

**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 PRE-HEARING STATEMENT

This Prehearing Statement is submitted to the Commission by Holland & Hart LLP and Campbell & Carr, attorneys for McElvain Oil & Gas Properties, Inc.

APPEARANCES OF PARTIES

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McELVAIN'S STATEMENT OF THE CASE

On November 10, 2000, McElvain proposed by letter to re-enter an existing plugged and abandoned well in the SW/4 of Section 25, T-25-N, R-3-W and attempt a completion in the Mesaverde formation at an unorthodox location for the Undesignated Blanco-Mesaverde Gas Pool. McElvain proposed to dedicate the S/2 of Section 25 to this proposed re-entry project. D. J. Simmons proposed no alternative development plan to the working interest owners in Section 25 in response to McElvain's letter.

On December 29, 2000, the Division approved McElvain's unorthodox gas well location in the SW/4 of Section 25 for "a proposed 320-acre standard lay-down gas spacing and proration unit comprising the S/2 of Section 25." On March 13, 2001, McElvain filed a compulsory pooling application to form a S/2 spacing unit for its proposed Naomi Well No. 1. D. J. Simmons did not file a competing pooling application or propose any alternative development plan to the working interest owners in Section 25.

On May 17, 2001, Division Examiner Michael Stogner heard McElvain's compulsory pooling application (Case No. 12635). D. J. Simmons appeared at the hearing in opposition to McElvain's application and presented testimony that stand-up spacing units should be formed for the Mesaverde formation in Section 25. D. J. Simmons attempted to establish that the drainage patterns in Section 25 supported stand-up units, and argued that an E/2 spacing unit should be preserved for up-hole gas completions in the event D. J. Simmons drilled Gallup-Dakota oil wells in the NE/4 or the SE/4 of

Section 25.¹

At the May 17th hearing, Edward B. Dunn (a landman for D. J. Simmons) testified that while D. J. Simmons had discussed plans to drill two Gallup-Dakota oil wells in the E/2 of Section 25, D. J. Simmons had no definitive plans for drilling the wells, had not sent out any drilling proposals to the working interest owners in Section 25, had not drafted any Joint Operating Agreement for a well in Section 25, and had filed no APDs with the Division for any well in Section 25. Transcript of May 17th Hearing at pp. 68-70, 77. Mr. Dunn also testified that the special pool rules for the Blanco-Mesaverde Gas Pool would allow any Gallup-Dakota oil well in the NE/4 or the SE/4 of Section 25 to be re-completed, if necessary, as an in-fill gas well in the Mesaverde formation. Tr. at 70-71. Mr. Dunn also observed that D. J. Simmons' acreage position in the SE/4 is similar to that held by Dugan Production Corporation, that Dugan supported McElvain's S/2 spacing unit, and that it was reasonable for the interest owners in Section 25 to have the financial risk of a Mesaverde test well reduced by the use of an existing wellbore and to share the risk among several parties. Tr. at 72-73.

At the end of the 3.5 hour hearing, Examiner Stogner made the following observations about D. J. Simmons' lack of due diligence:

I've been involved in those instances where you have had dual applications for compulsory pooling in which the orientation was questioned and one was taken over the other or they were reoriented because one necessarily -- *but I don't have that in this instance*.....You're wanting them [McElvain] to form a standard standup proration unit, but *there hasn't been any like application filed by D. J. Simmons or, for that matter, due diligence to drill a well*. They say they have, but there hasn't been anything written. They haven't talked to---or put anything in writing. So yeah, I understand that downhole commingling would have made it easier. Yes, there could

¹ The West Lindrith Gallup-Dakota Oil Pool is developed on 160-acres under the special pool rules issued by the Division.

be some precedent set on that. *But given where we are now, why should I reorient or deny this and force them [McElvain] to form a standard standup 320-acre proration unit simply because D. J. Simmons decided to drag their feet on something?*

Transcript of May 17th Hearing at p. 129-30.

On July 12, 2001, almost two months after the hearing on McElvain's application, four months after McElvain filed its pooling application for a S/2 spacing unit, and eight months after McElvain first proposed its re-entry project to the working interest owners in Section 25, D. J. Simmons filed its pooling application with the Division (Case No. 12705). D. J. Simmons now asks the Division to establish an E/2 Mesaverde spacing unit for a Gallup Dakota oil well D. J. Simmons proposes to drill in the NE/4 of Section 25. Since the filing of its application in July, D. J. Simmons has repeatedly requested continuances of its compulsory pooling case.

On September 24, 2001, the Division issued Order R-11663 granting McElvain's pooling application and forming a S/2 spacing unit in Section 25. The Division found that "the cumulative evidence presented in this matter serves to support McElvain's position." *See* Order R-11663 at p. 2, paragraph 10. The Division thus rejected D. J. Simmons' claims that the drainage patterns in Section 25 supported stand-up units, and rejected the theory that McElvain's pooling order would prevent development of any potential Gallup-Dakota reserves in Section 25. *Id.*

D. J. Simmons has now consolidated its pooling application (Case No. 12705) with its *de novo* appeal of Division Order R-11663. McElvain has moved to dismiss D. J. Simmons' pooling application as untimely. McElvain complied with all of the requirements for a compulsory pooling order well before D. J. Simmons took any action to propose a well. *See* NMSA 1978, Section 70-2-17(C) (noting that once the statutory preconditions are met, the Division "shall pool" the lands.) In

the event McElvain's Motion to Dismiss is not granted by the Commission, then McElvain will present evidence to support Division Order No. R-11663 and the assessment of a 200% risk penalty against the uncommitted mineral interest owners.

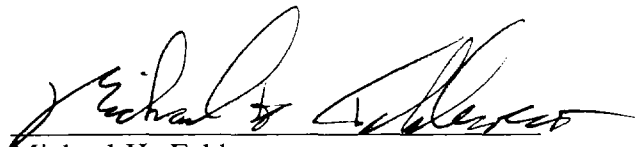
PROPOSED EVIDENCE

APPLICANT

WITNESSES (Name and expertise)	EST. TIME	EXHIBITS
Mona Binion, Landman	40 Minutes	Approx. 15
Janet Estes Jackson, Geologist	15 Minutes	Approx. 2
John Steuble, Engineer	30 minutes	Approx. 6

PROCEDURAL MATTERS

McElvain has filed a Motion to Dismiss the compulsory pooling application in Case 12705 on the grounds that is untimely.



Michael H. Feldewert
Attorney for McElvain Oil & Gas Properties, Inc.

Certificate of Service

The undersigned hereby certifies that on November 1, 2001 a true copy of the foregoing was hand-delivered to J. Scott Hall, Esq.



Michael H. Feldewert