

Information or instructions: Application for authority to execute oil, gas and mineral lease

PREVIEW

1. The Texas Probate Code requires the court to approve any transfer interest in the Ward's estate prior to the actual conveyance of the same.
2. The following application assumes that the Ward owned property over which the Ward holds the right to execute oil and gas leases (execute right).
3. The Guardian has been approached by parties wishing to explore for oil and gas on the Ward's land and in order to accomplish that purpose the court must approve the application for authority to execute an oil, gas and mineral lease.
4. It is important that the application and order state the extent of oil and gas development requested. The form gives examples of some of the typical powers requested for oil and gas development.
5. Sections 847-852 of the Texas Probate Code state as follows:

Sec. 847. Mineral Leases After Public Notice

(a) In this subpart:

(1) "Land" or "interest in land" includes minerals or any interest in any of the minerals in place.

(2) "Mineral development" includes exploration, by geophysical or by any other means, drilling, mining, developing, and operating, and producing and saving oil, other liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, sulphur, metals, and all other minerals, solid or otherwise.

(3) "Property" includes land, minerals in place, whether solid, liquid, or gaseous, as well as an interest of any kind in the property, including royalty, owned by the estate.

(b) A guardian acting solely under an order of a court, may be authorized by the court in which the guardianship proceeding is pending to make, execute, and deliver leases, with or without unitization clauses or pooling provisions, that provide for the exploration for, and development and production of, oil, other liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase), minerals and other solid minerals, and other minerals, or any of those minerals in place, belonging to the estate.

(c) All leases authorized by Subsection (b) of this section, with or without pooling provisions or unitization clauses, shall be made and entered into pursuant to and in conformity with Subsections (d)-(m) of this section.

(d) The guardian of the estate shall file a written application with the court seeking authority to lease property of the estate for mineral exploration and development, with or without

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pooling provisions or unitization clauses. The name of any proposed lessee or the terms, provisions, or form of any desired lease do not need to be set out or suggested in the application. The application shall:

- (1) describe the property fully enough by reference to the amount of acreage, the survey name or number, abstract number, or other description that adequately identifies the property and its location in the county in which the property is located;
- (2) specify the interest thought to be owned by the estate if less than the whole, but asking for authority to include all interest owned by the estate if that is the intention; and
- (3) set out the reasons why the particular property of the estate should be leased.

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(e) When an application to lease is filed, under this section the county clerk shall immediately call the filing of the application to the attention of the court. The judge shall promptly make and enter a brief order designating the time and place for the hearing of the application. If the hearing does not take place at the time originally designated by the court or by timely order of continuance duly entered, the hearing shall be automatically continued without further notice to the same hour or time the following day, except Sundays and holidays on which the county courthouse is officially closed to business, and from day to day until the application is finally acted on and disposed of by order of the court. No notice of the automatic continuance shall be required.

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(f) The guardian shall give written notice directed to all persons interested in the estate of the time designated by the judge for the hearing on the application to lease. The notice must be dated, state the date on which the application was filed, describe briefly the property sought to be leased, specify the fractional interest sought to be leased if less than the entire interest in the tract identified, and state the time and place designated by the judge for the hearing. Exclusive of the date of notice and of the date set for hearing, the guardian shall give at least 10 days' notice by publishing in one issue of a newspaper of general circulation in the county in which the proceeding is pending or by posting if there is no newspaper in the county. Posting under this section may be done at the guardian's instance. The date of notice when published shall be the date the newspaper bears.

(g) A court order authorizing any acts to be performed pursuant to the application is null and void in the absence of:

- THANK YOU**
- (1) a written order of the court designating time and place for hearing;
 - (2) a notice issued by the guardian of the estate in compliance with the order; and
 - (3) proof of publication or posting of the notice as required.

(h) At the time and place designated for the hearing, or at any time to which the hearing has been continued as provided by this section, the judge shall hear the application and require proof as to the necessity or advisability of leasing for mineral development the property

described in the application and in the notice. If the judge is satisfied that the application is in due form, that notice has been duly given in the manner and for the time required by law, that the proof of necessity or advisability of leasing is sufficient, and that the application should be granted, the judge shall enter an order so finding and authorizing the making of one or more leases, with or without pooling provisions or unitization clauses (with or without cash consideration if deemed by the court to be in the best interest of the estate) that affects and covers the property or portions of the property described in the application. The order that authorizes the leasing must also set out the following mandatory contents:

(1) the name of the lessee;

(2) the actual cash consideration, if any, to be paid by the lessee;

(3) a finding that the guardian is exempt by law from giving bond if that is a fact, and if the guardian is required to give a bond, then a finding as to whether or not the guardian's general bond on file is sufficient to protect the personal property on hand, inclusive of any cash bonus to be paid; but if the court finds the general bond is insufficient to meet these requirements, the order shall show the amount of increased or additional bond required to cover the deficiency;

(4) a complete exhibit copy, either written or printed, of each lease authorized to be made, either set out in, attached to, incorporated by reference in, or made a part of the order.

(i) An exhibit copy must show the name of the lessee, the date of the lease, an adequate description of the property being leased, the delay rental, if any, to be paid to defer commencement of operations, and all other terms and provisions authorized. If no date of the lease appears in the exhibit copy or in the court's order, then the date of the court's order is considered for all purposes as the date of the authorized lease. If the name and address of a depository bank for receiving rental is not shown in the exhibit copy, the name or address of the depository bank may be inserted or caused to be inserted in the lease by the estate's guardian at the time of its execution or at any other time agreeable to the lessee, his successors, or assigns.

(j) On the hearing of an application for authority to lease, if the court grants the authority to lease, the guardian of the estate is fully authorized to make, not later than the 30th day after the date of the judge's order, unless an extension is granted by the court on a sworn application showing good cause, the lease as evidenced by the true exhibit copies in accordance with the order. Unless the guardian is not required to give a general bond, a lease for which a cash consideration is required, though ordered, executed, and delivered, is not valid unless the order authorizing the lease actually makes a finding with respect to the general bond. If the general bond has been found insufficient, the lease is not valid until the bond has been increased or an additional bond given with the sureties required by law as required by the court order, has been approved by the judge, and has been filed with the clerk of the court in which the proceeding is pending. If two or more leases on different lands are authorized by the same order, the general bond shall be increased or additional

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bonds given to cover all. It is not necessary for the judge to make any order confirming the leases.

PREVIEW

(k) Every lease when executed and delivered in compliance with the rules set out in this section shall be valid and binding on the property or interest owned by the estate and covered by the lease for the full duration of the term as provided in the lease and is subject only to its terms and conditions even though the primary term extends beyond the date when the estate is closed in accordance with law. In order for a lease to be valid and binding on the property or interest owned by the estate under this section, the authorized primary term in the lease may not exceed five years, subject to terms and provisions of the lease extending it beyond the primary term by paying production, by bona fide drilling or reworking operations, whether in or on the same or additional well or wells with no cessation of operations of more than 60 consecutive days before production has been restored or maintained, or by the provisions of the lease relating to a shut-in gas well.

(l) As to any existing valid mineral lease executed and delivered in compliance with this chapter before September 1, 1993, a provision of the lease continuing the lease in force after its five-year primary term by a shut-in gas well is validated, unless the validity of the provision is an issue in a lawsuit pending in this state on September 1, 1993.

(m) Any oil, gas, and mineral lease executed by a guardian under this chapter may be amended by an instrument that provides that a shut-in gas well on the land covered by the lease or on land pooled with all or some part of the land covered by the lease shall continue the lease in force after its five-year primary term. The instrument shall be executed by the guardian, with court approval, and on the terms and conditions as may be prescribed in the instrument.

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Sec. 848. Mineral Leases at Private Sale

(a) Notwithstanding the mandatory requirements for setting a time and place for hearing of an application to lease under Section 847 of this code and the issuance, service, and return of notice, the court may authorize the making of oil, gas, and mineral leases at private sale without public notice or advertising if, in the opinion of the court, sufficient facts are set out in the application to show that it would be more advantageous to the estate that a lease be made privately and without compliance with the mandatory requirements under Section 847 of this code. Leases authorized under this section may include pooling provisions or unitization clauses as in other cases.

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(b) At any time after the expiration of five days and before the expiration of the 10th day after the date of filing and without an order setting the time and place of hearing, the court shall hear the application to lease at a private sale. The court shall inquire into the manner in which the proposed lease has been or will be made and shall hear evidence for or against the application. If the court is satisfied that the lease has been or will be made for a fair and sufficient consideration and on fair terms and has been or will be properly made in conformity with the law, the court shall enter an order authorizing the execution of the lease without the necessity of advertising, notice, or citation. An order entered under this

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subsection must comply in all other respects with the requirements essential to the validity of mineral leases set out in this chapter as if advertising or notice were required. An order that confirms a lease made at a private sale does not need to be issued. A lease made at a private sale is not valid until the increased or additional bond required by the court, if any, has been approved by the court and filed with the clerk of the court.

Sec. 849. Pooling or Unitization of Royalty or Minerals

(a) When an existing lease on property owned by the estate does not adequately provide for pooling or unitization, the court may authorize the commitment of royalty or mineral interests in oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, and other minerals or any one or more of them owned by the estate being administered to agreements that provide for the operation of areas as a pool or unit for the exploration, development, and production of all those minerals, if the court finds that the pool or unit to which the agreement relates will be operated in such a manner as to protect correlative rights, or to prevent the physical or economic waste of oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, or other mineral subject thereto, and that it is in the best interests of the estate to execute the agreement. Any agreement so authorized to be executed may provide that:

(1) operations incident to the drilling of or production from a well on any portion of a pool or unit are deemed for all purposes to be the conduct of operations on or production from each separately owned tract in the pool or unit;

(2) any lease covering any part of the area committed to a pool or unit shall continue in force in its entirety as long as oil, gas, or other mineral subject to the agreement is produced in paying quantities from any part of the pooled or unitized area, as long as operations are conducted as provided in the lease on any part of the pooled or unitized area, or as long as there is a shut-in gas well on any part of the pooled or unitized area if the presence of the shut-in gas well is a ground for continuation of the lease on the terms of the lease;

(3) the production allocated by the agreement to each tract included in a pool or unit shall, when produced, be deemed for all purposes to have been produced from the tract by a well drilled on the tract;

(4) the royalties provided for on production from any tract or portion of a tract within the pool or unit shall be paid only on that portion of the production allocated to the tract in accordance with the agreement;

(5) the dry gas, before or after extraction of hydrocarbons, may be returned to a formation underlying any lands or leases committed to the agreement, and that no royalties are required to be paid on the gas so returned; and

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(6) gas obtained from other sources or another tract of land may be injected into a formation underlying any land or lease committed to the agreement, and that no royalties are required to be paid on the gas so injected when same is produced from the unit.

(b) Pooling or unitization, when not adequately provided for by an existing lease on property owned by the estate, may be authorized by the court in which the proceeding is pending pursuant to and in conformity with Subsections (c)-(g) of this section.

(c) The guardian of the estate shall file with the county clerk of the county in which the guardianship proceeding is pending the guardian's written application for authority to enter into a pooling or unitization agreement supplementing, amending, or otherwise relating to, any existing lease covering property owned by the estate, or to commit royalties or other interest in minerals, whether subject to lease or not, to a pooling or unitization agreement. The application must also describe the property sufficiently as required in the original application to lease, describe briefly the lease to which the interest of the estate is subject, and set out the reasons the proposed agreement concerning the property should be made. A true copy of the proposed agreement shall be attached to the application and by reference made a part of the application, but the agreement may not be recorded in the minutes. The clerk shall immediately, after the application is filed, call it to the attention of the judge.

(d) Notice of the filing of the application by advertising, citation, or otherwise is not required.

(e) The judge may hold a hearing on the application at a time that is agreeable to the parties to the proposed agreement. The judge shall hear proof and be satisfied as to whether it is in the best interests of the estate that the proposed agreement be authorized. The hearing may be continued from day to day and from time to time as the court finds to be necessary.

(f) If the court finds that the pool or unit to which the agreement relates will be operated in such a manner as to protect correlative rights or to prevent the physical or economic waste of oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, or other mineral subject to the pool or unit, that it is in the best interests of the estate that the agreement be executed, and that the agreement conforms substantially with the permissible provisions of Subsection (a) of this section, the court shall enter an order setting out the findings made by the court and authorizing execution of the agreement, with or without payment of cash consideration according to the agreement. If cash consideration is to be paid for the agreement, the court shall make a finding as to the necessity of increase or additional bond and a finding is made in the making of leases on payment of the cash bonus for the lease. The agreement is not valid until the increased or additional bond required by the court, if any, has been approved by the judge and filed with the clerk. If the date is not stipulated in the agreement, the date of the court's order shall be the effective date of the agreement.

Sec. 850. Special Ancillary Instruments Executed Without Court Order

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As to any valid mineral lease or pooling or unitization agreement, executed on behalf of the estate before September 1, 1993, pursuant to provisions of a former owner of land, minerals, or royalty affected by the lease, pooling, or unitization agreement, the guardian of the estate that is being administered, without further order of the court and without consideration, may execute division orders, transfer orders, instruments of correction, instruments designating depository banks for the reception of delay rentals or shut-in gas well royalty to accrue or become payable under the terms of the lease, or similar instruments pertaining to the lease or agreement and the property covered by the lease or agreement.

Sec. 851. Procedure When Guardian of Estate Neglects to Apply for Authority

When the guardian of an estate neglects to apply for authority to subject property of the estate to a lease for mineral development, pooling, or unitization, or authority to commit royalty or other interest in minerals to pooling or unitization, any person interested in the estate, on written application filed with the county clerk, may cause the guardian to be cited to show cause why it is not in the best interests of the estate for the lease to be made or an agreement to be entered into. The clerk shall immediately call the filing of the application under this section to the attention of the judge of the court in which the guardianship proceeding is pending. The judge shall set a time and place for a hearing on the application. The guardian of the estate shall be cited to appear and show cause why the execution of the lease or agreement should not be ordered. On hearing and if satisfied from the proof that it would be in the best interests of the estate, the court shall enter an order requiring the guardian to file the guardian's application to subject the property of the estate to a lease for mineral development, with or without pooling or unitization provisions, or to commit royalty or other minerals to unitization, as the case may be. The procedures prescribed with respect to original application to lease or with respect to original application for authority to commit royalty or minerals to pooling or unitization shall be followed.

Sec. 852. Validation of Certain Leases and Pooling or Unitization Agreements Based on Previous Statutes

All leases on the oil, gas, or other minerals existing on September 1, 1993, belonging to the estates of minors or other incapacitated persons and all agreements with respect to the pooling or unitization of oil, gas, or other minerals or any interest in oil, gas, or other minerals with like properties of others that have been authorized by the court having venue, executed, and delivered by a guardian or other fiduciary of the estate of a minor or incapacitated person in substantial conformity to the rules set forth in statutes on execution or delivery providing for only seven days' notice in some instances and for a brief order designating a time and place for hearing, are validated insofar as the period of notice or absence of an order setting a time and place for hearing is concerned, unless the length of time of the notice or the absence of the order is an issue in a lease or pooling or unitization agreement that is involved in a lawsuit pending on September 1, 1993.

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Form: Application for authority to execute oil, gas and mineral lease

PREVIEW
CAUSE NUMBER _____

IN THE MATTER OF:

IN THE COUNTY COURT

THE GUARDIANSHIP OF [PERSON OR
ESTATE] OF NAME

NUMBER _____

AN INCAPACITATED PERSON

[COUNTY] COUNTY, TEXAS

APPLICATION FOR AUTHORITY TO EXECUTE
OIL, GAS AND MINERAL LEASE

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NOW COMES [Name] Guardian over the persons of estate of [Name] Wards, and applies
for authority to lease properties of the estate for mineral exploration and development, [specify:
with or without pooling provisions and/or unitization clauses], and in support of such application
respectfully shows as follows:

1.

1.1 The property is described as follows: [insert legal description]

THIS DOCUMENT

2.

2.1 The interest in the property that is owned by the Wards of this Court is as follows: [list
interest owned, e.g., the entire surface estate of the land and the fractional royalty or mineral interest
owned].

2.2 As owners, the Wards have the exclusive right and power to execute and deliver valid leases
and/or development contracts effectively covering an undivided [Amount] percent of the oil, gas
and other minerals of every kind, character or any one or more of the same in and under the land.

2.3 Wards also own an undivided [Amount] percent in the royalties, rentals, bonus or other
benefits or payments due or that may become payable under the lease, leases or development
contracts covering the oil, gas or other mineral in the lands

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2.4 The above-stated interests are owned by the Wards and authority is hereby requested to include any and all of the interests owned by the Wards on the lands for the exploration and development of oil and gas rights.

3.

3.1 The reasons the property should be leased for oil, gas, mineral exploration and development are as follows:

a It is believed that there is a good probability that the property has under it commercial deposits of oil, gas or some other valuable mineral.

b The exact nature and extent of the mineral content is not presently known and can be determined only by exploration and further development.

c There is a possibility that operations recently conducted in the immediate vicinity of or on the lands have resulted or can result in production of substantial quantities of oil, gas or other minerals and may lead to further production in commercial quantities from the above described lands.

d Applicant has received a proposal for the execution and sale of a lease covering the interests of the Wards in the oil, gas and other minerals in and under such lands for the consideration of a cash bonus and royalty participation in the mineral production.

e It would be advantageous and in the best interests of the Wards to lease such interests;

f Any mineral value, revenue, or income to be realized by the owners of the land above described can be best realized, considering the nature and expense of development and operations, by leasing the property to some person or persons regularly engaged in the oil and gas exploration business.

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g The execution of an oil, gas and mineral lease on the lands at this time would produce additional revenue for the Wards in the form of a cash bonus and the payment of annual delay rentals which the lease will provide for.

4.

4.1 Guardian therefore prays that the setting of a time and place for hearing of this application, and issuance, service, and return of notice or of citation should be omitted.

4.2 Guardian believes that it would be advantageous to the Wards if this application and lease are made privately without compliance with the otherwise mandatory requirements of the Texas Probate Code for authorizing the making of such lease.

4.3 The proposed lease that is contemplated for execution by applicant covering the Wards' interests in the above described property would be executed to and in favor of [Name] [name proposed Lessee, attach a copy of the oil and gas lease, and mark it as Exhibit "A"] for [insert legal description].

4.4 This leasing will encourage exploration and development of the premises for oil, gas and other minerals.

4.5 The execution of the lease attached to this application as Exhibit "A" would be in the best interests of the estate.

PRAYER

Applicant prays that [he or she] be authorized to execute the oil, gas and mineral lease privately and without compliance with such otherwise mandatory requirements of the Texas Probate Code regarding oil and gas leases; and for such other orders as the Court may deem proper.

Respectfully Submitted,
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[Law Firm Name]

By
PREVIEW_____

[Attorney's Name]

Attorney for Applicant

[Attorney's Address]

[Telephone Number]

[Facsimile Number]

[Bar Card Number]

Guardian
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Form: Affidavit for an application for authority to execute oil, gas and mineral lease

PREVIEW

AFFIDAVIT

State of Texas

County of [Name of county]

Before me the undersigned authority on _____ personally appeared [Name] known to me to be the Guardian of the person and estate of [Name] Ward, and to be the person whose name is subscribed to the above and foregoing Guardian's Application and the Guardian hereby certifies that the above statements are true and correct.

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Affiant on oath swears that the statements are true and correct based on his or her personal knowledge and Affiant has:

Subscribed and sworn to before me on _____ by

_____.

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Signature of officer

Notary's typed or printed name

My commission expires:

[or Notary's Stamp]

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Form: Order for authority to execute oil, gas and mineral lease

PREVIEW
CAUSE NUMBER _____

IN THE MATTER OF:

IN THE COUNTY COURT

THE GUARDIANSHIP OF [PERSON OR
ESTATE] OF NAME

NUMBER _____

AN INCAPACITATED PERSON

[COUNTY] COUNTY, TEXAS

ORDER GRANTING APPLICATION FOR AUTHORITY TO EXECUTE
OIL, GAS AND MINERAL LEASE
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Be it remembered on _____ in the above entitled and numbered cause,

came on to be heard the application of [Name] Guardian of [Name] Wards, for the Court's
permission to grant authority to lease property of the Wards for oil, gas and mineral exploration
and/or development. The property is as follows: [insert legal description].

It appearing to the Court and the Court being fully advised and finding

THAT it has jurisdiction of the subject matter and venue of this proceeding and the business
therein, that the application is in due form, that the Court has jurisdiction of all persons of whom it
should have jurisdiction under law, that _____ days have expired from the date of
filing the Application to Lease land, that this hearing is being held prior on the expiration of
_____ days from such filing date, and the Court having inquired into the manner in
which the proposed lease was made and having required and heard evidence and proof both for and
against it and as to the advisability and necessity of it and the proof satisfying the Court;

THANK YOU
THAT the leasing of the property described in the application and a copy of the lease being
attached hereto and incorporated by reference herein is in the best interest of the Wards and that it
would be more advantageous to the estate that this lease be made privately and without compliance
with the requirements that would otherwise require the setting of a hearing and place for hearing on

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this application and the issuance, service and return of notice, and the Court being further satisfied that the lease is made for a fair and sufficient consideration and on fair terms and was properly made in conformity with the law and that such application should be granted, and that execution of such lease should be authorized without the need of advertising, notice, or citation;

THAT the name of the Lessee is _____ and that the actual cash consideration to be paid by the Lessee for the execution of this lease is \$[Amount] and out of the sum \$[Amount] of such consideration is payable to the Guardian for the mineral interest actually owned by the Wards, the remaining \$[Amount] of such total consideration being applicable to mineral interests belonging to _____ who is not a Ward subject to this proceeding, the moneys being payable to _____ Bank in [Name of County] County, Texas for their credit by Lessee; and

THAT the personal representative's general bond is on file herein and is sufficient to protect the personal property on hand inclusive of the cash bonus to be paid, and that below set out is a complete and true exhibit of a copy of the written lease, which copy shows the name of the Lessee, the date of the lease, an adequate description of the property being leased, which includes and is hereby authorized to include all of the interests of the estate therein and all other terms and provisions of the lease which are authorized,

The Court concludes that the oil and gas lease should therefore be made, executed, and entered into.

It is therefore ORDERED, ADJUDGED and DECREED that the application for authority to execute oil and gas lease, the lease being attached thereto, is hereby approved and it is further ORDERED, ADJUDGED and DECREED that the Wards' Guardian shall be and is fully authorized in accordance with this order to execute and deliver to _____ as Lessee with

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_____ days after the filing of this Order the oil, gas and mineral lease covering the
PREVIEW
entire interest of the estate in such lands for and upon a cash bonus payment to the Guardian of

[\$Amount] for the Wards' estate and the payment of [\$Amount] amounts to _____

Bank or credit separately for [Name] persons not party to this proceeding; which oil, gas and

mineral lease is fully evidenced by the true and complete copy of it attached hereto and incorporated

herein by reference and made a part of this Order as if fully copied at length herein.

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JUDGE PRESIDING

THIS DOCUMENT

THANK YOU

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