gas are discovered on the land covered by this Lease, Lessee agrees to further develop said land covered by this Lease as a reasonable prudent operator would under the same or similar circumstances.

17. **Surface Damages and Restoration.** Lessee's obligations with respect to its use of the surface estate in the leased premises is governed by that certain Surface Use Agreement between Lessee and the Surface Owner of even date herewith which is incorporated herein by reference for all purposes.

18. **Water.** Lessee's rights and interests to utilize potable ground water from the acreage covered by this Lease shall be restricted to those rights and interests more fully described in the Surface Use Agreement; otherwise by this Lease, Lessee does not (expressly or by implication or by operation of law) acquire any title to or right to use for any purpose, any water located in, on or under the leased premises.

19. **Division Orders.** Division orders or transfer orders, if executed, shall be solely for the convenience of the parties for the purpose of confirming the extent of Lessor's interest in production of oil and gas from the leased premises. No term or provision of this Lease shall be altered, amended, extended or ratified by any division order or transfer order. Any amendment, alteration, extension or ratification of this Lease or of any term or provision of this Lease shall be made by an instrument in writing clearly denominated as to its purpose and effect, describing the specific terms or provisions of the Lease affected and the proposed change or modification, and executed by the party against whom the amendment, alteration, extension, or ratification is to be enforced, any amendment, alteration, extension or ratification not so drafted and executed shall be of no force or effect.

20. **Information Requirements.**

A. Lessee shall furnish to the designated representative of Lessor (such representative initially designated to be Jacqueline Montoya of Las Vegas, Nevada, at or within the times indicated, a true and correct copy of each of the following:

(i) Any contract under which gas is sold or processed and any amendment to contract, within thirty (30) days after entering into the contract or amendment.

(ii) Each week, the daily drilling reports covering each well being drilled on the leased premises during the preceding week.

(iii) Simultaneously with its filing, any document affecting the leased premises and which is filed by Lessee with the Texas Railroad Commission or any other regulatory agency.

(iv) As soon as completed, final prints of all driller's logs, electrical logs and surveys obtained in drilling any well on the leased premises, any core analysis and test results obtained from any well on the leased premises, and Lessee's interpretation of all data obtained in Lessee's exploration operations on the leased premises.

(v) As soon as obtained by or on behalf of or made available to Lessee, any title opinion covering all or any part of the leased premises and obtained by or on behalf of or made available to Lessee while this Lease is in effect.

(vi) As soon as entered into, any permitted farm out agreement which is not filed for record.

(vii) With each royalty payment, a check stub, schedule, summary or other remittance advice showing the production period covered by the payment, gross production for the period, the amounts of any deductions and the amount of royalty being paid.

B. Lessee shall furnish to Lessor, as soon as the recording data is available for inclusion, a true and correct photocopy of this Lease, any release of this Lease in whole or in part, any permitted farm out agreement which is filed for record and any permitted assignment of this Lease in whole or in part. In each case where such instruments are to be recorded, the copy provided to Lessor shall reflect the recording data for such instrument.

C. Lessor, at Lessor's risk, shall have access to the derrick floor and all other areas at all times during any operations conducted by Lessee on the land. Lessee shall advise Lessor of the size of chokes installed on all producing wells on the leased premises at all times, together with appropriate pressure information to permit Lessor to check the rate of production from the wells. Lessor shall have the right to strap all storage tanks and read and check all meters and charts affixed to any producing well at reasonable times without previous notice to Lessee, and Lessor may, at Lessor's expense, install check meters on or otherwise check any producing well or wells located on the leased premises.

D. During Lessee's regular office hours, Lessor shall have access to and may inspect and copy all information concerning the drilling, coring, testing and completing of all wells, including the driller's log and all electrical logs and surveys, and all accounting books and records, production charts, records and information, concerning the production, transportation and marketing of oil and gas from the leased premises, and during and for five (5) years after expiration of the primary term of this Lease, all of the following data obtained as a result of Lessee's operations under this lease: all seismic, gravity meter and similar exploration data obtained by Lessee in its exploitation of the leased premises so as to permit Lessor to make its own evaluation and interpretation of the data.

E. Lessee shall notify Lessor at least thirty (30) days in advance (exclusive of Saturdays, Sundays and legal holidays) of the time and date of the proposed plugging of any well which has produced, so as to allow Lessor to observe and inspect the plugging operations.

**21. INDEMNIFICATION.** LESSEE, ITS SUCCESSORS AND ASSIGNS, AGREE TO INDEMNIFY, DEFEND AND HOLD LESSOR HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, LIABILITIES, FINES, COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS FEES AND LITIGATION EXPENSES) (COLLECTIVELY "CLAIMS") RESULTING FROM OR ARISING OUT OF OR IN CONNECTION WITH OPERATIONS OF OR FOR LESSEE, ITS AGENTS, CONTRACTORS, OR SUBCONTRACTORS HEREUNDER, INCLUDING CLAIMS ARISING OUT OF LESSOR'S NEGLIGENCE PROVIDED HOWEVER, THAT THE LESSEE'S OBLIGATIONS UNDER THIS SECTION 21 SHALL NOT APPLY TO CLAIMS THAT ARISE SOLELY OUT OF LESSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THIS PROVISION AND ITS INDEMNITIES SHALL SURVIVE THE TERMINATION OF THIS LEASE AND SHALL INURE TO THE BENEFIT OF AND BE BINDING UPON THE RESPECTIVE SUCCESSORS, HEIRS AND ASSIGNS OF LESSOR AND LESSEE.

**22. Special Warranty of Title.** Lessor warrants title to the undivided fractional mineral fee interest it owns of record as of the date of this Lease and which is covered by this Lease subject to the reservations, exceptions and other provisions hereof, unto Lessee from and against the claims of persons claiming or to claim the same or any part thereof during the term of this Lease by, through and under Lessor, but not otherwise. Lessor agrees that Lessee, at its option after Lessee has given Lessor sixty (60) days' written notice, may discharge any tax, mortgage or other lien upon Lessor's interest in the lease premises, either in whole or in part, and in the event Lessee does so, it shall be subrogated to such lien with right to enforce same, subject to any defenses of Lessor, and apply royalties accruing hereunder toward satisfying same.

**23. Proportionate Reduction for less than Entire Interest.** It is agreed that if Lessor owns an interest in oil and gas in and under any of the leased premises which is less than the entire oil and gas fee simple estate, then the royalties on production shall each be reduced by the proportion thereof which the mineral fee estate of Lessor in such land bears to the entire mineral fee estate, provided that in no event shall there be any refund of any amounts previously paid to Lessor as bonus, or shut-in gas well payments.



24. COMPLIANCE WITH ENVIRONMENTAL LAWS AND REGULATIONS. LESSEE, ITS SUCCESSORS AND ASSIGNS, BY ITS ACCEPTANCE OF THIS LEASE, HEREBY AGREES TO COMPLY WITH ALL APPLICABLE LAWS, RULES AND REGULATIONS AND HEREBY ASSUMES FULL RESPONSIBILITY FOR, AND AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS, LESSOR FROM AND AGAINST ANY LOSS, LIABILITY, CLAIM, FINE, EXPENSE AND COSTS (INCLUDING REASONABLE ATTORNEYS FEES AND LITIGATION EXPENSES) AND CAUSE OF ACTION (COLLECTIVELY "ENVIRONMENTAL CLAIMS") CAUSED BY OR ARISING OUT OF THE VIOLATION (OR DEFENSE OF THE ALLEGED VIOLATION) OF ANY FEDERAL, STATE OR LOCAL LAWS, RULES OR REGULATIONS APPLICABLE TO ANY WASTE MATERIAL, DRILLING MATTOR OR FLUID OR ANY HAZARDOUS OR TOXIC SUBSTANCES RELEASED OR CAUSED TO BE RELEASED BY LESSEE OR LESSEE'S AGENTS, OR INDEPENDENT CONTRACTORS FROM THE LEASED PREMISES HEREUNDER INTO THE ATMOSPHERE OR INTO OR UPON THE LEASED PREMISES OR ANY WATER COURSE OR BODY OF WATER, INCLUDING GROUND WATER, INCLUDING ENVIRONMENTAL CLAIMS ARISING OUT OF LESSOR'S NEGLIGENCE; PROVIDED, HOWEVER, THAT LESSEE'S OBLIGATIONS UNDER THIS SECTION 24 DO NOT APPLY TO ENVIRONMENTAL CLAIMS THAT ARISE SOLELY OUT OF LESSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. ADDITIONALLY, UPON RECEIVING ANY NOTICE REGARDING ANY ENVIRONMENTAL, POLLUTION OR CONTAMINATION PROBLEM OR VIOLATION OF ANY LAW, RULE OR REGULATION, LESSEE WILL FORWARD A COPY TO LESSOR BY CERTIFIED MAIL. THIS PROVISION AND ITS INDEMNITIES SHALL SURVIVE THE TERMINATION OF THIS LEASE, AND SHALL INURE TO THE BENEFIT OF AND BE BINDING UPON THE RESPECTIVE SUCCESSORS, HEIRS AND ASSIGNS OF LESSOR AND LESSEE.

25. No Salt Water or Waste Injection Wells. Lessee shall not be permitted to dispose of salt water or produced wastes or wastes of any kind into any formation or strata on this Lease, provided however Lessee may inject salt water produced from the leased premises into a well located thereon that has been drilled by Lessee or an existing wellbore that Lessee has converted into a disposal well, provided that Lessor's written consent is first obtained (such consent not to be unreasonably withheld). If and when requested by Lessor, Lessee shall demonstrate to Lessor's reasonable satisfaction that any such disposal or injection well is in compliance with all relevant laws and regulations concerning protection of ground water resources.

26. Timely Plugging and Abandonment of Wells. Without prior written consent of the Lessor, Lessee shall not allow any well located on the leased premises to remain in a shut-in, temporarily abandoned or otherwise non-productive state for a period of more than twelve (12) months without beginning plugging and abandonment operations with respect to the well and restoring the location, and providing that these procedures must be completed within two (2) months of their initiation. The only exception to this shall be gas wells capable of production which are shut-in pursuant to the provisions above regarding shut-in gas well payments, and for which shut-in gas well payments are being made in accordance with those same provisions. The obligations of Lessee, (and the concomitant rights of the Lessor), under this provision concerning the proper plugging and abandonment of wells and restoration of the surface of the leased premises shall survive the termination of this Lease, and shall inure to the benefit of and be binding upon the respective successors, heirs and assigns of Lessor and Lessee.

27. Alteration/Modification. The terms of this Lease cannot be altered or amended except by a written instrument clearly demonstrating such purpose and effect, and executed by both parties to this Lease. The written instrument shall describe the specific terms or provisions being altered and the proposed modification or change thereto. Any notation or legend attached to a royalty check shall be null and void and without legal significance for the purpose of altering this Lease.

28. Recording Memorandum. It is understood and agreed that Lessee may, if it so chooses, file a Memorandum of this Lease in the real property records of Upton County, Texas, such Memorandum to describe the Leased Premises and identify the primary term and Lessor(s) and Lessee(s) who execute this Lease. Such a recording Memorandum will be executed and acknowledged by each of the parties hereto and shall disclose the existence of the continuous development program called for

in this Lease.

29. Counterparts. This Lease may be executed in multiple counterparts each of which shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument.

30. GOVERNING LAW; VENUE. THIS LEASE SHALL BE CONSTRUED UNDER THE LAWS OF THE STATE OF TEXAS. THE VENUE FOR ANY ACTION TO ENFORCE OR CONSTRUE THE TERMS AND PROVISIONS OF THIS LEASE SHALL BE IN THE STATE COURTS OF UPTON COUNTY, TEXAS.

31. Separate Tracts/No Communitization. If this lease now or hereafter covers separate tracts, no pooling or unitization of royalty interest as between any such separate tracts is intended or shall be implied, or result from, the inclusion of such separate tracts within this Lease. As used in this paragraph, the words "separate tract" mean any tract with royalty ownership differing, now or hereafter, either as to the parties or amounts, from that as to any other part of the leased premises. Lessor has included multiple tracts under this Lease for the convenience of Lessor and Lessee, with the express agreement and stipulation that this Lease is not a "community lease" and that no communitization of royalty interest shall occur and that each separate tract shall be, for purposes of calculating and paying of royalty interest, considered a separate lease.

32. Lease Bonus for Excess Acreage. In the event during the primary term of this Lease it is discovered by Lessor or Lessee that this Lease actually covers more net mineral acres in the leased premises than such parties believed to be covered by this Lease at the time of its execution and delivery, and Lessor provides reasonable documentary proof of the existence of such excess net mineral acreage, then and in that event Lessee agrees to pay to Lessor an additional lease bonus consideration equal to the sum arrived at by multiplying the number of excess net mineral acres times the agreed per acre lease bonus consideration paid at the time of the execution and delivery of this Lease.

33. Notices. Any notice permitted or required under the terms and provisions of this Lease shall be in writing signed by or on behalf of the party giving notice and properly addressed and delivered to the recipient party utilizing the following address and contact information. Each notice under this Lease shall be sent by certified mail, return receipt requested, by facsimile transmission (fax), or by commercial overnight courier. A notice sent by mail shall be deemed to have been received (if properly addressed, with postage prepaid) no later than three (3) Business Days after it is postmarked, while notices sent by commercial overnight courier shall be deemed to have been delivered when actually received.

Notices to the Lessor(s) and Lessee(s) respectively, shall be addressed as follows:

If to Lessor:

Eleanor C. Hartman, Individually and as  
Trustee of the W. N. Connell and  
Marjorie T. Connell Living Trust  
Agreement dated May 18, 1972  
P.O. Box 710  
Las Vegas, Nevada 89125-0710

*See attached addendum.*

If to Lessee:

Apache Corporation  
303 Veterans Airpark Lane, Suite 3000  
Midland, Texas 79705

IN WITNESS WHEREOF, this instrument is dated as of the date first written above.

**LESSOR**

By: Eleanor C. Hartman Individually and as  
Eleanor C. Hartman, Individually and as  
Trustee of the W. N. Connell and Marjorie  
T. Connell Living Trust under Trust *Trustee*  
Agreement dated May 18, 1972

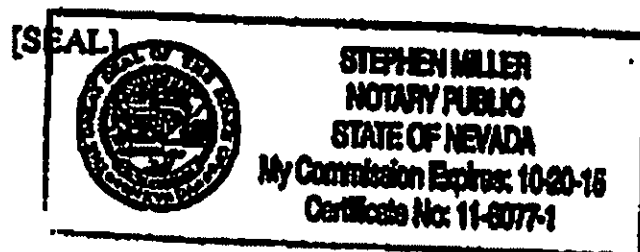
**LESSEE**

APACHE CORPORATION

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE STATE OF NEVADA §  
§  
COUNTY OF CLARK. §

The foregoing instrument was acknowledged before me this 4th day of April, 2012, by Eleanor C. Hartman, Individually and as Trustee of the W. N. Connell and Marjorie T. Connell Living Trust under Trust Agreement dated May 18, 1972.



[Signature]  
Notary Public in and for the State of Texas Newman  
Printed Name of Notary: Stephen Miller  
My commission Expires: 10-20-12

THE STATE OF TEXAS §  
§  
COUNTY OF \_\_\_\_\_ §

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of April, 2012, by \_\_\_\_\_ of Apache Corporation, a Delaware corporation, on behalf of said corporation.

[SEAL]

Notary Public in and for the State of Texas  
Printed Name of Notary: \_\_\_\_\_  
My commission Expires: \_\_\_\_\_

**ADDENDUM TO:  
OIL AND GAS LEASE**

Replace addresses in paragraph 33 Notices on Page 14.

**SIGNED 4-4-2012**

Notices to Lessor and Lessee(s), respectfully, shall be addressed as follows:

If to Lessor:

Eleanor C. Hartman, Individually and as Trustee of the  
W. N. Connell and Marjorie T. Connell  
Living Trust under Trust Agreement dated May 18, 1972  
8635 West Sahara Avenue, #549  
The Lakes, Nevada 89117-5858

If to Lessee:

Apache Corporation 303 Veterans Airpark Lane, Suite 3000 Midland, Texas 79705

LESSEE

APACHE CORPORATION

BY: Timothy R. Custer  
NAME: TIMOTHY R. CUSTER  
Title: ATTORNEY IN FACT

LESSOR

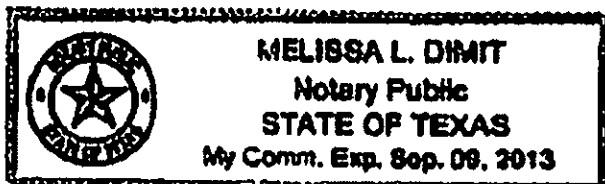
BY: Eleanor C. Hartman, Trustee

Eleanor C. Hartman, Individually and as Trustee of the  
W. N. Connell and Marjorie T. Connell  
Living Trust Agreement dated May 18, 1972  
8635 West Sahara Avenue, #549  
The Lakes, Nevada 89117-5858

State of TEXAS  
County of MIDLAND

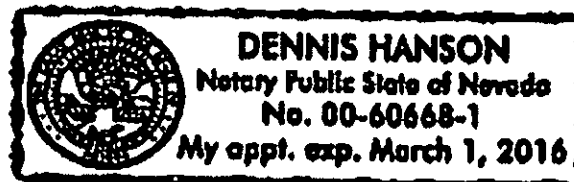
The foregoing instrument was acknowledged before me  
this 10<sup>th</sup> day of July, 2012, by Timothy R. Custer, Attorney  
in Fact of Apache Corporation, a Delaware corporation, on  
behalf of said corporation.

Melissa L. Dimit  
Notary Public in and for the State of Texas  
Printed Name of Notary: Melissa L. Dimit  
My commission expires: 9/9/2013



NOTARY Nevada

State of Nevada  
County of Clark  
This document was Acknowledged  
before me this May 23rd 2012, by  
Eleanor C. Hartman  
Dennis Hanson  
Notary Public



## OIL AND GAS LEASE

STATE OF TEXAS

§  
§  
§

COUNTY OF UPTON

THIS AGREEMENT, made and entered into as of the 4<sup>th</sup> day of April, 2012, by and between the undersigned party or parties designated as Lessor on the signature page of this Lease (such party or parties hereinafter called "Lessor") and the undersigned party or parties designated as Lessee on the signature page of this Lease (such party or parties hereinafter called "Lessee").

1. **Definitions.** As used in this Lease, the following words and phrases shall have the meaning set forth below:

A. "commence a well", "commencement of a well", "commence actual drilling operations", "commencement of actual drilling operations", "actual drilling" or "actual drilling of a well" shall be deemed to occur at such time as there has been erected on the leased premises at the location for the well, a derrick, a rig and machinery capable of drilling to the base of the objective formation, the well has been "spudded-in" and the machinery for drilling is rotating under power.

B. "completion" or "completion of a well" shall be deemed to occur on (i) the date which is ninety (90) days after the production casing and/or liner has been run in the hole, (ii) the date which is ninety (90) days after total depth of the well in question has been reached, or (iii) the date indicated in the completion report for the well which is filed with the Railroad Commission, whichever is the earliest date.

C. The date of abandonment of a dry hole is the date indicated on the Texas Railroad Commission plugging report for the well or thirty (30) days after total depth is reached, whichever is the earlier date.

D. "production", "producing", "production in paying quantities", "commercial production", "production in commercial quantities", "producing in paying quantities" and "producing in commercial quantities" shall have the same meaning for purposes of this Lease, namely production in quantities sufficient to yield a return to the holders of the working interest excluding severance taxes, in excess of operating expenses, royalties and expenses of equipment beyond the wellhead and costs including depreciation of assets ("depreciation of assets" shall be the actual loss of fair market value of salvable equipment on the leased premises during the relevant period), even though drilling costs may never be recouped by working interest owners. The review period for purposes of determining whether production is in paying or commercial quantities shall be one hundred twenty (120) consecutive days. There shall be no review period when production ceases. Production in less than paying or commercial quantities shall never be considered as production for purposes of this Lease.

E. "operations for reworking", "reworking operations", "commencement of reworking operations", "commence reworking operations", "commence reworking operations" and "actual reworking operations" shall have the same meaning being the actual re-entry into an existing wellbore with a drilling or workover rig capable of re-entering and reworking such well and the timely prosecution of such actual reworking operations in good faith and with reasonable diligence and without cessation of more than sixty (60) days, toward the re-establishment of commercial production of oil or gas from such previously producing zone or zones.

F. "Producing Unit" means the following:

(i) With respect to vertical wells:

[a] A tract of land designated in writing by Lessee, as provided in this Lease,

containing no more than 80 acres on which Lessee has drilled and completed an oil well pursuant to the terms of this Lease and which is producing in paying quantities (provided that if the field rules of the Texas Railroad Commission applicable to wells which are completed in each of the Wolfcamp, Dean and Spraberry formations are modified or amended after the date of this Lease to provide that the standard proration unit for such wells shall be 40 acres, then and in that event, each Producing Unit for oil wells drilled by Lessee after the effective date of such modification or amendment of the applicable field rules shall contain no more than 40 acres, plus a tolerance of ten percent);

- [b] A tract of land designated in writing by Lessee as provided in this Lease containing no more than 320 acres on which Lessee has drilled a gas well pursuant to the terms of this Lease and which is producing in paying quantities.

(ii) With respect to horizontal wells:

- [a] As to horizontal wells, which are not drilled or produced pursuant to a pooled unit created under the terms of this Lease, a tract of land designated in writing by Lessee containing no more than the lesser of:

- [I] Forty (40) acres plus the minimum additional acreage allowed for horizontal drain holes, as set forth in Rule 86 of the Texas Railroad Commission utilizing the Additional Acreage Assignment Table of Rule 86 for fields with a density rule of forty (40) acres or less, as set forth in Section 3.86, Chapter 3, Part 1, Title 16, of the Texas Administrative Code; or

- [II] 320 acres.

- [b] As to horizontal wells which are located within a valid pooled unit created under the terms of this Lease, the Producing Unit for purposes of this Lease shall be the portion of the leased premises comprising a part of such pooled unit.

A Producing Unit, whether for a vertical well or for a horizontal well, shall include only those depths and horizons from one hundred feet (100') above the top of the shallowest formation producing in the well for such Producing Unit down to one hundred feet (100') below the base of the deepest producing formation in such well.

G. "Surface Owner" shall mean the record owner of the fee interest in the surface estate of the tract of land described in Section 2 of this Lease.

H. "Disposition" shall mean when used in reference to Lessee's handling of production; the transaction, place and point in time whereby Lessee and its Affiliates finally and fully relinquish any beneficial ownership, rights or enjoyment of any substance produced under the terms of this Lease.

I. "Affiliate" or "affiliate" as used herein means and shall include each and every one of the following:

- (i) each individual, corporation, joint venture, trust, estate, partnership, limited liability company or other entity that owns or controls more than one percent (1%) of the outstanding voting securities or interest of Lessee; and
- (ii) each corporation, joint venture, trust, partnership, limited liability company or other entity in which Lessee or any current or past officer or director of Lessee owns or controls more than one percent (1%) of the outstanding voting

securities or interest.

2. **Grant of Interest/Description.**

A. Lessor, in consideration of a cash bonus in hand paid, of the royalties herein provided, and of the agreements of Lessee hereinafter contained, hereby grants, leases, and lets unto Lessee for the sole purpose of exploring for, drilling, operating, and producing oil and/or gas and of laying pipelines, temporarily storing oil, building one or more tank batteries, power lines, and roads thereon necessary to produce, save, care for, treat and transport the oil and/or gas produced from the land leased hereunder, the following described land situated in Upton County, Texas, (sometimes referred to hereinafter as the "leased premises") to wit:

**Tract A:** NE/4 of Section 38, Block 39, T-5-S, T&P Ry. Co. Survey.

**Tract B:** All depths from the surface down to a depth of 7100 feet below the surface and all depths lying below a depth of 8500 feet below the surface in the NW/4 and the S/2 of Section 38, Block 39, T-5-S, T&P Ry. Co. Survey.

**Tract C:** All depths lying below a depth of 9000 feet below the surface in Section 48, Block 39, T-5-S, T&P Ry. Co. Survey.

B. This Lease is made subject to any and all easements, rights of way and other encumbrances burdening any part of the leased premises as shown of record in Upton County, Texas or apparent from a reasonable inspection of the leased premises.

C. By this Lease, Lessee acquires no right to construct, operate or maintain any treating or processing plant, dwelling house, lease house, camp, pipe yard, equipment yard, warehouse or similar structure on the leased premises and acquires no easement, express or implied, with respect to any land other than the leased premises.

D. Lessee specifically covenants and agrees that with respect to its performance of obligations (both express and implied) and exercise of rights and privileges arising under this Lease that Lessee shall conduct itself with respect to Lessor and the Surface Owners with the utmost good faith and fair dealing. Lessee further covenants and agrees to comply with all applicable local, state and federal laws, rules, and regulations.

3. **Term.** Subject to the provisions contained herein, this Lease shall be for a term of three (3) years from this date (called "primary term"), and for so long thereafter as oil and gas, or either of them, is produced in paying quantities from the leased premises.

4. **Surface Use Agreement.** Lessee's rights to utilize the surface estate in the leased premises as elsewhere described in this Oil and Gas Lease are expressly made subject to that certain Surface Use Agreement dated April 4, 2012, entered into by and between Eleanor C. Hartman, as Trustee of the W. N. Connell and Marjorie T. Connell Living Trust under Trust Agreement dated May 18, 1972, as Owner, and Apache Corporation, as Operator. It is understood and agreed that the execution and delivery of this Oil and Gas Lease is made conditional upon the execution and delivery of the Surface Use Agreement.

5. **Reservations.** There is EXCEPTED from this Lease and Lessor RESERVES unto Lessor and Lessor's heirs, successors, administrators and assigns:

A. all minerals except oil, gas and other liquid and gaseous substances and sulphur that are necessarily produced with such oil or gas;

B. equal and concurrent rights of occupancy, use and possession of the surface estate by

(1) Lessor, (2) the Surface Owner and (3) Lessor's or the Surface Owner's other mineral, surface, grazing, agricultural and recreational lessees or assignees, together with the right of ingress to and egress from the leased premises for all purposes including exploring, developing and operating said leased premises for oil, gas and other minerals of whatever nature which are not covered by this Lease or which may hereafter be released from this Lease and, the sole and exclusive right, as between Lessor and Lessee, to complete water source wells on the leased premises and in any reservoir not productive of oil or gas for the purpose of obtaining water for domestic and agricultural use and consumption and for the exploration, development and operation of Lessor's reserved rights; provided, however, Lessor and Surface Owner agree not to use the surface of the premises affected hereby in any manner that will interfere unduly with any of Lessee's rights in exploring, developing, producing, transporting, and marketing oil, gas and other hydrocarbons under leased premises. As between mineral, surface, and agricultural lessees, access to the surface shall be based on the principle of first-in-time, first-in-right, but as between Lessee herein and subsequent mineral lessees, the leasehold estate created by this Lease shall be considered dominant;

C. all rights granted to Lessee in this Lease shall be limited to the leased premises and depths described and covered by this Lease together with such ingress to and egress from leased premises as designated by Lessor and shall not extend to and Lessor expressly reserves all rights, privileges and usage which relate to land not described herein or which may be released herefrom. It is understood and agreed that to the extent Lessee establishes roads, flowlines, pipelines or power lines across the leased premises in accordance with the terms and provisions of the Surface Use Agreement to service its operations on any of the following described tracts of land (the "Jointly Operated Acreage"), prior to any partial or total termination of this Lease, then and in that event, Lessee may nevertheless continue to use such established roads, flowlines, pipelines and power lines as originally configured for as long as any of the existing oil and gas leases (including this Lease and any oil and gas leases executed by Lessor to Lessee within (30) days from and after the date of this Lease) covering any portion of the Jointly Operated Acreage remains in force and effect; provided however it is expressly understood and agreed that Lessee's limited right to use the surface estate of the leased premises for roads, flowlines, pipelines and power lines across the leased premises for the benefit of Lessee's other leasehold operations on the Jointly Operated Acreage shall never be extended or construed to extend or be utilized by Lessee for the use or benefit of or as a convenience to Lessee in operating on lands not within the Jointly Operated Acreage, regardless of whether such lands not included within the Jointly Operated Acreage are owned by Lessor or any one or more of the Surface Owner or third parties;

- (i) Section 38, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.
- (ii) Section 48, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.

6. Partial Termination; Continuous Development; Retained Acreage and Depths.

A. At the later to occur of the following: (i) the expiration of the primary term of this Lease, or (ii) the conclusion of the Lessee's continuous development program undertaken and prosecuted in accordance with the provisions of this Lease; this Lease shall terminate as to all of the leased premises not theretofore released, save and except the acreage and depths included in the Producing Unit(s) established by Lessee.

B. Each Producing Unit shall be in the form of a square or rectangle as nearly as is practicable with the well at a legal location on such Producing Unit and as nearly as possible in the center of such Producing Unit.

C. Lessee shall designate each Producing Unit in recordable form with such designation containing a metes and bounds description or other sufficient legal description of the Producing Unit's exterior boundaries and relevant depth limitations. Lessee shall place each designation of a Producing Unit of record in Upton County, Texas within sixty (60) days after the completion of the well for such Producing Unit and promptly provide to Lessor a certified copy of such recorded designation of Producing Unit; provided, however that during the existence (if any) of Lessee's continuous development program, Lessee may defer filing such designations until the continuous development program has been concluded at which time Lessee may file a single instrument which



identifies and designates each Producing Unit situated on the leased premises.

D. Lessee shall, within sixty (60) days after termination of this Lease, as to any part of the leased premises, execute and furnish to Lessor a recordable release describing the acreage and/or depths as to which this Lease has terminated.

E. Subject to the provisions of Section 6.G. below, if at the expiration of the primary term of this Lease, Lessee is then engaged in drilling a well on the leased premises or if Lessee has completed a well as a commercial producer on the leased premises and such well is then still producing in paying quantities upon the expiration of the primary term of this Lease, Lessee shall have the right and option (but not obligation) to engage in a continuous development program on the leased premises by conducting a program of continuous drilling of new wells on the leased premises allowing no more than one hundred eighty (180) days to elapse between (i) the completion of one well as a well producing in paying quantities or as a dry hole, and (ii) the commencement of actual drilling operations on the next succeeding well. If a continuous development program is undertaken by the Lessee it shall be deemed to have been concluded on the earlier to occur of the following: (x) at such time as Lessee allows more than one hundred eighty (180) days to pass from the most recent completion of a new well on the leased premises without having commenced actual drilling operations on another new well; or (y) upon the date which is the tenth (10th) anniversary of the date on which the primary term of this Lease expired. It is understood and agreed that commencement of reworking operations or drilling, side tracking or deepening operations on a well previously completed pursuant to this Lease shall not constitute "commencement of actual drilling on the next succeeding well" so as to constitute continuous development.

F. If after the expiration of the primary term of this Lease or the conclusion of Lessee's continuous development program, whichever occurs later, any Producing Unit shall cease to produce in paying quantities this Lease shall terminate as to such Producing Unit unless Lessee, within sixty (60) days after such cessation of production in paying quantities, commences reworking operations or commences actual drilling operations and thereafter diligently prosecutes the same or different reworking or actual drilling operations on such Producing Unit with no cessation of more than thirty (30) days until production in paying quantities is restored.

G. Notwithstanding anything herein to the contrary, on the date which is the tenth (10th) anniversary of the date on which the primary term of this Lease expires, this Lease shall terminate as to all acreage not then located within a Producing Unit.

H. Although this Lease may have terminated in part or may have been partially released, Lessee shall have and retain easements over and across the terminated portion or portions of the surface of the leased premises as shall be reasonably necessary for ingress and egress so as to enable Lessee to develop and operate the portion or portions of the leased premises as to which this Lease continues in effect and Lessee shall not be required to relocate any pipelines or roads solely because of the partial termination or partial release of this Lease.

7. **Royalties.** As royalty, Lessee covenants and agrees:

A. **Oil.** To deliver free of cost to Lessor at the location of the disposition of Lessee's oil and liquid hydrocarbons or to the credit of Lessor at the pipelines to which the wells may be connected, one-fourth (1/4) of all oil and other liquid hydrocarbons (recovered or separated on the leased premises) produced and saved from the leased premises; or, at the Lessor's option, which may be exercised from time to time, Lessee shall pay to Lessor the same percentage of the market value at the point of Lessee's disposition of its oil and liquid hydrocarbons for such oil and other liquid hydrocarbons of like grade and gravity prevailing in the area on the day such oil and other hydrocarbons are run; provided, however, there shall be no deduction from the value of Lessor's royalty by reason of any processing, treatment, trucking, transportation or other cost to market such oil and other liquid hydrocarbons. If Lessee or any Affiliate of Lessee engages in any "downstream marketing" of oil or other liquid hydrocarbons, from the leased premises, including receiving payments for aggregating such substances with oil or liquid hydrocarbons produced from other tracts of land, then and in that event, Lessee shall fully disclose any such contractual or other marketing arrangements and shall include in its payment of royalties on oil the share of the payments or value

of any other consideration received in connection with or for such arrangements on the basis that the production from and attributable to this lease bears to the total volume of production the disposition for which Lessee or any of its Affiliates received any "bonuses", "marketing fees", "aggregation fees" or the like.

**B. Gas. To pay the Lessor:**

(i) On gas produced from the leased premises which is processed in a processing plant in which Lessee or any parent, subsidiary or affiliate of Lessee has a direct or indirect interest, Lessor shall receive the higher of (a) one-fourth (1/4) of the market value of such gas at the inlet to the processing plant, or (b) one-fourth (1/4) of the market value of all processed liquids saved from said gas at the point of disposition for Lessee's share of processed liquids, plus one-fourth (1/4) of the market value of all residue gas at the point of sale, use or other disposition.

(ii) On gas produced from the leased premises, which is processed in facilities other than a processing plant in which Lessee or any parent, subsidiary or affiliate of Lessee has a direct or indirect interest, Lessor shall receive one-fourth (1/4) of the market value at the point of disposition of Lessee's liquids of all processed liquids credited to the account of Lessee and attributable to such gas, plus one-fourth (1/4) of the market value of all residue gas at the point of sale, use or other disposition.

(iii) On all gas produced from the leased premises, and sold by Lessee or used on or off the leased premises, and to which the preceding subparagraphs (i) and (ii) above do not apply, Lessor shall receive one-fourth (1/4) of the market value at the point of use or other disposition of all such gas.

**C.** The market value of all gas shall be determined at the specified location and by reference to the gross heating value (measured in British thermal units) and quality of the gas. The market value used in the calculation of all royalty under this Lease shall never be less than the total proceeds received by Lessee in connection with the sale, use or other disposition of oil or gas produced or sold from the leased premises. If Lessee receives from a purchaser of oil or gas any reimbursement for all or any part of severance or production taxes, the proportionate part of such reimbursement amount shall be added to the total proceeds received by Lessee for purposes of this subsection. If Lessee realizes proceeds of production after deduction of any expenses of production, gathering, dehydration, separation, compression, transportation, treatment, processing, storage or marketing, then the proportionate part of such deductions shall be added to the total proceeds received by Lessee for purposes of this Section 7.C.

**D.** Notwithstanding anything to the contrary, Lessor's royalty shall never bear, either directly or indirectly, any part of the costs or expenses of production, separation, gathering, dehydration, compression, transportation, trucking, processing, treatment, storage or marketing of the oil or gas produced from the leased premises, nor any part of the costs of construction, operation or depreciation of any plant or other facilities or equipment used in the handling of oil or gas produced from the leased premises. Royalty shall be payable on oil, gas and other products produced from the leased premises and consumed by Lessee on the leased premises, whether for compression, dehydration, fuel or other uses. It is understood and agreed that as to gas volumes produced from the leased premises which are reinjected by Lessee into a producing formation in the leased premises for the purpose of pressure maintenance or re-pressuring such formation with Lessee having the good faith belief that such re-injection will result in the enhancement of the overall recovery of royalty-bearing hydrocarbons from this Lease, then and in that event Lessee shall not be required to pay royalties on such re-injected gas volumes.

**E.** If the gas produced from the leased premises is sold by Lessee pursuant to an arms-length contract with a purchaser which is not an affiliate of Lessee, and the contract provides for (i) net proceeds to be paid to Lessee which equal or exceed the market value of the gas at the point of delivery to such purchaser at the time such contract is entered into, and (ii) a term no longer than that which is usual and customary in the industry at the time the contract is made and such contract provides for redetermination of price to reflect increases in the market value of natural gas not less frequently than annually, then the market value of the gas sold pursuant to such contract shall be the

total proceeds received by Lessee in such sale, subject to the provisions of Section 7.C. and 7.D. above.

8. **Payment of Royalties.** With respect to each well on the leased premises, initial royalty payments for oil and/or gas shall be made on or before the end of the fourth (4th) calendar month following the month of first production. Thereafter, all royalties which are required to be paid hereunder to Lessor shall be due and payable in the following manner: Royalty on oil shall be due and payable on or before the fifth (5<sup>th</sup>) day of the second (2<sup>nd</sup>) calendar month following the month production is sold, and royalty on gas shall be due and payable on or before the fifteenth (15<sup>th</sup>) of the third (3<sup>rd</sup>) calendar month following the month of production. Each royalty payment shall be accompanied by a check stub, schedule, summary or remittance advice identifying the Lease and showing the gross amount and disposition of all oil and gas produced and the market value of the oil and gas. A copy of all contracts under which gas is sold or processed and all subsequent agreements and amendments to such contracts shall be delivered to Lessor within thirty (30) days after entering into or making such contracts, agreements or amendments. The books, accounts and all other records pertaining to production, transportation, sale and marketing of oil or gas from the leased premises shall at any time during normal business hours be subject to inspection and examination by Lessor. If payments to be made by Lessee to Lessor are not made when due for whatever reason, the unpaid portion shall bear interest at the lower of Twelve Percent per annum (12%) or the highest rate allowed by law. If Lessee is in default hereunder and this matter is turned over to an attorney for collection, or is collected by suit, Lessee agrees to pay all reasonable attorney's fees and litigation expenses incurred by Lessor. Payments may be remitted to Lessor annually for the aggregate of up to twelve (12) months' accumulation of proceeds if the total amount owed is \$25.00 or less.

9. **Limitation of Oil and Gas.** This Lease is intended to cover only oil and gas, but some other substances (including helium and sulphur) may be produced necessarily with and incidental to the production of oil or gas from the leased premises; and, in such event, this Lease shall also cover all such other substances so produced. On all such substances produced under and by virtue of the terms of this Lease, Lessor shall receive a royalty of one-fourth (1/4) of all such substances so produced and saved, same to be delivered to Lessor, free of all costs; or, at Lessor's election, Lessor's one-fourth (1/4) of such substances shall be sold by Lessee with Lessee's portion of such substances and at the same price realized by Lessee in its disposition of its portion of such substances.

10. **Gas Contracts: Contracts for Sale or Other Disposition of Production.**

A. Each and every contract or agreement entered into by Lessee for or relating to the sale, processing or other disposition of production from or attributable to this Lease shall contain provisions sufficient to accommodate the Lessor's full exercise of its rights and privileges with respect to its royalty share of production including, but not limited to, those set forth in Section 12 of this Lease.

B. In the event Lessee enters into a contract for the sale of gas produced from or attributable to this Lease (including the Lessor's royalty share of gas) which contract contains what is commonly referred to as a "take or pay provision" (such provision meaning that the gas purchaser agrees to take delivery of a specified minimum volume or quantity of gas over a specified term at a specified price or to make minimum periodic payments to the producer for gas not taken by purchaser) and the purchaser under such gas purchase contract makes payments to Lessee by virtue of such purchaser's failure to take delivery of such minimum volume or quantity of gas, then Lessor shall be entitled to one-fourth (1/4) of all sums paid to producer under the provisions of such contract. Such royalty payments shall be due and owing to Lessor within sixty (60) days after Lessee's receipt of such payments from its purchaser. Any royalty payments made to Lessor under the "pay" obligation of any "take or pay" gas contract shall be applied as a credit toward Lessee's minimum royalty obligation. If the gas purchaser which has made any such "take or pay" payments to Lessee is entitled to and does "make-up" volumes of gas within the recoupment period called for in the gas contract and Lessee is required to give such purchaser a credit for those volumes of gas previously paid for but not taken, then Lessor shall not be entitled to royalty on such "make-up" gas, except to the extent necessary for Lessor to receive its full royalty share of the market value of such gas in accordance with Section 7.

C. To the extent Lessor's royalty share of oil, gas, natural gas liquids or any other substance produced and saved from the leased premises is covered or included by Lessee in any contract for the sale, processing or other disposition of production from or attributable to this Lease, Lessor shall be an intended third-party beneficiary of any such contract regardless of any provision of such contract(s) to the contrary. Further, Lessor shall be entitled to one-fourth (1/4) of the value of any benefits obtained by or granted to Lessee in connection with the Lessee's execution, amendment, modification, extension, cancellation, waiver, or settlement of any such contract.

11. **Separation of Liquids.** All gas produced from the leased premises shall, before the same is sold or used for any purpose or is transported from the leased premises be passed through a mechanical separator system situated on the leased premises designed and operated to effect the maximum economical recovery of liquid hydrocarbons therefrom. All condensate, distillate, natural gasoline, kerosene and all other liquid hydrocarbons and mixtures thereof produced with gas from the leased premises and separated from such shall be considered oil for all purposes of Section 7.A. above.

12. **Right to Take Production in Kind.** Lessor shall always have the right, at any time and from time to time, upon reasonable written notice to Lessee, to take Lessor's share of oil, gas and processed liquids in kind. Lessor may elect to take Lessor's gas in kind at the well, or at the point of delivery where Lessee delivers Lessee's gas to any third party. If gas is processed, Lessor may elect to take Lessor's share of residue gas attributable to production from the leased premises, at the same point of delivery where Lessee receives its share of residue gas or has its share of residue gas delivered to a third party. Lessor may elect to have its royalty share of processed liquids stored in tanks at the plant or delivered into pipelines on the same basis as Lessee's share of liquids is stored or delivered. Lessor shall reimburse Lessee for all reasonable costs incurred by Lessee in operating or maintaining additional facilities necessary for Lessor's royalty gas and processed liquids to be separately metered, accounted for, and delivered to a third party, but Lessor shall not be charged for any expense in the production, gathering, dehydration, separation, compression, transportation, treatment, processing or storage of Lessor's share of gas and processed liquids along with Lessee's share of gas and processed liquids.

13. **Shut-in Gas Well Payments.** If after the expiration of the primary term there is a gas well on the leased premises capable of producing in paying quantities but the production thereof is shut-in, shut-down or suspended for lack of a market, available pipelines, or because of government restrictions or, if it is economically inadvisable for both the Lessor and Lessee to sell gas for a time as evidenced by a written agreement signed by both parties, then, and in any such event, Lessee may pay as shut-in royalty on or before sixty (60) days after the date on which (a) production from any such well is shut-in, shut-down or suspended; or (b) this Lease is no longer maintained by compliance with one of the other preservation provisions hereof, whichever is the later date and thereafter at annual intervals the sum of Twenty Five Dollars (\$25.00) per net mineral acre per Producing Unit per well, or Five Hundred Dollars (\$500.00) per well which ever is greater, for each and every shut-in, shut-down or suspended well. If such payment is made in accordance with the terms hereof, this Lease shall not terminate, but shall continue in force for a period of one (1) year from the date of making such shut-in payment (subject to the exceptions set out hereafter) and it will be considered that gas is being produced from the leased premises in paying quantities within the meaning of each pertinent provision of this Lease. Provided, however, in no event shall shut-in well payments maintain this Lease in force for any single period exceeding two (2) years nor shall Lessee be entitled to utilize shut-in gas well payments to maintain any part of this Lease if this Lease has theretofore been maintained in whole or in part by the payment of shut-in gas well payments for a cumulative length of time exceeding four (4) years. Any shut-in royalty payment shall not be a credit against production nor be credited with prior production royalty. In the event that production is begun or resumed during the year following the payment of a shut-in royalty payment and is subsequently shut-in, during such year the second annual shut-in payment shall be due and payable on the anniversary date of the first payment. If there is production on such first anniversary date and the well is subsequently shut-in, shut-down or suspended, then the second shut-in payment shall be made on or before sixty (60) days after such new shut-in date or the Lease shall terminate. Notwithstanding anything to the contrary set out above, a proper shut-in gas well payment will maintain the rights granted by this Lease only to the Producing Unit(s) of such gas well(s) as if they were producing gas in paying quantities pursuant to Section 2 above. Should such shut-in gas well payments not be made

in a timely manner as provided for above, then, in that event, it shall be considered for all purposes that there is no production of gas from any such well or wells and, unless this Lease is being maintained by another preservation provision hereof, this Lease shall terminate automatically at midnight on the last day provided for the payment of such shut-in royalties, and Lessee shall thereupon furnish to Lessor a release of all of its interest in and to the Producing Units containing a shut-in gas well.

14. Pooling.

Vertical Wells. Unless Lessee obtains the prior written consent of Lessor, Lessee shall have no authority under this Lease to pool all or any portion of the leased premises with other acreage, tracts, interests or leases for the purposes of drilling or producing from a vertical well.

Horizontal Wells. Lessee, at its option, is granted the right and power to pool or combine Lessor's interest in the leased premises, or any portion thereof, as to oil and gas, or either of them, with other contiguous land, lease or leases, to form a pooled unit for a horizontal well, when in Lessee's judgment it is necessary or advisable to do so in order to properly explore, develop and operate the leased premises in compliance with the spacing and density rules of the Railroad Commission of Texas, or other lawful authority, or when to do so would, in the judgment of Lessee, promote the conservation of the oil and/or gas in and under and that may be produced from the portion of the leased premises to be included in such a pooled unit for a horizontal well.

A pooled unit created for a horizontal well under this Lease may contain no more than the lesser of:

- (a) Forty (40) acres plus the minimum additional acreage allowed for horizontal drain holes, as set forth in Rule 86 of the Texas Railroad Commission utilizing the Additional Acreage Assignment Table of Rule 86 for fields with a density rule of forty (40) acres or less, as set forth in Section 3.86, Chapter 3, Part 1, Title 16, of the Texas Administrative Code; or
- (b) 320 acres.

Lessee shall execute in writing an instrument identifying and describing the pooled acreage, the leases and interests so pooled, the zones, substances, formations and depths covered by the pooled unit and record such instrument in the county or counties in which the pooled land is situated. The pooled unit shall be effective on the date such instrument is filed of record. A copy of such recorded instrument, and all amendments thereof, shall be furnished to Lessor within thirty (30) days from and after the respective effective date of such instrument(s).

Production from or drilling or reworking operations on any horizontal well on such pooled unit shall be treated as production from or drilling or reworking operations on the portion of the leased premises included in such pooled unit, provided, however, notwithstanding anything else in this Lease to the contrary, production from or drilling or reworking operations on any pooled unit established hereunder shall not be treated as or constitute production from, or drilling or reworking operations on any portion of the leased premises not included within such pooled unit. This Lease may be continued in force and effect as to portions of the leased premises not included in a pooled unit only as provided elsewhere in this Oil and Gas Lease.

Unless otherwise stated herein, there shall be allocated to this Oil and Gas Lease the proportion of the total production from the pooled unit that the number of surface acres covered by this Oil and Gas Lease and included in the pooled unit bears to the total number of surface acres in such pooled unit; and royalties shall be paid hereunder only upon that portion of total pooled unit production so allocated.

Any pooled unit designated by Lessee in accordance with the provisions of this Lease shall automatically terminate upon the completion of a dry hole on the pooled unit or upon the cessation of production in commercial quantities from said pooled unit unless Lessee commences additional operations or restores production on the pooled unit within the applicable time period required for



operations provided in Section 6.F. of this Lease. Lessee may dissolve a pooled unit designated in accordance with this Lease at any time after the completion of a dry hole or cessation of production in commercial quantities from such pooled unit.

15. **Assignability.** The rights of either party hereunder may be assigned in whole or in part and the provisions hereof extend to the heirs, executors, administrators, successors and assigns of the parties hereto; provided, however, that any such assignment by Lessee shall require the prior written consent of Lessor, provided further, however that such consent shall not be unreasonably withheld. Lessor's consent to any assignment shall not constitute consent to any other assignment. Lessee shall furnish Lessor a copy of any assignment made pursuant to this section, with the recording data reflected thereon (if recorded). Assignment of this Lease or any part thereof shall not relieve Lessee, its assignees, or any subassignees of any obligations hereunder, theretofore accrued or to accrue in the future; and any assignee of Lessee shall, by acceptance of such assignment, be bound by all terms and provisions hereof. The term "assignment" as used herein, shall include, without limitation, any sublease, farmout, or any other agreement by which any share of the operating rights granted by this Lease are assigned or conveyed, or agreed to be assigned or conveyed, to any other party.

No change or division in ownership of the leased premises, rentals or royalties however accomplished shall operate to enlarge the obligations or diminish the rights of Lessee, nor shall any such change or division be binding upon Lessee for any purpose until the person acquiring any interest has furnished Lessee with a true and correct copy of the instrument or instruments constituting his chain of title from Lessor.

16. **Duty to Develop.** The drilling of a well or wells within the broad language of this Lease shall not be construed as an agreement or construction on the part of Lessor that such drilling would constitute reasonable development of the leased premises, or such portion or portions thereof as may be in force from time to time, as may be necessary to reasonably explore and develop the same for the production of oil and gas. In the event a well or wells producing oil or gas should be brought in on adjacent land and draining the leased premises, Lessee agrees to drill such offset wells as a reasonable prudent operator would drill under the same or similar circumstances. If oil and/or gas are discovered on the land covered by this Lease, Lessee agrees to further develop said land covered by this Lease as a reasonable prudent operator would under the same or similar circumstances.

17. **Surface Damages and Restoration.** Lessee's obligations with respect to its use of the surface estate in the leased premises is governed by that certain Surface Use Agreement between Lessee and the Surface Owner of even date herewith which is incorporated herein by reference for all purposes.

18. **Water.** Lessee's rights and interests to utilize potable ground water from the acreage covered by this Lease shall be restricted to those rights and interests more fully described in the Surface Use Agreement; otherwise by this Lease, Lessee does not (expressly or by implication or by operation of law) acquire any title to or right to use for any purpose, any water located in, on or under the leased premises.

19. **Division Orders.** Division orders or transfer orders, if executed, shall be solely for the convenience of the parties for the purpose of confirming the extent of Lessor's interest in production of oil and gas from the leased premises. No term or provision of this Lease shall be altered, amended, extended or ratified by any division order or transfer order. Any amendment, alteration, extension or ratification of this Lease or of any term or provision of this Lease shall be made by an instrument in writing clearly denominated as to its purpose and effect, describing the specific terms or provisions of the Lease affected and the proposed change or modification, and executed by the party against whom the amendment, alteration, extension, or ratification is to be enforced, any amendment, alteration, extension or ratification not so drafted and executed shall be of no force or effect.

20. **Information Requirements.**

A. Lessee shall furnish to the designated representative of Lessor (such representative initially designated to be Jacqueline Montoya of Las Vegas, Nevada, at or within the times indicated, a true and correct copy of each of the following:

(i) Any contract under which gas is sold or processed and any amendment to contract, within thirty (30) days after entering into the contract or amendment.

(ii) Each week, the daily drilling reports covering each well being drilled on the leased premises during the preceding week.

(iii) Simultaneously with its filing, any document affecting the leased premises and which is filed by Lessee with the Texas Railroad Commission or any other regulatory agency.

(iv) As soon as completed, final prints of all driller's logs, electrical logs and surveys obtained in drilling any well on the leased premises, any core analysis and test results obtained from any well on the leased premises, and Lessee's interpretation of all data obtained in Lessee's exploration operations on the leased premises.

(v) As soon as obtained by or on behalf of or made available to Lessee, any title opinion covering all or any part of the leased premises and obtained by or on behalf of or made available to Lessee while this Lease is in effect.

(vi) As soon as entered into, any permitted farm out agreement which is not filed for record.

(vii) With each royalty payment, a check stub, schedule, summary or other remittance advice showing the production period covered by the payment, gross production for the period, the amounts of any deductions and the amount of royalty being paid.

B. Lessee shall furnish to Lessor, as soon as the recording data is available for inclusion, a true and correct photocopy of this Lease, any release of this Lease in whole or in part, any permitted farm out agreement which is filed for record and any permitted assignment of this Lease in whole or in part. In each case where such instruments are to be recorded, the copy provided to Lessor shall reflect the recording data for such instrument.

C. Lessor, at Lessor's risk, shall have access to the derrick floor and all other areas at all times during any operations conducted by Lessee on the land. Lessee shall advise Lessor of the size of chokes installed on all producing wells on the leased premises at all times, together with appropriate pressure information to permit Lessor to check the rate of production from the wells. Lessor shall have the right to strap all storage tanks and read and check all meters and charts affixed to any producing well at reasonable times without previous notice to Lessee, and Lessor may, at Lessor's expense, install check meters on or otherwise check any producing well or wells located on the leased premises.

D. During Lessee's regular office hours, Lessor shall have access to and may inspect and copy all information concerning the drilling, coring, testing and completing of all wells, including the driller's log and all electrical logs and surveys, and all accounting books and records, production charts, records and information, concerning the production, transportation and marketing of oil and gas from the leased premises, and during and for five (5) years after expiration of the primary term of this Lease, all of the following data obtained as a result of Lessee's operations under this lease: all seismic, gravity meter and similar exploration data obtained by Lessee in its exploration of the leased premises so as to permit Lessor to make its own evaluation and interpretation of the data.

E. Lessee shall notify Lessor at least thirty (30) days in advance (exclusive of Saturdays, Sundays and legal holidays) of the time and date of the proposed plugging of any well which has produced, so as to allow Lessor to observe and inspect the plugging operations.

21. **INDEMNIFICATION.** LESSEE, ITS SUCCESSORS AND ASSIGNS, AGREE TO INDEMNIFY, DEFEND AND HOLD LESSOR HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, LIABILITIES, FINES, COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS FEES AND LITIGATION EXPENSES) (COLLECTIVELY "CLAIMS") RESULTING FROM OR ARISING OUT OF OR IN CONNECTION WITH OPERATIONS OF OR FOR LESSEE, ITS AGENTS, CONTRACTORS, OR

SUBCONTRACTORS HEREUNDER, INCLUDING CLAIMS ARISING OUT OF LESSOR'S NEGLIGENCE PROVIDED HOWEVER, THAT THE LESSEE'S OBLIGATIONS UNDER THIS SECTION 21 SHALL NOT APPLY TO CLAIMS THAT ARISE SOLELY OUT OF LESSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THIS PROVISION AND ITS INDEMNITIES SHALL SURVIVE THE TERMINATION OF THIS LEASE AND SHALL INURE TO THE BENEFIT OF AND BE BINDING UPON THE RESPECTIVE SUCCESSORS, HEIRS AND ASSIGNS OF LESSOR AND LESSEE.

22. Special Warranty of Title. Lessor warrants title to the undivided fractional mineral fee interest it owns of record as of the date of this Lease and which is covered by this Lease subject to the reservations, exceptions and other provisions hereof, unto Lessee from and against the claims of persons claiming or to claim the same or any part thereof during the term of this Lease by, through and under Lessor, but not otherwise. Lessor agrees that Lessee, at its option after Lessee has given Lessor sixty (60) days' written notice, may discharge any tax, mortgage or other lien upon Lessor's interest in the lease premises, either in whole or in part, and in the event Lessee does so, it shall be subrogated to such lien with right to enforce same, subject to any defenses of Lessor, and apply royalties accruing hereunder toward satisfying same.

23. Proportionate Reduction for less than Entire Interest. It is agreed that if Lessor owns an interest in oil and gas in and under any of the leased premises which is less than the entire oil and gas fee simple estate, then the royalties on production shall each be reduced by the proportion thereof which the mineral fee estate of Lessor in such land bears to the entire mineral fee estate, provided that in no event shall there be any refund of any amounts previously paid to Lessor as bonus, or shut-in gas well payments.

24. COMPLIANCE WITH ENVIRONMENTAL LAWS AND REGULATIONS. LESSEE, ITS SUCCESSORS AND ASSIGNS, BY ITS ACCEPTANCE OF THIS LEASE, HEREBY AGREES TO COMPLY WITH ALL APPLICABLE LAWS, RULES AND REGULATIONS AND HEREBY ASSUMES FULL RESPONSIBILITY FOR, AND AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS, LESSOR FROM AND AGAINST ANY LOSS, LIABILITY, CLAIM, FINE, EXPENSE AND COSTS (INCLUDING REASONABLE ATTORNEYS FEES AND LITIGATION EXPENSES) AND CAUSE OF ACTION (COLLECTIVELY "ENVIRONMENTAL CLAIMS") CAUSED BY OR ARISING OUT OF THE VIOLATION (OR DEFENSE OF THE ALLEGED VIOLATION) OF ANY FEDERAL, STATE OR LOCAL LAWS, RULES OR REGULATIONS APPLICABLE TO ANY WASTE MATERIAL, DRILLING MATTER OR FLUID OR ANY HAZARDOUS OR TOXIC SUBSTANCES RELEASED OR CAUSED TO BE RELEASED BY LESSEE OR LESSEE'S AGENTS, OR INDEPENDENT CONTRACTORS FROM THE LEASED PREMISES HEREUNDER INTO THE ATMOSPHERE OR INTO OR UPON THE LEASED PREMISES OR ANY WATER COURSE OR BODY OF WATER, INCLUDING GROUND WATER, INCLUDING ENVIRONMENTAL CLAIMS ARISING OUT OF LESSOR'S NEGLIGENCE; PROVIDED, HOWEVER, THAT LESSEE'S OBLIGATIONS UNDER THIS SECTION 24 DO NOT APPLY TO ENVIRONMENTAL CLAIMS THAT ARISE SOLELY OUT OF LESSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. ADDITIONALLY, UPON RECEIVING ANY NOTICE REGARDING ANY ENVIRONMENTAL, POLLUTION OR CONTAMINATION PROBLEM OR VIOLATION OF ANY LAW, RULE OR REGULATION, LESSEE WILL FORWARD A COPY TO LESSOR BY CERTIFIED MAIL. THIS PROVISION AND ITS INDEMNITIES SHALL SURVIVE THE TERMINATION OF THIS LEASE, AND SHALL INURE TO THE BENEFIT OF AND BE BINDING UPON THE RESPECTIVE SUCCESSORS, HEIRS AND ASSIGNS OF LESSOR AND LESSEE.

25. No Salt Water or Waste Injection Wells. Lessee shall not be permitted to dispose of salt water or produced wastes or wastes of any kind into any formation or strata on this Lease, provided however Lessee may inject salt water produced from the leased premises into a well located thereon that has been drilled by Lessee or an existing wellbore that Lessee has converted into a disposal well, provided that Lessor's written consent is first obtained (such consent not to be unreasonably withheld). If and when requested by Lessor, Lessee shall demonstrate to Lessor's reasonable satisfaction that any such disposal or injection well is in compliance with all relevant laws and regulations concerning protection of ground water resources.



26. **Timely Plugging and Abandonment of Wells.** Without prior written consent of the Lessor, Lessee shall not allow any well located on the leased premises to remain in a shut-in, temporarily abandoned or otherwise non-productive state for a period of more than twelve (12) months without beginning plugging and abandonment operations with respect to the well and restoring the location, and providing that these procedures must be completed within two (2) months of their initiation. The only exception to this shall be gas wells capable of production which are shut-in pursuant to the provisions above regarding shut-in gas well payments, and for which shut-in gas well payments are being made in accordance with those same provisions. The obligations of Lessee, (and the concomitant rights of the Lessor), under this provision concerning the proper plugging and abandonment of wells and restoration of the surface of the leased premises shall survive the termination of this Lease, and shall inure to the benefit of and be binding upon the respective successors, heirs and assigns of Lessor and Lessee.
27. **Alteration/Modification.** The terms of this Lease cannot be altered or amended except by a written instrument clearly demonstrating such purpose and effect, and executed by both parties to this Lease. The written instrument shall describe the specific terms or provisions being altered and the proposed modification or change thereto. Any notation or legend attached to a royalty check shall be null and void and without legal significance for the purpose of altering this Lease.
28. **Recording Memorandum.** It is understood and agreed that Lessee may, if it so chooses, file a Memorandum of this Lease in the real property records of Upton County, Texas, such Memorandum to describe the Leased Premises and identify the primary term and Lessor(s) and Lessee(s) who execute this Lease. Such a recording Memorandum will be executed and acknowledged by each of the parties hereto and shall disclose the existence of the continuous development program called for in this Lease.
29. **Counterparts.** This Lease may be executed in multiple counterparts each of which shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument.
30. **GOVERNING LAW; VENUE.** THIS LEASE SHALL BE CONSTRUED UNDER THE LAWS OF THE STATE OF TEXAS. THE VENUE FOR ANY ACTION TO ENFORCE OR CONSTRUE THE TERMS AND PROVISIONS OF THIS LEASE SHALL BE IN THE STATE COURTS OF UPTON COUNTY, TEXAS.
31. **Separate Tracts/No Communitization.** If this lease now or hereafter covers separate tracts, no pooling or unitization of royalty interest as between any such separate tracts in intended or shall be implied, or result from, the inclusion of such separate tracts within this Lease. As used in this paragraph, the words "separate tract" mean any tract with royalty ownership differing, now or hereafter, either as to the parties or amounts, from that as to any other part of the leased premises. Lessor has included multiple tracts under this Lease for the convenience of Lessor and Lessee, with the express agreement and stipulation that this Lease is not a "community lease" and that no communitization of royalty interest shall occur and that each separate tract shall be, for purposes of calculating and paying of royalty interest, considered a separate lease.
32. **Lease Bonus for Excess Acreage.** In the event during the primary term of this Lease it is discovered by Lessor or Lessee that this Lease actually covers more net mineral acres in the leased premises than such parties believed to be covered by this Lease at the time of its execution and delivery, and Lessor provides reasonable documentary proof of the existence of such excess net mineral acreage, then and in that event Lessee agrees to pay to Lessor an additional lease bonus consideration equal to the sum arrived at by multiplying the number of excess net mineral acres times the agreed per acre lease bonus consideration paid at the time of the execution and delivery of this Lease.
33. **Notice.** Any notice permitted or required under the terms and provisions of this Lease shall be in writing signed by or on behalf of the party giving notice and properly addressed and delivered to the recipient party utilizing the following address and contact information. Each notice under this Lease shall be sent by certified mail, return receipt requested, by facsimile transmission (fax), or by commercial overnight courier. A notice sent by mail shall be deemed to have been received (if

properly addressed, with postage prepaid) no later than three (3) Business Days after it is postmarked, while notices sent by commercial overnight courier shall be deemed to have been delivered when actually received.

Notices to the Lessor(s) and Lessee(s) respectively, shall be addressed as follows:

If to Lessor:

Eleanor C. Hartman, Individually and as  
Trustee of the W. N. Connell and  
Marjorie T. Connell Living Trust  
Agreement dated May 18, 1972  
P.O. Box 210  
Las Vegas, Nevada 89125-0710

*See attached addendum.*

If to Lessee:

Apache Corporation  
303 Veterans Airpark Lane, Suite 3000  
Midland, Texas 79705

IN WITNESS WHEREOF, this instrument is dated as of the date first written above.

LESSOR

By: *Eleanor C. Hartman*  
Eleanor C. Hartman, Individually and as  
Trustee of the W. N. Connell and Marjorie  
T. Connell Living Trust under Trust  
Agreement dated May 18, 1972 *Trustee*

LESSEE

APACHE CORPORATION

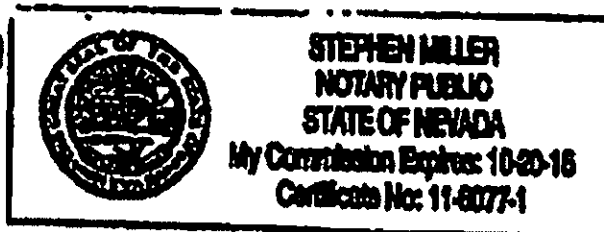
By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE STATE OF NEVADA §

COUNTY OF CLARK §

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of April, 2012, by Eleanor C. Hartman, Individually and as Trustee of the W. N. Connell and Marjorie T. Connell Living Trust under Trust Agreement dated May 18, 1972.

[SEAL]



*[Signature]*  
Notary Public in and for the State of Texas  
Printed Name of Notary: *Stephen Miller*  
My commission Expires: *10-20-15*

THE STATE OF TEXAS §  
COUNTY OF \_\_\_\_\_ §

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of April, 2012, by \_\_\_\_\_ of Apache Corporation, a Delaware corporation, on behalf of said corporation.

[SEAL]

Notary Public in and for the State of Texas  
Printed Name of Notary: \_\_\_\_\_  
My commission Expires: \_\_\_\_\_

# Exhibit 32

**JOHNSTON & ASSOCIATES, P.C.**

JEFFREY M. JOHNSTON  
*Also licensed in New Mexico*

*Of Counsel:*  
STANLEY E. CRAWFORD, JR.  
*Board Certified in Civil Trial Law*  
MICHAEL A. SHORT

ATTORNEYS AT LAW  
INDEPENDENCE PLAZA  
400 WEST ILLINOIS, SUITE 1600  
MIDLAND, TEXAS 79701  
P. O. BOX 2890  
MIDLAND, TEXAS 79702-2890  
(432) 683-8844  
(432) 683-8855 (Fax)

April 6, 2012

**Via Hand Delivery**

Wells Fargo Bank, N.A.  
500 West Texas Avenue  
Midland, Texas 79701

***Re: Wire Transfer of Lease Bonus Consideration remitted by Apache Corporation  
for Acreage in Upton County, Texas.***

Gentlemen:

Please wire transfer the sum of One Million Seven Hundred Twenty-Seven Thousand Four Hundred Ninety-Three and 60/100 Dollars (\$1,727,493.60) from this law firm's client trust account (Wells Fargo Acct. No. REDACTED) in accordance with the following instructions:

Name of Account: Marjorie T. Connell and Eleanor C. Hartman  
Account No.: REDACTED  
Bank Name: Wells Fargo Bank, N.A.  
Bank Address: 420 Montgomery Street  
San Francisco, California 94104  
Bank ABA Routing No.: REDACTED  
Contact Person: Ms. Elizabeth Kagele  
[elizabeth.kagele@wellsfargo.com]

If you have any questions concerning the foregoing, please contact me. Thank you for your attention to this matter.

Very truly yours,

  
Jeffrey M. Johnston

JMJ/mgm

cc: Eleanor Hartman - via e-mail

M:\Connell-Cowden Minerals L.P.\LtrWellsFargoConnellLivingTrust

**CONNELL LIVING TRUST BONUS SCHEDULE**  
**Apache Lease Purchase (4-5-2012)**

	<u>Tract</u>	<u>M.I</u>	<u>Gross Acreage</u>	<u>Net Mineral Acreage</u>	<u>Bonus Rate</u>	<u>Bonus Payable</u>
1.	W/2 SE/4 of 32	1/8	84.0000	10.5000	\$3000.00	\$31,500.00
2.	Sect. 32 <u>SAE</u> W/2 SE/4	7/64	588.0000	64.3125	\$3000.00	\$192,937.50
3.	SW/4 SE/4 of 38	1/8	41.9375	5.2422	\$3000.00	\$15,726.60
4.	Sect. 38 <u>SAE</u> SW/4 SE/4	7/64	629.0625	68.8037	\$3000.00	\$206,411.10
5.	SW/4 NE/4 and SW/4 NW/4 of Sect. 40	7/64	83.7500	9.1602	\$3000.00	\$27,480.60
6.	SW/4 of 41	15/64	160.0000	37.5000	\$3000.00	\$112,500.00
7.	Sect. 42	-0-	671.0000	-0-	\$3000.00	-0-
8.	SE/4 of 43	-0-	160.0000	-0-	\$3000.00	-0-
9.	Sect. 44	15/64	670.0000	157.0313	\$3000.00	\$471,093.90
10.	Sect. 45	15/64	640.0000	150.0000	\$3000.00	\$450,000.00
11.	Sect. 48, Block 39	7/64	670.0000	73.2813	\$3000.00	\$219,843.90
12.	W/2 of 48, Block 40	-0-	327.8500	<u>-0-</u>	\$3000.00	<u>-0-</u>
<b>Totals:</b>				<b>575.8312</b>		<b>\$1,727,493.60</b>

# Exhibit 33

**2010**

**NET - TEXAS INCOME**

Oil and Gas Income from Voucher	\$825,950.66
Ranch Land - 1 Year	\$2,300.00
<b>Total</b>	<b>\$828,250.66</b>
<b>Less Expenses</b>	<b>18,915.62</b>
<b>NET TOTAL</b>	<b>\$809,335.04</b>

**Texas Income Divided**

Eleanor Ahern - 35%	\$283,267.26
Kathy Bouvier - 32.5%	\$263,033.89
Jacquie Montoya - 32.5%	\$263,033.89
<b>Total</b>	<b>\$809,335.04</b>



Lease Owner	Owner Number	Gross/Net	Voucher Totals	1099 Totals
DCP Midstream	162705	Gross	\$209.52	\$209.52
		Net	\$209.52	\$209.52
Pioneer	5486	Gross	\$1,876.31	\$1,876.31
		Net	\$1,779.21	\$1,779.21
Pioneer	41374	Gross	\$832.03	\$832.03
		Net	\$771.83	\$771.83
Plains Marketing	0782216	Gross	\$23,788.35	\$23,788.35
		Net	\$22,691.91	\$22,691.91
Plains Marketing	0488845	Gross	\$1,612.48	\$1,612.48
		Net	\$1,538.16	\$1,538.16
Prime	7635	Gross	\$248,425.77	\$248,425.77
		Net	\$235,854.95	\$235,854.95
Remuda	C0596	Gross	\$12,084.47	\$12,084.47
		Net	\$11,406.47	\$11,406.47
Apache	45572	Gross	\$575,783.38	\$575,783.38
		Net	\$546,101.99	\$546,101.99

Sub Total Net	<u>\$820,144.52</u>
---------------	---------------------

Total Voucher NET	\$820,144.52
Total 1099 NET	\$820,144.52
	\$0.00

Total Voucher GROSS	\$864,402.79
Total 1099 GROSS	\$864,402.79

## 2011 EXPENSES

<u>Date Paid</u>	<u>Company / Service</u>	<u>Amount</u>
	Trust Tax Service paid from TX Oil Acct	
1/3/2011	Reimburse Jacquie for Annual PO Box Fee for 2011	\$250.00
11/4/2011	Upton County Tax District 2011 Taxes Statement #2024	\$2,500.32
11/4/2011	Upton County Tax District 2011 Taxes Statement #2025	\$18,803.50
11/4/2011	Upton County Tax District 2011 Advalorum Statement #12498-12502	\$144.24
	<b>Total</b>	<b><u>\$21,698.06</u></b>

**2011**

**NET - TEXAS INCOME**

Oil and Gas Income from Voucher	\$820,144.52
Ranch Land - 1 Year	\$2,300.00
<b>Total</b>	<b>\$822,444.52</b>
<b>Less Expenses</b>	<b>21,698.06</b>
<b>NET TOTAL</b>	<b>\$800,746.46</b>

**Texas Income Divided**

Eleanor Ahern - 35%	\$280,261.26
Kathy Bouvier - 32.5%	\$260,242.60
Jacquie Montoya - 32.5%	\$260,242.60
<b>Total</b>	<b>\$800,746.46</b>

# Exhibit 34



## **DIVIDING A TRUST INTO SUBTRUSTS AFTER A SETTLOR'S DEATH**

*Funding Separate Subtrusts Created under a Trust*

*by Layne T. Rushforth*

**Section 1. Overview:** This memo is directed to the trustee of a revocable trust where the trust requires the allocation of trust assets into two or more subtrusts at the time of the settlor's death, or, in the case of a two-settlor trust, at the time of the settlor who dies first ("deceased settlor" or "decedent"). Traditionally, this type of planning has been done by married couples, but it also works for domestic partners and unrelated individuals; however, planning involving a trust that qualifies for the marital deduction for federal estate tax purposes does not apply if the surviving settlor is not married (as defined under federal law) to the deceased settlor.

1.1 **Purpose of Division.** The division of a trust is frequently tax motivated, but it can also be required because of a desire to preserve assets for specific beneficiaries (such as the children of the deceased settlor), and/or a desire to protect assets against the claims of creditors and the impact of divorce and re-marriage.

1.2 **Federal Estate Tax.** The federal estate tax rate is 40%.<sup>1</sup> The amount of property that can be transferred free of the estate tax is referred to as the "applicable exclusion amount", which is \$5,340,000 in 2014 and \$5,430,000 in 2015.<sup>2</sup>

1.3 **Note of Caution.** This memo speaks in general terms and refers to trust provisions that are typical. This memo was not written with any specific trust in mind. Each trust is unique, and you should read the trust documents carefully and confer with a CPA or with us or another attorney who is experienced in trust administration and estate tax matters. This memo does not discuss your duties to administer the subtrusts after they are created and funded. For that, you should read the memo titled "Your Duties as Trustee".<sup>3</sup>

**Section 2. Two-Settlor Trusts:** Most of the two-settlor trusts that require a division when one settlor dies are designed either as an "A/B Trust" or as an "A/B/C Trust".

2.1 **A/B Trust.** Upon the decedent's death, the typical "A/B Trust" is divided into two subtrusts, which are labeled as the "Survivor's Trust" and the "Decedent's Trust" in **Figure 1**. It is called an A/B Trust because the Survivor's Trust is referred to as Trust A, and the Decedent's Trust is referred to as Trust B.<sup>4</sup>

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<sup>1</sup>The maximum rate imposed for federal estate tax purposes is currently 40%. For the rates in prior years, see <http://rushforth.net/advintro.html#ae>.

<sup>2</sup>Internal Revenue Code § 2010(c) provides for an "applicable exclusion", which is the cumulative amount that can pass free of gift and/or estate tax. For 2014, the applicable exclusion is \$5,340,000, and for 2015, the applicable exclusion is \$5,430,000. For the applicable exclusion in prior years, see <http://rushforth.net/advintro.html#ae>.

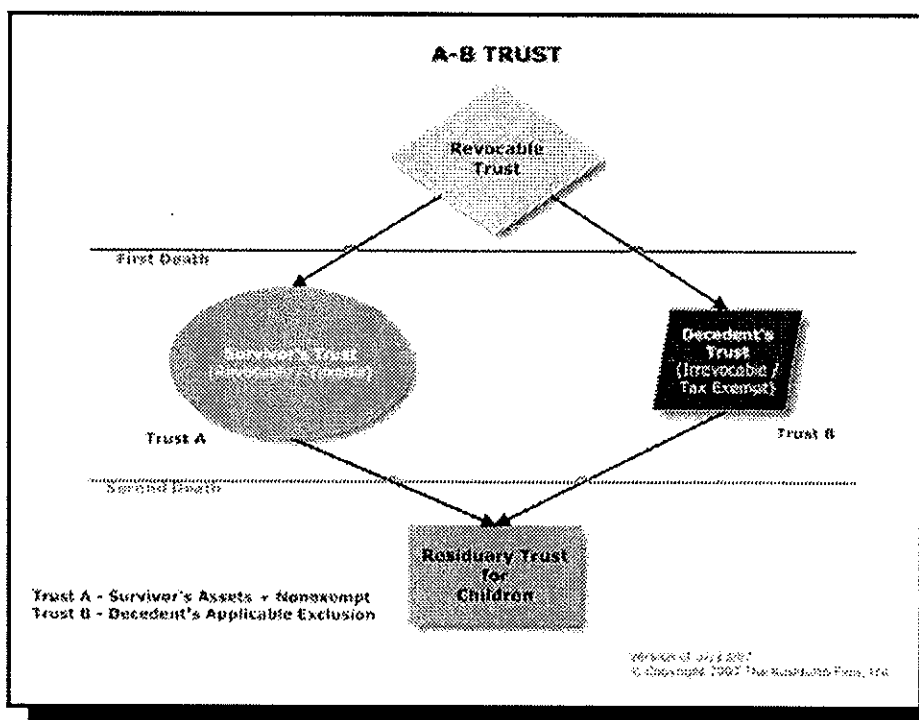
<sup>3</sup>This is available online at <http://rushforth.net/pdf/trustee.death.pdf>.

<sup>4</sup>One way to remember which trust is which is to keep in mind that Trust A is for the settlor that is Alive, and Trust B is for the settlor that is Buried. Most trusts do not use the Trust A and Trust B designations, but it is still common to refer to these trusts as "A/B Trusts".



(a) *Survivor's Trust.* The "Survivor's Trust" or "Trust A" receives all of the surviving settlor's assets plus the decedent's assets to the extent the value exceeds the "applicable exclusion amount". In most cases, the surviving settlor will have the right to amend and revoke the "Survivor's Trust". This trust is usually designed to qualify for the estate tax marital deduction if the settlors are married at the time of the first death of a settlor.

(b) *Decedent's Trust.* The Decedent's Trust<sup>5</sup> or Trust B receives as much of the deceased settlor's property that can pass free of the estate tax.<sup>6</sup> This is done primarily so that the decedent's "applicable exclusion amount" is preserved without further estate taxation and without being subject to the claims of a beneficiary's creditors or to dissipation in a beneficiary's divorce proceeding. The surviving settlor may be (and usually is) the beneficiary of the Decedent's Trust, and the trust may permit the surviving settlor to direct distributions from the trust either during the surviving settlor's lifetime or after the surviving settlor's death or both.



**Figure 1**

2.2 A/B/C Trust. An A/B/C trust is only for couples who are married (as defined in federal tax law).<sup>7</sup> Upon the decedent's death, the typical "A/B/C Trust" or "A/B/QTIP" divides into three subtrusts. (See **Figure 2.**)

(a) *Survivor's Trust.* In a typical "A/B/C Trust", the "Survivor's Trust" or "Trust A" is a trust for the surviving settlor's assets, and the surviving spouse has the right to designate who will be its beneficiaries upon the survivor's death. This trust receives all of the surviving settlor's assets but none of the decedent's assets.

(b) *Decedent's Trust.* In an "A/B/C Trust", the "Decedent's Trust" or "Trust B" is an irrevocable trust that receives assets that are covered by the "applicable exclusion". This is usually drafted as a spendthrift trust that is exempt from the claims of the surviving spouse's creditors.

<sup>5</sup>Although this memo refers to the "Decedent's Trust", it may be named something else in your trust documents. Common names include "Credit-Shelter Trust", "Bypass Trust", "Exemption Trust", and "Exclusion Trust".

<sup>6</sup>This is the "applicable exclusion amount" that has not been used for lifetime gifts. The "applicable exclusion amount" is given in note 7 at the bottom of page 7.

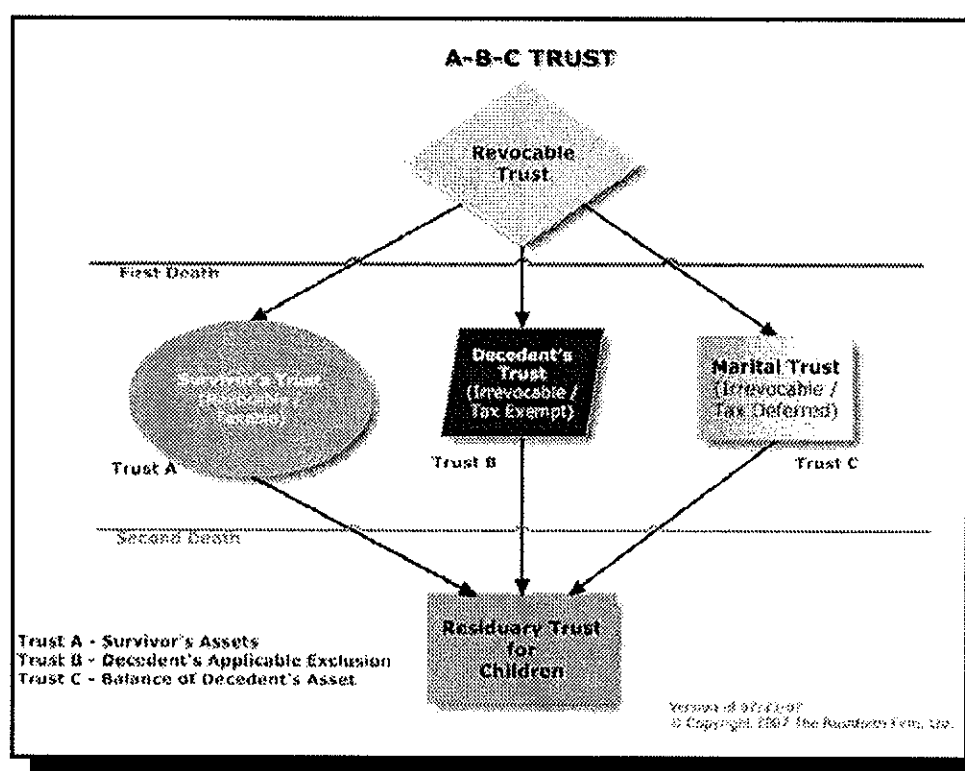
<sup>7</sup>While Nevada's domestic partnership laws give domestic partners exactly the same rights as married couples, current federal tax law does not recognize domestic partners as being married. Federal law does not currently recognize same-sex marriages, either.



(c) **Marital Trust.** The "Marital Trust" or "Trust C" is an irrevocable trust that qualifies for the marital deduction. This trust can either be a "Qualified Terminable Interest Property Trust" (often called a "QTIP Trust")<sup>8</sup> or it can be a life estate/general power of appointment trust, sometimes referred to as a "B5 Trust".<sup>9</sup> Under either type of marital trust, the surviving spouse is entitled to all of the trust's income each year and may permit the invasion of the trust's principal for the surviving spouse's benefit. The QTIP trust rules do not permit anyone other than the surviving spouse to receive distributions from the trust during the surviving spouse's lifetime, but it may permit the surviving spouse to direct distributions from the trust after the surviving spouse's death. The life estate/general power of appointment Marital Trust requires that the surviving spouse have the power to direct distributions from the trust at his or her death.

**Section 3. Division of One-Settlor Trust:** In the case of a one-settlor trust, the trust is commonly divided between a Decedent's Trust and a second trust, such as a Marital Trust or a Survivor's Trust, in a manner similar to the division of a two-settlor trust as described in section 2, above. While a Survivor's Trust is usually revocable, that is frequently not true in a one-settlor trust.

**Section 4. Trust Allocation Formulas:** Under both an A/B trust and an A/B/C trust, upon the death of the decedent, the trust must be divided into the trusts as directed in the trust document. Sometimes, specific assets are allocated to the different trusts, but usually the trust is divided according to a stated formula. Each type of formula produces slightly different results with respect to asset allocations and income tax consequences. ***It is important for the trustee to follow the provisions of the document relating to asset allocations and to document what has been done. It will also be important to maintain accurate records of the subtrusts until the surviving settlor dies.***



**Figure 2**

4.1 **Fractional Formula.** The formula can provide for a division of the trust into "fractional shares" so that each trust owns a fractional interest of each asset. The advantage of this formula is that the division is a mathematical division that appears in the trust's accounting records, but specific asset allocations are unnecessary. The disadvantage of this method is the need to have your accountant update the fraction every time you distribute assets from one of the subtrusts.

4.2 **Pecuniary Formula.** The pecuniary formula can provide for an allocation of assets based on an amount of money ("pecuniary amount"). Certain versions of this formula can provide for greater flexibility in allowing growth assets to benefit the Decedent's Trust, but if there is substantial post-death

<sup>8</sup>If a QTIP Trust is used, the trust may be referred to as an "A/B/QTIP Trust" or an "A/B/Q Trust".

<sup>9</sup>This type of trust gets its name because it is described in IRC § 2056(b)(5).



appreciation on certain assets, the allocation of assets to a subtrust can actually trigger an income tax on capital gains.

**Section 5. Procedure:** The division of the trust is based on the fair market value of the trust assets at a stated point in time, either at the time of the decedent's death or at the time the trust allocations are made. Our documents usually require the use of values "as finally determined for estate tax purposes", which are date-of-death values (with a few exceptions). If the trust allows the trustee to select a valuation date, it is often advisable to use the estate-tax valuation date in order to reduce the need for additional appraisals.

5.1 **Appraisal.** Formal appraisals of real property, valuable collectibles, jewelry, and closely-held business interests are highly recommended. Appraisals by qualified appraisers are the best defense against subsequent attacks by the IRS or disgruntled beneficiaries. In addition to establishing values for purposes of asset allocation, appraisals also establish the income tax basis for purposes of computing the gain on the sale of capital assets. In other words, the date-of-death value is treated as the cost of all of the decedent's separate property and for all community property.

5.2 **Selecting Assets.** Once the assets are appraised, the next step is to decide which assets are to be allocated to each trust. If a fractional formula applies, there still may be assets that are specifically allocated to one trust or another, and so it is important to follow the legal documents. If one or more specific assets are to be allocated to one or more specific trusts, the trustee should consult with an accountant and investment advisors before deciding which assets should go into which trust. There are estate and income tax issues to be considered. If the survivor is not the trustee, the trustee must carefully consider the survivor's rights, and consulting with the survivor is advisable.

(a) **Expenses, Taxes, and Income.** The trust document will usually contain detailed and somewhat complicated rules for the allocation of expenses, taxes, and income between or among the various subtrusts. Failure to follow the directives of the document can expose the trustee to criticism or even litigation and can expose the trust to unexpected or undesirable tax consequences.

(b) **Postmortem Appreciation or Depreciation.** Assets will appreciate or depreciate between the date of death and the date the assets are actually allocated to the various subtrusts. Unless your trust uses a fractional formula that allocates fractional shares of all assets between or among the subtrusts, your trust requires that the appreciation and depreciation be fairly apportioned between or among the trusts.

(c) **Splitting Asset Ownership.** The ownership of assets can be divided between or among multiple trusts. For example, each trust can own different shares of a business or different percentages in a parcel of real estate. If the Survivor's Trust or Marital Trust have a minority interest in a business or a fractional interest in real estate, the estate tax value in the survivor's estate might be reduced because of a valuation "discount" that an appraiser will apply in appropriate circumstances. Keep in mind, however, that splitting the ownership of an asset can complicate matters if the trusts have different trustees and/or different beneficiaries.

(d) **Income Tax Issues.** The Survivor's Trust is usually revocable or contains a general power of appointment allowing the survivor to change trust beneficiaries. This makes the survivor's trust a "grantor trust" for federal income tax purposes, which means that all income will be taxed to the survivor. It also means that any tax benefits available to an individual — such as the exclusion of capital gain on the sale of a primary residence under Internal Revenue





Code ("IRC") § 121 — will pass through to the survivor. The assets in the Decedent's Trust will escape estate taxation upon the survivor's death, making this an attractive trust into which appreciated assets should be allocated, but a sale of assets from the Decedent's Trust will not escape capital gain taxes if there has been appreciation after the first spouse's death. With respect to a home sale, the IRC § 121 exclusion will not apply to any interest in the home allocated to the Decedent's Trust.

(e) *Unproductive Assets.* Assets in a QTIP trust cannot benefit anyone other than the surviving spouse, and, at a minimum, the surviving spouse is entitled to trust income from the Marital Trust, regardless of the type. Federal law allows the survivor to compel the trustee to make unproductive property income-producing, so allocating unproductive property to the Marital Trust is not appropriate unless the survivor consents.

5.3 Record of Division. It is the trustee's responsibility to see that assets are properly allocated to the various subtrusts. Once a value has been established for the trust's assets, it is important to document the required division into the subtrusts. In most cases, this will require a coordinated effort of both your accountant and your trust attorney. The trust document contains detailed and somewhat complicated rules for the allocation of expenses, taxes, and income between or among the various subtrusts. Failure to follow the directives of the document can expose the trustee to criticism or even litigation and can expose the trust to unexpected or undesirable tax consequences.

5.4 Asset Transfers. Most trust documents do not require that the legal title to assets be specifically transferred to the subtrusts; title can remain in the name of the trustee of the primary trust so long as the trust's accounting records accurately reflect each subtrust's property interests. On the other hand, if the subtrusts have different trustees, it is usually advisable to transfer legal title to the trustee(s) of each subtrust. We recommend re-titling assets in the name of each subtrust in almost all cases.

**Section 6. Generation-Skipping Transfer Tax:** The federal government has established a generation-skipping transfer tax ("GSTT") that is imposed when assets are transferred from a transferor to a "skip person", who is anyone who is in any generation below a child, including grandchildren, great-grandchildren, etc. There is a "GST Exemption" that exempts transfers totaling \$5,000,000 (adjusted for inflation)<sup>10</sup> from the GSTT. To maximize the effectiveness of the GST Exemption, many trusts permit or require that trusts be divided into GSTT-exempt and GSTT-nonexempt trusts. Without going into the details of why, it is important to follow the trust's provisions relating to the creation of subtrusts. Generally, the same principles that apply to the division of the trust into the Marital Trust, Decedent's Trust, and Survivor's Trust also apply into dividing those trusts into exempt and nonexempt trusts for generation-skipping transfer tax purposes.

**Section 7. Disclaimer by Surviving Settlor:** Most trusts for married couples are designed to eliminate estate taxes upon the death of the first spouse to die. This defers all estate tax until the surviving spouse's death. Unfortunately, this can push the overall estate into higher estate tax rate brackets. Under prior law, it was sometimes advisable, for the surviving spouse to disclaim part of the Marital Trust, allowing it to be taxed at lower brackets. Unless and until the law is changed, for estates exceeding the applicable exclusion, there is only one tax rate (40%), so disclaiming more than that may not save estate taxes. If the surviving spouse disclaims assets, the disclaimed portion will pass as is

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<sup>10</sup>The federal generation-skipping transfer tax ("GST tax") is imposed at the highest rate imposed for federal estate tax purposes, which is shown in note 1. For 2011 and beyond, the GST exemption has been the same as the applicable exclusion for estate tax. (See note 2.)



provided in the trust document. Disclaimed assets usually go either to the residuary beneficiaries (as though the surviving spouse had died) or to a special Disclaimer Trust established for the survivor's benefit. Disclaimers are another tool that can save taxes in the long run if used effectively, but they should be used only after considering all of the implications.

**Section 8. Estate Tax Return:** If the decedent's assets (all separate property plus half of any community property) have a value greater than the exemption amount, a federal estate tax return (IRS Form 706) must be filed within nine months of the decedent's death even though no estate tax is due.

8.1 The values shown on this tax return must jibe with the values used to allocate assets between or among the subtrusts. If the values are not identical, they must be reconciled. It is important that the value claimed as a marital deduction on the estate tax return correspond with the value of assets in the Marital Trust plus the value of other assets transferred to the surviving spouse. It is also important that the value of each GSTT-exempt trust created for generation-skipping transfer tax purposes match the GST Exemption allocated to that trust on the estate tax return.

8.2 We strongly recommend that you retain a qualified and experienced certified public accountant to prepare the estate tax return. While the estate tax return itself does not appear too complicated, a properly prepared return will include copies of supporting documents, including copies of appraisals, trust documents, the deceased spouse's Will, etc.

**Section 9. Income Taxes:** After the death of the decedent, the trustee is required to obtain a tax identification number for each trust other than a grantor trust (as defined in federal income tax laws).

9.1 The Decedent's Trust and any Marital Trust are irrevocable trusts and will each require a tax identification number. Each year, the trustee must file a fiduciary income tax return (IRS Form 1041) for each irrevocable trust, providing a schedule K-1 to each income beneficiary.

(a) The distribution of income to the surviving spouse is mandatory as to the Marital Trust, which means that the surviving spouse will report all Marital Trust income on his or her individual income tax return (IRS Form 1040), in which case the trust itself would pay no income taxes.

(b) The same is true for income from the Decedent's Trust if the trust requires income to be distributed to the survivor. On the other hand, if the Decedent's Trust permits the accumulation of income or permits income to be distributed to other beneficiaries, the trust will pay the tax on any income it accumulates, the surviving settlor will report the income he or she actually receives, and each other beneficiary will report the income he or she actually receives.

9.2 The Survivor's Trust is usually revocable, and so the tax identification number for the Survivor's Trust can be the surviving spouse's social security number so long as the surviving spouse is serving as the sole trustee of the trust. Until the survivor's death, all income from the assets in the Survivor's Trust will be reported each year on the survivor's individual income tax return (IRS Form 1040).

**Section 10. Updating Trust Inventory:** The inventory of each subtrust's assets should be kept current. If specific assets are allocated to each subtrust, it is recommended that a separate supplemental schedule be prepared regularly for each subtrust. If the trust was divided into fractional shares, the trust allocation is updated by recalculating the fraction each time distributions are made and



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***DIVIDING A TRUST INTO SUBTRUSTS***

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Page 7 of 7 Pages

each time income is allocated to principal. Distributions to beneficiaries, gifts, sales, exchanges, and other transfers will change the assets or the undivided interest allocated to each subtrust.

**Section 11. Conclusion:** In order to preserve the estate tax planning that was designed into your trust, it is important to meticulously follow the trust's provisions relating to the division of the trust into subtrusts. You have a duty to make a complete inventory of all trust assets, determine the value of trust assets, and allocate assets to the subtrusts according to the document's formula based on the assets' value. It is important to file annual tax returns for each irrevocable trust and to keep asset allocations up-to-date and properly documented so that each subtrust's assets or property interests are clearly segregated and identifiable.

***NOTE: This memo provides general information only and does not contain legal, accounting, or tax advice. For brevity, this memo is oversimplified and should not be relied on for any particular situation. Although this memo may discuss tax issues, this is not a "covered opinion" as defined in Circular 230 issued by the U. S. Treasury Department, and nothing in this memo can be relied upon to avoid any tax penalties.***

[END: Version of October 31, 2014]

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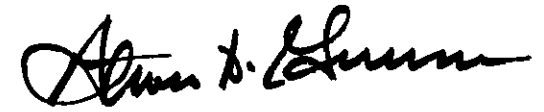
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

In the Matter of

THE W.N. CONNELL AND MARJORIE T.  
CONNELL LIVING TRUST DATED May 18,  
1972, An Inter Vivos Irrevocable Trust.

Case No.: P-09-066425-T

Dept. No.: 26

Date of Hearing: January 14, 2015

Time of Hearing: 9:00 a.m.

**ELEANOR C. AHERN'S (1) REPLY IN SUPPORT OF ELEANOR C. AHERN'S  
MOTION TO DISMISS PETITION FOR DECLARATORY JUDGMENT FOR  
FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED; (2)  
OPPOSITION TO COUNTERMOTION OF KATHRYN A. BOUVIER AND  
JACQUELINE M. MONTOYA FOR SUMMARY JUDGMENT ON PETITION FOR  
DECLARATORY JUDGMENT, FOR DAMAGES AND ASSESSMENT OF PENALTIES,  
AND FOR OTHER RELIEF; AND (3) REPLY IN SUPPORT OF COUNTERMOTION  
FOR SUMMARY JUDGMENT**

Eleanor Connell Hartman Ahern, as Trustee and Individually (hereinafter "Eleanor"), by and through her attorneys of record, the law firm of Marquis Aurbach Coffing, hereby files this Reply in Support of Eleanor C. Ahern's Motion to Dismiss Petition for Declaratory Judgment for Failure to State a Claim Upon Which Relief Can Be Granted ("Reply"); Opposition to Countermotion of Kathryn A. Bouvier and Jacqueline M. Montoya for Summary Judgment on Petition for Declaratory Judgment, for Damages and Assessment of Penalties, and for Other Relief ("Opposition"); and Reply in Support of Countermotion for Summary Judgment ("Reply"). The Replies and Opposition is made and based upon the pleadings and papers on file herein, the following memorandum of points and authorities, and any oral argument allowed at the time of hearing on this matter.

**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION.**

Eleanor submits this Reply in Support of her Motion to Dismiss Jacqueline and Kathryn's Petition for Declaratory Relief filed September 27, 2013. The Petition for Declaratory Relief is the only pleading filed by Jacqueline and Kathryn in this case and requests a declaration that Eleanor is only entitled to 35% of the Oil Rights and Oil Income (collectively, the "Oil Assets") and that Jacqueline and Kathryn, as beneficiaries of the MTC Trust, are entitled to 65% of the Oil Assets. Eleanor requests that the Court dismiss the Petition for Declaratory Relief based on claim preclusion and estoppel.

Eleanor also submits this Opposition to Jacqueline and Kathryn's Countermotion for Summary Judgment. Jacqueline and Kathryn have failed to prove that they are entitled to judgment as a matter of law on their one and only claim for declaratory relief regarding ownership of the Oil Assets, and therefore, Eleanor requests that the Court deny the Countermotion for Summary Judgment.

Additionally, Eleanor submits this Opposition to Jacqueline and Kathryn's Countermotion for Damages and Assessment of Penalties and Other Relief Against Eleanor ("Countermotion for Assorted Relief"). The Countermotion seeks an assortment of relief based on claims Jacqueline and Kathryn have never alleged, defenses they have never alleged, and conclusions unsupported by law or fact in violation of EDCR 2.20(c). Accordingly, Eleanor requests that the Court deny the Countermotion for Assorted Relief.

Finally, Eleanor submits this Reply in Support of her Countermotion for Summary Judgment. Jacqueline and Kathryn have failed to establish any genuine issues of material fact, and Eleanor is entitled to judgment as a matter of law regarding Trust No. 2's 100% ownership of the Oil Assets. Therefore, the Court should grant Eleanor's Countermotion for Summary Judgment.

**II. FACTUAL AND PROCEDURAL BACKGROUND.**

Eleanor hereby incorporates all of the facts and exhibits of her Omnibus Opposition to (1) Petition for Determination of Construction and Interpretation of Language Relating to Trust No

1 2, and (2) Petition for Construction and Effect of Probate Court Order; and Countermotion for  
2 Summary Judgment filed January 2, 2015 (“Omnibus Opposition”). Accordingly, this factual  
3 and procedural background is to highlight additional factual information and evidence for the  
4 Court’s consideration particularly relevant to this Reply and Opposition.

5 **A. THE TRUST.**

6 Eleanor’s father, W.N. Connell (“William”) and her adoptive mother, Marjorie Connell,  
7 formed the W.N. Connell and Marjorie T. Connell Living Trust dated May 18, 1972 (the  
8 “Trust”).<sup>1</sup> William owned oil, gas, and mineral rights and leases on real property located in  
9 Upton County, Texas (the “Oil Rights”).<sup>2</sup> The Oil Rights generated consistent monthly income  
10 (the “Oil Income”) (collectively, with the Oil Rights, “Oil Assets”).<sup>3</sup> The Oil Rights were  
11 William’s separate property and remained such after he transferred the Oil Rights to the Trust.<sup>4</sup>  
12 The Trust was funded with (1) real property interests characterized as community property; (2)  
13 real property in Nevada<sup>5</sup> and Texas characterized as William’s separate property; and (3) 100%  
14 title and ownership to the Oil Assets, characterized as William’s separate property.<sup>6</sup>

15 **B. WILLIAM ENSURED THAT ELEANOR WOULD BE ENTITLED TO**  
16 **ALL OF THE OIL INCOME DURING HER LIFE.**

17 Before his death, William took several steps to ensure that Eleanor would be entitled to  
18 all of the Oil Income during her life.

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22 <sup>1</sup> See Trust Agreement (“Trust Agreement”), attached to the Omnibus Opposition as Exhibit 3.

23 <sup>2</sup> See Declaration of Eleanor Connell Hartman Ahern dated December 11, 2014 at ¶ 4 (“Second  
24 Declaration of Eleanor”), attached to the Omnibus Opposition as Exhibit 4.

25 <sup>3</sup> Id.

26 <sup>4</sup> See Trust Agreement, Schedule A, attached to the Omnibus Opposition as Exhibit 3.

27 <sup>5</sup> See Grant, Bargain Sale Deed dated April 18, 1944, reflecting real property in Clark County, Nevada, as  
28 William N. Connell’s sole and separate property, attached hereto as **Exhibit 8**.

<sup>6</sup> See Trust Agreement, Schedule A, pp. 1-3, attached to the Omnibus Opposition as Exhibit 3.

1        Eleanor's Adoption: First, he insisted that Marjorie adopt Eleanor when Eleanor was 38  
2 years old and already had her daughters, Jacqueline and Kathryn.<sup>7</sup> This would ensure that after  
3 William's death, Eleanor would be entitled to all the rights and benefits of being Marjorie's  
4 daughter, i.e. she could not be excluded from the legacy planning because she was not Marjorie's  
5 legal or biological daughter.

6        The Promise: Second, William made Marjorie and Eleanor promise on the family Bible  
7 to always take care of each other and never do anything to hurt one another.<sup>8</sup>

8        Trust No. 2: Third, William provided in the Trust that if he predeceased Marjorie, the  
9 Trust would split into two separate Trusts, Trust No. 2, a "Decedent's Trust" for the benefit of  
10 Eleanor during her lifetime and then her children, and Trust No. 3, a "Survivor's Trust" for the  
11 benefit of Marjorie.<sup>9</sup> While the Trust generally described the type of assets to be used to fund  
12 Trust No. 3 for Marjorie's benefit, the Trust very specifically carved out the Oil Assets as the  
13 assets to fund Trust No. 2 for Eleanor's benefit. From the plain terms of the Trust, William  
14 made his intent clear that Trust No. 2 would own 100% of the Oil Rights, with all the Oil Income  
15 being distributed to Eleanor during her lifetime and to her bloodlines after her death.<sup>10</sup>

16        Co-Trustee: Fourth, William provided in the Trust that Eleanor would be the co-trustee of  
17 Trust No. 2—another safeguard to ensure protection of the Oil Assets for Eleanor's benefit.<sup>11</sup>

18        Prohibiting Sale of Oil Rights: Fifth, the Trust instructed that the Oil Rights are not to be  
19 sold, again ensuring that the Oil Assets would provide for Eleanor during her lifetime and from  
20 generation to generation after her death.<sup>12</sup>

21  
22        <sup>7</sup> See Decree of Adoption filed on November 24, 1976 ("Adoption Decree"), attached to the Omnibus  
Opposition as Exhibit 6; see Declaration of Eleanor, attached to the Omnibus Opposition as Exhibit 1.

23        <sup>8</sup> See Declaration of Eleanor, attached to the Omnibus Opposition as Exhibit 1.

24        <sup>9</sup> See Trust Agreement at Article Second, Section C.1., p. 3, and Article Fourth, Section A. attached to the  
25 Omnibus Opposition as Exhibit 3.

26        <sup>10</sup> See Trust Agreement, Article Fourth, attached to the Omnibus Opposition as Exhibit 3.

27        <sup>11</sup> See Trust Agreement, Article Second, Section C.6, attached to the Omnibus Opposition as Exhibit 3.

28        <sup>12</sup> See Trust at Article Fourth, C.3, attached to the Omnibus Opposition as Exhibit 3.

1 William's actions before his death, including the specific Trust language, unambiguously  
2 evidence his intent that Eleanor receive 100% of the Oil Income during her life and that the Oil  
3 Assets serve as an heirloom assets for the generations to come after Eleanor.

4 **C. ELEANOR HONORS HER FATHER'S WISHES.**

5 After William died, Eleanor honored her promise made to her father that she would take  
6 care of her adoptive mother, Marjorie.<sup>13</sup> Eleanor was fortunate enough to have a very  
7 comfortable lifestyle with her then husband, Mr. Ahern.<sup>14</sup> Eleanor's comfortable lifestyle  
8 allowed her to supplement Marjorie's lifestyle, which was not as comfortable as Eleanor's at the  
9 time.<sup>15</sup> Since Marjorie had not been employed since 1955, Eleanor financially supported  
10 Marjorie by letting her receive 65% of the Oil Income until her death in 2009.<sup>16</sup> Eleanor did so  
11 even though she always understood that Trust No. 2 owned 100% of all of the Oil Rights and  
12 clearly designated Eleanor as the sole income beneficiary.<sup>17</sup> Eleanor never agreed to allow  
13 Marjorie to own any part of her father's separate, real property in Upton County, Texas or the  
14 Oil Assets.<sup>18</sup> Equally as important, no evidence exists where Eleanor, in writing, officially  
15 assigned, waived or transferred any part of her 100% beneficial interest in the Oil Assets to  
16 Marjorie.

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22 <sup>13</sup> See Declaration of Eleanor, attached to the Omnibus Opposition as Exhibit 1.

23 <sup>14</sup> See Rough Draft Deposition of Jacqueline Montoya, January 6, 2014, excerpts of which are attached  
24 hereto as **Exhibit 7**, 64:14-19 (Jacqueline's Deposition).

25 <sup>15</sup> See *id.* at 65:23-25.

26 <sup>16</sup> See Declaration of Eleanor, attached to the Omnibus Opposition as Exhibit 1.

27 <sup>17</sup> *Id.*

28 <sup>18</sup> *Id.*



1           **D.       THE TAX RETURNS.**

2                   **1.       The Texas Tax Return.**

3           Unbeknownst to Eleanor, Marjorie hired Texas CPA Darrel Knight (“CPA Knight”) to  
4   prepare the Inheritance Tax Return for William (the “Texas Tax Return”).<sup>19</sup> CPA Knight  
5   prepared the Tax Return reflecting the following distribution to Marjorie:

6                   Marital bequest, 64.493% of 2,301 acres Upton Co., Texas land

7                   Marital bequest, 64.493% of mineral rights, Upton Co., Texas.

8   Regardless of how creative CPA Knight was from a tax perspective to report Eleanor’s  
9   generosity towards Marjorie to the IRS, the terms of the Trust remained in full force and effect  
10   and were never amended—Eleanor remained the sole income beneficiary entitled to all the Oil  
11   Income. Moreover, Eleanor never saw or approved the Texas Tax Return; in fact, she never saw  
12   it until around the time of the falling out with her daughters.<sup>20</sup>

13                   **2.       The Alleged Federal Tax Return Form 706.**

14           Kathryn and Jacqueline repeatedly allege that there exists a Federal Tax Return Form 706  
15   (“Form 706”) for William that reflects a similar marital bequest of approximately 65% of the Oil  
16   Rights and Oil Income to Marjorie. In fact, they allege that they requested the Form 706 from  
17   the IRS, but the IRS responded in a letter that it could not be located.<sup>21</sup> Notably, neither the  
18   alleged Form 706 nor the letter from the IRS has been produced in this litigation.<sup>22</sup> Nonetheless,  
19   the Form 706 would be as irrelevant as the Texas Tax Return. Eleanor never saw or approved  
20

21   <sup>19</sup> See Inheritance Tax Return – Non-Resident (“Tax Return”), attached to the Omnibus Opposition as Exhibit 10.

22   <sup>20</sup> See Declaration of Eleanor, attached to the Omnibus Opposition as Exhibit 1.

23   <sup>21</sup> See Jacqueline and Kathryn’s Opposition and Countermotion, pp. 10-11; see Jacqueline’s Petition for  
24   Declaratory Judgment, filed September 27, 2013, p. 6, ¶ C.20.

25   <sup>22</sup> Nevada law presumes “[t]hat evidence willfully suppressed would be adverse if produced.” NRS  
26   47.250(3). Nevada courts have consistently enforced an adverse presumption and, at the very least, an  
27   adverse inference from evidence that was requested and willfully suppressed by a party. See, e.g.,  
28   Douglas Spencer & Assoc. v. Las Vegas Sun Inc., 84 Nev. 279, 439 P.2d 473 (1968). At the very least, if  
evidence is inadvertently lost or destroyed, the court draws an inference that the evidence would be  
adverse if produced. See, e.g., Bass-Davis v. Davis, 122 Nev. 442, 134 P.3d, 103 (2006).

1 either return at the time of filing, Eleanor never transferred Trust No. 2's ownership of the Oil  
2 Rights and Oil Income to Marjorie, and the tax returns did not transfer ownership to Marjorie.

3 **E. DOCUMENTS EVIDENCING MARJORIE'S KNOWLEDGE THAT**  
4 **TRUST NO. 2 ALWAYS OWNED 100% OF THE OIL ASSETS.**

5 As detailed in the Omnibus Opposition, the following documents demonstrate that Trust  
6 No. 2 always owed 100% of the Oil Assets, and Marjorie always knew this.

- 7 • Letters from Marjorie, dated May and June 1980, to Tesoro Crude Oil Company  
8 and Permian Corporation instructing them to amend the division orders to reflect  
9 that Eleanor is the Co-Trustee of Trust No. 2, acknowledging that Trust No. 2 is  
10 the legal owner.<sup>23</sup>
- 11 • Letter from Phillips Petroleum Company to Marjorie dated February 10, 1981,  
12 explaining the legal department's analysis that all disbursements of Oil Income  
13 were to be paid to Marjorie and Eleanor as co-trustees of Trust No. 2.<sup>24</sup>
- 14 • Halco Petroleum, Inc. required that Marjorie and Eleanor obtain a separate tax  
15 identification number for Trust No. 2, which was obtained and is EIN #XX-  
16 XXX7338.<sup>25</sup>
- 17 • Letters from Marjorie to oil companies instructing them to make royalty checks  
18 payable to Marjorie and Eleanor as co-trustees and identifying the EIN Number  
19 for Trust No. 2.<sup>26</sup>
- 20 • Division Orders from 1989 to 2006, all identifying Trust No. 2 as the 100%  
21 owner, signed by Marjorie and Eleanor as the co-trustees, in the presence of  
22 witnesses, and indentifying Trust No. 2's EIN.<sup>27</sup>

23 <sup>23</sup> See Letters dated May 19, 1980 and June 25, 1980 attached to the Omnibus Opposition as Exhibit 13.

24 <sup>24</sup> See 2-10-1981 Letter attached to the Omnibus Opposition as Exhibit 14.

25 <sup>25</sup> See Letter dated February 19, 1986, attached to the Omnibus Opposition as Exhibit 15; see IRS Letters  
26 responding to Inquiry of April 23, 2013 and June 24, 2013 ("IRS Letters"), attached to the Omnibus  
Opposition as Exhibit 16.

27 <sup>26</sup> See Letter dated August 4, 1994, attached to the Omnibus Opposition as Exhibit 17; see Handwritten  
28 Letter dated December 6, 1989 ("12-06-89 Letter"), attached to the Omnibus Opposition as Exhibit 18.

- Marjorie's handwritten bookkeeping records for 1994, 1995, and 1999, identifying Trust No. 2 and Trust No. 2's EIN in bookkeeping records related to the Oil Income.<sup>28</sup>

#### F. JACQUELINE GAINS CONTROL OF THE OIL INCOME PAYMENTS.

In or about 1999, Jacqueline began assisting Marjorie with her finances, in particular, the income generated from the Oil Rights.<sup>29</sup> Jacqueline gained a better understanding of the value of the business when she was added as a signatory on the oil and gas bank account in 1999.<sup>30</sup> During this time, Eleanor was living in Idaho, caring for her companion and attending to his medical needs.<sup>31</sup> In or about 2006 or 2007, Jacqueline realized how valuable the Oil Assets were when a division order was signed by Marjorie and Eleanor.<sup>32</sup> Each month, Jacqueline would gather the checks from the post office box to which they were mailed from the various lessees and deposit them into the joint Wells Fargo bank account, which was in the name of Marjorie and Eleanor and referred to as the "oil and gas account."<sup>33</sup> From there, Jacqueline would divide the money, with 35% going to Eleanor, and 65% going to Marjorie.<sup>34</sup> Marjorie's health began to decline in about 2001 to 2002, and she eventually passed away in May 2009.<sup>35</sup>

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<sup>27</sup> See Division Orders from May 1, 1989 to June 1, 2006, collectively attached to the Omnibus Opposition as Exhibit 19.

<sup>28</sup> See Handwritten Notes from 1994 through 1999, attached to the Omnibus Opposition as Exhibit 22.

<sup>29</sup> See Jacqueline M. Montoya's Responses to Eleanor C. Ahern's First Set of Interrogatories signed on August 29, 2014 at Response to Interrogatory No. 23 ("Montoya's Responses to Interrogatories"), a copy of which is attached to the Omnibus Opposition as Exhibit 23.

<sup>30</sup> See Jacqueline's Deposition, 48:11-19.

<sup>31</sup> See Declaration of Eleanor, attached to the Omnibus Opposition as Exhibit 1.

<sup>32</sup> See Jacqueline's Deposition, 46:9-15, 47:2-11.

<sup>33</sup> See Montoya's Responses to Interrogatories, Exhibit 23.

<sup>34</sup> Id.

<sup>35</sup> Id.; see Death Certificate of Marjorie Connell, attached to the Omnibus Opposition as Exhibit 2.

1                   **1.       Jacqueline And Kathryn Receive Millions Of Dollars.**

2           After Marjorie's death, Jacqueline and Kathryn collectively received \$3.5 million, which  
3   did not include any of the Oil Assets.<sup>36</sup> Additionally, after Marjorie's death, Jacqueline paid  
4   herself and Kathryn 65% of the Oil Income. Similar to Marjorie, Eleanor extended her  
5   generosity to her daughters, but always understood that she was the 100% current income  
6   beneficiary.<sup>37</sup> These payments resulted in the sisters receiving approximately \$1,046,552 from  
7   the Oil Income in 2010 and 2011<sup>38</sup> and a lease bonus of approximately \$1,122,870.<sup>39</sup> Thus,  
8   Jacqueline and Kathryn received over \$2.1 million, and this does not include the Oil Income for  
9   2009, 2012, or 2013.

10                   **2.       Documents Evidencing Jacqueline And Kathryn's Knowledge That**  
11                   **Trust No. 2 Always Owned 100% Of The Oil Assets.**

12           After Marjorie's death in 2009 and continuing for almost four years, Jacqueline and  
13   Kathryn confirmed that only Trust No. 2 owned all of the Oil Rights as evidenced by several  
14   documents:

- 15           • Email from Jacqueline to attorney David Strauss acknowledging that Eleanor is  
16           only the trustee of Trust No. 2.<sup>40</sup>
- 17           • Consents filed with the probate court by Jacqueline and Kathryn, verifying the  
18           truth and accuracy of Eleanor's Petition, including that Eleanor is to receive all

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22   <sup>36</sup> See Declaration of Eleanor, attached to the Omnibus Opposition as Exhibit 1.

23   <sup>37</sup> Id.

24   <sup>38</sup> See Financial Records, attached hereto to the Omnibus Opposition as Exhibit 33.

25   <sup>39</sup> See Letter dated April 6, 2012 from Jeffrey Johnston to Wells Fargo Bank instructing \$1,727,493.60  
26   representing the lease bonuses to be wired to the Trust bank account, attached to the Omnibus Opposition  
27   as Exhibit 32. It is believed that Jacqueline and Kathryn received 65% of this amount, which totals  
28   approximately \$1,122,870.84.

<sup>40</sup> See Email dated July 28, 2009, attached to the Omnibus Opposition as Exhibit 24.

the Oil Income during her lifetime, that Trust No. 2 owns the Oil Rights, and that Jacqueline and Kathryn are *contingent income beneficiaries* of Trust No. 2.<sup>41</sup>

- Letter from Jim Walton to Eleanor, who assisted Jacqueline in negotiating oil and gas leases with Apache Corporation, indicating that Jacqueline's signature was on the leases, which was incorrect and requesting that Eleanor sign the leases.<sup>42</sup>
- Mr. Johnston sent Jacqueline a letter enclosing the documentation to be signed by Eleanor for the Apache closing.<sup>43</sup> Jacqueline assisted in obtaining Eleanor's signature.<sup>44</sup>
- Eleanor again signed addendums to the Apache oil and gas leases.<sup>45</sup>

### 3. Title Never Transferred to the MTC Trust.

Title to the Upton County, Texas property and the Oil Rights never transferred to Trust No. 3, Marjorie's trust, or the MTC Living Trust dated December 6, 1995 (the "MTC Trust") where Marjorie purportedly exercised her power of appointment under Trust No. 3.<sup>46</sup> Title remains vested in the Trust.<sup>47</sup> In fact, Jacqueline and Kathryn knew that the MTC Trust did not own any of the Oil Assets because their attorney advised them a deed was needed to transfer any such interest.<sup>48</sup> Eleanor would have never agreed to sign a deed transferring any of the Oil Assets out of Trust No. 2. No deed was ever executed. Jacqueline and Kathryn's only

<sup>41</sup> See Petition to Assume Jurisdiction Over Trust; Confirm Trustee ("Petition to Assume Jurisdiction"); and Construe and Reform Trust filed on August 17, 2009; see Consents to Petition signed by Jacqueline Montoya and Kathryn Bouvier, attached to the Omnibus Opposition as Exhibits 25 and 26.

<sup>42</sup> See Letter dated January 30, 2013 from James A. Walton to Eleanor, attached to the Omnibus Opposition as Exhibit 28.

<sup>43</sup> See Letter dated April 4, 2012, attached to the Omnibus Opposition as Exhibit 29.

<sup>44</sup> See Montoya's Responses to Interrogatories at Response to Interrogatory No. 5, attached to the Omnibus Opposition as Exhibit 27.

<sup>45</sup> See Addendums to: Oil and Gas Lease, attached to the Omnibus Opposition as Exhibit 31.

<sup>46</sup> See Declaration of Eleanor, attached to the Omnibus Opposition as Exhibit 1.

<sup>47</sup> Id.

<sup>48</sup> See Declaration of David Strauss, Esq. ¶ 11, attached to Jacqueline and Kathryn's Opposition and Counter-motion as Exhibit E.

1 explanation for never pursuing such a deed was that they did not want to incur the attorney fees  
2 for the preparation of a deed. Given the minimal cost typically associated with preparing a deed,  
3 it seems more likely that Jacqueline and Kathryn knew that Eleanor would never execute such a  
4 deed.

5 **G. JACQUELINE AND KATHRYN ALIENATE ELEANOR.**

6 Kathryn and Jacqueline did several things that alienated Eleanor and ultimately  
7 culminated in a falling out between Eleanor and her daughters and Eleanor's decision to stop  
8 sharing the Oil Income with Jacqueline and Kathryn. Specifically, (1) Jacqueline and Kathryn  
9 abandoned Eleanor when she was unwell, (2) Jacqueline called Elder Protective Services without  
10 consulting Eleanor, (3) Jacqueline called the police regarding Eleanor, (4) Eleanor learned of  
11 Jacqueline's irresponsible spending, and (5) Jacqueline and Kathryn attempted a foreign probate  
12 of Marjorie's will without notifying Eleanor.

13 **1. Jacqueline And Kathryn Abandoned Eleanor When She Was Unwell.**

14 In April 2011, Eleanor had a hernia operation.<sup>49</sup> Eleanor experienced vertigo and life  
15 threatening complications after the surgery.<sup>50</sup> She was rushed back to the hospital where she  
16 recovered for several days and nights.<sup>51</sup> Neither Kathryn nor Jacqueline visited Eleanor while  
17 she was in the hospital.<sup>52</sup>

18 In March 2012, Eleanor broke her leg—the same leg which she broke in 1972, which  
19 took seven years to heal, and is the cause of her current difficulty walking and needing a service  
20 dog.<sup>53</sup> The leg required surgery, and Eleanor had a severe, life threatening allergic reaction to  
21 the anesthesia. Eleanor spent 30 days recovering in the hospital.<sup>54</sup> Kathryn never visited, called,

22 \_\_\_\_\_  
23 <sup>49</sup> See Eleanor's Declaration, attached hereto as **Exhibit 1**.

24 <sup>50</sup> Id.

25 <sup>51</sup> Id.

26 <sup>52</sup> Id.

27 <sup>53</sup> Id.

28 <sup>54</sup> Id.

1 or sent flowers or a card to Eleanor during her hospital stay.<sup>55</sup> In fact, Eleanor has not spoken  
2 with Kathryn since the Spring of 2012, when Kathryn called her under false pretenses and  
3 demanded that Eleanor blindly trust Jacqueline and do as she asks.<sup>56</sup> Jacqueline visited Eleanor  
4 at most a few times a week for approximately fifteen minutes at a time.<sup>57</sup> Once she brought her  
5 twins to see Eleanor.<sup>58</sup> Neither Jacqueline nor Kathryn expressed any concern for Eleanor's life  
6 threatening condition.<sup>59</sup>

7 During the year period from the Spring of 2011 to the Spring of 2012, Eleanor had two  
8 hospital stays during which her life was at risk. Both times, Eleanor felt little to no concern or  
9 care from her daughters, and she felt abandoned.<sup>60</sup>

10 **2. Jacqueline Called Elder Protective Services Without Consulting**  
11 **Eleanor.**

12 On July 6, 2012, Jacqueline agreed to allow Eleanor to see Jacqueline's children,  
13 Eleanor's grandchildren, with the stipulation that Jacqueline "supervise" the visit.<sup>61</sup> The visit  
14 lasted approximately two hours, much of which Jacqueline spent in her car. Within minutes after  
15 Jacqueline and her children left, Eleanor received a telephone call from Elder Protective Services  
16 ("EPS"), who wanted to perform an immediate assessment at Eleanor's home. Eleanor  
17 scheduled an appointment to meet with the case worker on July 9, 2012 at the case worker's  
18 office.<sup>62</sup> Eleanor learned that Jacqueline had called EPS and reported that Eleanor's close friend  
19 and limited agent, Suzanne Nounna ("Suzanne") was financially exploiting Eleanor. Eleanor

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20 <sup>55</sup> Id.

21 <sup>56</sup> Id.

22 <sup>57</sup> Id.

23 <sup>58</sup> Id.

24 <sup>59</sup> Id.

25 <sup>60</sup> Id.; Jacqueline confirms that her relationship with Eleanor deteriorated during April 2012. Jacqueline's  
26 Deposition, 228-231.

27 <sup>61</sup> Id.; see Jacqueline's Deposition at 11:12-21.

28 <sup>62</sup> Id.

1 explained that this was not the case, that Suzanne was a trusted friend, and that Eleanor had  
2 complete control and understanding of her finances and business affairs. EPS closed the case on  
3 July 25, 2012, determining that the claims of exploitation were not substantiated.<sup>63</sup> Eleanor was  
4 extremely hurt, upset, and angered that Jacqueline would lie to EPS and contact EPS without so  
5 much as discussing her alleged concerns with Eleanor.<sup>64</sup>

6 **3. Jacqueline Called The Police Regarding Eleanor.**

7 The day after EPS closed the case, July 26, 2012, Jacqueline called the police to perform  
8 a wellness check on Eleanor. Eleanor was out of town in Mammoth, California with friends.  
9 Jacqueline never spoke to Eleanor about whether Eleanor needed any assistance or a wellness  
10 check. In fact, Eleanor was fine. When Eleanor learned that Jacqueline had called the police to  
11 request a wellness check, she was hurt that her daughter would do such a thing without even  
12 talking with her, and was embarrassed to needlessly have the police involved in her affairs.<sup>65</sup>

13 **4. Eleanor Learned Of Jacqueline's Irresponsible Spending.**

14 In or about September 2012, Eleanor learned that Jacqueline had spent \$80,000 in one  
15 month.<sup>66</sup> This caused Eleanor concern because it indicated careless, irresponsible spending.  
16 Eleanor wanted to discourage this type of mismanagement and preserve the Oil Income as an  
17 heirloom asset for her grandchildren, as her father had intended.<sup>67</sup>

18 **5. Jacqueline And Kathryn Attempted A Foreign Probate Of Marjorie's**  
19 **Will Without Notifying Eleanor.**

20 In the summer of 2013, Eleanor learned that Jacqueline, without any notice to Eleanor,  
21 had filed in July 2012 an application in Upton County, Texas to probate Marjorie's will as a  
22 foreign will (the "Texas Case").<sup>68</sup> The application contained false statements, including that

23 <sup>63</sup> See EPS Assessment, Bates Nos. AHERN 560-59, attached hereto as **Exhibit 2**.

24 <sup>64</sup> See Eleanor's Declaration, attached hereto as Exhibit 1.

25 <sup>65</sup> Id.

26 <sup>66</sup> See Declaration of Eleanor, attached to the Omnibus Opposition as Exhibit 1.

27 <sup>67</sup> Id.

28 <sup>68</sup> Id.



1 Marjorie had no natural or adopted children, when Marjorie had adopted Eleanor decades  
2 earlier.<sup>69</sup> Other misstatements included that Marjorie owned oil, gas, and mineral rights in Upton  
3 County, Texas,<sup>70</sup> which was not true, and that the rights were a portion of the principal of Trust  
4 No. 3.<sup>71</sup> Eleanor then filed a Petition in Intervention and Motion to Set Aside the order in July  
5 2013.<sup>72</sup>

6 Jacqueline and Kathryn's numerous hostile acts against Eleanor alienated her and caused  
7 Eleanor to feel completely abandoned and taken advantage of.<sup>73</sup> As a result, Eleanor had a  
8 falling out with her daughters and decided to stop the payments of 65% of the Oil Income to  
9 Jacqueline and Kathryn.<sup>74</sup>

#### 10 H. JACQUELINE AND KATHRYN INITIATE LITIGATION.

11 Jacqueline and Kathryn—not Eleanor—initiated this litigation, and Jacqueline admitted  
12 as much.<sup>75</sup> First they filed the Texas Case. Then, reacting to Eleanor's exercise of her right not  
13 to share any of the Oil Income with them, they filed the Petition for Declaratory Judgment in  
14 September 2013.<sup>76</sup> Through the Petition for Declaratory Judgment, Jacqueline—not Eleanor—  
15 initiated litigation, claiming that she and Kathryn are entitled to 65% of the Oil Assets, despite  
16 the clear language of the Trust and the historical acknowledgement of Marjorie and Jacqueline  
17 that only Trust No. 2 owned the Oil Assets. In fact, the only legal proceeding Eleanor initiated  
18 was to reform the Trust to address the final distribution of Trust No. 2 after Eleanor's death since

19 <sup>69</sup> Id.; see Application for Original Probate of Foreign Will and Issuance of Letters of Independent  
20 Administration and Order Probating Foreign Will and Appointing Independent Administrator, ¶ 5, Bates  
Nos. 570-82, attached hereto as **Exhibit 3**.

21 <sup>70</sup> Id. at ¶ 3.

22 <sup>71</sup> Id. at ¶ 12.

23 <sup>72</sup> See Petition in Intervention and Motion to Set Aside, filed July 12, 2013 in the Texas case, Bates Nos.  
24 AHERN 586-599, attached hereto as **Exhibit 4**.

25 <sup>73</sup> See Declaration of Eleanor, attached to the Omnibus Opposition as Exhibit 1.

26 <sup>74</sup> Id.

27 <sup>75</sup> See Jacqueline's Deposition, 27:11-18.

28 <sup>76</sup> See Petition for Declaratory Judgment, filed September 27, 2013.

1 Marjorie predeceased Eleanor, and this was not addressed in the Trust.<sup>77</sup> All of Eleanor's actions  
2 within this case have been in defense to the Petition for Declaratory Relief.

3 **I. JACQUELINE AND KATHRYN PREVENT DISTRIBUTION OF THE**  
4 **OIL INCOME.**

5 In addition to initiating this litigation, Jacqueline and Kathryn's counsel also contacted all  
6 of the oil companies that lease the Texas land, informed them there was a dispute regarding the  
7 ownership of the Oil Rights, and caused all of the companies to suspend payments of the Oil  
8 Income.<sup>78</sup> Notably, the letters from Jacqueline's counsel enclosed Jacqueline's Petition for  
9 Declaratory Judgment as evidence of the lawsuit and the dispute—again, evidence that  
10 Jacqueline and Kathryn—not Eleanor—initiated this litigation. Mr. Johnston, Eleanor's Texas  
11 counsel, has been and continues to negotiate with the oil companies to unwind the suspended  
12 payments. Although Mr. Johnston has been able to negotiate an end to the suspensions with  
13 some of the oil companies, some are still withholding Oil Income payments. Jacqueline and  
14 Kathryn have not assisted with the unwinding of the suspension of the Oil Income payments.<sup>79</sup>

15 **J. ELEANOR HAS PRESERVED THE OIL INCOME PAYMENTS.**

16 Despite Eleanor, as the sole income beneficiary of Trust No. 2, always having been  
17 entitled to 100% of the Oil Income, and despite Jacqueline and Kathryn never posting a bond,  
18 Eleanor has preserved the Oil Income payments since November 12, 2013. In fact, Shawn D.  
19 King, CPA reviewed the Trust's bank account records and confirmed in a letter that the Oil  
20 Income from November 12, 2013 through October 15, 2014 totals \$1,602,442,33, and 65% of  
21 that amount is \$1,041,587.51. As of October 15, 2014, there was over \$1.3 million in the  
22

23 <sup>77</sup> See Petition to Assume Jurisdiction Over Trust; Confirm Trustee; and Construe and Reform Trust, filed  
24 August 17, 2009.

25 <sup>78</sup> See Letters from Jacqueline's counsel to Plains Marketing and to Apache dated September 30, 2013,  
26 and response from Plains Marketing dated October 14, 2014, Bates Nos. AHERN 780-799, 800-821, 832-  
853, attached hereto as **Exhibit 5**; see Declaration of Jeffrey M. Johnston, Esq., Exhibit 2 to the  
Opposition to Motion to Enforce Settlement, filed December 11, 2014.

27 <sup>79</sup> See Declaration of Jeffrey M. Johnston, Esq., Exhibit 2 to the Opposition to Motion to Enforce  
28 Settlement, filed December 11, 2014.

1 account, which is more than 65% of the Oil Income for the time period.<sup>80</sup> Moreover, Jacqueline  
2 and Kathryn are aware of this because Eleanor provided them Mr. King's letter at the Supreme  
3 Court settlement conference on October 15, 2014. Thus, Eleanor has preserved the Oil Income  
4 Payments in an amount more than the 65% share to which Jacqueline and Kathryn allege they  
5 are entitled.

### 6 **III. SUMMARY OF UNDISPUTED FACTS.**

- 7 1. The Trust now consists solely of Trust No. 2.<sup>81</sup>
- 8 2. Since William's death, Eleanor has been and remains the sole income beneficiary  
9 of Trust No. 2.<sup>82</sup>
- 10 3. Eleanor was only appointed and has only served as Co-Trustee over Trust No. 2  
11 from the time of William's death until the time of Marjorie's death.<sup>83</sup>
- 12 4. Since Marjorie's death, Eleanor has been the sole trustee of Trust No. 2.<sup>84</sup>
- 13 5. Eleanor was never appointed a trustee over Trust No. 3.<sup>85</sup>
- 14 6. Since William's death, all royalty payments from the oil companies were always  
15 paid to Trust No. 2.<sup>86</sup>
- 16 7. From 1989 to 2006, all division orders issued by the oil companies were always  
17 signed by Marjorie and Eleanor, as Co-Trustees of Trust No. 2.<sup>87</sup>

18  
19  
20 <sup>80</sup> See Letter from Shawn D. King, CPA dated October 15, 2014, Bates Nos. AHERN 600-601, attached  
21 hereto as **Exhibit 6**.

22 <sup>81</sup> See Jacqueline's Deposition, at 246:25, 247:1-11.

23 <sup>82</sup> See Jacqueline's Deposition at 85:16-21, 97:13-18.

24 <sup>83</sup> See Jacqueline's Deposition at 117:19-22, 247:6-7.

25 <sup>84</sup> Id.

26 <sup>85</sup> Id.

27 <sup>86</sup> See, e.g., Jacqueline's Deposition at 246:25, 247:1-11, 255:20-23.

28 <sup>87</sup> See Omnibus Opposition, Exhibit 19.

1           8.       From 1989 to 2006, Trust No. 2's Tax ID number was always used to identify the  
2 owner of all Oil Assets on the division orders signed by Marjorie and Eleanor, as Co-Trustees of  
3 Trust No. 2.<sup>88</sup>

4           9.       On all division orders issued by the oil companies in relation to the Oil Assets, the  
5 Tax ID number for Trust No. 3 was never used.<sup>89</sup>

6           10.      In all of Marjorie's correspondence to the oil companies and handwritten records,  
7 Trust No. 2's Tax ID number was always referenced in identifying the owner of the Oil Assets.<sup>90</sup>

8           11.      In all of her communications to the oil companies, Marjorie never referenced  
9 Trust No. 3 or used Trust No. 3's Tax ID number to identify the owner of the Oil Assets.<sup>91</sup>

10          12.      In all correspondence and division orders sent to the oil companies, Marjorie  
11 never mentioned that the Oil Assets were owned 35% by Trust No. 2 and 65% by Trust No. 3.<sup>92</sup>

12       **IV.   LEGAL ARGUMENT.**<sup>93</sup>

13               The Court should rule in Eleanor's favor: (A) Jacqueline and Kathryn's arguments rest on  
14 four false premises; (B) the Court should grant Eleanor's Motion to Dismiss the Petition for  
15 Declaratory Relief; (C) the Court should deny Jacqueline and Kathryn's Countermotion for  
16 Summary Judgment; (D) the Court should deny Jacqueline and Kathryn' Countermotion for  
17 Assorted Relief; and (E) the Court should grant Eleanor's Countermotion for Summary  
18 Judgment (contained in the Omnibus Opposition), or, alternatively, enter findings of fact  
19 pursuant to NRCP 56(d).

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20       <sup>88</sup> Id.

21       <sup>89</sup> Id.

22       <sup>90</sup> See Omnibus Opposition, Exhibit 18 and 22; See also Jacqueline's Deposition at 156:15-25; 157:1-3.

23       <sup>91</sup> Id.

24       <sup>92</sup> Id.; See also Omnibus Opposition, Exhibit 19.

25       <sup>93</sup> On January 8, 2014, the Parties submitted to the Court a stipulation to dismiss the Will Contest with  
26 prejudice. As the Parties have settled all claims related to the Will Contest, this Reply and Opposition  
27 does not address any issues related to the Will Contest raised by Jacqueline and Kathryn's Opposition and  
28 Countermotion. Any references by Kathryn and Jacqueline to the Will Contest within their Opposition to  
Eleanor's Countermotion for Summary Judgment should be disregarded by the Court and stricken from  
the record.

1           **A.       JACQUELINE AND KATHRYN’S ARGUMENTS REST ON FOUR**  
2           **FALSE PREMISES.**

3           Jacqueline and Kathryn’s arguments rest on four false premises, which flaw their logic  
4           throughout. These false premises are: (1) Trust No. 3 owns 65% of the Oil Assets; (2) Because  
5           Marjorie and later Jacqueline and Kathryn received a portion of the Oil Income, they own some  
6           portion of the Oil Assets; (3) Eleanor claims entitlement to benefits under Trust No. 3; and (4)  
7           Jacqueline and Kathryn’s claims arose in June 2013. Each of these positions is fatally flawed.

8                   **1.       False Premise #1: Trust No. 3 Owns 65% Of The Oil Assets.**

9           The dispositive issue in this case is the ownership of the Oil Assets. As analyzed at  
10          length in the Omnibus Opposition, since the death of William, Trust No. 2 has always owned the  
11          Oil Assets. It is undisputed that Eleanor is the sole income beneficiary under Trust No. 2, and  
12          since Marjorie’s passing, Eleanor is the sole trustee of Trust No. 2. In addition to the plain  
13          language of the Trust, it is clear that William’s intent was to ensure that Eleanor received 100%  
14          of the Oil Income during her life, and that the Oil Assets would serve as an heirloom asset to be  
15          passed down Eleanor’s bloodlines. Additionally, numerous documents evidence that Marjorie  
16          always acknowledged that Trust No. 2 was the sole owner of 100% of the Oil Assets, as  
17          demonstrated by: letters between Marjorie and the oil companies, the separate EIN for Trust No.  
18          2 as required by the oil companies, the division orders from 1989 to 2006 identifying Trust No. 2  
19          as the 100% owner, and Marjorie’s handwritten bookkeeping records.<sup>94</sup> Moreover, numerous  
20          documents also evidence Jacqueline and Kathryn’s acknowledgement that Trust No. 2 is the  
21          100% owner of the Oil Assets, including: Jacqueline’s email to David Strauss, Jacqueline and  
22          Kathryn’s consents approving Eleanor’s Petition to reform the trust, Jim Walton’s letter  
23          indicating that Eleanor—not Jacqueline—must sign the oil leases, and Eleanor’s signing of the  
24          Apache leases and addendums thereto.<sup>95</sup> And, Jacqueline admitted in her deposition that the  
25          division orders have always been signed by the trustee(s) of Trust No. 2, and only Trust No. 2’s  
26          EIN was ever used in connection with the royalty payments.

27          <sup>94</sup> These documents are itemized in the Factual and Procedural Background, Section E, *supra*, p. 7.

28          <sup>95</sup> These documents are itemized in the Factual and Procedural Background, Section F.2, *supra*, pp. 9-10.

Moreover, no deed was ever executed transferring any of the Oil Assets to the MTC Trust as required by the Statute of Frauds. Royalties from “oil and gas and other minerals in the ground, is usually treated as real property.” In re Shailer’s Estate, 266 P.2d 613, 616 (Okla. 1954). Nevada’s statute of frauds requires that all interests in land must be in writing, signed by the party creating or granting the interest, “unless by act or operation of law.” NRS 111.205(1). This does not “prevent any trust from arising or being extinguished by implication or operation of law.” NRS 111.205(2). “An oral agreement regarding real property is void and not final until put in writing.” Waters v. Weyerhaeuser Mortgage Co., 582 F.2d 503, 506 (9th Cir. 1978).

In this case, the transfer could not be effectuated within the Trust. NRS 163.385 authorizes a trustee to “[a]cquire, receive, hold and retain the principal of several trusts created by a single instrument undivided until division becomes necessary in order to make distributions.” Here, the MTC Trust was not created by the same “single instrument” as Trust No. 2. The MTC Trust is a separate Trust created by Marjorie. Additionally, a trust created in relation to real property is only valid unless created by operation of law or by a written instrument signed by the trustee. NRS 163.008. Here, there can be no transfer of any of the Oil Assets from Trust No. 2 to Trust No. 3 by operation of law without a written instrument because a written instrument is required by the statute of frauds. Therefore, without a written deed, the MTC Trust cannot, as a matter of law, own any of the Oil Assets.<sup>96</sup>

**2. False Premise #2: Because Marjorie, And Later Jacqueline And Kathryn, Received A Portion Of The Oil Income, They Own Some Portion Of The Oil Assets.**

Jacqueline and Kathryn’s arguments wrongly conflate receipt with ownership. Trust No. 2 owns 100% of the Oil Assets. The fact that Eleanor allowed Marjorie to receive 65% of the Oil Income during Marjorie’s life and for Jacqueline and Kathryn to receive 65% for a time period after Marjorie’s death, does not change the legal ownership of the Oil Assets, which always remained with Trust No. 2.

<sup>96</sup> Jacqueline and Kathryn have submitted as Exhibit D to the Opposition to Eleanor’s Countermotion for Summary Judgment a handwritten record purporting to be an intake sheet related to estate planning for Marjorie. Eleanor hereby objects to the Court’s consideration of this document because it is inadmissible. It has not been authenticated and no foundation has been properly laid. See e.g., NRS 52.015.

1 Similarly, the fact that Marjorie's CPA reported Marjorie's receipt of 65% of the Oil  
2 Income during her lifetime as a marital bequest is creative accounting for tax purposes. A state  
3 tax return is not conclusive evidence of ownership or title. See Benetic v. M/Y Athena  
4 Alexander, No. CV 00-06845 ABC (EX), 2001 WL 1843781, \*1, \*4 (C.D. Cal. Aug. 13, 2001)  
5 (9th Cir. 2004) (disregarding argument that a state tax return referencing a bill of sale was  
6 evidence of ownership of a boat); Engeman v. Engeman, 123 S.W.3d 227, 237 (Mo. Ct. App.  
7 2003) (holding that witness testimony conflicted with tax returns and trial court must determine  
8 which statements were false).

9 Neither Marjorie, Jacqueline, nor Kathryn's receipt of a portion of the Oil Income nor the  
10 characterization of the receipt of that income on tax returns changes the legal ownership. Trust  
11 No. 2 always has and still does own 100% of the Oil Assets.

12 **3. False Premise #3: Eleanor Claims Entitlement To Benefits Under**  
13 **Trust No. 3.**

14 Throughout the Opposition and Countermotion, Jacqueline and Kathryn assert that  
15 Eleanor is claiming entitlement to benefits under Trust No. 3. This is patently false. Eleanor  
16 acknowledges that Marjorie was the sole beneficiary and trustee under Trust No. 3 and that  
17 Marjorie exercised her power of appointment under Trust No. 3, directing assets from Trust No.  
18 3 to the MTC Trust, of which Kathryn and Jacqueline are beneficiaries. Importantly, it is  
19 undisputed that Trust No. 3 ceased to exist upon Marjorie's death. Thus, Eleanor never has and  
20 is not claiming any interest under Trust No. 3. In any event, Trust No. 3 never owned any of the  
21 Oil Assets—they were always owned solely by Trust No. 2. Eleanor is not claiming any interest  
22 under Trust No. 3, and any references to this false premise in the Opposition and Countermotion  
23 should be disregarded.

24 **4. False Premise #4: Jacqueline And Kathryn's Claims Arose In June**  
25 **2013.**

26 Jacqueline and Kathryn posit that their claim to 65% of the Oil Income did not arise until  
27 Eleanor stopped allowing Jacqueline and Kathryn to receive a portion of the Oil Income in June  
28 2013. This argument is detached from reality. Jacqueline took over the record keeping and  
transactions related to the Oil Income in or about 1999. Jacqueline obtained the checks,

1 deposited them, and disbursed 65% to Marjorie until her death, and then to herself and her sister.  
2 Thus, Jacqueline saw that the checks were payable to Marjorie and Eleanor, as co-trustees of  
3 Trust No. 2. And, Jacqueline of course knew—it is undisputed—that Eleanor was only ever a  
4 co-trustee of Trust No. 2. Therefore, Jacqueline knew as early as 1999 that the Oil Income was  
5 all payable to and owned by Trust No. 2. If she thought this was inaccurate and that Trust No. 3  
6 owned 65%, why did she not raise the issue back in 1999?

7 All the way into 2012, Jacqueline knew that Trust No. 2 owned 100% of the Oil Assets.  
8 In or about April 2012, Jacqueline assisted in obtaining Eleanor's signature on the Apache oil  
9 leases. Thus, Jacqueline knew that only Eleanor's signature was required on the oil leases, and  
10 therefore only Trust No. 2 had an ownership interest in the Oil Assets. Yet, Jacqueline and  
11 Kathryn did not raise the issue at any point between 1999 and 2012.

12 In fact, Jacqueline and Kathryn did not raise the issue until they filed the Petition for  
13 Declaratory relief in September 2013, after they alienated Eleanor and Eleanor decided to stop  
14 sharing the Oil Income with them in or about June 2013. The evidence is clear, however, that  
15 Jacqueline and Kathryn knew no later than 1999 that Trust No. 2 was and is the 100% owner of  
16 the Oil Assets. Thus, any claim would have arisen in 1999.

17 **B. THE COURT SHOULD DISMISS KATHRYN AND JACQUELINE'S**  
18 **PETITION FOR DECLARATORY RELIEF.**

19 The Court should grant Eleanor's Motion to Dismiss the Petition for Declaratory  
20 Judgment based on claim preclusion and estoppel. Claim preclusion bars the litigation of a claim  
21 when "(1) the parties or their privies are the same, (2) the final judgment is valid, and (3) the  
22 subsequent action is based on the same claims or any part of them that were or could have been  
23 brought in the first case." Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1054, 194 P.3d 709,  
24 713 (2008). "This test maintains the well-established principle that claim preclusion applies to  
25 all grounds of recovery that were or could have been brought in the first case." Id. at 1054-55,  
26 194 P.3d at 713. The "purposes of claim preclusion are 'based largely on the ground that  
27 fairness to the defendant, and sound judicial administration, require that at some point litigation  
28 over the particular controversy come to an end' and that such reasoning may apply 'even though



1 the substantive issues have not been tried, especially if the plaintiff has failed to avail himself of  
2 opportunities to pursue his remedies in the first proceeding . . .’ Consequently, the dismissal in  
3 the first suit is properly considered a final judgment for claim preclusion purposes.” *Id.* at 1058,  
4 194 P.3d at 715 (quoting Restatement (Second) of Judgments section 19, comment a).

5 Here, claim preclusion bars Jacqueline and Kathryn’s claims because (1) Jacqueline and  
6 Kathryn were parties in the Reformation Action, (2) the Reformation Order is valid, and (3)  
7 Jacqueline and Kathryn’s claims should have been brought in the Reformation Action. (4)  
8 Additionally, their claims are barred by estoppel.

9 **1. Jacqueline And Kathryn Were Parties In The Reformation Action.**

10 Jacqueline and Kathryn actively participated in the Reformation Action. In fact, they  
11 signed Consents stating, “I am a *contingent beneficiary*” of the Trust; “I have read the Petition . .  
12 . and believe it to be *true and correct* to the best of my knowledge.”<sup>97</sup> The Petition states, “As of  
13 the death of Marjorie, *Trust No. 2* owned land and oil gas shares in reserves and income located  
14 in Upton County, Texas (the “Oil Assets”).”<sup>98</sup> It further states, “Pursuant to Article Fourth,  
15 which Article governs the administration of *Trust No. 2*, all income from the Oil Assets is to be  
16 paid to the Petitioner as the “Residual Beneficiary” [*Eleanor*] during her lifetime.”<sup>99</sup> And, the  
17 Petition states that the Oil Assets are “*the sole asset of Trust No. 2.*”<sup>100</sup> Consequently, by  
18 signing the Consents, Jacqueline and Kathryn acknowledged and represented to this Court that  
19 they understood, that Trust No. 2 owns the Oil Rights and Oil Income and that Eleanor is entitled  
20 to 100% of the Oil Income during her life. Thus, Jacqueline and Kathryn actively participated in  
21 the Reformation Action and were parties to the action for purposes of claim preclusion.

22 Moreover, even if Jacqueline and Kathryn were not parties in the technical, procedural  
23 sense of the word, they were certainly in privity with Eleanor. “To be in privity, the person must

24 <sup>97</sup> See Consents attached to the Petition, filed August 17, 2009, Exhibit 6.

25 <sup>98</sup> See Petition, filed August 17, 2009, p. 4, ¶ 18.

26 <sup>99</sup> See *id.* at pp. 4-5, ¶ 19.

27 <sup>100</sup> See *id.* at p. 5, n.4.

1 have ‘acquired an interest in the subject matter affected by the judgment through . . . one of the  
2 parties, as by inheritance, succession, or purchase.’” Bower v. Harrah’s Laughlin, Inc., 125 Nev.  
3 470, 481-82, 215 P.3d 709, 718 (2009) (quoting Restatement (Second) of Judgments § 41(1)  
4 (1982)). In fact, the Restatement Second of Judgments specifically identifies beneficiaries as  
5 being in privity with trustees. Id. Here, Jacqueline and Kathryn are contingent beneficiaries of  
6 Trust No. 2, of which Eleanor is the trustee. And, as Eleanor’s daughters, Jacqueline and  
7 Kathryn are certainly in privity with Eleanor, especially since the Reformation Action was  
8 finalized well before their falling out in or about 2012.

9 **2. The Reformation Order Is Valid.**

10 The Court’s Reformation Order is valid. Jacqueline and Kathryn never filed a motion for  
11 reconsideration, an appeal, or any other challenge to the Reformation Order. Jacqueline and  
12 Kathryn argue that the Reformation Order is irrelevant to their claims in this case, which  
13 argument fails on its face. The Reformation Order granted the very Petition, to which Jacqueline  
14 and Kathryn consented, which affirmed the provisions of Trust No. 2, including that Trust No. 2  
15 owns all of the Oil Rights and that Eleanor is entitled to all of the Oil Income during her life. In  
16 this case, the sole dispositive issue is the ownership of the Oil Rights and entitlement to the Oil  
17 Income. The Reformation Order, based on the Petition, addressed this issue.

18 **3. Jacqueline And Kathryn’s Claims Should Have Been Brought In The**  
19 **Reformation Action.**

20 The third element of claim preclusion is met because Jacqueline and Kathryn could have  
21 and should have brought their claims in the Reformation Action. The third element of claim  
22 preclusion requires that, “the subsequent action is based on the same claims or any part of them  
23 that were or could have been brought in the first case.” Five Star Capital, 124 Nev. at 1054, 194  
24 P.3d at 713. Jacqueline and Kathryn specifically acknowledged in their Consents that they are  
25 contingent beneficiaries to Trust No. 2, Trust No. 2 owns all of the Oil Rights, and that Eleanor  
26 is entitled to all of the Oil Income during her lifetime. If Jacqueline and Kathryn truly think that  
27 Trust No. 3 has always owned 65% of the Oil Rights and that they have been entitled to 65% of  
28 the Oil Income since Marjorie’s death, then they should (1) not have signed the Consents stating

1 the contrary, and (2) they should have raised these claims immediately upon reviewing the  
2 Reformation Petition. Yet, they did the reverse by reviewing, approving, and consenting to the  
3 Reformation Petition.

4 The Opposition and Countermotion asserts that Jacqueline and Kathryn's claim is an  
5 entitlement under Trust No. 3, which was not addressed by the Reformation Petition. This  
6 argument does not hold water. The Reformation Petition specifically addressed and confirmed  
7 Trust No. 2's ownership of 100% of the Oil Rights and Eleanor's entitlement to 100% of the Oil  
8 Income during her life. To say that the Reformation Petition and the Reformation Order did not  
9 address Jacqueline and Kathryn's claim to 65% of the Oil Rights and Oil Income is  
10 disingenuous.

11 Finally, Jacqueline and Kathryn argue that their claim did not arise until June 2013 when  
12 Eleanor stopped sharing the Oil Income with them. As discussed above, this is a false premise.  
13 Marjorie and Jacqueline always knew that Trust No. 2 owned the Oil Rights. This is  
14 demonstrated by numerous documents where Marjorie and Jacqueline acknowledged this.  
15 Jacqueline, especially, having gained control over the recordkeeping and transactions related to  
16 the Oil Income in 1999, knew since then that Trust No. 2 owned all of the Oil Rights and that  
17 Eleanor was entitled to all of the Oil Income during her life. Jacqueline again confirmed that she  
18 knew this in 2012 when she tried to execute the Apache oil leases, but was instructed that only  
19 Eleanor could sign.<sup>101</sup>

20 Jacqueline always knew that Trust No. 2 owned the Oil Rights and that Eleanor was  
21 entitled to 100% of the Oil Income during her life. At the very latest, she learned this in 1999  
22 and confirmed her knowledge in 2012. With this knowledge, if Jacqueline and Kathryn thought  
23 this was wrong and that Trust No. 3 owned 65% of the Oil Rights, then why did they not raise it  
24 during the 10 years between 1999 and 2009? And why did they sign consents confirming Trust  
25 No. 2's 100% ownership in 2009? Jacqueline and Kathryn were aware of any claim in 1999 at  
26

27 <sup>101</sup> See Letter dated January 30, 2013 from James A. Walton to Eleanor, attached to the Omnibus  
28 Opposition as Exhibit 28.

1 the latest. Thus, they should have and could have raised their claim to the Oil Rights during the  
2 Reformation Action. They failed to do so, and their claims are barred by claim preclusion.

3 **4. Jacqueline And Kathryn's Claims Are Barred By Estoppel.**

4 The Court should dismiss the Petition for Declaratory relief because estoppel bars the  
5 claims. Estoppel prevents a party from taking a position contrary to a previous position or action  
6 when another has relied on the prior position or acts in good faith and is injured by the party's  
7 change in position. Bankers Trust Co. v. Pacific Employers Insurance Co., 282 F.2d 106, 112  
8 (9th Cir. 1960). "The doctrine of judicial estoppel, sometimes referred to as the doctrine of  
9 preclusion of inconsistent positions, is invoked to prevent a party from changing its position over  
10 the course of judicial proceedings when such positional changes have an adverse impact on the  
11 judicial process." Yniguez v. State of Ariz., 939 F.2d 727, 738 (9th Cir. 1991).

12 Here, Jacqueline and Kathryn's position that they are entitled to 65% of the Oil Rights  
13 and Oil Income through Trust No. 3 contradicts their Consents as well as all of the  
14 documentation evidencing that Marjorie and Jacqueline always knew that Trust No. 2 owns all of  
15 the Oil Rights and that Eleanor is entitled to receive 100% of the Oil Income during her life.  
16 Therefore, the Court should dismiss the Petition for Declaratory Relief based on estoppel.

17 **C. THE COURT SHOULD DENY JACQUELINE AND KATHRYN'S**  
18 **COUNTERMOTION FOR SUMMARY JUDGMENT.**

19 The Countermotion for Summary Judgment ("SJ Countermotion") is procedurally and  
20 substantively flawed. Summary judgment is appropriate when materials properly before the  
21 court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to  
22 judgment as a matter of law. NRCP 56(c); Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d  
23 1026, 1031 (2005). "The substantive law controls which factual disputes are material and will  
24 preclude summary judgment." Wood, 121 Nev. at 731, 121 P.3d at 1031. A material issue of  
25 fact is one that affects the outcome of the litigation and requires a trial to resolve the differing  
26 versions of the truth. Valley Bank v. Marble, 105 Nev. 366, 367, 775 P.2d 1278, 1282 (1989);  
27 SEC v. Seaboard Corp., 677 F.2d 1301, 1306 (9th Cir. 1982). The burden for demonstrating the  
28 absence of a genuine issue of material fact lies with the moving party, and the material lodged by

1 the moving party must be viewed in the light most favorable to the nonmoving party. Hoopes v.  
2 Hammargren, 102 Nev. 425, 429, 725 P.2d 238, 241 (1986); Adickes v. S.H. Kress & Co., 398  
3 U.S. 144, 157 (1970).

4 In this case, viewing the facts in the light most favorable to Eleanor, Jacqueline and  
5 Kathryn are not entitled to judgment as a matter of law: (1) The SJ Countermotion improperly  
6 raises new claims and defenses never before pled, (2) the SJ Countermotion misconstrues  
7 Eleanor's defense of ownership as an affirmative claim, (3) no statute of limitations has expired  
8 on Eleanor's counterclaims, (4) laches does not bar Eleanor's counterclaims, (5) Eleanor has not  
9 waived her counterclaims, (6) claim preclusion is inapplicable to Eleanor's counterclaims, and  
10 (7) Jacqueline and Kathryn are not entitled to an accounting.

11 1. **The Countermotion Improperly Raises New Claims And Defenses**  
12 **Never Before Pled.**

13 The SJ Countermotion argues the statute of limitations, laches, waiver, claim preclusion,  
14 and right to an accounting. Yet, the *only claim* that Jacqueline and Kathryn have pled to date is  
15 for declaratory relief that Eleanor is only entitled to 35% of the Oil Assets and that Jacqueline  
16 and Kathryn, as beneficiaries of the MTC Trust, are entitled to 65% of the Oil Assets.<sup>102</sup> The  
17 only claims Eleanor has pled in this case are her counterclaims for intentional interference with  
18 contractual relations and enforcement of the Trust's no contest clause, as asserted in her Answer  
19 and Counterclaim.<sup>103</sup> Jacqueline and Kathryn's SJ Countermotion, however, argues the statute  
20 of limitations, laches, waiver, claim preclusion, and right to an accounting, none of which they  
21 have previously pled. The statute of limitations, laches, and waiver, must all be pled as  
22 affirmative defenses pursuant to NRCP 8, but Jacqueline and Kathryn have never pled  
23 affirmative defenses to Eleanor's counterclaims. Thus, the court should disregard the arguments  
24 in the countermotion regarding the statute of limitations, laches, and waiver. As to the  
25 accounting claim, Jacqueline and Kathryn have never pled a claim for an accounting, and this  
26 should be disregarded as well.

27 <sup>102</sup> See Jacqueline's Petition for Declaratory Relief, pp. 17-18.

28 <sup>103</sup> See Eleanor's Answer and Counterclaim filed February 10, 2014.

1                                   2.       **Eleanor's Ownership Is A Defense, Not A Claim.**

2           As a preliminary matter, Jacqueline and Kathryn misconstrue Eleanor's defense of  
3 ownership as a claim. Jacqueline and Kathryn initiated this litigation with Jacqueline's Petition  
4 for Declaratory relief filed in September 2013. The Petition for Declaratory Relief asks this  
5 court to determine that Eleanor as trustee of Trust No. 2 is only entitled to 35% of the Oil  
6 Income, and Jacqueline and Kathryn, as beneficiaries of the MTC Trust are entitled to 65% of  
7 the Oil Income.<sup>104</sup> As a *defense* to these claims, Eleanor has raised Trust No. 2's 100%  
8 ownership of the Oil Assets and her entitlement to 100% of the Oil Income during her life.<sup>105</sup>  
9 Therefore, Eleanor has not raised a claim regarding ownership; rather, she has asserted her  
10 ownership as a defense against the declaratory relief claim of Jacqueline and Kathryn. Eleanor  
11 had no ability or duty to raise the defense of ownership until Jacqueline filed the Petition for  
12 Declaratory Relief, and Eleanor appropriately raised the defense in her Answer and  
13 Counterclaim. On summary judgment, Kathryn and Jacqueline bear the burden of proving their  
14 claim of entitlement to 65% of the Oil Assets, as this is their sole claim in this litigation.

15                                   3.       **No Statute Of Limitations Has Expired Regarding Eleanor's**  
16                                   **Counterclaims.**

17           Eleanor timely filed her counterclaims for intentional interference with contractual  
18 relations and enforcement of the no contest clause.

19           The statute of limitations for a claim for intentional interference with contractual relations  
20 is three years. Stalk v. Mushkin, 125 Nev. 21, 27, 199 P.3d 838, 842 (2009); NRS 11.190(3)(c).  
21 Jacqueline, through counsel, began contacting all of the oil companies to report a dispute over  
22 ownership of the Oil Rights (which caused suspension of payments) in September 2013. Eleanor  
23 learned of these actions in or about September 2013, and she filed her counterclaim for  
24 intentional interference with contractual relations on February 10, 2014,<sup>106</sup> well within the three  
25 year statute of limitation.

26 <sup>104</sup> See Jacqueline's Petition for Declaratory Relief, pp. 17-18 (prayer).

27 <sup>105</sup> See Eleanor's Answer and Counterclaim.

28 <sup>106</sup> See Eleanor's Answer and Counterclaim.

1 Similarly, Eleanor's counterclaim for enforcement of the no contest clause is timely. "An  
2 action upon a contract, obligation or liability founded upon an instrument in writing, except those  
3 mentioned in the preceding sections of this chapter" are subject to a six year statute of limitation.  
4 NRS 11.190(1)(b). Since Eleanor is seeking to enforce provision of the written Trust, this  
5 statute of limitation applies. Jacqueline and Kathryn contested the Trust when they filed their  
6 Petition for Declaratory Relief in September 2013, and Eleanor filed her counterclaim to enforce  
7 the no contest clause on February 10, 2014, less than one year later. Thus, Eleanor's  
8 counterclaim to enforce the no contest clause is timely.

9 **4. Laches Does Not Bar Eleanor's Counterclaims.**

10 Laches does not bar Eleanor's counterclaims because she promptly filed her claims for  
11 intentional interference with contractual relations and to enforce the no contest clause. "Laches  
12 is an equitable doctrine which may be invoked when delay by one party works to the  
13 disadvantage of the other, causing a change of circumstances which would make the grant of  
14 relief to the delaying party inequitable." Carson City v. Price, 113 Nev. 409, 412, 934 P.2d  
15 1042, 1043 (1997) (internal quotations omitted). Laches requires not only a delay in enforcing  
16 one's rights, but also that the delay disadvantaged another. Id. "The condition of the party  
17 asserting laches must become so changed that the party cannot be restored to its former state.  
18 Applicability of the laches doctrine depends upon the particular facts of each case." Id. To  
19 determine whether a challenge is barred by the doctrine of laches, this court considers (1)  
20 whether the party inexcusably delayed bringing the challenge, (2) whether the party's  
21 inexcusable delay constitutes acquiescence to the condition the party is challenging, and (3)  
22 whether the inexcusable delay was prejudicial to others." Miller v. Burk, 124 Nev. 579, 598, 188  
23 P.3d 1112, 1125 (2008).

24 Eleanor brought her counterclaim for intentional interference with contractual relations  
25 within five months of learning of Jacqueline and Kathryn's interference with the payment of the  
26 Oil Income by the oil companies. Likewise, she filed her counterclaim for enforcement of the no  
27 contest clause five months after Jacqueline filed the Petition for Declaratory Relief. As such,  
28

1 Eleanor was very prompt in filing her counterclaims. There was no delay and therefore could be  
2 no prejudice to anyone.

3 **5. Eleanor Has Not Waived Any Claims.**

4 Eleanor has not waived her counterclaims for intentional interference with contractual  
5 relations or enforcement of the no contest clause. “Waiver requires the intentional  
6 relinquishment of a known right. If intent is to be inferred from conduct, the conduct must  
7 clearly indicate the party’s intention. Thus, the waiver of a right may be inferred when a party  
8 engages in conduct so inconsistent with an intent to enforce the right as to induce a reasonable  
9 belief that the right has been relinquished. However, delay alone is insufficient to establish a  
10 waiver.” Nevada Yellow Cab Corp. v. Dist. Ct., 123 Nev. 44, 49, 152 P.3d 737, 740 (2007).  
11 “[T]o be effective, a waiver must occur with full knowledge of all material facts.” State, Univ.  
12 & Cmty. Coll. Sys. v. Sutton, 120 Nev. 972, 987, 103 P.3d 8, 18 (2004) (internal quotations  
13 omitted). Waiver must be pled as an affirmative defense. NRCP 8; Sutton, 120 Nev. at 988, 103  
14 P.3d at 19. “Whether there has been a waiver is a question for the trier of fact.” McKellar v.  
15 McKellar, 110 Nev. 200, 202, 871 P.2d 296, 297 (1994).

16 Here, Jacqueline and Kathryn have not pled waiver as an affirmative defense to Eleanor’s  
17 counterclaims as required by NRCP 8. Moreover, there is no evidence that Eleanor waived her  
18 right to assert her counterclaims for intentional interference with contractual relations or  
19 enforcement of the no contest clause—they were both raised timely in her Answer and  
20 Counterclaim filed in response to Jacqueline and Kathryn’s Petition for Declaratory Relief. As a  
21 matter of law, Eleanor has not waived her counterclaims.

22 **6. Claim Preclusion Is Inapplicable To Eleanor’s Counterclaims.**

23 Eleanor’s counterclaims are not barred by claim preclusion because the Reformation  
24 Action had nothing to do with Jacqueline and Kathryn’s interference with the oil lease payments  
25 or their contesting the Trust. Claim preclusion bars the litigation of a claim when “(1) the parties  
26 or their privies are the same, (2) the final judgment is valid, and (3) the subsequent action is  
27 based on the same claims or any part of them that were or could have been brought in the first  
28 case.” Five Star Capital, 124 Nev. at 1054, 194 P.3d at 713.



As discussed above, the parties are the same in the Reformation Action and this case, and the Reformation Order is valid. However, the Reformation Action did not and could not involve Eleanor's counterclaims for intentional interference with contractual relations and enforcement of the no contest clause. These claims could not have been addressed in the Reformation Action because the events giving rise to the claims had not yet occurred. Specifically, Jacqueline did not contact the oil companies and causes suspension of the oil lease payment until September 2013, four years after entry of the Reformation Order. Similarly, Jacqueline and Kathryn did not contest the Trust until the filing of their Petition for Declaratory Relief in September 2013, four years after entry of the Reformation Order. Therefore, Eleanor's counterclaims could not have and did not exist during the Reformation Action. Thus, claim preclusion does not bar Eleanor's counterclaims.

**7. Jacqueline And Kathryn Are Not Entitled To An Accounting.**

Jacqueline and Kathryn are remainder beneficiaries. A remainder beneficiary is "a beneficiary who will become a current beneficiary upon the death of an existing current beneficiary or upon the occurrence of some other event that may occur during the beneficiary's lifetime . . . ." Here, Jacqueline and Kathryn are remainder beneficiaries of the Oil Rights and Oil Income under Trust No. 2, meaning they become beneficiaries upon Eleanor's death. A trustee is to provide an accounting to a remainder beneficiary upon request. NRS 165.137(1)(a); 165.141(1); 165.141(3). "An account shall be deemed approved by a beneficiary who received a copy of the account if no written objection thereto is given to the trustee within 120 days after the date on which the trustee provided the account to that beneficiary." NRS 165.137(1)(h).

In this case, Jacqueline and Kathryn are demanding summary judgment for an accounting. They have never before pled a claim for an accounting. And, they attach no evidence that they requested an accounting as required by statutes NRS 165.137 and 165.141. Therefore, they have failed to prove they are entitled to an accounting. Moreover, at the October 15, 2014 Supreme Court settlement conference, Eleanor provided an accounting to Jacqueline and Kathryn. The letter from CPA King detailed that the Oil Income from November 12, 2013 through October 15, 2014 totals \$1,602,442,33, and 65% of that amount is \$1,041,587.51. As of

1 October 15, 2014, there was over \$1.3 million in the account, which is more than 65% of the Oil  
2 Income for the time period.<sup>107</sup> Since neither Jacqueline nor Kathryn objected to this accounting  
3 within 120 days, it is deemed approved. NRS 165.137(1)(h). And since a trustee need not  
4 account to remainder beneficiaries more than once per year, no further accounting is required.  
5 NRS 165.137(1)(b).

6 Accordingly, the Court should deny the request for an accounting because it was never  
7 properly pled, no accounting was ever properly demanded, and an accounting was provided.

8 **D. THE COURT SHOULD DENY THE COUNTERMOTION FOR**  
9 **DAMAGES, ASSESSMENT OF PENALTIES, AND OTHER RELIEF.**

10 In the countermotion for damages, assessment of penalties, and other relief, Jacqueline  
11 and Kathryn barrage the Court with assorted claims for relief never before pled. The Court  
12 should deny all of the requests for relief as detailed in turn below.

13 **1. The Court Should Deny The Request For Attorney Fees As Sanctions**  
14 **For Filing The Motion To Dismiss.**

15 Jacqueline and Kathryn seek attorney fees as a sanction for Eleanor's filing the Motion to  
16 Dismiss, which they allege is frivolous under NRS 18.010(2)(b). As detailed above, Eleanor's  
17 Motion to Dismiss is well founded on Nevada's claim preclusion law. There is nothing frivolous  
18 or vexatious about a motion to dismiss based on sound legal and factual arguments. Therefore,  
19 the Court should deny the request for attorney fees as sanctions related to the Motion to Dismiss.

20 **2. The Court Should Deny The Request To Enforce The No Contest**  
21 **Clause.**

22 The countermotion requests that the Court enforce the no contest clause of the Trust, and  
23 the MTC Trust.<sup>108</sup> As for the MTC Trust, it is a wholly separate Trust created by Marjorie,  
24 under which Eleanor has no interest. Eleanor has never claimed an interest under the MTC Trust

25 <sup>107</sup> See Letter from Shawn D. King, CPA dated October 15, 2014, attached hereto as **Exhibit 6**.

26 <sup>108</sup> The countermotion also seeks enforcement of the no contest clause in Marjorie's will, but the Will  
27 Contest has been settled, and the stipulation and order to dismiss with prejudice is with the Court for  
28 signature and entry. Any references by Kathryn and Jacqueline to the Will Contest within their  
Opposition to Eleanor's Countermotion for Summary Judgment should be disregarded by the Court and  
stricken from the record.

1 nor contested its provisions; therefore, the no contest clause of the MTC Trust is inapplicable  
2 here.

3 As to the Trust, Eleanor has not contested the Trust. Jacqueline and Kathryn are  
4 contesting ownership of the Oil Rights and Oil Income via their Petition for Declaratory Relief.  
5 Eleanor has confirmed the provisions of the Trust and raised them as a defense against  
6 Jacqueline and Kathryn's Petition, which challenges the provisions of the Trust. The Trust's no  
7 contest clause is triggered when a person asserts:

8 any claim to the assets of [the Trust] . . . or attack, oppose, or seek to set aside the  
9 administration and distribution of [the Trust] . . . or to have the same declared null  
and void or diminished, or to defeat or change any part of the provisions of the  
[T]rust . . . .<sup>109</sup>

10 Eleanor has not attacked, opposed, or sought to defeat any part of the Trust. In fact, she seeks to  
11 enforce its plain language and the intent of William by ensuring that Trust No. 2 remains the  
12 owner of all the Oil Rights and that Eleanor, as Trust No. 2's sole income beneficiary, receives  
13 all of the Oil Income during her life. Thus, Eleanor's seeking to enforce the Trust provisions  
14 does not trigger the no contest clause. Rather, it is Jacqueline and Kathryn's seeking to change  
15 the terms of the Trust to provide a 65% interest in the Oil Rights to Trust No. 3 that has triggered  
16 the no contest clause.

17 Moreover, under NRS 163.00195, the no contest clause cannot be enforced against  
18 Eleanor. Eleanor has only sought to enforce the terms of the Trust to effectuate William's intent.  
19 NRS 163.00195(2), (3). Also, even if Eleanor was "contesting" the Trust, which she is not, her  
20 interest under the Trust cannot be reduced or eliminated because she has defended this litigation  
21 in good faith. NRS 163.00195(4). Therefore, the Court should deny the countermotion seeking  
22 to enforce the no contest clause against Eleanor.

23 **3. The Court Should Deny Sanctions Related To The Accounting.**

24 Jacqueline and Kathryn seek sanctions against Eleanor for failure to provide an  
25 accounting. As discussed above, they are not entitled to an accounting absent a proper request as  
26 specified by statute. There is no evidence before the Court of any written, statutorily compliant  
27

28 <sup>109</sup> See Trust Agreement, Article Tenth.

1 request for an accounting. And, Eleanor provided an accounting on October 15, 2014, to which  
2 Jacqueline and Kathryn never objected. Thus, no sanctions are warranted. Additionally, the  
3 sanctions requested are that all the Oil Income monies currently being held by Eleanor be  
4 transferred to a “neutral account” and that Eleanor be removed as the trustee for Trust Nos. 1, 2,  
5 and 3. There is no need to move the funds, which are being held in a Wells Fargo account. And,  
6 Eleanor is only the Trustee of Trust No. 2, as Trust No. 1 technically ceased to exist upon  
7 William’s death. Also, Eleanor never was a trustee of Trust No. 3, and Trust No. 3 ceased to  
8 exist upon Marjorie’s death. The Court should deny any sanctions related to the accounting.

9 **4. The Court Should Deny The Request For Reconsideration Of Its**  
10 **Prior Order.**

11 The Countermotion goes on to request that the Court reconsider its July 7, 2014 Order re  
12 Pending Motions and Scheduling, in which the Court ordered that Eleanor should pay back 65%  
13 of the back Oil Income to Jacqueline and Kathryn if they posted a bond (“July Order”).  
14 Specifically, Jacqueline and Kathryn request that the Court reconsider that motion and order the  
15 funds released to Jacqueline and Kathryn, without a bond, and require Eleanor to post a bond to  
16 continue to receive her share of the Oil Income. This request should be denied for several  
17 reasons.

18 First, the July Order is currently on appeal. Second, the countermotion cites no legal  
19 authority for the Court to reconsider an order that is on appeal and which order was entered six  
20 months ago. Third, the Countermotion offers no legal authority for releasing all the Oil Income  
21 to Jacqueline and Kathryn without a bond and instead requiring Eleanor to post a bond. Failure  
22 to include a memorandum of points and authorities “may be construed as an admission that the  
23 motion is not meritorious, as cause for its denial or as a waiver of all grounds not so supported.”  
24 EDCR 2.20(c). Accordingly, the Court should deny the reconsideration and all related relief  
25 requested because the request is untimely and contains no legal authority.

26 **5. The Court Should Deny The Request That The Court Determine**  
27 **Eleanor Has Forfeited All Of Her Rights Under The Trust.**

28 Jacqueline and Kathryn ask the Court to determine that Eleanor has forfeited all of her  
rights under the Trust by wrongfully claiming a right to the Oil Assets and Oil Income. Again,

1 Jacqueline and Kathryn provide no legal or factual basis for this request, rendering it meritless  
2 under EDCR 2.20(c). Further, the only basis for such a request would be the no contest clause,  
3 which is not applicable, as discussed above. And, Eleanor has always defended against this  
4 litigation initiated by her daughters, asserting and affirming her rights under Trust No. 2. Thus,  
5 the Court should deny this request for a determination that Eleanor has forfeited all of her rights  
6 under the Trust.

7 **V. CONCLUSION.**

8 Eleanor respectfully requests that the Court (1) grant Eleanor's Motion to Dismiss the  
9 Petition for Declaratory Relief; (2) deny the Countermotion for Summary Judgment; (3) deny the  
10 Countermotion for Assorted Relief; and (3) grant Eleanor's Motion for Summary Judgment  
11 (contained in the Omnibus Opposition), or alternatively, make factual findings pursuant to NRC  
12 56(d).

13 Dated this 9<sup>th</sup> day of January, 2015.

14 MARQUIS AURBACH COFFING

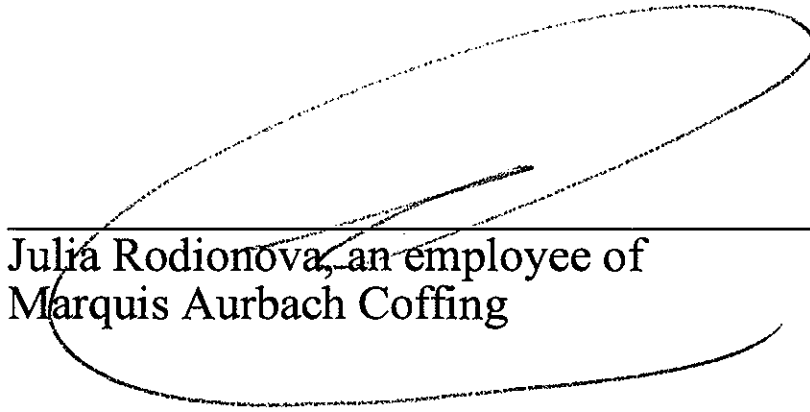
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Ahern, as Trustee and Individually

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **ELEANOR C. AHERN'S (1) REPLY IN SUPPORT OF ELEANOR C. AHERN'S MOTION TO DISMISS PETITION FOR DECLARATORY JUDGMENT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED; (2) OPPOSITION TO COUNTERMOTION OF KATHRYN A. BOUVIER AND JACQUELINE M. MONTOYA FOR SUMMARY JUDGMENT ON PETITION FOR DECLARATORY JUDGMENT, FOR DAMAGES AND ASSESSMENT OF PENALTIES, AND FOR OTHER RELIEF; AND (3) REPLY IN SUPPORT OF COUNTERMOTION FOR SUMMARY JUDGMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 9<sup>th</sup> day of January, 2015. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:<sup>110</sup>

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*Attorney for Jacqueline M. Montoya*

  
\_\_\_\_\_  
Julia Rodionova, an employee of  
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<sup>110</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

**ELEANOR C. AHERN'S (1) REPLY IN SUPPORT OF ELEANOR C. AHERN'S  
MOTION TO DISMISS PETITION FOR DECLARATORY JUDGMENT FOR  
FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED; (2)  
OPPOSITION TO COUNTERMOTION OF KATHRYN A. BOUVIER AND  
JACQUELINE M. MONTOYA FOR SUMMARY JUDGMENT ON PETITION FOR  
DECLARATORY JUDGMENT, FOR DAMAGES AND ASSESSMENT OF  
PENALTIES, AND FOR OTHER RELIEF; AND (3) REPLY IN SUPPORT OF  
COUNTERMOTION FOR SUMMARY JUDGMENT**

<b>Exhibit No.</b>	<b>Description</b>
1	Declaration of Eleanor Ahern in Support of Reply and Opposition
2	EPS Assessment (Bates Nos. AHERN 560-569)
3	Application for Original Probate of Foreign Will and Issuance of Letters of Independent Administration (Bates Nos. AHERN 570-582)
4	Petition in Intervention and Motion to Set Aside "Order Probating Foreign Will, and Appointment Independent Administrator" (Bates Nos. AHERN 586-599)
5	Letters (Bates Nos. AHERN 780-799; AHERN 800-821; AHERN 832-853)
6	Letter from Shawn King, CPA Enclosing Wells Fargo Letter (Bates Nos. AHERN 600-601)
7	Excerpts from Draft Transcript of Jacqueline Montoya
8	Deed (Bates Nos. AHERN 832-833)

# Exhibit 1



**DECLARATION OF ELEANOR C. AHERN IN SUPPORT OF (1) REPLY IN  
SUPPORT OF MOTION TO DISMISS PETITION FOR DECLARATORY  
JUDGMENT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE  
GRANTED; AND (2) OPPOSITION TO COUNTERMOTION OF KATHRYN A.  
BOUVIER AND JACQUELINE M. MONTOYA FOR SUMMARY JUDGMENT ON  
PETITION FOR DECLARATORY JUDGMENT, FOR DAMAGES AND  
ASSESSMENT OF PENALTIES, AND FOR OTHER RELIEF**

Eleanor C. Ahern, declares as follows:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. I am submitting this Declaration in Support of my (1) Reply In Support Of Motion To Dismiss Petition For Declaratory Judgment For Failure To State A Claim Upon Which Relief Can Be Granted; And (2) Opposition To Countermotion Of Kathryn A. Bouvier And Jacqueline M. Montoya For Summary Judgment On Petition For Declaratory Judgment, For Damages And Assessment Of Penalties, And For Other Relief ("Reply and Opposition").

**JACQUELINE AND KATHRYN ABANDONED ME WHEN I WAS UNWELL.**

3. In April 2011, I had a hernia operation. I experienced vertigo and life threatening complications after the surgery. I was rushed to the hospital where I recovered for several days and nights. Neither Kathryn nor Jacqueline visited me while I was in the hospital.

4. In March 2012, I broke my leg—the same leg which I broke in 1972, which took seven years to heal, and is the cause of my current difficulty walking and needing a service dog. The leg required surgery, and I had a severe, life threatening allergic reaction to the anesthesia. I spent 30 days recovering in the hospital.

5. Kathryn never visited, called, or sent flowers or a card during my hospital stay. In fact, I have not spoken with Kathryn since the Spring of 2012, when Kathryn called me under false pretenses and demanded that I blindly trust Jacqueline and do as she asks.

6. Jacqueline visited me at most a few times a week for approximately fifteen minutes at a time. Once she brought her twins, my grandchildren, to see me. Neither Jacqueline nor Kathryn expressed any concern for my life threatening condition.

1           7.       During both of these hospital stays, I felt little to no concern or care from my  
2 daughters, and I felt abandoned.

3                   **JACQUELINE CONTACTED ELDER PROTECTIVE SERVICES WITHOUT**  
4                   **CONSULTING ME**

5           8.       On July 6, 2012, Jacqueline agreed to allow me to see her children, my  
6 grandchildren, with the stipulation that Jacqueline “supervise” the visit.   The visit lasted  
7 approximately two hours, much of which Jacqueline spent in her car.

8           9.       Within minutes after Jacqueline and her children left, I received a telephone call  
9 from Elder Protective Services (“EPS”), who wanted to perform an immediate assessment at my  
10 home. I scheduled an appointment to meet with the case worker on July 9, 2012 at the case  
11 worker’s office.

12           10.      During the meeting, I learned that Jacqueline had called EPS and reported that my  
13 close friend and limited agent, Suzanne Nounna (“Suzanne”) was financially exploiting me. I  
14 explained that this was not the case, that Suzanne was a trusted friend, and that I had complete  
15 control and understanding of my finances and business affairs.

16           11.      EPS closed the case, determining that the claims of exploitation were not  
17 substantiated. I later obtained a copy of the EPS Assessment from EPS via mail, a true and  
18 correct copy of which is attached to the Reply and Opposition as **Exhibit 2**.

19           12.      I was extremely hurt, upset, and angered that Jacqueline would lie to EPS and  
20 contact EPS without so much as discussing her alleged concerns with me.

21                   **JACQUELINE CALLED THE POLICE ABOUT ME**

22           13.      I learned from a friend that the day after EPS closed the case, July 26, 2012,  
23 Jacqueline called the police to perform a wellness check on me. I was out of town in Mammoth,  
24 California with friends. Jacqueline never spoke to me about whether I needed any assistance or a  
25 wellness check. In fact, I was fine.

26           14.      When I learned that Jacqueline had called the police to request a wellness check, I  
27 was hurt that my daughter would do such a thing without even talking with me, and I was  
28 embarrassed to needlessly have the police involved in my affairs.

## INTERFERENCE WITH THE OIL LEASES

15. Jacqueline and Kathryn's counsel contacted all of the oil companies that lease the Texas land, informed them there was a dispute regarding the ownership of the Oil Rights, and caused all of the companies to suspend payments of the Oil Income.

16. I first learned of this in or about the fall of 2013. For example, I received a fax from Apache Corporation on or about November 11, 2013, enclosing a letter from Jacqueline's counsel to Apache claiming there was a dispute and attaching Jacqueline's Petition for Declaratory Relief. A true and correct copy of this correspondence is attached to the Reply and Opposition as **Exhibit 5**.

## ACCOUNTING

17. I have not received a written request from Jacqueline or Kathryn requesting an accounting of Trust No. 2.

18. In preparation for the Supreme Court Settlement Conference on October 15, 2014, I requested that a CPA, Mr. Shawn D. King, review the Wells Fargo account where I have been holding the Oil Income money to which Jacqueline and Kathryn claim they are entitled since November 12, 2013. Mr. King provided an accounting in letter form, dated October 15, 2014, which he provided to me. A true and correct copy of this accounting is attached to the Reply and Opposition as **Exhibit 6**.

19. I provided this to Jacqueline and Kathryn at the Supreme Court Settlement Conference. To date, I have not received an objection to this accounting form either Jacqueline or Kathryn.

Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Dated this 9 day of January, 2015.

*Eleanor C. Ahern as Trustee + Individually*  
ELEANOR C. AHERN, as Trustee and  
Individually

# Exhibit 2

## EPS Assessment

Ahern, Eleanor (1322155398)

7/6/2012

### Intake

#### A. Client Information

##### Case record number

LVP13-0049

##### Intake Specialist

Sandy Lewis

##### Enter the date of intake

7/6/2012

##### Client's last name

Ahern

##### Client's first name

Eleanor

##### Client's middle initial

##### Client's physical or mailing address

610S Elton Ave

##### Client's residential city or town

Las Vegas

##### Client's county of residence

Clark

##### Client's residential zip code

89107

##### Client's telephone number

702-366-5588

##### Client's date of birth

5/13/1938

##### Client's Medicaid number

##### Client's gender

☒ Female

☐ Male

##### Client's race/ethnicity

☐ African American

☐ American Indian/Native Alaskan

☐ Asian (not Pacific Islander/Hawaiian)

☐ Asian/Pacific Islander (incl. Hawaiian)

☐ Hispanic Origin

☒ Non-Minority (White, non-Hispanic)

☐ Other

☐ Unknown

##### Client's current marital status

☐ Divorced

☐ Married

☒ Single

☐ Widow (er)

☐ Unknown

#### B. Reporting Party Information

##### Name of the reporting party

##### What is the reporting party's phone number?

##### Relationship of the reporting party

☐ Unknown

☐ Acute Care

☐ Adult Day Care

☐ Attorney

☐ Clergy

☐ CBC

☐ CCSPS

☐ Family

☐ Financial Institution

☐ Friend

☐ Group Home/Assisted Living

☐ Health Department

☐ HIRC (Home for Individual Residential Care)

☐ Home Health

☐ Hospital

☐ Law Enforcement

☐ Medicaid

☐ Neighbor

☐ Nursing Facility

☐ Physician

☐ Self

☐ Senior Center

☐ Social Security

☐ Social Worker

☐ Spouse

☐ Service Provider

☐ Welfare Department

☐ Other

##### Name of the person of interest (1)

Susan Noonan

##### Address of the person of interest (1)

3635 W Sahara Ave #549

##### Area code and telephone number of the person of interest (1)

702-990-3819

##### Zip code of the person of interest (1)

89117

**Relationship of the person of interest (1)**

- ☐ Brother
- ☐ Caretaker
- ☐ Daughter
- ☐ Daughter-in-Law
- ☐ Father
- ☒ Friend or Neighbor
- ☐ Granddaughter
- ☐ Grandson
- ☐ Mother
- ☐ No relationship/stranger
- ☐ Self
- ☐ Service Provider
- ☐ Sister
- ☐ Son
- ☐ Son-in-Law
- ☐ Spouse/Significant Other
- ☐ Other Relative

**Describe characteristics of the person of interest in previous cases.**

**Name of the person of interest (2)**

**Address of the person of interest (2)**

**Area code and telephone number of the person of interest (2)**

**Relationship of the person of interest (2)**

- ☐ Brother
- ☐ Caretaker
- ☐ Daughter
- ☐ Daughter-in-Law
- ☐ Father
- ☐ Friend or Neighbor
- ☐ Granddaughter
- ☐ Grandson
- ☐ Mother
- ☐ No relationship/stranger
- ☐ Self
- ☐ Service Provider
- ☐ Sister
- ☐ Son
- ☐ Son-in-Law
- ☐ Spouse/Significant Other
- ☐ Other Relative

**C. Physician**

**Client's primary care physician**

**Telephone number of the client's primary care physician**

**D. Living Arrangement:**

**Select the client's current living arrangement**

- ☐ Home of Another
- ☐ Hospital facility
- ☐ Information unavailable
- ☐ Living with person of interest
- ☐ Lives Alone
- ☐ Lives in a group setting with non-relatives
- ☐ Lives with a friend
- ☐ Lives with child (not spouse)
- ☐ Lives with other family member
- ☐ Lives with others (not spouse or children)
- ☐ Lives with paid help
- ☐ Lives with spouse and child
- ☐ Lives with spouse and others
- ☐ Lives with spouse only
- ☐ Nursing facility
- ☐ Parent or guardian
- ☐ Significant other
- ☐ Other

**E. Collateral Contacts:**

**Name of the collateral contact (1)**

**Address of the collateral contact (1)**

**Area code and telephone number of the collateral contact (1)**

**Relationship to the collateral contact (1)**

**Name of the collateral contact (2)**

**Address of the collateral contact (2)**

**Area code and telephone number of the collateral contact (2)**

**Relationship to the collateral contact (2)**

**F. Safety**

**Are there any safety risks that the social worker needs to be aware of?**

**G. Current Services**

**Is the client participating in any of the following services or programs?**

- ☐ Adult day care
- ☐ Clark County Social Services (CCSS)
- ☐ Community Based Care (CBC)
- ☐ Home delivered meals (MOW)
- ☐ Home health care
- ☐ Homemaker services
- ☐ Hospice
- ☐ Mental Health Services
- ☐ Personal Care Attendant (PCA)/(PCS)
- ☐ Private Caregiver
- ☐ Senior companion
- ☐ Other

**List other current services or programs the client currently receives.**

**H. Allegation**

**What are the allegations on the report?**

- ☐ Abuse
- ☐ Neglect
- ☐ Self-neglect
- ☒ Exploitation
- ☐ Isolation

**Enter intake/referral comments.**

**Social Worker Assessment**

**A. Assessment Information**

**Name of the assigned social worker**  
Ashley Hice

**Date of case initiation**  
7/6/2012

**Was a face to face interview conducted?**  
☐ No  
☒ Yes

**Date of face-to-face interview**  
7/9/2012

**Describe why face to face interview was not conducted.**

**Date of case closure**  
7/16/2012

**B. Housing**

**What type of housing does the client live in?**

- ☒ Own home
- ☐ Rental
- ☐ Apartment
- ☐ HIRC (Home for Individual Residential Care)

- ☐ Group Home/Assisted Living
- ☐ Mobile Home
- ☐ Nursing Facility
- ☐ Subsidized housing
- ☐ Other

**Indicate problems in the client's physical environment.**

- ☐ Architectural barriers
- ☐ Dangerous floor/steps
- ☐ Fire safety
- ☐ Garbage/trash accumulation
- ☐ In need of repair
- ☐ Inadequate bathroom
- ☐ Inadequate heat/cooling/ventilation
- ☐ Inadequate kitchen/bath facilities
- ☐ Inadequate living/sleeping area
- ☐ Insect/pest problem
- ☐ Lack of utilities
- ☐ Pet/animal problem
- ☐ Poor lighting
- ☐ Security problem
- ☐ Signs of careless smoking
- ☐ Slipping/tripping hazard
- ☐ Substandard structure
- ☐ Uncleanliness
- ☐ Other

**Describe other problems in the client's physical environment.**

**C. Financial**

**Client refused to give income information?**

- ☐ No
- ☒ Yes

**Select those who are responsible for making decisions regarding the client's care, treatment, financial and legal affairs.**

- ☒ Client responsible for self
- ☐ Durable power attorney/financial
- ☐ Durable power of attorney/healthcare
- ☐ Family member responsible
- ☐ Guardian/ Private
- ☐ Guardian/Public
- ☐ Informal decision maker
- ☐ Legal guardian
- ☐ Limited power of attorney
- ☐ Living will
- ☐ Other legal oversight
- ☐ Representative payee
- ☐ None of the above

**Name of the person providing assistance with legal/financial matters**

7/6/2012

**Specify the client's monthly SSI Income.**

**Specify the client's monthly VA benefits Income.**

**Specify the client's monthly social security Income.**

**Specify the client's monthly retirement/pension Income.**

**Specify the client's other monthly Income.**

**Are the client's bills being paid?**

Yes

**Is there a risk to the client's property or assets?**

No

**Who does the client's banking?**

Client

**D. Transportation**

**Client's usual means of transportation**

Client

**E. Medical Information**

**Comments regarding the client's medical conditions/diagnoses**

Currently has a broken tibia



**Indicate which of the following conditions/diagnoses the client currently has.**

- ☐ Alcoholism/substance abuse  
☐ Allergies  
☐ Alzheimer's disease  
☐ Anemia  
☐ Ankle/leg swelling  
☐ Anxiety disorder  
☐ Any psychiatric diagnosis  
☐ Aphasia  
☐ Arteriosclerosis heart disease (ASHD)  
☐ Arthritis/rheumatic disease/gout  
☐ Asthma  
☐ Blood-related problems  
☐ Breathing disorders  
☐ Bruises  
☐ Cancer  
☐ Cardiac dysrhythmias  
☐ Cataract  
☐ Cerebral palsy  
☐ Chronic pain  
☐ Chronic weakness/fatigue  
☐ Congestive heart failure  
☐ Contractures  
☐ Coronary artery disease  
☐ Decubitus  
☐ Deep vein thrombosis  
☐ Dementia  
☐ Depression  
☐ Developmental disability  
☐ Diabetes  
☐ Diabetic retinopathy  
☐ Dialysis  
☐ Digestive problems  
☐ Drug resistance (MRSA/VRE)  
☐ Edema  
☐ Emphysema/COPD/asthma  
☐ Expressive communication  
☐ Frailty  
☐ Frequent falls  
☐ Gastritis or related condition  
☐ Glaucoma  
☐ Hearing impairment  
☐ Heart problems  
☐ Hemiplegia/Hemiparesis  
☐ High cholesterol  
☐ Hip fracture  
☐ HIV  
☐ Hypertension  
☐ Hyperthyroidism  
☐ Hypotension  
☐ Hypothyroidism  
☐ Immune system disorders  
☐ Liver disease

- ☐ Macular degeneration  
☐ Manic depression (bipolar disease)  
☐ Memory Loss  
☐ Missing limb (e.g., amputation)  
☐ Multiple sclerosis  
☐ Muscle or bone problems  
☐ Nausea/vertigo  
☐ Neurological condition  
☐ Osteoporosis  
☐ Other cardiovascular disease  
☐ Other eye condition  
☐ Other fracture (except hip/spine)  
☐ Other neurological  
☐ Other significant illness  
☐ Pacemaker  
☐ Paralysis  
☐ Paraplegia  
☐ Parkinson's disease  
☐ Pathological bone fracture  
☐ Peripheral vascular disease  
☐ Pneumonia  
☐ Quadriplegia  
☐ Receptive communication  
☐ Renal failure  
☐ Respiratory disease  
☐ Schizophrenia  
☐ Seizure disorder  
☐ Speech impairment  
☐ Stroke  
☐ TB  
☐ Thyroid disease  
☐ Transient ischemic attack (TIA)  
☐ Traumatic brain injury  
☐ Tremors  
☐ Urinary problems  
☐ Urinary tract infection  
☐ Vision problems  
☐ None of the above

**Is the client taking medication?**

- ☐ Yes  
☒ No

**List client's current medications.****Comments regarding client's medication****F. Cognitive Functioning**

**Describe the client's needs for supervision, taking into account physical health, mental impairment and behavior. How long can the client routinely be left alone at home?**

- ☐ A few hours  
☐ Cannot be left alone  
☒ No supervision needed

**What cognitive/behavioral conditions are demonstrated by the client?**

- ☐ Abusive  
☐ Actively resistive  
☐ Agitated  
☐ Alcohol abuse  
☐ Alcohol use  
☒ Alert  
☐ Anger  
☐ Assault  
☒ Cooperative  
☐ Dementia  
☐ Depressed  
☐ Difficulty adjusting to losses  
☐ Disoriented  
☐ Disruptive socially/verbally  
☐ Drug abuse  
☐ Grief issues  
☐ Hallucinations  
☐ Impaired decision making  
☐ Impaired reasoning  
☐ Lonely  
☐ Memory deficit  
☐ Nervous  
☒ Oriented  
☐ Physical aggression  
☐ Problem behavior reported  
☐ Regressive behavior  
☐ Restraint order  
☐ Sleeping problems  
☐ Smoking  
☐ Smoking carelessly  
☐ Suicidal thoughts  
☐ Suspicious  
☐ Verbally/physically aggressive  
☐ Wanders  
☐ Withdrawn  
☐ Worried or anxious  
☐ Other

**G. Activities of Daily Living (ADLs)**

**What is the client's ability to perform bathing?**

- ☒ Independent  
☐ Assistance  
☐ Unable

**How difficult is it (or would it be) for the client to perform dressing?**

- ☒ Independent  
☐ Assistance  
☐ Unable

**What kind of help does the client need with eating?**

- ☒ Independent  
☐ Assistance  
☐ Unable

**Describe problems with client's teeth or gums.**

**What is the current state of the client's bladder continence?**

- ☒ Continent  
☐ Incontinent  
☐ Continent with catheter  
☐ Unknown

**What is the current state of the client's bowel continence?**

- ☒ Continent  
☐ Incontinent  
☐ Ostomy  
☐ Unknown

**H. Mobility**

**Rate the client's ability to ambulate.**

- ☒ Independent  
☐ Assistance  
☐ Unable  
☐ Uses device

**What assistive devices does the client use for aid in mobility?**

- ☐ Cane  
☐ Crutches  
☐ Guide dog  
☐ Hospital bed  
☐ Hoyer lift  
☐ Leg braces  
☐ Prosthesis  
☐ Ramp access  
☐ Transfer board  
☐ Walker  
☐ Wheelchair, electric  
☐ Wheelchair, manual  
☐ Other

**Can the client get in and out of bed/chairs without help?**

- ☐ No  
☒ Yes  
☐ Unknown

**Rate the client's ability to go up and down the stairs.**

- ☒ Independent  
☐ Assistance  
☐ Unable  
☐ Unknown

**Is the client at risk of falling?**

- ☐ Yes  
☒ No

**Has there been a recent history of falls?**

- ☒ Yes  
☐ No  
☐ Unknown

**I. Instrumental Activities of Daily Living (IADLs)**

**How would you rate the client's ability to perform meal preparation?**

- ☒ Independent  
☐ Assistance  
☐ Unable

**Specify the client's ability to perform light housekeeping.**

- ☒ Independent  
☐ Assistance  
☐ Unable

**Specify the client's ability to perform heavy housework.**

- ☐ Independent  
☒ Assistance  
☐ Unable

**Describe the client's ability to do his or her own laundry.**

- ☒ Independent  
☐ Assistance  
☐ Unable

**How would you rate the client's ability to perform shopping?**

- ☒ Independent  
☐ Assistance  
☐ Unable

**Specify the client's ability to manage money.**

- ☒ Independent  
☐ Assistance  
☐ Unable

**Describe the client's ability to perform telephone use.**

- ☒ Independent  
☐ Assistance  
☐ Unable

**J. Nutrition**

**What is the client's idea of his/her appetite?**

- ☒ Good  
☐ Fair  
☐ Poor  
☐ Unknown

**Has the client lost or gained weight in the past 6 months?**

- ☐ Unknown  
☒ No  
☐ Yes

**What is the reason for the client's weight change?**

**Describe the client's physician prescribed modified/therapeutic diet.**

- ☐ Calorie Controlled  
☐ Diabetic diet  
☐ Fat Restricted  
☐ High Calorie  
☐ Liquid nutritional supplement  
☐ Renal  
☐ Sodium Restricted  
☐ Texture Modified  
☐ Other

**Other dietary comments**

**Final Disposition**

**A. Case Disposition**

7/6/2012

**To what services or programs is the client being referred?**

- ☐ ASD Community OMB
- ☐ ASD LTC OMB
- ☐ Adult Day Care
- ☐ Attorney General
- ☐ Attorney/Private
- ☐ Bureau of Health Care Quality and Compliance
- ☐ Case Management
- ☐ CHIP
- ☐ Clark County Protective Services
- ☐ Clinical Assessment
- ☐ Code Enforcement
- ☐ County Social Services
- ☐ DMV Referral
- ☐ Group Home/Assisted Living
- ☐ Guardian Private
- ☐ Guardian Public
- ☐ Homemaker
- ☐ Housing
- ☐ Law Enforcement
- ☐ Licensing Boards
- ☐ Medicaid
- ☐ Mental Health Services
- ☐ Nursing Facility
- ☐ Nutrition Program/Meals On Wheels
- ☐ Personal Care Attendant
- ☐ Protective Services out of State
- ☐ Representative Payee
- ☐ Respite Program
- ☐ Senior Companion Program
- ☐ Senior Law Project
- ☐ WEARC
- ☐ Other (specify in comments)

- ☐ Moved/Unable to locate
- ☐ Placement in a facility
- ☐ Safety issues unresolved
- ☐ Short-term intervention provided
- ☐ Wait list - ASD
- ☐ Wait list - outside resources
- ☐ Other (specify in comments)

**Disposition comments**

**Was the allegation of abuse substantiated?**

- ☐ No
- ☐ Yes

**Was the allegation of neglect substantiated?**

- ☐ No
- ☐ Yes

**Was the allegation of self-neglect substantiated?**

- ☐ No
- ☐ Yes

**Was the allegation of exploitation substantiated?**

- ☒ No
- ☐ Yes

**Was the allegation of isolation substantiated?**

- ☐ No
- ☐ Yes

**Enter the hours and minutes spent in the actual completion of the case.**

2.75

**Specify the case disposition.**

- ☒ Problem(s) resolved
- ☐ Problem(s) partially resolved
- ☐ Problem(s) not resolved

**Select the reason(s) the case was either partially or not resolved.**

- ☐ Client declined services
- ☐ Client declined to follow health recommendations
- ☐ Client declined to take prescribed medications
- ☐ Client hospitalized
- ☐ Client uncooperative with investigation/services
- ☐ Death of client
- ☐ Declined home visit
- ☐ Guardianship referral declined
- ☐ Guardianship services unavailable
- ☐ Insufficient resources - mental health services
- ☐ Insufficient resources - emergency placement
- ☐ Insufficient resources - transportation
- ☐ Insufficient resources - other (specify in comments)

## Assessment Narrative

Language Spoken: English  
Alert and Oriented: unk  
No Priors  
Intake Summary

07/06/12 .25

RP states client has been going into the W Cheyenne and Jones branch since December 2011. Client often comes into the bank requesting large sums of cash \$50,000 or more. When asked why she needs so much cash, client would state that God told her to withdraw the money or Sue told her to withdraw the money. Sometimes the client would return and deposit the money back into the account. God or Sue would tell her it's okay to deposit the money back into the account. RP states client's daughter, Jacqueline Montoya contacted the banker and stated somehow hers and the client's address had been changed. Banker noticed that the new address was changed to Susan Noonan's address. Susan is client's bookkeeper. RP states Jacqueline stated that POI is trying to move client's money to Chase bank. Jacqueline also reported that POI recently borrowed client's car by telling the client she was going to paint it even though it was only one year old. RP states POI tried to withdraw \$80,000 from client's account through the drive up teller window. The transaction was declined because banker recognized that POI was not the client. Jacqueline also alleged that POI changed the lock at the client's home so that only client and POI can gain access to client's home. Jacqueline states she has been talking to an attorney, name unknown, and he or she believes that client may be victim of elderly exploitation. SLEWIS

07/06/12 .50

This worker attempted an unannounced home visit. The client has a gate blocking this worker from reaching the door, therefore this worker called the client. The client answered and stated she was out running errands and wanted to know why this worker was at her house. This worker explained the EPS concern and the client stated that she was not being exploited but this worker could contact her Monday to schedule a home visit. HICE

07/09/12 .25

TC to client who stated that she would love to stop by the office and speak to this worker. This worker provided the client with their availability and the client stated that she would check her schedule and call this worker back. HICE

07/09/12 .75

This worker met with the client at the ADSD Office. The client appeared alert and oriented x4. Client drove herself to the office. This worker reviewed the EPS allegation. The client stated that her finances are her business and she thought what she did with her bank accounts were confidential and up to her. This worker explained that is correct and that this worker and ADSD wanted to make sure no one is taking advantage of the client and if they are to help support the client to end the exploitation. The client stated that she has many bank accounts due to she has many businesses and trusts. The client denied exploitation by POI Susan Noonan. The client stated that POI Susan is a good friend who has a lot of experience with book keeping and money management, but she is not the client's book keeper. This worker addressed the EPS concern about the client withdrawing large sums of cash per God or Susan's request, the client stated that it is her money and she is allowed to withdraw it the way she sees fit and deposit back as well. This worker asked if POI Susan was telling her to withdraw the money or was forcing her to withdraw the money and the client stated no. This worker asked about the bank changing the addresses on the bank accounts to everything will be mailed to POI Susan and the client denied the change. The client stated that she receives all of her bank mail at her house. This worker asked about POI Susan borrowing the client's car and having it painted. The client responded in a joyous voice tone that POI Susan did take her Volvo to be repainted white and now it looks brand new. The client stated it was a nice thing for the POI to do. This worker asked if POI Susan changed the locks to her house so she was the only individual who could get into the house and the client stated that was incorrect. This worker asked about POI Susan attempting to withdraw \$80,000 from her account and the client stated that she does not know anything about that, nor has the bank told her someone is trying to access her account. This worker verified that POI Susan is not on any of the client's bank accounts nor is the POA document. No consent was given to speak to POI Susan.

Assessment- The client is alert and oriented x4. The client is able to advocate and make her needs known. The client denied the allegation of exploitation stating that POI Susan Noonan is a friend and not her book keeper. The client stated that her mail is not going to Susan's home nor did Susan change her locks. The client did state that POI Susan took her Volvo to be repainted white, but felt that was a nice thing for her to do. POI Susan is not on the client's bank accounts and the client is able to handle her finances. No consent was given to speak to POI Susan about the allegation. HICE

Plan- This worker will close the case due to client denies the allegation and no consent was given to speak to POI Susan.

07/11/12 .25

Staffed w/ SW. T/C to RP needed. SW meet with client in office on 7/9/12 and will be updating narrative. JUSTESN

07/13/12 .25

This worker updated the narrative. HICE

07/16/12 .25 Formulating Conclusions Worksheet

List the specific allegation investigated:  
Exploitation

List the specific information that refutes this allegation:  
Client denies allegation  
Client is alert and oriented x4  
Client is aware of her finances and feels she can manage them

List the specific information that supports this allegation:  
N/A

EPS Assessment

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7/25/2012  
Page 9 of 10

AHERN 000568

Ahern, Eleanor (1322155398)  
7/6/2012

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Substantiation decision:  
Unsubstantiated

Emergency intervention steps taken during the investigation:  
None

07/16/12 .25 Case Summary

Report was made alleging exploitation. The reporter stated client often comes into the bank requesting large sums of cash \$50,000 or more. When asked why she needs so much cash, client would state that God told her to withdraw the money or Sue told her to withdraw the money. Sometimes the client would return and deposit the money back into the account. God or Sue would tell her it's okay to deposit the money back into the account. RP states client's daughter, Jacqueline Montoya contacted the banker and stated somehow hers and the client's address had been changed. Banker noticed that the new address was changed to Susan Noonan's address. Susan is client's bookkeeper. RP states Jacqueline stated that POI is trying to move client's money to Chase bank. Jacqueline also reported that POI recently borrowed client's car by telling the client she was going to paint it even though it was only one year old. RP states POI tried to withdraw \$80,000 from client's account through the drive up teller window. The transaction was declined because banker recognized that POI was not the client. Jacqueline also alleged that POI changed the lock at the client's home so that only client and POI can gain access to client's home. Jacqueline states she has been talking to an attorney, name unknown, and he or she believes that client may be victim of elderly exploitation.

This worker attempted an unannounced home visit at 6105 Elton Ave Las Vegas 89107. The client was not home at the time but this worker was able to reach her on the phone. This worker explained the purpose of the visit. The client denied the allegation but agreed to meet with this worker the following week.

This worker completed an office visit with the client. x4. The client is able to advocate and make her needs known. The client denied the allegation of exploitation stating that POI Susan Noonan is a friend and not her book keeper. The client stated that her mail is not going to Susan's home nor did Susan change her locks. The client did stated that POI Susan took her Volvo to be repainted white, but felt that was a nice thing for her to do. POI Susan is not on the client's bank accounts and the client is able to handle her finances. No consent was given to speak to POI Susan about the allegation.

The allegation of exploitation is not substantiated.  
This case is appropriate for closure HICE  
Total Hours 2.75

07/25/12 .25

SW addressed SWS Justesen note and TC to RP and notify them of case assignment and case closure. HICE

# Exhibit 3

No. 12-07-41836-PRO

ESTATE OF  
MARJORIE T. CONNELL,  
DECEASED

§  
§  
§  
§  
§

IN THE COUNTY COURT OF  
  
  
  
UPTON COUNTY, TEXAS

**APPLICATION FOR ORIGINAL PROBATE OF FOREIGN WILL  
AND ISSUANCE OF LETTERS OF INDEPENDENT ADMINISTRATION**

TO THE HONORABLE JUDGE OF SAID COURT:

**Jacqueline Montoya**, the same person as **Jacqueline Marguerite Montoya** ("Applicant") furnishes the following information to the Court for the original probate of the written Will of **Marjorie T. Connell** ("Decedent"), a domiciliary of the State of Nevada, and for issuance of Letters Testamentary under Section 103 of the Texas Probate Code.

Section 103 provides that the original probate of a will of a testator who died domiciled outside of the State of Texas which, upon probate, may operate upon any property in this State, and which is valid under the laws of this State, may be granted in the same manner as the probate of other wills is granted under this Code, if the will does not stand rejected from probate in the jurisdiction where the testator died domiciled.

1. **Jacqueline Montoya** is a granddaughter of the Decedent and an individual interested in this estate whose residence address is 3385 Maverick St., Las Vegas, Nevada 89108.

2. **Marjorie T. Connell** died May 1, 2009, at the age of 91 years. Four years have not elapsed since the date of her death. She was domiciled in the State of Nevada, her residence address being 1325 Strong Dr., Las Vegas, Nevada.

3. Decedent owned oil, gas and mineral interests located in Upton County, Texas, of a probable value in excess of \$100,000.00.

4. This Court has jurisdiction of this proceeding because the Decedent owned property in Texas upon which her Will may operate, and it has venue because the principal property is located in Upton County, Texas.

5. To Applicant's knowledge, Decedent was married one time only, such marriage being to **W. N. Connell**, who predeceased her. She was not divorced after the making of her Will. No child was ever born to or adopted by the Decedent.

6. Decedent left a written Will dated January 7, 2008, duly executed according to the laws of the State of Nevada, which was never revoked. The original Will was lodged

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LEWANDA McMURRAY  
CLERK, COUNTY/DISTRICT COURT  
UPTON COUNTY, TEXAS  
DEPUTY

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with the Clerk of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark. An exemplified copy of the Will is filed herein.

7. The subscribing witnesses to the Will are Sharon A. Brown, whose present address is unknown, and Josefina C. Jones, whose present address is 900 Rancho Lane, Las Vegas, Nevada 89106. The Will is not self-proved according to Texas law, but will be proved by the sworn deposition on written questions of Josefina C. Jones.

8. Decedent's Will has never been offered for probate in the State of Nevada where she was domiciled and does not stand rejected for probate in that state.

9. Decedent's Will names Jacqueline Marguerite Montoya, Applicant herein, as personal representative of her estate, and provides that no bond shall be required of her.

10. Decedent's Will was prepared in accordance with the laws of the State of Nevada and does not provide for independent administration of her estate in accordance with Texas law.

11. Decedent's Will provides that her probate estate shall be distributed to the then acting Trustee of the MTC Living Trust dated December 6, 1995, as restated on January 7, 2008.

12. In Article Four of Decedent's Will, she exercised a Power of Appointment granted in the W. N. Connell and Marjorie T. Connell Living Trust dated May 18, 1971, Article Fifth, Trust No. 3, Paragraph B(2), by which she appointed the entire principal and undistributed income in Trust No. 3 to Jacqueline Montoya and Kathryn Anne Bouvier, to be distributed in trust in accordance with the provisions of the MTC Living Trust dated December 6, 1995, as restated on January 7, 2008. The oil, gas and mineral interests located in Upton County, Texas, comprise a portion of the principal and undistributed income of Trust No. 3.

13. Jacqueline Montoya and her sister, Kathryn Anne Bouvier, are the distributees of Trust No. 3 and the residuary distributees of the MTC Living Trust, which includes the Upton County property. Jacqueline Montoya is the current trustee of the MTC Living Trust, and Kathryn Anne Bouvier is the successor trustee. As the distributees, Jacqueline Montoya and Kathryn Anne Bouvier agree to independent administration of Decedent's Estate. Kathryn Anne Bouvier further agrees to the appointment of Jacqueline Montoya as Independent Administrator of the estate.

14. Applicant is willing to accept the trust and qualify and is not disqualified by law from accepting Letters of Independent Administration, and she is entitled to such Letters. Because Applicant is a resident of the State of Nevada, she will appoint Mary Lou Cassidy, of Stubbeman, McRae, Sealy, Laughlin & Browder, Inc., Midland, Texas, as resident agent for service of process in the State of Texas.

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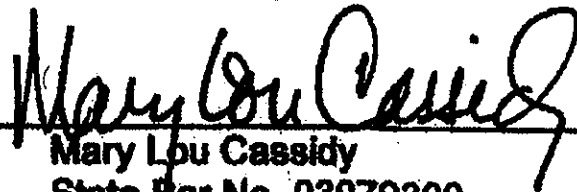
15. Decedent's Will does not name the State of Texas, a governmental agency of Texas, or a charitable organization as a devisee.

16. It is represented to the Court that there is no need for the appointment of appraisers.

WHEREFORE, Applicant prays that citation issue as required by law to all persons interested in this estate; that the Will of Marjorie T. Connell be admitted to probate; that Applicant be appointed Independent Administrator of the estate to serve without bond; that Letters of Independent Administration be issued to Applicant upon qualification; and that all other orders be entered as the Court may deem proper.

Respectfully submitted,

STUBBEMAN, McRAE, SEALY,  
LAUGHLIN & BROWDER, INC.  
550 West Texas, Suite 800  
Midland, Texas 79702  
432-682-1616  
432-682-4884 (FAX)

By:   
Mary Lou Cassidy  
State Bar No. 03979300

ATTORNEYS FOR APPLICANT

12-07-W836-PRD

**Last Will and Testament** FILED  
**of**  
**MARJORIE T. CONNELL** MAY 19 11 09 AM '09

I, MARJORIE T. CONNELL, also known as MARJORIE THRASH CONNELL, a resident of Clark County, Nevada, revoke any prior wills and codicils made by me and declare this to be my Last Will and Testament.

**Article One**  
**Family Information**

I am unmarried.

I have one step-child, ELEANOR C. HARTMAN AHERN, born on May 13, 1938.

**Article Two**  
**Distribution of My Property**

**Section 2.01 Pour-Over to My Living Trust**

All of my probate estate, excluding any property over which I might have a power of appointment, and after payment of expenses and taxes which are paid pursuant to this will, I give to the then acting Trustee of the MTC LIVING TRUST dated December 6, 1995 as restated on January 7, 2008 and executed prior to this will, to be added to the property of that trust. I direct that the Trustee administer the property as provided in the trust agreement and any amendments prior to my death.

**Section 2.02 Alternate Disposition**

If the trust referred to in Section 2.01 is not in effect at my death or if for any other reason the pour-over cannot be accomplished, I specifically and completely incorporate the terms of the trust into this will by reference. In such a situation, I direct my Personal Representative to establish a trust in accordance with the provisions of such trust and give the remainder of my estate, excluding any property over which I might have a power of

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CLARK COUNTY, NEVADA  
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appointment, to the Trustee of said trust to be administered as provided in the trust agreement.

### **Article Three Designation and Succession of Fiduciaries**

#### **Section 3.01 Personal Representative**

I nominate JACQUELINE MARGUERITE MONTOYA as my Personal Representative. If JACQUELINE MARGUERITE MONTOYA fails or ceases to act as my Personal Representative, I nominate KATHRYN ANN BOUVIER as my successor Personal Representative.

### **Article Four Exercise of Power of Appointment**

#### **Section 4.01 Exercise of Power of Appointment Granted by WILLIAM N. CONNELL**

In the W.N. Connell and Marjorie T. Connell Living Trust dated May 18, 1972, Article Fifth Trust No. 3 Paragraph B(2) of the Trust, I was granted a testamentary power of appointment. I hereby exercise that power of appointment and appoint the entire principal and the undistributed income in Trust No. 3, if any, on my death to JACQUELINE MONTOYA and KATHRYN ANNE BOUVIER to be distributed in trust in accordance with the provisions of the MTC LIVING TRUST dated December 6, 1995, as restated on January 7, 2008.

### **Article Five Powers of Fiduciaries**

#### **Section 5.01 Grant**

My Personal Representative may perform every act reasonably necessary to administer my estate and any trust established under my will.

Specifically, my Personal Representative may exercise the following powers: hold, retain, invest, reinvest, sell, and manage real or personal property, including interests in any form of business entity including, but not limited to, limited partnerships and limited liability companies, and policies of life, health and disability insurance, without diversification as to kind, amount or risk of non-productivity and without limitation by statute or rule of law. My Personal Representative may partition, sell, exchange, grant, convey, deliver, assign, transfer, lease, option, mortgage, pledge, abandon, borrow, loan and contract. My Personal Representative may distribute the assets of my estate in cash or kind or partly in each at fair market value on the date of distribution, without requiring pro rata distribution of specific assets and without requiring pro rata allocation of the tax bases of such assets. My Personal Representative may hold in nominee form, continue businesses, carry out agreements and deal with itself, other fiduciaries and business organizations in which my Personal Representative may have an interest. It may establish reserves; release powers, and abandon, settle or contest claims. It may employ attorneys, accountants, custodians of the trust assets, and other agents or assistants as deemed advisable to act with or without discretionary powers and compensate them and pay their expenses from income or principal or both.

#### **Section 5.02 Powers Granted by State Law**

In addition to all of the above powers, my Personal Representative may, without prior authority from any court, exercise all powers conferred by my will or by common law or by the Nevada Revised Statutes or other statute of the State of Nevada or any other jurisdiction whose law applies to my will. My Personal Representative shall have absolute discretion in exercising these powers. Except as specifically limited by my will, these powers shall extend to all property held by my fiduciaries until the actual distribution of the property.

#### **Section 5.03 Distribution Alternatives**

My Personal Representative may make any payments under my will:

Directly to the beneficiary;

In any form allowed by applicable state law for gifts or transfers to minors or persons under disability;

To the beneficiary's guardian, conservator or caregiver for the benefit of the beneficiary; or

By direct payment of the beneficiary's expenses.

A receipt by the recipient for any such distribution, if such distribution is made in a manner consistent with the proper exercise of my fiduciaries' duties hereunder, shall fully discharge my fiduciaries.

## **Article Six Administrative Provisions**

### **Section 6.01 Court Proceedings**

If any trust is established under my will that trust shall be administered in a timely and efficient manner consistent with its terms, free of active judicial intervention and without order, approval or other action by any court. It shall be subject only to the jurisdiction of a court being invoked by the trustees or other interested parties or as otherwise provided by law.

### **Section 6.02 No Bond**

I direct that no fiduciary shall be required to give any bond in any jurisdiction, and if, notwithstanding this direction, any bond is required by any law, statute, or rule of court, no sureties be required.

### **Section 6.03 Compensation**

Any fiduciary under this instrument shall be entitled to reasonable compensation commensurate with services actually performed and to be reimbursed for expenses properly incurred.

### **Section 6.04 Ancillary Fiduciary**

In the event ancillary administration shall be required or desired and my domiciliary Personal Representative is unable or unwilling to act as an ancillary fiduciary, my domiciliary Personal Representative shall have the power to designate, compensate, and remove the ancillary fiduciary. The ancillary fiduciary may either be a natural person or a corporation. My domiciliary Personal Representative may delegate to such ancillary fiduciary such powers granted to my original Personal Representative as my Personal Representative may deem proper, including the right to serve without bond or surety on bond. The net proceeds of the ancillary estate shall be paid over to the domiciliary Personal Representative.

## **Article Seven**

### **Taxes, Claims and Expenses**

#### **Section 7.01     Payment of Death Taxes, Claims and Expenses**

The Trustee of the trust referred to in this will is authorized to pay my funeral and burial expenses, claims against my estate, and expenses of estate administration. Accordingly, I direct my Personal Representative to consult with the Trustee to determine which such expenses and claims should be paid by my personal representative from property passing under my will, and which such expenses and claims should be paid by the trustee from the trust.

I direct my Personal Representative to follow any instructions contained in the MTC LIVING TRUST in making any tax election, including, but not limited to, the allocation of my GST Exemption. I direct that the taxes imposed by reason of my death upon property passing under and outside my will be apportioned and paid in the manner provided in the MTC LIVING TRUST, and I incorporate the tax apportionment provisions of the MTC LIVING TRUST as part of my will.

In no event shall any of such taxes be allocated to or paid from property which is not included in my gross estate for federal estate tax purposes or which qualifies for the federal estate tax charitable deduction.

#### **Section 7.02     Tax and Administrative Elections**

My Personal Representative may exercise any available elections under any applicable income, inheritance, estate, succession, or gift tax law. This authority specifically includes the power to select any alternate valuation date for death tax purposes and the power to determine whether any or all of the administration expenses of my estate are to be used as estate tax deductions or as income tax deductions, and no compensating adjustments need be made between income and principal as a result of such determinations unless my Personal Representative shall determine otherwise, in the discretion of my Personal Representative, or unless required by law.

My Personal Representative shall not be liable to any beneficiary of my estate for tax consequences occasioned by reason of the exercise or non-exercise of any such elections or by reason of the allocation and distribution of property in kind in full or partial satisfaction of any beneficiary's interest in my estate.

## **Article Eight General Provisions**

### **Section 8.01    Applicable Law**

The validity and construction of my will shall be determined by the laws of Nevada.

### **Section 8.02    No Contract to Make Will**

I have not entered into any contract, actual or implied, to make a will.

### **Section 8.03    Contest Provision**

If any beneficiary of this will or any trust created under this will, alone or in conjunction with any other person undertakes or participates in any one or more of the actions listed below, then the right of such beneficiary to take any interest given to such beneficiary under this will or any trust created pursuant to this will shall be determined as it would have been determined had such beneficiary predeceased me without surviving descendants.

Contests by a claim of undue influence, fraud, menace, duress or lack of testamentary capacity, or otherwise objects in any court to the validity of (a) this Will, (b) any trust created under the terms of this Will, (c) any other trust created by me, and any trusts created under those agreements, or (d) any beneficiary designation of an annuity, retirement plan, IRA, Keogh, pension or profit sharing plan or insurance policy signed by or created by me, (collectively referred to hereafter in this Section as "Document" or "Documents") or any amendments or codicils to any Document;

Seeks to obtain an adjudication in any court proceeding that a Document or any of its provisions is void, or otherwise seeks to void, nullify or set aside a Document or any of its provisions;

Files suit on a creditor's claim filed in a probate of my estate, against my trust estate, or any other Document, after rejection or lack of action by the respective fiduciary;

Files a petition or other pleading to change the character (community, separate, joint tenancy, partnership, domestic partnership, real or personal, tangible or intangible) of property already so characterized by a Document;



Claims ownership in a court proceeding to any asset held by me in joint tenancy, other than as a surviving joint tenant;

Files a petition to determine domestic partnership property as my cohabitant or as my Spouse;

Files a petition for probate homestead in a probate proceeding of my estate without the prior written consent of the Personal Representative designated in this Will;

Files a petition for family allowance in a probate of my estate without the prior written consent of the Personal Representative designated in this Will;

Files a petition to impose a constructive trust or resulting trust on any assets of my estate, if any; or

Participates in any of the above actions in a manner adverse to my estate, such as conspiring with or assisting any person who takes any of the above actions.

My Personal Representative is hereby authorized to defend, at the expense of my estate, any violation of this paragraph. A "contest" shall include any action described above in an arbitration proceeding and shall not include any action described above solely in a mediation not preceded by a filing of a contest with a court, notwithstanding the foregoing.

This Section shall not apply so as to cause a forfeiture of any distribution otherwise qualifying for the federal estate tax charitable deduction.

#### **Section 8.04 Construction**

Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural. Words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender, if appropriate.

#### **Section 8.05 Headings and Titles**

The headings and paragraph titles are for reference only.

#### **Section 8.06 Internal Revenue Code, IRC or Code**

References to the Internal Revenue Code, the IRC or the Code shall refer to the Internal Revenue Code of the United States. References to specific sections of the Code shall be to any sections of like or similar import that replace the specific sections as a result of changes to the Internal Revenue Code made after the date of my will.

**Section 8.07 Other Definitions**

Except as otherwise provided in my will, terms shall be as defined in the Nevada Revised Statutes as amended after the date of my will and after my death.

**Section 8.08 Survivorship**

For purposes of this will, any beneficiary shall be deemed to have predeceased me if such beneficiary dies within 90 days after the date of my death.

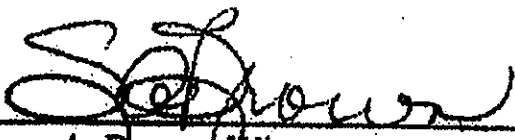
**Section 8.09 Severability**


If any part of this instrument shall be adjudicated to be void or invalid, the remaining provisions not specifically so adjudicated shall remain in full force and effect.

I, MARJORIE T. CONNELL, sign my name to this instrument consisting of 9 pages on January 7, 2008 and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and Testament, that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

  
MARJORIE T. CONNELL, Testatrix

Then and there personally appeared the within-named Sharon A. Brown and Josefina C. Jones, who, being duly sworn, depose and say under the penalty of perjury: That they witnessed the execution of the within Will of the within-named Testatrix, MARJORIE T. CONNELL, that the Testatrix subscribed the Will and declared the same to be her Last Will and Testament in their presence; that they thereafter subscribed their names as witnesses in the presence of the Testatrix and in the presence of each other and at the request of the Testatrix; that the Testatrix at the time of the execution of the Will appeared to them to be of full age and of sound mind and memory, and that they make this affidavit at the request of the Testatrix.

  
Sharon A. Brown, Witness  
900 Rancho Lane  
Las Vegas, NV 89106

  
Josefina C. Jones, Witness  
900 Rancho Lane  
Las Vegas, NV 89106

## Exemplification Certificate

I, Steven D. Grierson, the duly appointed Clerk of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark, do hereby certify and attest the document(s) attached hereto,  
**"LAST WILL AND TESTAMENT OF MARJORIE T. CONNELL"** dated May 19, 2009. As of this date this **LAST WILL AND TESTAMENT OF MARJORIE T. CONNELL** has not been amended or appealed.  
**IN THE ENTITLED ACTION:**

**to be a full and correct copy of the official document(s) now on file in my office**

**This 31<sup>st</sup> day of May, 2012.**

1. Elissa F. Cadish, Judge of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark, do hereby certify that Steven D. Grierson is Clerk of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark (which Court is a Court of Record having a seal) and that the signature to the foregoing certificate and attestation is the genuine signature of the said Steven D. Grierson, as such officer and that such attestation is in due form according to the laws of the State of Nevada.

JUDGE OF THE DISTRICT COURT OF THE  
EIGHTH JUDICIAL DISTRICT OF THE STATE OF  
NEVADA, IN AND FOR THE COUNTY OF CLARK.