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

IN THE MATTER OF THE APPLICATION OF McELVAIN OIL & GAS PROPERTIES, INC. FOR COMPULSORY POOLING RIO ARRIBA COUNTY, NEW MEXICO **CASE NO. 12635, *de novo***

IN THE MATTER OF THE APPLICATION OF D. J. SIMMONS, INC. FOR COMPULSORY POOLING, RIO ARRIBA COUNTY, NEW MEXICO **CASE NO. 12705**

McELVAIN'S POST-HEARING STATEMENT

This Post-hearing Statement is submitted by McElvain Oil & Gas Properties, Inc. pursuant to the request of the Commissioners at the November 17, 2001, hearing.

At the May 17, 2001, Examiner hearing, D.J. Simmons presented the same arguments and evidence it has presented to the Commission. After considering this evidence, the Division's Examiner concluded "the cumulative evidence presented in this matter serves to support McElvain's position..."[1] D.J. Simmons has presented nothing to the Commission to overturn that conclusion.

I. No Competing Mesaverde Well Proposal Is Before the Commission.

Compulsory pooling is limited to situations where an interest owner with a right to drill "has drilled or proposes to drill a well on said unit to a common source of supply..." NMSA 1978, Section 70-2-17.C. D.J. Simmons has not met the statutory preconditions for invoking the Division's compulsory pooling power. It has not proposed to drill and complete a well in the

[1] *See* Division Order R-11663 at p. 2, para. 10.

Mesaverde formation in Section 25.[2] Instead, D.J. Simmons merely plans to drill a Gallup Dakota oil well in the NE/4 of Section 25 (which is spaced on 160-acres owned entirely by D.J. Simmons) with the "possibility" of a Mesaverde completion in this wellbore at some unknown time in the future. As a result, the only proposal before the Commission to drill a well to source of supply common to all of the interest owners in Section 25, and the only proposal that allows Dugan and Forcenergy to produce their just and equitable share of Mesaverde reserves under their property, is McElvain's re-entry project approved by Division Order R-11663 and Administrative Order NSL-4538.

II. Division Order R-11663 Protects Correlative Rights And Affords the Interest Owners In The SE/4 of Section 25 The Opportunity To Recover Without Unnecessary Expense Their Just And Fair Share of Mesaverde Reserves.

When the statutory preconditions are met, the Division "shall" pool properties to "avoid the drilling of unnecessary wells or to protect correlative rights or to prevent waste." *See* NMSA 1978, Section 70-2-17.C. The Division is further compelled to enter pooling orders that are "just and reasonable and will afford to the owners or owners of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of oil or gas, or both." *Id.* McElvain has met all of the statutory preconditions for pooling, and Division Order R-11663 protects the correlative rights of the interest owners in the SE/4 by providing them the opportunity to recover their fair share of Mesaverde reserves without unnecessary expense.

The evidence establishes that D.J. Simmons intends to drill Gallup Dakota oil wells in both

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[2] *See, e.g.*, McElvain exhibits 11-13, the testimony of Mona Binion, and the cross-examination of D.J. Simmons' witnesses (in particular Ed Dunn and Tom Mullins).

the NE/4 and SE/4 of Section 25. Nothing in Order R-11663 prevents that development plan. Indeed, D.J. Simmons' proposed oil wells are eligible for re-completion, if necessary, as in-fill Mesaverde gas wells for N/2 and S/2 spacing units. D.J. Simmons cries of "waste" are nothing more than a desire to "keep in its back pocket" the ability to operate at some unknown time a Mesaverde gas well. That desire does not constitute "waste" (*see* NMSA 1978, Section 70-2-3) and compulsory pooling authority does not exist to keep in an operator's "back pocket" a formation the interest owners in Section 25 wish to develop now.

D.J. Simmons also fails to establish that Division Order R-11663 is contrary to the known geology and prevailing drainage patterns in the area. D.J. Simmons presented no direct evidence of fracturing in the Mesaverde formation or north-south drainage trends. Indeed, the only direct evidence presented by the parties shows that the sand orientations in Section 25 support east-west drainage trends.[3]

D.J. Simmons' main objection to Order R-11663 is that it spreads the risk of a Mesaverde test well among the parties who will share in the production from that well. However, the testimony of Mona Binion and Ed Dunn establish that this sharing of benefits and risk is a common consideration operators take into account in developing properties. Moreover, McElvain not only owns Mesaverde rights in the W/2 of Section 25, but also the SE/4. The correlative rights of the interest owners in the SE/4 are protected, and they are afforded an opportunity to share in the recovery of Mesaverde reserves without unnecessary expense, by

[3]*See* McElvain Exhibits 16 and 17; D.J. Simmons Exhibit 25.

participating in the re-entry of a well in the SW/4 under the terms of Division Order R-11663.

III. McElvain Is The Only Party That Made Diligent and Good Faith Efforts to Reach a Voluntary Agreement With the Interest Owners In Section 25.

D.J. Simmons' has observed: "The Division and the Commission require operators to show that they have made a 'diligent' and 'good faith' effort to negotiate a voluntary agreement before a compulsory pooling application may be filed."[4] Looking at the same facts as the Commission, the Division's Examiner concluded D.J. Simmons was not diligent in this matter. *See* Tr. of May 17th Hearing at p. 129, line 20. Ed Dunn further testified that D.J. Simmons never attempted to reach an agreement with Dugan. *See also* D.J. Simmons Exhibit 3.

With respect to McElvain, D.J. Simmons' arguments consist of attempting to establish who initiated the numerous discussions and exchange of information that took place between the parties since McElvain proposed its re-completion project in November of 2000. *See, e.g,* D.J. Simmons Exhibit 3. However, D.J. Simmons' landman (Ed Dunn) candidly admitted that by the end of November of 2000, McElvain had provided all the documentation D.J. Simmons considered necessary to meet the "good faith" obligation, and that McElvain had indeed made good faith efforts to reach an agreement with D.J. Simmons.[5]

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[4] D.J. Simmons, Inc.'s Hearing Memorandum at p. 7.

[5] Indeed, McElvain accepted farmout terms for D.J. Simmons' Mesaverde interests in the SE/4 of Section 25. The only matter holding up the settlement is D.J. Simmons' insistence that McElvain support the creation of two non-standard 160-acre Mesaverde spacing units in the N/2 of Section 25. *See* McElvain's Exhibit B-1 (11/1/01 McElvain settlement letter to John A. Byrom). At the May 17th hearing, Examiner Stogner noted the absence of precedent for non-standard spacing units for the Mesaverde formation. *See* Transcript of May 17th hearing at p. 123-126. Certainly it does not constitute bad faith for McElvain to refuse to support a proposal that is contrary to the Division's rules and regulations.

It is rather ironic for D.J. Simmons to now argue good faith when the Division's Examiner concluded D.J. Simmons had not been diligent, McElvain is the only party to reach a voluntary agreement with an interest owner in the SE/4 (Herbert Kai), another interest owner in the SE/4 (Dugan) strongly supports McElvain's re-completion project, and the final interest owner in the SE/4 (Forcenergy) stands ready to participate in McElvain's re-entry project once a final order is entered by the Commission.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 9, 2001 I served a copy of the foregoing document to the following by

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