

**WHITE,
KOCH, KELLY
&
McCARTHY**
A Professional Association

Attorneys and Counselors at Law

John F. McCarthy, Jr.

Benjamin Phillips

Suzanne C. Odom

David R. Cunningham

Albert V. Gonzales

Janet Clow

Kevin V. Reilly

Special Counsel

C.W. Thompson, Jr.

Paul L. Bloom

M. Karen Kilgore

Sandra J. Brinck

Aaron J. Wolf

Mary E. Walta

Rebecca Dempsey

John M. Hickey

Julie Wittenberger-Wagner

OIL CONSERVATION DIVISION

01 AUG 20 11 31 AM '01

August 16, 2001

David Brooks, Examiner
Oil Conservation Division
New Mexico Department of Energy
Minerals and Natural Resources
2040 South Pacheco Street
Santa Fe, NM 87505

***Re: Case No. 12693; Application of McElvain Oil & Gas Properties, Inc. For
Compulsory Pooling, Rio Arriba County, N.M.; E/2 Section 5, T-25-N, R-2-W.***

Dear Mr. Brooks:

I am in receipt of a copy of a letter to you dated August 8, 2001 from Michael Feldewert, Esq., attorney for T.H. McElvain Oil and Gas Properties, Inc., regarding the above-referenced matter, as well as your response to the letter, dated August 13, 2001. Since Mr. Feldewert informed you that my clients have taken no action in furtherance of their proposal to re-enter the existing well in the East ½ of Section 5, T-25-N, R-2-W and re-complete in the Mesa Verde Formation, I did want to respond to that statement because it is not correct.

A number of actions have been taken in furtherance of this project, all in accordance with the terms of the Operating Agreement, which cover the existing well, the East ½ of Section 5 and the Leases subject to thereto. First, by vote of a majority of working interest owners, the operator NM&O Operating Company, who has failed to diligently operate this property and protect correlative rights, was removed and a successor operator designated. The new operator has transmitted to all working interest owners an Authority for Expenditure in the amount of \$117,000 for the re-completion project, over \$690,000 less than McElvain's proposed new well. A copy of the AFE and transmittal is attached.

Mr. Feldewert's letter also incorrectly states that there must be a "voluntary" agreement of working interest owners reached as to this proposal. No such agreement is required because the Operating Agreement covering this property is already in place and agreed to by all working interest owners in the leases subject to it. This project is proceeding under the provisions of the Operating Agreement. Under the terms of the Operating Agreement only 48 hours telephonic

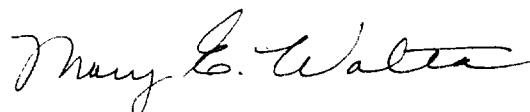
David Brooks, Examiner

August 16, 2001

Page 2

notice could be required for a project such as this. Nonetheless, the working interest owners have been provided the thirty (30) day written notice (with a reservation of 48 hours telephonic notice should drilling equipment become available) for election to participate or not. Since compulsory pooling is not required due to the existing Operating Agreement, my clients do not expect to file a competing application for compulsory pooling, as Mr. Feldewert has stated they must do. The new operator will be prepared on September 20, 2001 to demonstrate that the project proposed by McElvain's Application is wasteful and unnecessary.

Very truly yours,



MARY E. WALTA

MEW:lab

cc: Michael Feldewert, Esq.
Richard Altman & Company
Peter C. Neumann, Esq. (via facsimile & e-mail)
NOSECO Corporation (via facsimile & U.S. Mail)