

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. 12635

and

IN THE MATTER OF THE APPLICATION OF
D. J. SIMMONS, INC. FOR COMPULSORY POOLING,
RIO ARriba COUNTY, NEW MEXICO

CASE NO. 12705

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OIL CONSERVATION DIV.

**MOTION FOR TEMPORARY STAY
AND
TO CONSOLIDATE**

D. J. Simmons, Inc., through its counsel of record, moves the Division enter its Order temporarily staying Case No. 12635 and consolidating the matter with Case No. 12705 (Application of D. J. Simmons, Inc. for Compulsory Pooling, Rio Arriba County, New Mexico) while the parties attempt settlement negotiations. As grounds for its motion, Simmons states:

Cases No. 12635 and No. 12705 involve the conflicting applications of McElvain Oil and Gas Properties, Inc., ("McElvain"), and D. J. Simmons, Inc., ("Simmons"), for the compulsory pooling of certain working interests in Section 25, Township 25 North, Range 3 West, NMPM, in Rio Arriba County.

In its Application, McElvain seeks to pool working interests from the base of the Pictured Cliffs formation to the base of the Mesaverde formation underlying the SE/4¹ of Section 25 in order to dedicate a S/2 320 acre spacing unit to its Naomi Com No. 1 well

¹ McElvain already owns 100 percent of the working interest in the W/2 of Section 25.

located 1650' FSL and 450' FWL of the section. McElvain proposes to re-enter a previously plugged well and recomplete the same in the Mesaverde formation (Blanco-Mesaverde Gas Pool) at its present unorthodox location.

In Case No. 12705, Simmons also seeks to pool the working interests in all formations and pools spaced on 320 acres from the surface to the base of the Mesaverde formation (Blanco-Mesaverde Gas Pool) in the E/2 of Section 25 in order to dedicate the pooled acreage to its Bishop Federal 25-1 well to be drilled at a standard location in the NE/4 of the Section. In addition to testing the Mesaverde formation, Simmons plans to test the Chacra/Lewis and Gallup-Dakota² formations.

The McElvain and Simmons Applications conflict with one-another as both seek orders pooling the SE/4 of Section 25. The Simmons Application is set for hearing on September 20, 2001. The hearing on the McElvain Application has been completed, but no order has been issued to date.

At the hearing on the McElvain application, the positions of the parties were made quite clear: McElvain explained that while it had 100 percent ownership and control of a 320 acre W/2 spacing unit which it could dedicate to its Naomi Com No. 1 well, it instead chose to dedicate a S/2 laydown unit to its well in order to spread the risk of its proposed re-entry to the unjoined working interest owners in the SE/4 of Section 25. Simmons objected to McElvain's Application for the reasons that (1) the prevailing north-south drainage patterns in the area did not support the creation of a S/2 laydown unit, (2) the pooling of the Blanco-Mesaverde formation would effectively preclude the development of the Gallup-Dakota formation reserves underlying the SE/4 of Section 25, resulting in waste, and, (3) the Naomi Com well, at its unorthodox location 450 feet off

of the west line of the Section, was better situated to more efficiently drain reserves from a W/2 unit which McElvain already controlled. Simmons also challenged the cursory, pro-forma effort of McElvain to obtain Simmons's voluntary participation in the well, arguing that McElvain fell well-short of the applicable standards of good faith in negotiations.

Both Simmons and McElvain are experienced, knowledgeable San Juan Basin operators. Simmons and McElvain both hold sufficient equity acreage positions in the immediate vicinity so that both are well situated to negotiate a resolution that will allow for the proper development of the area without having to resort to the forced pooling of the other's interests. Given the diametrically opposed Applications, the relative certainty of an appeal *de novo* by one party or the other and the further prolongation of administrative proceedings, this is a case that cries out for settlement. Moreover, as both of the conflicting applications overlap into the SE/4 of Section 25 and will involve a repetition of proof on a number of issues, geology in particular, efficient case management dictates that the two matters be consolidated for ultimate consideration by the Division in the event the parties are unable to resolve the conflict.

The Division should encourage the informal resolution of disputes and efficiency in case management by consolidating the two applications and temporarily staying proceedings in both.

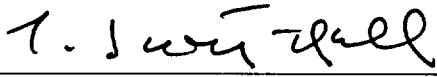
McElvain's concurrence with this Motion was sought but was refused.

WHEREFORE, D.J. Simmons, Inc. requests the Division enter its order (1) consolidating Case No. 12635 with Case No. 12705 and (2) temporarily staying proceedings in both cases until the October 18, 2001 Examiner hearing docket.

² 160 acre spacing.

Respectfully submitted,


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Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing was mailed to counsel of record on the 11 day of September, 2001, as follows:

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