

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

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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D. J. SIMMONS'S RESPONSE TO McELVAIN'S MOTION TO DISMISS

McElvain Oil and Gas Properties, Inc. Motion to Dismiss the Application of D. J. Simmons, Inc. is inappropriate for two separate but equally compelling reasons: (1) It seeks to prevent D.J. Simmons from having a full and fair hearing on its Application, and (2) does not present adequate grounds to support the relief requested. McElvain's motion should be denied. In addition, in order to avoid a duplicative Division hearing, Case No. 12705 and Case No. 12635 should be simultaneously heard by the Commission at the November 9, 2001 hearing docket. Alternatively, this case should be continued until the *de novo* proceedings in Case No. 12635 are completed.

BACKGROUND

In this case, the Applicant, D. J. Simmons, Inc., seeks the compulsory pooling of the Blanco-Mesaverde formation underlying the E/2 of Section 25, T-25-N, R-3-W, NMPM, in Rio Arriba County. D. J. Simmons proposes to dedicate the E/2 of Section 25 to its Bishop Federal 25 No. 1 well to be drilled at a standard location in the NE/4 of the section. In addition to testing the Blanco-Mesaverde formation, D. J. Simmons also plans test the Chacra/Lewis and the Gallup-Dakota formations.

There is also presently pending before the New Mexico Oil Conservation Commission D. J. Simmons's Application for Hearing De Novo in the matter of

McElvain's application for the compulsory pooling of the S/2 of Section 25, T-25-N. R-3-W. (Case No. 12635; Order No. R-11663, *de novo*). As the two cases involve competing applications affecting the SE/4 of the same section, D. J. Simmons filed a request for a temporary stay of the pooling order in Case No. 12635 pending the completion of the *de novo* proceedings. Simmons has also requested that the hearing on its Application in this case be continued until the *de novo* proceedings in Case No. 12635 are completed. To date, McElvain has presented no evidence that it would be prejudiced by a stay.

POINTS AND AUTHORITIES

McElvain's Motion to Dismiss Case No. 12705 is premature. Moreover, it presents no adequate grounds to support an outright dismissal.

McElvain seeks to short-circuit these proceedings by pre-supposing the outcome the *de novo* appeal in Case No. 12635. Until the Commission has resolved the issues in the *de novo* proceeding, McElvain can neither presume that its pooling order will stand, nor that Simmons is precluded from pursuing its own Application. By circumventing the regular processes of the Division and the Commission, McElvain would prevent Simmons from having a full and fair hearing on its legitimately filed application. Yet, it is understandable why McElvain would seek to pre-empt any further exposure of the numerous issues involved in these two cases. McElvain would rather avoid having the Division hear evidence on such issues as (1) McElvain's delays in developing its acreage, (2) waste, and (3) the propriety of developing an E/2 unit.

McElvain's Delays. In its motion, McElvain argues that it is entitled to a compulsory pooling order under the theory of "first-come, first served". McElvain

derides the fact that Simmons's compulsory pooling application was filed some four months after its own. Yet, McElvain fails to mention the fact that the record in Case No. 12635 established that Simmons acquired its acreage interest only last year while McElvain has held its W/2 acreage since at least 1987. McElvain avoids explaining why, on the one-hand, it has put-off its simple re-completion operation and delayed any development of the Blanco-Mesaverde reserves for over fourteen years while, on the other hand, Simmons is ready to proceed with a new-drill in only a few months time.

Waste. In Case No. 12635, McElvain seeks to pool only the Blanco-Mesaverde formation in the SE/4 of Section 5. It has eschewed any plans to develop either the Chacra/Lewis or the Gallup-Dakota reserves underlying the acreage it seeks to pool. Simmons, on the other hand, plans to develop the Chacra/Lewis and the Gallup-Dakota in conjunction with the Blanco-Mesaverde. Notably, in its Motion to Dismiss, McElvain represents that it "tested" the Gallup-Dakota in the SW/4 of Section 25 (by its former Wynona No. 1 well, now named the Naomi Com No. 1) and found it to be "non-productive".¹ This is not true. The record in Case No. 12635 established that the Wynona No. 1 produced 144 million cubic feet of gas and 8,893 barrels of oil. In Case No. 12705, Simmons will present evidence consistent with that presented in Case No. 12635, that the potential for economically recoverable Gallup-Dakota reserves underlying the SE/4 exists; potential which McElvain plans to ignore, thus making the development and production of those reserves problematic. Simmons's proposal, unlike McElvain's, would avoid the waste of the Gallup-Dakota reserves underlying the SE/4.

¹ McElvain Motion to Dismiss, Pg. 2, footnote 2

E/2 Development. Simmons intends to present evidence establishing how the development of the 160 acre Lewis/Chacra and Gallup-Dakota reservoirs in conjunction with the 320 acre Blanco-Mesaverde reservoir on an E/2 stand-up proration unit basis is justified by, among other reasons, (1) the geology, (2) prevailing drainage patterns, and (3) the established equities in the affected acreage. McElvain, on the other hand, would be hard-put to overcome such a showing given, among other things, (1) the inability of the Naomi Com No.1 recompletion, to adequately drain Blanco-Mesaverde reserves from the SE/4 from its present unorthodox location 450 feet from the west line of the section in Unit L, or (2) why it would be inequitable to create an E/2 proration unit when it already owns 100% of the W/2.

These issues, to the extent they specifically concern the lands located in the E/2 of Section 25, were not directly at issue in Case No. 12635. All of these issues have merit and they deserve to be heard. None of them are moot.

Correspondingly, McElvain's motion for outright dismissal is inappropriate and should be denied. Instead, it makes more sense to combine Case No. 12705 with Case No. 12635 for the simultaneous presentation of full evidence in both cases at the Commission's November 9, 2001 hearing docket. Such a course of action is authorized by the Division's Rule 1216(b) and would result in a quicker, and ultimately more efficient resolution of the dispute.

Respectfully submitted,

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