

WHITING PETROLEUM CORP

Form S-1/A

March 13, 2012

Table of Contents

As filed with the Securities and Exchange Commission on March 13, 2012

Registration No. 333-178586

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

**Amendment No. 3**

**to**

**FORM S-1**

**WHITING USA TRUST II**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**1311**

*(Primary Standard Industrial*

*Classification Code No.)*

**38-7012326**

**Amendment No. 3**

**to**

**FORM S-3**

**WHITING PETROLEUM CORPORATION**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**1311**

*(Primary Standard Industrial*

*Classification Code No.)*

**20-0098515**

(I.R.S. Employer  
Identification No.)

Edgar Filing: WHITING PETROLEUM CORP - Form S-1/A

(I.R.S. Employer  
Identification No.)

**919 Congress Avenue, Suite 500**

**Austin, Texas 78701**

**(512) 236-6599**

(Address, including zip code, and telephone number,

including area code, of registrant's principal executive offices)

**Michael J. Ulrich**

**The Bank of New York Mellon Trust Company, N.A., Trustee**

**919 Congress Avenue, Suite 500**

**Austin, Texas 78701**

**(512) 236-6599**

(Name, address, including zip code, and telephone number,  
including area code, of agent for service)

**1700 Broadway, Suite 2300**

**Denver, Colorado 80290-2300**

**(303) 837-1661**

(Address, including zip code, and telephone number,  
including area code, of registrant's principal executive offices)

**James J. Volker**

**Chairman and Chief Executive Officer**

**1700 Broadway, Suite 2300**

**Denver, Colorado 80290-2300**

**(303) 837-1661**

(Name, address, including zip code, and telephone number,  
including area code, of agent for service)

*with copies to:*

**David P. Oelman, Esq.**

**Kathryn S. Wilson, Esq.**

**Vinson & Elkins L.L.P.**

**1001 Fannin Street, Suite 2500**

**Houston, Texas 77002-6760**

**(713) 758-2222**

**Benjamin F. Garmer, III, Esq.**

**John K. Wilson, Esq.**

**Foley & Lardner LLP**

**777 East Wisconsin Avenue**

**Milwaukee, Wisconsin 53202-5306**

**(414) 271-2400**

**Approximate date of commencement of proposed sale to the public:** As soon as practicable after this Registration Statement becomes effective.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. "

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. "

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

## Edgar Filing: WHITING PETROLEUM CORP - Form S-1/A

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box. "

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box. "

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Whiting USA Trust II

Large accelerated filer "	Accelerated filer "	Non-accelerated filer x (Do not check if a smaller reporting company)	Smaller reporting company "
Whiting Petroleum Corporation			

Large accelerated filer x	Accelerated filer "	Non-accelerated filer "	Smaller reporting company "
		(Do not check if a smaller reporting company)	

**Table of Contents**

**EXPLANATORY NOTE**

This Amendment No. 3 to the Registration Statement on Forms S-1 and S-3 (Registration Nos. 333-178586 and 333-178586-01) (the Registration Statement ) of Whiting USA Trust II and Whiting Petroleum Corporation is being filed solely to include pages 104 through 110, which contained a portion of the Underwriting section and all of the Legal Matters , Experts , Where You Can Find More Information and Glossary of Certain Definitions sections. These pages were inadvertently omitted from Amendment No. 2 to the Registration Statement due to a printer error.

---

**Table of Contents**

The information in this preliminary prospectus is not complete and may be changed. Whiting may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

**Subject to Completion dated March 13, 2012**

**PRELIMINARY PROSPECTUS**

## **Whiting USA Trust II**

**16,000,000 Trust Units**

*This is an initial public offering of units of beneficial interest in Whiting USA Trust II. Whiting Petroleum Corporation has formed the trust and, immediately prior to the closing of this offering, will contribute a term net profits interest in oil and natural gas properties to the trust in exchange for 18,400,000 trust units. Whiting is offering all of the trust units to be sold in this offering and will receive all proceeds from the offering. Whiting is an independent oil and gas company engaged in acquisition, development, exploitation, production and exploration activities. Whiting's common stock is traded on the New York Stock Exchange under the symbol WLL.*

*There is no current public market for the trust units. Whiting expects that the public offering price will be between \$19.00 and \$21.00. The trust units have been approved for listing on the New York Stock Exchange under the symbol WHZ, subject to official notice of issuance.*

**The trust units.** *Trust units are units of beneficial interest in the trust and represent undivided interests in the trust. They do not represent any interest in Whiting.*

**The trust.** *The trust will own the net profits interest, which represents the right to receive 90% of the net proceeds from the sale of production from oil and gas properties located in the Rocky Mountains, Permian Basin, Gulf Coast and Mid-Continent regions of the United States held by Whiting. The net profits interest will terminate on the later to occur of (1) December 31, 2021, or (2) the time when 11.79 MMBOE have been produced from such underlying properties and sold (which is the equivalent to 10.61 MMBOE attributable to the net profits interest), and the trust will soon thereafter wind up its affairs and terminate.*

**The trust unitholders.** *As a trust unitholder, you will receive quarterly distributions of cash from the proceeds that the trust receives from Whiting pursuant to the net profits interest. The trust's ability to pay such quarterly cash distributions will depend on its receipt of net proceeds attributable to the net profits interest, which will depend upon, among other things, production quantities, sale prices of oil, natural gas and natural gas liquids, costs to produce and develop the oil, natural gas and natural gas liquids and the amount and timing of trust administrative expenses.*

**Investing in the trust units involves a high degree of risk. Before buying any trust units, you should read the discussion of material risks of investing in the trust units in Risk factors beginning on page 18 of this prospectus.**

**These risks include the following:**

The amounts of cash distributions by the trust are subject to fluctuation as a result of changes in oil, natural gas and natural gas liquids prices.

Estimates of future cash distributions to unitholders are based on assumptions that are inherently subjective.

Actual reserves and future production may be less than current estimates, which could reduce cash distributions by the trust and the value of the trust units.

## Edgar Filing: WHITING PETROLEUM CORP - Form S-1/A

Risks associated with the production, gathering, transportation and sale of oil, natural gas and natural gas liquids could adversely affect cash distributions by the trust.

The processes of drilling and completing wells are high risk activities.

The trust and the trust unitholders will have no voting or managerial rights with respect to the underlying properties. As a result, trust unitholders will have no ability to influence the operation of the underlying properties.

Whiting has limited control over activities on the underlying properties that Whiting does not operate, which could reduce production from the underlying properties, increase capital expenditures and reduce cash available for distribution to trust unitholders.

The reserves attributable to the underlying properties are depleting assets and production from those reserves will diminish over time. The trust is precluded from acquiring other oil and natural gas properties or net profits interests to replace the depleting assets and production.

The amount of cash available for distribution by the trust will be reduced by the amount of any costs and expenses related to the underlying properties and other costs and expenses incurred by the trust.

There has been no public market for the trust units and no independent appraisal of the value of the net profits interest has been performed. The market price for the trust units may not reflect the value of the net profits interest held by the trust and, in addition, over time will decline to zero at termination of the trust.

Conflicts of interest could arise between Whiting and the trust unitholders.

Trust unitholders have limited ability to enforce provisions of the net profits interest.

The trust has not obtained a ruling from the IRS regarding the tax treatment of ownership of the trust units. If the IRS were to determine that the trust is not a grantor trust for federal income tax purposes, or that the net profits interest is not properly treated as a production payment (and thus could fail to qualify as a debt instrument) for federal income tax purposes, the trust unitholders may receive different and potentially less advantageous tax treatment than that described in this prospectus.

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.**

	Per	
	Trust Unit	Total
Initial public offering price	\$	\$
Underwriting discounts(1)	\$	\$
Proceeds, before expenses, to Whiting(1)	\$	\$

(1) Excludes a structuring fee equal to 0.50% of the gross proceeds of this offering, or approximately \$ million, payable to Raymond James & Associates, Inc. for evaluation, analysis and structuring of the trust. Please read Underwriting beginning on page 101 of this prospectus.

Edgar Filing: WHITING PETROLEUM CORP - Form S-1/A

*The underwriters may also exercise their option to purchase from Whiting up to 2,400,000 additional trust units to cover over-allotments, if any, at the initial public offering price, less the underwriting discounts, within 30 days of the date of this prospectus.*

*The underwriters are offering the trust units as set forth under Underwriting beginning on page 101 of this prospectus. Delivery of the trust units will be made on or about , 2012.*

**RAYMOND JAMES**

**MORGAN STANLEY**

**J.P. MORGAN**

**BAIRD**

**OPPENHEIMER & CO.**

**RBC CAPITAL MARKETS**

**STIFEL NICOLAUS WEISEL**

**MORGAN KEEGAN**

**WUNDERLICH SECURITIES**

The date of this prospectus is , 2012

**Table of Contents**



**Table of Contents****TABLE OF CONTENTS**

	<b>Page</b>
<u>PROSPECTUS SUMMARY</u>	1
<u>RISK FACTORS</u>	18
<u>FORWARD-LOOKING STATEMENTS</u>	33
<u>USE OF PROCEEDS</u>	34
<u>WHITING PETROLEUM CORPORATION</u>	35
<u>THE TRUST</u>	37
<u>PROJECTED CASH DISTRIBUTIONS</u>	38
<u>THE UNDERLYING PROPERTIES</u>	48
<u>COMPUTATION OF NET PROCEEDS</u>	73
<u>DESCRIPTION OF THE TRUST AGREEMENT</u>	76
<u>DESCRIPTION OF THE TRUST UNITS</u>	82
<u>TRUST UNITS ELIGIBLE FOR FUTURE SALE</u>	85
<u>DIRECTORS, EXECUTIVE OFFICERS AND EXECUTIVE COMPENSATION</u>	87
<u>U.S. FEDERAL INCOME TAX CONSEQUENCES</u>	88
<u>STATE TAX CONSIDERATIONS</u>	97
<u>ERISA CONSIDERATIONS</u>	99
<u>SELLING TRUST UNITHOLDER</u>	100
<u>UNDERWRITING</u>	101
<u>LEGAL MATTERS</u>	105
<u>EXPERTS</u>	105
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	106
<u>GLOSSARY OF CERTAIN DEFINITIONS</u>	107
<u>INDEX TO FINANCIAL STATEMENTS</u>	F-1
<u>APPENDIX A SUMMARY RESERVE REPORT</u>	A-1

You should rely only on the information contained in this prospectus or in any free writing prospectus that the trust may authorize to deliver to you. Until \_\_\_\_\_, 2012 (25 days after the date of this prospectus), federal securities laws may require all dealers that effect transactions in the trust units, whether or not participating in this offering, to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

The trust has not, Whiting has not and the underwriters have not, authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. The trust is not, Whiting is not, and the underwriters are not, making an offer to sell these securities in any jurisdiction where an offer or sale is not permitted. You should assume that the information appearing in this prospectus is accurate as of the date on the front cover of this prospectus only.

**CONVENTIONS USED IN THIS PROSPECTUS**

This prospectus has been prepared using a number of conventions, which you should consider when reading the information contained herein. Unless the context suggests otherwise, references to:

the trust are to Whiting USA Trust II;

Whiting are to Whiting Petroleum Corporation and its wholly owned subsidiary, Whiting Oil and Gas Corporation;

the net profits interest are to the term net profits interest to be conveyed to the trust that represents the right to receive 90% of the net proceeds (as calculated as described in Computation of net proceeds beginning on page 73) from Whiting's interests in the underlying properties;

the underlying properties are to Whiting's net interests in the oil and natural gas properties to which the net profits interest applies, as described in more detail in "The underlying properties" beginning on page 48;

**Table of Contents**

the terminal production amount are to the 11.79 MMBOE of production that is to be produced and sold (which is the equivalent of 10.61 MMBOE in respect of the trust's right to receive 90% of the net proceeds from such reserves pursuant to the net profits interest) prior to the termination of the net profits interest (unless earlier terminated as described in Description of the trust agreement Termination of the trust; sale of the net profits interest beginning on page 80);

the reserve report are to the reserve report prepared by Cawley, Gillespie & Associates, Inc., an independent reserve engineering firm, of the estimates of proved oil and natural gas reserves for the underlying properties as of December 31, 2011, of which a summary is located at the back of this prospectus as Appendix A;

production and development costs are to the lease operating expenses, development costs, production and property taxes, hedge payments made by Whiting to the hedge contract counterparty upon settlements of the hedge contracts, maintenance expenses and producing overhead, as described in more detail in Computation of net proceeds beginning on page 73; and

the hedge contracts are to the contracts to which Whiting is a party at the time of the closing of this offering that relate to the underlying properties, as described in The underlying properties Hedge contracts beginning on page 52.  
You will find definitions for terms relating to the oil and natural gas business in Glossary of certain definitions beginning on page 107.

**Table of Contents**

**PROSPECTUS SUMMARY**

*This summary highlights information contained elsewhere in this prospectus. To understand this offering fully, you should read the entire prospectus carefully, including the risk factors and the financial statements and notes to those statements. Unless otherwise indicated, all information in this prospectus assumes (1) no exercise of the underwriters' over-allotment option and (2) the termination of the net profits interest on December 31, 2021.*

Whiting USA Trust II was formed in December 2011 by Whiting Petroleum Corporation to own a term net profits interest in certain long-lived, predominantly producing properties located primarily in the Rocky Mountains, Permian Basin, Gulf Coast and Mid-Continent regions of the United States. The net profits interest will entitle the trust to receive 90% of the net proceeds (calculated as described below) from Whiting's interests in the underlying properties after the effective date of the conveyance of the net profits interest to the trust. The trust will make quarterly cash distributions of substantially all of its quarterly cash receipts of net proceeds attributable to the trust, after deduction of fees and expenses for administration of the trust, to holders of its trust units during the term of the net profits interest. Please read "Computation of net proceeds" beginning on page 73. The net profits interest will terminate on the later to occur of (1) December 31, 2021, or (2) the time when 11.79 MMBOE have been produced from the underlying properties and sold (which is the equivalent of 10.61 MMBOE in respect of the trust's right to receive 90% of the net proceeds from such reserves pursuant to the net profits interest), subject to certain specified exceptions. Please see "Description of the trust agreement" "Termination of the trust; sale of the net profits interest" on page 80.

As of December 31, 2011, the estimated proved reserves attributable to the underlying properties for the full economic life of the underlying properties, as estimated in the reserve report, were 18.28 MMBOE with a pre-tax PV10% value of \$408.5 million. For an explanation of pre-tax PV10% value and a comparison of pre-tax PV10% value to the standardized measure of oil and gas, please read "Major producing areas" beginning on page 3. Based on the reserve report, the net profits interest would entitle the trust to receive net proceeds from the sale of production of an estimated 10.61 MMBOE of proved reserves during the term of the net profits interest, calculated as 90% of the proved reserves attributable to the underlying properties expected to be produced during the term of the net profits interest. Based on the reserve report, the total estimated proved reserves attributable to the net profits interest had a pre-tax PV10% value of \$323.6 million as of December 31, 2011. The exact rate of production attributable to the underlying properties cannot be predicted. However, because the term of the trust continues until the later of December 31, 2021, or the time when the terminal production amount has been produced and sold, trust unitholders will have the right to participate in additional proceeds attributable to the underlying properties in excess of 10.61 MMBOE in the event such amount is produced and sold prior to December 31, 2021. As of December 31, 2011 and assuming its continued ownership of the underlying properties, the total estimated proved reserves attributable to Whiting's remaining interest in the underlying properties at the termination of the net profits interest, as estimated in the reserve report, are expected to be 6.49 MMBOE, or approximately 35.5% of total estimated proved reserves attributable to the underlying properties.

The underlying properties include interests in 1,300 gross (390.3 net) producing wells located in 49 predominantly mature fields with established production profiles in 10 states. As of December 31, 2011, approximately 96.4% of estimated proved reserves attributable to the underlying properties during the estimated term of the net profits interest were classified as proved developed producing reserves, 2.3% were classified as proved developed non-producing reserves and 1.3% were classified as proved undeveloped reserves. For the three months ended December 31, 2011, the average daily net production from the underlying properties was approximately 4,988 BOE/d (or 4,489 BOE/d attributable to the net profits interest) and was comprised of approximately 72% oil, 25% natural gas and 3% natural gas liquids. Based on the reserve report, production attributable to the underlying properties is expected to decline at an average year-over-year rate of approximately 8.4% between 2012 and 2021, assuming no additional development drilling or other development expenditures are made on the underlying properties after 2014. Whiting operates approximately 59% and 56% of the estimated proved reserve volumes and pre-tax PV10% value, respectively, of these properties based on the reserve report.

## Table of Contents

Whiting believes that its retained interest in the underlying properties, which entitles it to 10% of the net proceeds from the sale of production attributable to the underlying properties during the term of the net profits interest and all of the net proceeds thereafter, together with its ownership of trust units, if any, will provide incentive for it to operate (or cause to be operated) the underlying properties in an efficient and cost-effective manner. In addition, Whiting has agreed to operate the properties for which it is the operator as a reasonably prudent operator in the same manner that it would operate if these properties were not burdened by the net profits interest. Furthermore, for those properties that it is not the operator, Whiting has agreed to use commercially reasonable efforts to cause the operator to operate the property in the same manner; however, Whiting's ability to cause other operators to take certain actions is limited. Please see "Risk factors" "Whiting has limited control over activities on the underlying properties that Whiting does not operate, which could reduce production from the underlying properties, increase capital expenditures and reduce cash available for distribution to trust unitholders" beginning on page 22.

The trust will make quarterly cash distributions of substantially all of its quarterly cash receipts of net proceeds attributable to the trust, after deduction of fees and expenses for the administration of the trust, to holders of its trust units during the term of the net profits interest. The first quarterly distribution is expected to be made on or prior to May 30, 2012 to trust unitholders owning trust units on May 20, 2012. The trust's first quarterly distribution will consist of an amount in cash paid by Whiting equal to the amount that would have been payable to the trust had the net profits interest been in effect during the period from January 1, 2012 through the day prior to close of this offering plus the amount payable under the net profits interest for the period from the day of closing of the offering through March 31, 2012, less any general and administrative expenses and reserves of the trust. Because payments to the trust will be generated by depleting assets and the trust has a finite life with the production from the underlying properties diminishing over time, a portion of each distribution will represent a return of your original investment.

The gross proceeds from the underlying properties used to calculate the net profits interest will fluctuate and will be based on prices realized for oil, natural gas and natural gas liquids attributable to the underlying properties for each calendar quarter during the term of the net profits interest and calculated on an aggregate basis for all these properties. In calculating the net proceeds to be attributed to the trust, Whiting will deduct from the gross proceeds from oil, natural gas and natural gas liquids sales all production and development costs and amounts that may be reserved for future development, maintenance or operating expenses (which reserve amounts may not exceed \$2.0 million at any time), all calculated on an aggregate basis for all of these properties. The production and development costs will be reduced by hedge payments received by Whiting, if any, under the hedge contracts described below and other non-production revenue. If at any time production and development costs should exceed gross proceeds, neither the trust nor the trust unitholders would be liable for the excess costs; the trust, however, would not receive any net proceeds until future net proceeds exceed the total of those excess costs, plus interest at the prevailing money market rate.

Whiting has entered into hedge contracts, which are structured as costless collar arrangements, to hedge approximately 50% of the anticipated oil production from the estimated proved reserves attributable to the underlying properties in the reserve report for the period from April 1, 2012 through December 31, 2014. The hedge contracts provide a fixed floor price of \$80.00 and a fixed ceiling price of \$122.50 for this oil production during this period. During the term of the hedge contracts, Whiting expects these contracts will reduce the oil price-related risks inherent in holding interests in oil properties, although they will also limit the potential for upside during the hedged period if oil prices increase. Trust unitholders will be exposed to fluctuations in prices of natural gas and natural gas liquids throughout the term of the trust; and after the hedge contracts terminate on December 31, 2014, trust unitholders' exposure to fluctuations in oil prices will increase. Because the trust is intended to qualify as a grantor trust for U.S. federal income tax purposes, it is generally prohibited from varying or reinvesting its assets. Permitting Whiting to enter into additional hedge arrangements after the closing of this offering relating to production from the underlying properties could be treated as the trust constructively

**Table of Contents**

retaining the right to vary its assets. Accordingly, under the terms of the conveyance, Whiting will be prohibited from entering into hedging arrangements covering the production from the underlying properties following the completion of this offering.

**MAJOR PRODUCING AREAS**

The following table summarizes the estimated proved reserves by region attributable to the net profits interest according to the reserve report, the corresponding pre-tax PV10% value as of December 31, 2011 and the average daily net production attributable to the net profits interest for three months ended December 31, 2011.

Region	Reserve Category(1)	Number of Fields	Estimated Proved Reserves as of December 31, 2011					% of Total Reserves	Pre-Tax PV10% Value (3)(5) (In Millions)	% of Total Pre-Tax PV10% Value	Three Months Ended December 31, 2011 Average Daily Net Production (BOE/d)
			Oil(2) (MBbl)	Natural Gas (MMcf)	Total (MBOE) (3)(4)	% Oil	Total				
Rocky Mountain	PD		4,312	715	4,432						
	PUD		41		41						
	Total	14	4,353	715	4,473	97.3%	42.2%	\$ 146.2	45.2%	1,734	
Permian Basin	PD		2,807	9,855	4,450						
	PUD		62	170	90						
	Total	17	2,869	10,025	4,540	63.2%	42.8%	128.1	39.6%	1,991	
Gulf Coast	PD		700	2,897	1,182						
	PUD										
	Total	8	700	2,897	1,182	59.2%	11.1%	35.6	11.0%	617	
Mid-Continent	PD		356	345	413						
	PUD										
	Total	10	356	345	413	86.1%	3.9%	13.7	4.2%	147	
<b>Total</b>	PD		8,175	13,812	10,476						