

**STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION**

**IN THE MATTER OF THE APPLICATION  
OF McELVAIN OIL & GAS PROPERTIES, INC.  
FOR COMPULSORY POOLING,  
SAN JUAN, NEW MEXICO**

**CASE NO. 13605**

2005 DEC 12 PM 4 40

**APPLICANT'S RESPONSE TO LANCE'S MOTION DISMISS**

In Case Nos. 13605, 13606 and 13607, Applicant seeks orders pooling uncommitted mineral interests in, respectively, the NE/4, the SW/4 and the SE/4 of Section 5, T-29-N, R-13-W (San Juan County) to form standard 160-acre gas spacing units for the Fulcher Kutz Pictured Cliffs Gas Pool. Lance Oil & Gas ("Lance"), a working interest owner in this section, has moved to dismiss all three cases as "premature" on the grounds McElvain failed to comply with an alleged "custom and practice" of proposing a well 30 days prior to filing a pooling application. Rather than debate the issue, McElvain intends to dismiss its pooling applications for the SW/4 and the SE/4 of Section 5 (Case Nos. 13606 and 13607) and re-file those cases to include the interests held by Lance. However, with respect to the NE/4 of Section 5 (**Case No. 13605**) McElvain's application is clearly not "premature." Since McElvain has a drilling rig coming available in January, McElvain opposes Lance's request to delay any hearing with respect to Case No. 13605.

50/21/21 RNM

**A. Since Lance Did Not Acquire and Record Its Minority Interest in the NE/4 Until Weeks After McElvain Filed Its Pooling Application, Case No. 13605 Is Ripe for Decision.**

Since March of this year, McElvain has attempted to reach a voluntary agreement with Alamo Development Company to drill a Pictured Cliffs well in the NE/4 of Section 5. McElvain has a drilling rig scheduled in January to commence development of Section 5 and was anxious to reach a development agreement with Alamo. Indeed, all remaining working interest owners of record in the NE/4 have executed a Joint Operating Agreement naming McElvain as operator of this acreage, and some of these working interest owners have already prepaid the estimated drilling expenses. In early November, Alamo finally informed McElvain that it should proceed with pooling proceedings to meet its drilling schedule.

Accordingly on November 15th, McElvain filed its application in Case No. 13605 to pool Alamo's interests and requested a hearing on December 5th. Lance's Motion to Dismiss represents that two weeks later, on December 1, 2005, Lance recorded a lease under which it apparently obtained Alamo's working interest in the NE/4 of Section 5. Prior to filing this lease, Lance had no recorded interest whatsoever in the NE/4 of Section 5. *See* Motion at p. 2.

Lance's motion further acknowledges that since recording its lease, Lance has met with McElvain about development of this quarter section, but the parties been unable to reach an agreement. *See* Motion at p. 2. The fact that Lance, who holds a recently acquired minority interest in the NE/4 of Section 5, suddenly desires to drill and operate a well in this quarter section does not render McElvain's pooling

application “premature” or otherwise defective. Instead, McElvain meets all the requirements for obtaining a pooling order covering this acreage:

- Prior to filing its pooling application, McElvain met and attempted to reach an agreement with all interest owners of record in the NE/4 of Section 5;
- When Alamo expressed its reluctance to participate in developing this acreage, McElvain timely filed and properly noticed a pooling application;
- McElvain independently holds a 54% working interest in this quarter section, and with the execution of a Joint Operating Agreement by all other interest owners in this quarter section, McElvain controls 75% of the affected working interest (*see* Motion at p. 2);
- McElvain’s AFE is an attempt to reflect the maximum potential costs based on its extensive experience with drilling wells in this area, has been approved by the other working interest owners in this quarter section, and has been prepaid by some of the working interest owners in this quarter section; and
- McElvain is the first and only interest owner that has sought to develop this acreage.

*See* Order No. R-11870 at ¶ 26 (“Division precedent has established that in the absence of other controlling factors, the party who first developed a prospect and first proposed a well should be designated operator.”) Since Lance did not even acquire an interest in the NE/4 of Section 5 until *weeks after* McElvain filed its pooling application, Lance is in no position to suddenly claim McElvain’s application is “premature.” *Id.* Indeed, there is no reason to prevent McElvain from proceeding with its January drilling plans for the NE/4 of Section 5.

For these reasons, McElvain respectfully request that the Division deny Lance's Motion to Dismiss and proceed with a hearing in Case No. 13605. With respect to Case Nos. 13606 and 13607, because Lance has now expressed an unwillingness to participate in the wells proposed by McElvain, these cases will be dismissed and re-filed to include the working interests held by Lance.

Respectfully submitted,

HOLLAND & HART, LLP

By:   
Michael H. Feldewert  
Post Office Box 2208  
Santa Fe, NM 87504-2208

**Attorneys for McElvain Oil & Gas  
Properties, Inc.**

**CERTIFICATE OF SERVICE**

I certify that on December 12, 2005, I served a copy of the foregoing document Applicant's Response to Lance's Motion to Dismiss to the following counsel of record via facsimile

W. Thomas Kellahin  
Kellahin & Kellahin  
Post Office Box 2265  
Santa Fe, New Mexico 87504  
(505) 982-2047

  
Michael Feldewert