

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

Motion denied.
MA
8-8-00

APPLICATION OF NM&O OPERATING
COMPANY FOR COMPULSORY POOLING,
RIO ARRIBA COUNTY, NEW MEXICO.

CASE 12467

**MCELVAIN OIL & GAS PROPERTIES, INC.'S
MOTION TO DISMISS APPLICATION**

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OIL CONSERVATION DIVISION

McElvain Oil & Gas Properties, Inc. ("McElvain") hereby moves the Division for an order dismissing the application of NM&O Operating, Company, Inc. ("NM&O") in the above referenced case and in support of its Motion to Dismiss states:

FACTS:

1. With this application, NM&O seeks an order compulsory pooling all mineral interests from the base of the Pictured Cliffs formation to the base of the Dakota formation underlying the E/2 of Section 4, Township 25 North, Range 2 West , NMPM, Rio Arriba County, New Mexico. NM&O proposes to re-enter and utilize the Dewey Bartlett Well No. 1 located in the NE/4 SE/4 of said Section 4 to test the pooled formations.

2. By Oil Conservation Division Order Nos. R-11182 and R-11182-A dated May 13, 1999 and October 7, 1999, the E/2 of said Section 4 was forced pooled from the base of the Pictured Cliffs formation to the base of the Mesaverde formation for the drilling of the McElvain Cougar Com. "4" Well No. 1 (API No. 30-039-26204) which has been drilled and completed in the

Mesaverde formation. McElvain Oil & Gas Properties, Inc. is the Division-designated operator of this spacing unit and this well. Copies of Order Nos. R-11182 and R-11182-A are attached hereto as Exhibits 1 and 2.

3. On April 18, 2000, McElvain contacted NM&O and other interest owners in the E/2 of said Section 4 and proposed the re-entry of the Dewey Bartlett Well No. 1 (now called the Cougar Com. "4" Well No. 1A) as the infill well on the E/2 of Section 4. No agreement was reached with all interest owners in the E/2 of this section for the re-entry of this well on the spacing unit operated by McElvain and a compulsory pooling application was filed by McElvain on June 20, 2000. A July 13, 2000 hearing was requested. A copy of McElvain's application is attached hereto as Exhibit 3.

4. McElvain's application was heard by a Division Examiner. McElvain presented evidence which established that it had the right to re-enter the Dewey Bartlett Well No. 1, proposed to re-enter this well to test the Mesaverde formation and had attempted but been unable to reach voluntary agreement with NM&O and the other interest owners in the E/2 of Section 4 for the re-entry of this well.

5. At the hearing NM&O appeared through counsel and advise dthe Division that it was filing a competing pooling application. At the request of NM&O, the application of McElvain was continued to August 10, 2000.

6. On July 13, 2000, NM&O filed its application seeking, among other things, an order "Pooling all mineral interests underlying the E/2 of Section 4" and designating it "as operator of the well." A copy of NM&O's application is attached hereto as Exhibit 4.

ARGUMENT:

**I.
NM&O DOES NOT HAVE THE RIGHT TO POOL
THE MINERALS COVERED BY ITS APPLICATION.**

7. Pursuant to the Oil and Gas Act (Section 72-2-17C, NMSA1978) a precondition for the exercise of the state's compulsory pooling authority is a showing by the applicant that it has the right to drill on the proposed spacing units. In this case, NM&O does not have the right to drill and develop the minerals from the base of the Pictured Cliffs formation to the base of the Mesaverde formation under the E/2 of said Section 4. These rights belong exclusively to McElvain by virtue of Division Order Nos. R-11182 and R-11182-A and by the drilling of the Cougar Com. "4" Well No. 1 in the NE/4 of this Section. NM&O is therefore not entitled to the order which it seeks.

**II.
THE OIL CONSERVATION DIVISION PERMITS
ONLY ONE OPERATOR OF A SPACING UNIT.**

8. Operator is defined by Oil Conservation Division Rules as follows:

"OPERATOR shall mean any person or persons who, duly authorized, is in charge of the development of a lease or the operation of a producing property."

9. McElvain is the person which is duly authorized and is in charge of the development of the E/2 of said Section 4 from the base of the Pictured Cliffs formation to the base of the Mesaverde formation.

10. The Division only permits one operator to each spacing unit.¹ McElvain is the

¹ Rule 104 C.(2)(c), as amended on August 12, 1999, which authorized infill drilling of 320-acre gas spacing units in southeast New Mexico recognized long

operator of the E/2 of Section 4 from the base of the Pictured Cliffs formation to the base of the Mesaverde formation. NM&O does not have the right to develop these minerals and its application for compulsory pooling must be dismissed.

III.
**MCELVAIN HAS THE RIGHT TO UTILIZE THE WELLBORE
OF THE DEWEY BARTLETT WELL NO. 1 IN THE SE/4 OF SECTION 4
TO TEST THE MESAVERDE FORMATION.**

11. The operator of an oil and gas property has the right to utilize as much of the surface as is reasonably necessary for its drilling operations. **Amoco Production Co. v. Carter Farms Co.**, 103 N.M. 117, 703 P2d 894 (1985) This right includes the right to utilize an existing wellbore on the property. **White v. Conoco, Inc.**, 710 F. 2d1442 (10th Cir. 1983).

12. McElvain is the Division-designated operator of all formations from the base of the Pictured Cliffs formation to the base of the Mesaverde formation. McElvain is the person authorized by the Division and charged with the development of the E/2 of Section 4. McElvain has the right to utilize any portion of the E/2 of Section 4 for the development of the minerals for which it is the designated operator. McElvain has the right to utilize the Dewey Bartlett Well No. 1 to test and produce the Mesaverde reserves under the E/2 of Section 4.

established Division policy and requires that “the Division-designated operator of the infill well is the same operator currently designated by the Division for the initial well”.

13. NM&O's application is merely an attempt to interfere with McElvain's efforts to develop the Mesaverde formation under this this spacing unit. McElvain has proposed to NM&O that the Mesaverde formation be completed first because the Dakota formation generally is of poor quality in this area and often not produced. NM&O, however, has proceeded with its application seeking an order which would interfere with McElvain's right to efficiently operate the Mesaverde formation under this spacing unit.

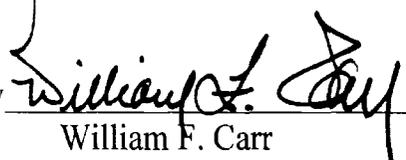
14. NM&O cannot, either directly or indirectly, interfere with McElvain's development of the Mesaverde formation under the E/2 of said Section 4. See, **Cozart v. Crenshaw**, 299 S.W. 499 (Tex. Civ. App. 1927), **Eternal Cemetery Corporation v. Tammen**, 324 S.W. 2d 562 (Tex. Civ. App. 1959), O&GR 270.

15. NM&O's application for the forces pooling of these minerals is contrary to the Oil and Gas Act, is an attempt by NM&O to interfere with the rights of McElvain and must be dismissed.

WHEREFORE, McElvain Oil & Gas Properties, Inc. hereby requests that the application of NM&O Operating Company, Inc. for an order compulsory pooling all mineral interests underlying the E/2 of Section 4, Township 25 North, Range 2 West, NMPM, Rio Arriba County, New Mexico be dismissed.

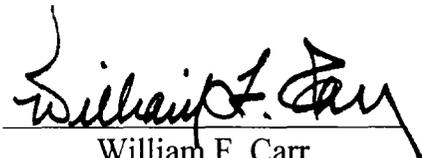
Respectfully submitted,

CAMPBELL, CARR, BERGE
AND SHERIDAN, P.A.

By 
William F. Carr
ATTORNEYS FOR MCELVAIN OIL &
GAS PROPERTIES, INC.

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Motion to Dismiss to be served on the following on this 7th day of August 2000.


William F. Carr

Marilyn Hebert, Esq.
James Bruce, Esq.

**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. 12172
ORDER NO. R-11182**

**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 29, 1999 at Santa Fe, New Mexico, before Examiner Mark W. Ashley.

NOW, on this 13th day of May, 1999, 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 its subject matter.
- (2) The applicant, McElvain Oil & Gas Properties, Inc. ("McElvain"), seeks an order pooling all mineral interests from the base of the Pictured Cliffs formation to the base of the Mesaverde formation underlying Lots 1 and 2, S/2 NE/4, and SE/4 (E/2 equivalent) of Section 4, Township 25 North, Range 2 West, NMPM, Rio Arriba County, New Mexico, thereby forming a standard 320.73-acre gas spacing and proration unit for any formation and/or pool spaced on 320 acres within that vertical extent, which presently includes the Blanco-Mesaverde Gas Pool.
- (3) This unit is to be dedicated to the applicant's proposed Elk Corn Well No. 4-7 to be drilled at a standard gas well location 1825 feet from the North line and 1330 feet from the East line (Unit G) of Section 4.
- (4) The applicant is a working interest owner within the 320.73-acre unit and therefore has the right to drill for and develop the minerals underlying this unit.

(5) There are interest owners in the proposed proration unit who have not agreed to pool their interests.

(5) Dennis Hopper and NM&O Operating Company appeared at the hearing through legal counsel. Neither party presented any evidence or testimony in support of or in opposition to the application.

(7) No other interested or affected party appeared at the hearing.

(8) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste, and afford each interest owner in the unit the opportunity to recover or receive without unnecessary expense its just and fair share of the production underlying the unit, the application should be approved by pooling all mineral interests, whatever they may be, within the unit.

(9) McElvain should be designated the operator of the subject well and unit.

(10) Any non-consenting working interest owner should be afforded the opportunity to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production.

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

(12) Any non-consenting interest owner should be afforded the opportunity to object to the actual well costs but actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(13) Following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of estimated well costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(14) Reasonable charges for supervision (combined fixed rates) should be fixed at \$5,184.00 per month while drilling and \$518.40 per month while producing. The operator should be 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 non-consenting working interest.

(15) All proceeds from production from the well that are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

(16) If the operator of the pooled unit fails to commence drilling the well to which the units are dedicated on or before August 15, 1999, or if all the parties to this forced pooling reach voluntary agreement subsequent to entry of this order, this order should become of no effect.

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

(18) The operator of the well and unit should notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the application of McElvain Oil & Gas Properties, Inc. ("McElvain"), all mineral interests, whatever they may be, from the base of the Pictured Cliffs formation to the base of the Mesaverde formation underlying Lots 1 and 2, S/2 NE/4, and SE/4 (E/2 equivalent) of Section 4, Township 25 North, Range 2 West, NMPM, Rio Arriba County, New Mexico, are hereby pooled thereby forming a standard 320.73-acre gas spacing and proration unit for any formation and/or pool spaced on 320 acres within that vertical extent, which presently includes the Blanco-Mesaverde Gas Pool.

PROVIDED HOWEVER THAT, the operator of the unit shall commence drilling the well on or before August 15, 1999, and shall thereafter continue drilling the well with due diligence to a depth sufficient to test the Mesaverde formation.

PROVIDED FURTHER THAT, in the event the operator does not commence drilling the well on or before August 15, 1999, Ordering Paragraph (1) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause shown.

PROVIDED FURTHER THAT, should the well not be drilled to completion or abandoned within 120 days after commencement thereof, the operator shall appear before the Division Director and show cause why Ordering Paragraph (1) should not be rescinded.

(2) McElvain is hereby designated the operator of the subject well and unit.

(3) After the effective date of this order and within 90 days prior to commencing the well, the operator shall furnish the Division and each known working interest owner in the unit an itemized schedule of estimated well costs.

(4) Within 30 days from the date the schedule of estimated well costs is furnished, any non-consenting 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, 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.

(5) The operator shall furnish the Division and each known working interest owner 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 the reasonable well costs; provided, however, that if there is an objection to actual well costs within the 45-day period, the Division will determine reasonable well costs after public notice and hearing.

(6) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of estimated 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.

(7) The operator is hereby authorized to withhold the following costs and charges from production:

- (a) the proportionate share of reasonable well costs attributable to each non-consenting working interest owner who has not paid its share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished; and
- (b) as a charge for the risk involved in drilling the well, 200 percent of the above costs.

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

(9) Reasonable charges for supervision (combined fixed rates) are hereby fixed

Case No. 12172

Order No. R-11182

Page 5

at \$5,184.00 per month while drilling and \$518.40 per month while producing. The operator is hereby 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 non-consenting working interest.

(10) 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.

(11) 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.

(12) All proceeds from production from the 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.

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

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

(15) 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.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION


LORI WROTENBERY
Director

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CAMPBELL, CARR, et. al.

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. 12251
ORDER NO. R-11182-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 October 7, 1999 at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this 14th day of October, 1999, 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 its subject matter.

(2) The applicant, McElvain Oil & Gas Properties, Inc. ("McElvain"), seeks an order pooling all mineral interests from the base of the Pictured Cliffs formation to the base of the Mesaverde formation underlying Lots 1 and 2, the S/2 NE/4, and the SE/4 (E/2 equivalent) of Section 4, Township 25 North, Range 2 West, NMPM, Rio Arriba County, New Mexico, thereby forming a standard 320.73-acre gas spacing and proration unit for any pool spaced on 320-acre spacing within this vertical extent, which presently includes only the Blanco-Mesaverde Pool.

(3) This unit is to be dedicated to the applicant's proposed Cougar Com. "4" Well No. 1 (API No. 30-039-26204), previously named the Elk Com Well No. 4-7, to be drilled within the SW/4 NE/4 (Unit G) of Section 4 at a location considered standard for the Blanco-Mesaverde Pool.

(4) On April 29, 1999, a Division Examiner heard Case No. 12172 and on May 13, 1999, the Division entered Order No. R-11182, which granted the application of

McElvain and compulsory pooled the above-described 320.73 acres in Section 4. Ordering Paragraph No. (1) of Order No. R-11182 further required McElvain, as operator of the subject unit, to commence drilling its proposed Elk Com. Well No. 4-7 at a standard gas well location 1825 feet from the North line and 1330 feet from the East line (Unit G) of Section 4 before August 15, 1999 and to continue drilling with due diligence to a depth sufficient to test the Mesaverde formation. This order further provided the operator the opportunity to obtain a time extension for good cause shown.

(5) At the October 7, 1999 hearing McElvain testified to the following:

- (a) delays were encountered in reaching an agreement with the owner of the surface of the lands on which the well was to be drilled, thereby preventing McElvain from commencing its drilling of this well before August 15, 1999;
- (b) McElvain however failed to seek a time extension of Division Order No. R-11182 before the August 15, 1999 deadline; therefore, Order No. R-11182 expired on its own terms;
- (c) McElvain has now entered into agreement with those parties necessary to permit it to proceed with this well and proposes to do so before the end of 1999;
- (d) McElvain has redesignated the well to be dedicated to this unit the Cougar Com. "4" Well No. 1; and
- (e) the evidence and exhibits, which were offered in Case No. 12172 on April 29, 1999, remain valid.

(6) NM & O Operating Company ("NM&O"), a working interest owner within this unit, appeared at the hearing through legal counsel. Although McElvain was questioned concerning a farmout agreement covering NM&O's interest, NM&O did not present evidence or testimony in support of or in opposition to this application.

(7) This application should be approved and Division Order No. R-11182 should be amended accordingly.

IT IS THEREFORE ORDERED THAT:

(1) Division Order No. R-11182, issued in Case No. 12172 and dated May 13, 1999, is hereby reinstated.

(2) Ordering Paragraph No. (1) on page 3 of Division Order No. R-11182 is hereby amended to read in its entirety as follows:

" (1) Pursuant to the application of McElvain Oil & Gas Properties, Inc. ("McElvain"), all mineral interests, whatever they may be, from the base of the Pictured Cliffs formation to the base of the Mesaverde formation underlying Lots 1 and 2, the S/2 NE/4, and the SE/4 (E/2 equivalent) of Section 4, Township 25 North, Range 2 West, NMPM, Rio Arriba County, New Mexico, are hereby pooled in order to form a standard 320.73-acre gas spacing and proration unit for any for any pool spaced on 320-acre spacing within this vertical extent, which presently includes only the Blanco-Mesaverde Pool. This unit is to be dedicated to McElvain's proposed Cougar Com. "4" Well No. 1 (API No. 30-039-26204), to be drilled within the SW/4 NE/4 (Unit G) of Section 4 at a location that is considered standard for the Blanco-Mesaverde Pool.

PROVIDED HOWEVER THAT, the operator of the unit shall commence drilling this well on or before January 1, 2000, and shall thereafter continue drilling this well with due diligence to a depth sufficient to test the Mesaverde formation.

PROVIDED FURTHER THAT, in the event the operator does not commence drilling this well on or before January 1, 2000, Ordering Paragraph No. (1) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause shown.

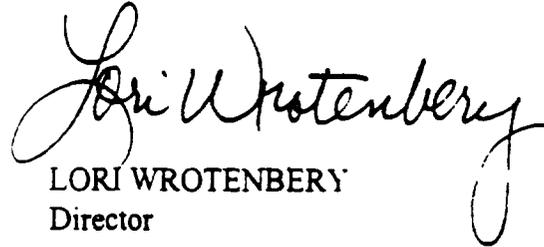
PROVIDED FURTHER THAT, should the well not be drilled to completion or abandoned within 120 days after commencement thereof, the operator shall appear before the Division Director and show cause why Ordering Paragraph

No. (1) of this order should not be rescinded."

(3) 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.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION


LORI WROTENBERY
Director

SEAL

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

IN THE MATTER OF THE APPLICATION
OF McELVAIN OIL & GAS PROPERTIES, INC.
FOR COMPULSORY POOLING,
RIO ARRIBA COUNTY, NEW MEXICO.

CASE NO. _____

APPLICATION

McELVAIN OIL AND GAS PROPERTIES, INC. ("McElvain"), through its undersigned attorneys, hereby makes application pursuant to the provisions of N.M.Stat. Ann. § 70-2-17, (1978), for an order pooling all mineral interests in all formations from the base of the Pictured Cliffs formation to the base of the Mesaverde formation developed on 320-acre spacing in the E/2 of Section 4, Township 25 North, Range 2 West, N.M.P.M., Rio Arriba County, New Mexico, and in support thereof states:

1. McElvain is a working interest owner in the E/2 of said Section 4 and has the right to drill thereon.
2. This acreage was the subject of a prior compulsory pooling order for the Cougar Com "4" Well No. 1 (Order No. R11182-A, Case No. 12251). In this case, McElvain seeks an order pooling this acreage for the drilling of the second well on this spacing and proration unit.
3. McElvain proposes to dedicate the above-referenced spacing or proration units to its Cougar Com "4" Well No. 1A (formerly the Dewey Bartlett Well No. 1) to be re-entered at a standard location in the NE/4 SE/4 of said Section 4 and drilled to test any and

OIL CONSERVATION DIV.
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all formations to the base of the Mesaverde formation, Blanco-Mesaverde Gas Pool.

4. Applicant has sought and been unable to obtain either voluntary agreement for pooling or farmout from certain interest owners in the subject spacing units identified on Exhibit A to this application.

5. Said pooling of interests will avoid the drilling of unnecessary wells, will prevent waste and will protect correlative rights.

6. In order to permit the Applicant to obtain its just and fair share of the oil and gas underlying the subject lands, all mineral interests should be pooled, and McElvain Oil & Gas Properties, Inc. should be designated the operator of the well to be drilled.

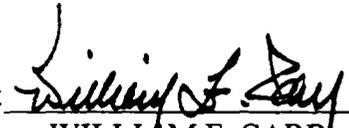
WHEREFORE, McElvain Oil & Gas Properties, Inc. requests that this application be set for hearing before an Examiner of the Oil Conservation Division on July 13, 2000, and, after notice and hearing as required by law, the Division enter its order:

- A. pooling all mineral interests in the subject spacing and proration units,
- B. designating McElvain Oil & Gas Properties, Inc. operator of the unit and the well to be drilled thereon,
- C. authorizing McElvain to recover its costs of drilling, equipping and completing the well,
- D. approving the actual operating charges and costs of supervision while drilling and after completion, together with a provision adjusting the rates pursuant to the COPAS accounting procedures, and
- E. imposing a penalty for the risk assumed by McElvain in drilling and

completing the well against any working interest owner who does not voluntarily participate in the drilling of the well.

Respectfully submitted,

CAMPBELL, CARR, BERGE
& SHERIDAN, P.A.

By: 

WILLIAM F. CARR

Post Office Box 2208

Santa Fe, New Mexico 87504

Telephone: (505) 988-4421

ATTORNEYS FOR McELVAIN OIL
& GAS PROPERTIES, INC.

EXHIBIT A

APPLICATION OF
McELVAIN OIL & GAS PROPERTIES, INC.
FOR COMPULSORY POOLING
E/2 EQUIVALENT OF SECTION 4, TOWNSHIP 25 NORTH, RANGE 2 WEST, N.M.P.M.
RIO ARRIBA COUNTY, NEW MEXICO

Dennis Hopper, as his separate property
c/o Spencer Cross
Dharma Properties, Inc.
8018 NDCBU
Taos, New Mexico 87571

xc: Grove Burnett, Attorney at Law
Post Office Box 386
Taos, New Mexico 87571

Cougar Capital, L.L.C.
5862 Cromo Drive, Suite 139
El Paso, Texas 79912-5512

James M. Raymond, a married man dealing
in his separate property
Post Office Box 291445
Kerrville, Texas 78028

Pena Blanca Corporation
c/o McElvain Oil & Gas Properties, Inc.
1050 17th Street, Suite 1800
Denver, Colorado 80265

Big Snowy Exploration, Limited Partnership
c/o McElvain Oil & Gas Properties, Inc.
1050 17th Street, Suite 1800
Denver, Colorado 80265

Joe Elledge, a married man dealing
in his separate property
Post Office Box 111
Farmington, New Mexico 87499

Noseco Corporation, a Nevada corporation
7400 Lakeside Drive
Reno, Nevada 89511

Neumann Family Trust and/or
Peter and Renate Neumann, individually
c/o Peter C. Neumann
Post Office Box 1170
Reno, Nevada 89504

Gavilan Dome Properties, a California Limited Partnership
1180 Cedarwood Drive
Moraga, California 94556

Mesa Grande Resources, Inc. an Oklahoma Corporation
1200 Philtower Building
Tulsa, Oklahoma 74103

NM&O Operating Company
6 East 5th Street, Suite 200
Tulsa, Oklahoma 74103

Hunnington T. Walker, et ux.
2961 S. Filmore Way
Denver, Colorado 80210

Johansen Energy Partnership
Post Office Box 1773
Whitefish, Moutana 59937

Williams Production Company

Attn: Mr. M. Vern Hansen
Post Office Box 3102
Tulsa, Oklahoma 74101

Dugan Production Corporation
Post Office Box 420
Farmington, New Mexico 87499-420

OIL CONSERVATION DIV.
BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

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APPLICATION OF NM&O OPERATING
COMPANY FOR COMPULSORY POOLING,
RIO ARriba COUNTY, NEW MEXICO.

Case No. _____

APPLICATION

NM&O Operating Company applies for an order pooling all mineral interests in all formations developed on 320 acre spacing from the base of the Pictured Cliffs formation to the base of the Dakota formation underlying the E $\frac{1}{2}$ of Section 4, Township 25 North, Range 2 West, N.M.P.M., Rio Arriba County, New Mexico, and in support thereof, states:

1. Applicant is a working interest owner in the E $\frac{1}{2}$ of Section 4, and has the right to drill a well thereon.

2. Applicant proposes to re-complete the existing Dewey-Bartlett Well No. 1, located at an orthodox location in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of the section, in the Dakota formation, and seeks to dedicate the E $\frac{1}{2}$ of Section 4 for all pools or formations developed on 320 acre spacing, including the Basin-Dakota Gas Pool.

3. Applicant has in good faith sought the voluntary joinder of all mineral interest owners in the E $\frac{1}{2}$ of Section 4 for the purposes set forth herein.

4. Although applicant attempted to obtain voluntary agreements from all mineral interest owners to commit their interests to the well, certain interest owners have failed or refused to join in dedicating their interests. Therefore, Applicant seeks an order pooling all mineral interest owners in the E $\frac{1}{2}$ of Section 4 pursuant to NMSA 1978 § 70-2-17.

5. The pooling of all interests in the E½ of Section 4 will prevent the drilling of unnecessary wells, prevent waste, and protect correlative rights.

WHEREFORE, Applicant requests that, after notice and hearing, the Division enter its order:

- A. Pooling all mineral interests underlying the E½ of Section 4;
- B. Designating applicant as operator of the well;
- C. Considering the cost of drilling and re-completing the well, and allocating the cost thereof among the well's working interest owners;
- D. Approving actual operating charges and costs charged for supervision, together with a provision adjusting those rates as provided in the COPAS accounting procedure;
- E. Setting a penalty for the risk involved in drilling and re-completing the well in the event a working interest owner elects not to participate in the well; and
- F. Granting such further relief as the Division deems proper.

Respectfully submitted,



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