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\* NEW MEXICO BOARD OF SPECIALIZATION RECOGNIZED SPECIALIST IN NATURAL RESOURCES - OIL & GAS LAW  
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January 11, 2002

Ms. Lori Wrotenbery, Director  
New Mexico Oil Conservation Division  
1220 St. Francis Drive  
Santa Fe, New Mexico 87505

Re: NMOCD Case No. 12801; Application of McElvain Oil and Gas Properties, Inc. for  
Compulsory Pooling, Rio Arriba County, New Mexico

Dear Ms. Wrotenbery:

Enclosed please find for filing, an original and one copy of the Motion to Continue in the  
above-referenced matter.

Very truly yours,



J. Scott Hall

JSH/glb  
enclosures a/s

RECEIVED  
JAN 11 PM 4:30  
OPERATION DIV

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

IN THE MATTER OF THE APPLICATION  
OF McELVAIN OIL & GAS PROPERTIES, INC.  
FOR COMPULSORY POOLING,  
RIO ARRIBA COUNTY, NEW MEXICO

CASE NO. 12801

02 JAN 11 PM 4:53  
OIL CONSERVATION DIV.  
AND MINERAL RIGHTS SECTION

**MOTION TO CONTINUE**

D. J. Simmons, Inc., (“Simmons”), through its counsel, moves the Division enter its Order continuing Case No. 12801 to the February 7, 2002 Examiner hearing docket.

As grounds for its motion, Simmons states:

In Case No. 12801, McElvain Oil and Gas Properties, Inc., (“McElvain”), seeks the pooling of all formations developed on 320 acre units from the base of the Pictured Cliffs formation to the base of the Mesaverde formation underlying the E/2 of Section 25, T-25-N, R-3-W, NMPM, in Rio Arriba County. In its Application, McElvain requests that the matter be set for hearing before a Division Examiner on January 24, 2002. Notably, the Division received McElvain’s Application on January 2, 2002.

McElvain’s request for a January 24<sup>th</sup> hearing is premature.

To be timely, an application requesting a January 24, 2002 hearing must have been received by the Division on or before December 31, 2001. Division Rule 1203.B<sup>1</sup> specifies:

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<sup>1</sup> 19 NMAC 15.N.1203.B

“Applications for hearing before the Division or Commission must be in writing and received by the Division at least 23 days in advance of the hearing on that application.”

The 23-day advance filing requirement under Rule 1203.B is written in mandatory terms and there is no discretion to waive the application or operation of provisions. Just as an applicant must comply with the rule’s requirements, so must the Division give effect to the plain meaning of its provisions.

Here, there is no dispute that the Application was not timely received by the Division.

The Applicant will in no way be prejudiced by the granting of this Motion to Continue.

WHEREFORE, D. J. Simmons, Inc. requests the Division enter its Order continuing the hearing on the Application in this matter to the February 7, 2002 Examiner hearing docket.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, P.A.

By



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J. Scott Hall  
Attorneys for D. J. Simmons, Inc.  
Post Office Box 1986  
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(505) 989-9614

**Certificate of Mailing**

I hereby certify that a true and correct copy of the foregoing was mailed to counsel of record on the 11th day of January, 2002 as follows:

Michael Feldewert, Esq.  
P.O. Box 2208  
Santa Fe, New Mexico 87504

A handwritten signature in black ink, appearing to read "J. Scott Hall", written in a cursive style.

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J. Scott Hall