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June 5, 2001

VIA HAND DELIVERY

Michael Stogner, Chief Hearing Examiner
Oil Conservation Division
New Mexico Energy, Minerals and
Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87504

***Re: Application of McElvain Oil & Gas Properties, Inc. for
Compulsory Pooling, Rio Arriba County, New Mexico;
Naomi Well No. 1 (proposed re-entry and recompletion)
Case No. 12635 Heard May 17, 2001***

Dear Mr. Stogner:

This letter is the response of McElvain Oil & Gas Properties, Inc. to the Post Hearing-Memorandum filed in this case by D. J. Simmons.

In this case, D. J. Simmons attempts to block McElvain's efforts to develop the S/2 of Section 25 pursuant to the compulsory pooling provisions of the Oil & Gas Act. Since the subject well was first proposed by McElvain in November 2000, D. J. Simmons has sat on the sidelines and worked outside the statutory scheme to obstruct McElvain's efforts. D. J. Simmons' objective is clear, it hopes to force McElvain to prove-up the Mesaverde formation in Section 25 without cost to D. J. Simmons and increase its economic share of a potential Mesaverde completion. Dugan, which holds a similar acreage position as D. J. Simmons in this unit, does not agree with D. J. Simmons' tactics and neither should the Division. See McElvain's Exhibit No. 8.

D. J. Simmons' entire objection is based on the theory that waste will occur if McElvain's application is granted. D. J. Simmons' "waste" theory is that reserves will be lost if it does not drill a well to the Gallup-Dakota in SE/4 of this section and that its economics will not permit it to drill a Gallup-Dakota

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well in the SE/4 of Section 25 if the Mesaverde formation cannot be developed as a secondary objective in the well thereby reducing the risk it will be a dry hole. On this issue, D. J. Simmons is wrong. The Mesaverde formation will remain available to D. J. Simmons in the SE/4 of Section 25, in addition to any other infill location drilled in the S/2. If the Gallup completion is unsuccessful, the well can produce from the Mesaverde formation as an infill well on the McElvain operated S/2 spacing and proration unit and D. J. Simmons will receive its share of the of the production from the well. The only thing D.J. Simmons will not be able to do is operate the well if it is completed in the Mesaverde formation.

D. J. Simmons' understanding of "waste" falls outside statute. The Oil and Gas Act does not define "waste" in terms of the subjective economics of a single operator, but rather on engineering principles - the "dissipation of reservoir energy" and the resulting effect on the quantity of oil and gas that can be produced. See NMSA 1978, § 70-2-3(A). What D. J. Simmons may subjectively perceive as an uneconomic venture ignores the fact that other working interest owners the SE/4 may take a different view.¹

D. J. Simmons also suggests the Division is required to deny McElvain's application because it will "spread the risk" of a Mesaverde test in Section 25 on all working interest owners in that Section. While this was one consideration, geological and engineering factors were also considered in determining the orientation of this spacing unit. Allocation of risk is a common and necessary consideration in every proposed pooling effort. However, D. J. Simmons overlooks the fact that under the statutory pooling scheme, it will share in the production of McElvain's proposed re-completion commensurate with its ownership in the acreage dedicated to the well and its share of the risk.

In its Post Hearing Memorandum D. J. Simmons also attacks the good faith efforts of McElvain to reach voluntary agreement for the development of the subject acreage. However, at the April 19, 2001, hearing on McElvain's application, Ed Dunn, Land Witness for D. J. Simmons, admitted that a reasonable effort had been made by McElvain to reach a voluntary agreement for the development of the oil and gas under these lands.

D. J. Simmons is inviting the Division into areas where in the past it has refused to go. Certain matters have been left within the discretion of the operator. Only the operator can evaluate the geological, engineering and

¹ D. J. Simmons' Exhibit 15 estimates a 22.1% rate of return for a Dakota well in the SE/4 of Section 25.

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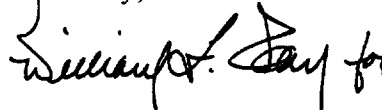
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economic factors involved in determining whether or not to drill a well. These considerations include the orientation of the acreage to be dedicated to the proposed well for the orientation of the unit impacts the risk which the operator will assume and what interests it will have to carry. These considerations vary from operator to operator and from well to well and the Division has not looked behind nor second-guessed these operator decisions. To accept the arguments of D. J. Simmons, the Division will have to inject itself into this process.

The pooling provisions of the Oil and Gas Act govern this case, not the whims and desires of D. J. Simmons. McElvain has met all statutory preconditions for a pooling order. D. J. Simmons has proposed nothing to this Division for the development of the oil and gas under this section of land. Granting McElvain's application does not prevent D. J. Simmons, McElvain, Dugan or any other working interest owner from proposing and drilling a Gallup-Dakota well in the SE/4 of Section 25. D. J. Simmons' mere suggestion that it will not drill a Gallup-Dakota well in the SE/4 of Section 25 unless a standup E/2 spacing unit is available for a potential Mesaverde completion provides no grounds to deny McElvain and Dugan the opportunity to produce the Mesaverde reserves under their property pursuant to a proposal they both consider makes the most geological, engineering and economic sense for them.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael H. Feldewert", written over a horizontal line.

Michael H. Feldewert

MHF

cc: J. Scott Hall, Esq., Attorney for D. J. Simmons
Mona Binion, McElvain