

## McEvoy v. Diversified Energy Co. PLC

United States District Court for the Northern District of West Virginia

September 22, 2023, Decided; September 22, 2023, Filed

Civil Action No. 5:22-CV-171

### Reporter

2023 U.S. Dist. LEXIS 169489 \*

MARK McEVOY, et al., Plaintiffs, v. DIVERSIFIED ENERGY COMPANY PLC, et al., Defendants.

### Core Terms

Intervening, gas well, mineral, gas production, surface, impair, oil production, Plaintiffs', allegations, producing, royalties, plug

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For Benjamin Patterson, Chad Silvester, Christine Cochran, Clinton and Candace Drainer Irrevocable Trust, Eben Fritts, Eben Fritts III, Heidi Deem, Jacob Collette, Jeffrey L. Saltis, Jennifer Tanner, Joan Medley, Kathy Johnson, Kellie D. Saltis, Lane Evans, Maynard Tanner, Minerva Evans, Regina Collette, Scott Corcoran, Plaintiffs: Amanda Demmerle, Benjamin A. Lockett, Appalachian Mountain Adovcates Inc., Lewisburg, WV; Brian A Glasser, John W. Barrett, Kevin Wallace Barrett, LEAD ATTORNEY, Bailey & Glasser LLP - Charleston, Charleston, WV; Claire Marie Horan, LEAD ATTORNEY, PRO HAC VICE, Appalachian Mountain Advocates, Charlottesville, VA; Isak J. Howell, LEAD ATTORNEY, Isak Howell Law Office, Roanoke, [\*2] VA; John Michael Becher, Appalachian Mountain Advocates, Lewisburg, WV.

For Carol DelRosso, George DelRosso, individually and on behalf of a proposed class, Mark Goff, Samuel Stark, susan dennison, Plaintiffs: Amanda Demmerle, LEAD ATTORNEY, Benjamin A. Lockett, Appalachian

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For Chester C. Dodd Jr., Kathryn M. Hunt, Linda Dodd Fluharty, Intervenor Defendants: G. Nicholas Casey Jr., LEAD ATTORNEY, Lewis Glasser Casey & Rollins PLLC, Charleston, WV; Patrick S. Casey, Sandra M. Chapman, Ryan P. Orth, LEAD ATTORNEYS, Casey & Chapman PLLC, Wheeling, WV.

For [\*3] David Brian McMahon, Objector: David B. McMahon, Charleston, WV; John F. McCuskey, LEAD ATTORNEY, Shuman McCuskey Slicer PLLC, Charleston, WV.

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For Gas and Oil Association of WV Inc., Amicus: Evan George Conard, LEAD ATTORNEY, Bowles Rice LLP - Charleston, Charleston, WV; George A. Patterson III, LEAD ATTORNEY, Bowles Rice LLP, Charleston, WV; Patrick Craig [\*4] Timony, LEAD ATTORNEY, Bowles Rice McDavid Graff & Love - Charleston, Charleston, WV.

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For Luke Plants, Plants and Goodwin Inc., Movants: Timur R. Dikec, LEAD ATTORNEY, Nelson Mullins Riley & Scarborough LLP, Pittsburgh, PA.

For Sierra Club, Objector: Randal M Whitlatch Jr, LEAD ATTORNEY, Duane Morris LLP, Pittsburgh, PA.

For Susan Tawney, Plaintiff: Amanda Demmerle, Benjamin A. Lockett, LEAD ATTORNEYS, Appalachian Mountain Adovcates Inc., Lewisburg, [\*5] WV; Athanasios Basdekis, Kevin Wallace Barrett, John W. Barrett, Brian A Glasser, LEAD ATTORNEYS, Bailey & Glasser LLP - Charleston, Charleston, WV; Brian R. Swiger, LEAD ATTORNEY, Bailey Glasser LLP, Charleston, WV; Claire Marie Horan, LEAD ATTORNEY, PRO HAC VICE, Appalachian Mountain Advocates, Charlottesville, VA; John Michael Becher, LEAD ATTORNEY, Appalachian Mountain Advocates, Lewisburg, WV; Joseph M. Lovett, LEAD ATTORNEY, Lewisburg, WV; Panida A. Anderson, LEAD ATTORNEY, PRO HAC VICE, Bailey & Glasser LLP - DC, Washington, DC.

For The Institute for Energy Economics and Financial Analysis, Notice Only: Edward A. Icové, LEAD ATTORNEY, PRO HAC VICE, Icové Legal Group, Cleveland, OH.

For West Virginia Land & Mineral Owners Association, Amicus: William M. Herlihy, LEAD ATTORNEY, Spilman Thomas & Battle PLLC, Charleston, WV.

**Judges:** JOHN PRESTON BAILEY, UNITED STATES DISTRICT JUDGE.

**Opinion by:** JOHN PRESTON BAILEY

## Opinion

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### ORDER

Pending before this Court is a Motion on Behalf of Chester C. Dodd, Jr., Kathryn M. Hunt, and Linda Dodd Fluharty to Intervene as Defendants [Doc. 344], filed July 20, 2023. A Memorandum in Opposition [Doc. 354] was filed on August 3, 2023. A Reply [Doc. 357] was filed on August 10, 2023. [\*6] The Court held a Motion hearing on September 21, 2023. Therefore, the Motion to Intervene is ripe for adjudication.

In the Motion, Chester C. Dodd, Jr., Kathryn M. Hunt, and Linda Dodd Fluharty ("Intervening Defendants") move the Court to intervene as defendants. In support, Intervening Defendants state they are West Virginia mineral owners whose interests would be impaired and/or terminated as a result of Plaintiffs' claims seeking, in part, to plug thousands of alleged abandoned gas wells in West Virginia. More specifically, Intervening Defendants argue that if a disposition is rendered in favor of the plaintiffs and the subject gas wells are plugged, the Intervening Defendants would be deprived of further royalties by way of gas wells that are still producing or that can be rehabilitated.

In their Response in Opposition, plaintiffs state that plaintiffs' action will not impair any interest of the Intervening Defendants and any such interest is adequately represented by the existing defendants. Plaintiffs also argue that this Court should deny the Intervening Defendants request for intervention under [Rule 24\(b\)](#) because the motion is untimely and their presence would complicate the issues to [\*7] be determined and burden plaintiffs and the Court without providing any countervailing benefit.

Pursuant to [Federal Rule of Civil Procedure 24\(a\)](#), "[o]n timely motion, the court must permit anyone to intervene who: (1) is given an unconditional right to intervene by a federal statute; or (2) claims an interest relating to the

property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest."

In the Third Amended Class Action Complaint [Doc. 322], for example, plaintiff Joan Medley alleges:

370. Medley owns the surface estate. Upon information and belief, she does not possess the right to produce oil or gas from the property because the mineral estate was severed from the surface estate prior to Medley's acquisition of the property.

371. As a surface owner, Medley is not entitled to royalties or other compensation for gas production by the mineral estate owner or its lessee.

\* \* \*

373. The first conventional vertical gas well is known by a unique numerical identifier, called an API number, which is 047-039-02361.

\* \* \*

375. According to the [\*8] Office of Oil and Gas, the well's operator has not reported natural gas production in any amount since 2018 for well 047-039-02361.

\* \* \*

377. According to the Office of Oil and Gas, the well 047-039-02361 has not produced oil since 2018.

\* \* \*

384. Without any mineral production on those wells, there is no purpose and no legal justification for the continued presence of the wells or their associated equipment.

[Doc. 322 at 44-45].

The Intervening Defendants all have mineral interests in Well 047-039-02361. The WV DEP Office of Oil and Gas website lists Well 047-039-02361 as an "Active Well." Moreover, plaintiff Medley's allegation that the well has not reported gas production in any amount since 2018 is simply untrue. As the chart shows below, Well 047-039-02361, even if only marginally, produced 18mcf of gas<sup>1</sup> in 2022.<sup>2</sup>

WVDEP Office of Oil and Gas - Well Search

Disclaimer: This page is posted online for an open well permit application. See section 20-2-2(a) of the Code of West Virginia. This page is intended for use by persons who are not well owners. It does not constitute an offer of insurance or any other financial product. The operator of an API number on this page does not imply that a permit has been issued. The API number is used in a link to the permit application. The operator of the well is responsible for the accuracy of the information provided. The operator of the well is responsible for the accuracy of the information provided. The operator of the well is responsible for the accuracy of the information provided.

Current Operator

Well API	Operator	Surface Owner	Well Number	Well Status	Well Type	Last Permit Issue Date
04703902361	DAWBERG PRODUCTION LLC	EDUCATION RETIRED	1	Active Well	Vertical	08/24/2022

Note: The operator listed above is the current operator of the well. The operator may or may not have produced production for this well for the years indicated. The production listed below spans the years shown, regardless of the operator who originally reported a particular well's production numbers.

Production by Energy Type

Well Lifetime Gas Production

Reporting Operator	Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
DAWBERG PRODUCTION LLC	2022	0	0	0	0	0	0	0	0	0	0	0	18
DAWBERG PRODUCTION LLC	2021	0	0	0	0	0	0	0	0	0	0	0	0
DAWBERG PRODUCTION LLC	2020	0	0	0	0	0	0	0	0	0	0	0	0
WV ENERGY SERVICES COMPANY LLC	2019	0	0	0	0	0	0	0	0	0	0	0	0
WV ENERGY SERVICES COMPANY LLC	2018	0	0	0	0	0	0	0	0	0	0	0	0

Based upon the Intervening Defendants' material interest in the subject gas wells that are still producing, and the allegations set forth in the Third Amended Class Action Complaint, the Intervening Defendants have a direct interest in the outcome of this matter. Thus, the Motion on Behalf of Chester C. Dodd, Jr., Kathryn M. Hunt, and Linda Dodd Fluharty to Intervene as Defendants [\*9] [Doc. 344] is **GRANTED**.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record herein.

**DATED:** September 22, 2023.

/s/ John Preston Bailey

**JOHN PRESTON BAILEY**

**UNITED STATES DISTRICT JUDGE**

End of Document

<sup>1</sup>The WV DEP website shows that Well 047-039-02361 produced no oil since 2019.

<sup>2</sup>Plaintiffs filed the Third Amended Complaint on June 16, 2023. Upon further review, some of the allegations concerning some wells in the Third Amended Complaint appear to be unsupported.