

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

**IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:**

**CASE NO. 13693
ORDER NO. R-12226-A**

**APPLICATION OF MCELVAIN OIL & GAS PROPERTIES, INC. FOR
COMPULSORY POOLING, RIO ARRIBA COUNTY, NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on April 13, 2006, at Santa Fe, New Mexico, before Examiner David K. Brooks.

NOW, on this 31st day of May, 2006, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

(1) Due public notice has been given, and the Division has jurisdiction of this case and of the subject matter.

(2) By Order No. R-12226, issued in Case No. 13340 on October 26, 2004, the Division, pursuant to the application of McElvain Oil & Gas Properties, Inc., ("Applicant"), pooled all uncommitted mineral interests from the surface to the base of the Mesaverde formation underlying the W/2 of Section 14, Township 25 North, Range 2 West, NMPM, Rio Arriba County, New Mexico, to form a standard 320-acre gas spacing and proration unit (the "Unit") for all formations or pools spaced on 320 acres within this vertical extent, including but not limited to the Blanco-Mesaverde Gas Pool.

(3) This unit is dedicated to Applicant's Badger 14 Well No. 1 (API No. 30-039-27576), located in the NW/4 NW/4 (Unit D) of Section 14.

(4) In the present application, Applicant seeks to dedicate the above-described compulsory-pooled unit to its proposed Badger14 Well No. 1A (API No. 30-039-29662) ("the proposed well"), an infill well which applicant proposes to drill at a standard gas

well location 2120 feet from the South line and 660 feet from the West line (Unit L) of Section 14.

(5) Two or more separately owned tracts are embraced within the Unit, and/or there are owners of royalty interests and/or undivided interests in oil and gas minerals in one or more tracts within the Unit which are separately owned.

(6) T.H. McElvain Oil & Gas Limited Partnership is an owner of an oil and gas working interest within the Unit. Applicant is duly authorized by T.H. McElvain Oil & Gas Limited Partnership to file this application and to propose and drill wells on lands owned by said partnership. Applicant has the right to drill and proposes to drill the proposed well to a common source of supply at a standard well location within the Unit.

(7) There are interest owners in the proposed unit that have not agreed to pool their interests.

(8) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to the owner of each interest in the Unit the opportunity to recover or receive without unnecessary expense its just and fair share of hydrocarbons, this application should be approved by amending Order No. R-12226 to provide for drilling of the proposed well as an infill well and dedication of the Unit thereto.

(9) Applicant is the operator of the Unit and should be designated the operator of the proposed well.

(10) Any non-consenting working interest owner who does not pay its share of estimated well costs of the proposed well should have withheld from production derived from the proposed well its share of reasonable well costs plus an additional 200% thereof as a reasonable charge for the risk involved in drilling the proposed well.

(11) Reasonable charges for supervision (combined fixed rates), with respect to the proposed well, should be fixed at \$5,692.50 per month while drilling and \$569.25 per month while producing, provided that these rates should be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations.*"

IT IS THEREFORE ORDERED THAT:

(1) The Unit shall be dedicated to Applicant's Badger 14 Well No. 1A, an infill well to be drilled at a standard gas well location 2120 feet from the South line and 660 feet from the West line (Unit L) of Section 14, Township 25 North, Range 2 West, NMPM, Rio Arriba County, New Mexico.

(2) Applicant is hereby designated the operator of the proposed well.

(3) Applicant shall commence drilling the proposed well on or before September 30, 2006, and shall thereafter continue drilling the well with due diligence to test the Blanco-Mesaverde formation.

(4) In the event Applicant does not commence drilling the proposed well on or before September 30, 2006, Ordering Paragraph (1) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause.

(5) Should the proposed well not be drilled to completion, or be abandoned, within 120 days after commencement thereof, Ordering Paragraph 1 shall be of no further effect unless Applicant appears before the Division Director and obtains an extension of time to complete the proposed well for good cause demonstrated by satisfactory evidence.

(6) Working interest owners whose interests are not committed to the proposed well are referred to as pooled working interest owners. ("Pooled working interest owners" are owners of working interests in the Unit, including un-leased mineral interests, who are not parties to an operating agreement governing the drilling of the proposed well.) After the effective date of this order, the operator shall furnish the Division and each known pooled working interest owner an itemized schedule of estimated costs of drilling, completing and equipping the proposed well ("well costs").

(7) Within 30 days from the date the schedule of estimated well costs is furnished, any pooled working interest owner shall have the right to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production as hereinafter provided, and any such owner who pays its share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges. Pooled working interest owners who elect not to pay their share of estimated well costs as provided in this paragraph shall thereafter be referred to as "non-consenting working interest owners."

(8) The operator shall furnish the Division and each known pooled working interest owner (including non-consenting working interest owners) an itemized schedule of actual well costs within 90 days following completion of the well. If no objection to the actual well costs is received by the Division, and the Division has not objected within 45 days following receipt of the schedule, the actual well costs shall be deemed to be the reasonable well costs. If there is an objection to actual well costs within the 45-day period, the Division shall determine reasonable well costs after public notice and hearing.

(9) Within 60 days following determination of reasonable well costs, any pooled working interest owner who has paid its share of estimated well costs in advance as provided above shall pay to the operator its share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator its share of the amount that estimated well costs exceed reasonable well costs.

(10) The operator is hereby authorized to withhold the following costs and charges from production derived from the proposed well:

- (a) the proportionate share of reasonable well costs attributable to each non-consenting working interest owner; and
- (b) 200% of the above costs, as a charge for the risk involved in drilling the proposed well.

(11) The operator shall distribute the costs and charges withheld from production, proportionately, to the parties who advanced the well costs.

(12) Reasonable charges for supervision (combined fixed rates), with respect to the proposed well, are hereby fixed at \$5,692.50 per month while drilling and \$569.25 per month while producing, provided that these rates should be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations.*" The operator is authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to each pooled working interest.

(13) Except as provided in Ordering Paragraphs (10) and (12) above, all proceeds from production from the proposed well that are not disbursed for any reason shall be placed in escrow in Rio Arriba County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership. The operator shall notify the Division of the name and address of the escrow agent within 30 days from the date of first deposit with the escrow agent.

(14) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under this order. Any well costs or charges that are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(15) Should all the parties to this order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(16) The operator of the well and Unit shall notify the Division in writing of the subsequent voluntary agreement of all parties subject to the compulsory pooling provisions of this order.

(17) Ordering Paragraph (6) of Order R-12226 is amended to provide that the Unit shall not terminate, except by voluntary agreement of all owners, prior to final plugging and abandonment of the proposed well.

(18) In all other respects, except as expressly amended and supplemented hereby, Order R-12226 shall remain in full force and effect.

(19) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



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STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

A handwritten signature in black ink, appearing to read "Mark E. Fesmire".

MARK E. FESMIRE, P.E.
Director