

**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
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. 12635, *de novo*

Consolidated with:

**IN THE MATTER OF THE APPLICATION OF
D.J. SIMMONS INC. FOR COMPULSORY POOLING,
RIO ARriba COUNTY, NEW MEXICO**

**CASE NO. 12705
ORDER NO. R-11663-A**

**ORDER OF THE DIVISION
DENYING MOTION FOR STAY OF DIVISION ORDER R-11663**

BY THE DIVISION DIRECTOR:

THIS MATTER, having come before the Division Director of the New Mexico Oil Conservation Division (hereinafter referred to as "the Director") pursuant to Rule 1220(B) of the Rules and Regulations of the Oil Conservation Division, 19 NMAC 15.N.1220(B) (7-15-99), on motion of D.J. Simmons Inc. (hereinafter referred to as "Simmons") for stay of Division Order No. R-11663, which motion was opposed by McElvain Oil & Gas Properties Inc. (hereinafter referred to as "McElvain"), and the Director, being fully advised in the premises,

FINDS:

1. On September 24, 2001 the Oil Conservation Division (hereinafter referred to as "the Division") entered Order No. R-11663 in Case No. 12635 which, in pertinent part, ordered pooling of all uncommitted mineral interests from the base of the Pictured Cliffs formation to the base of the Mesaverde formation underlying the S/2 of Section 25, Township 25 North, Range 3 West, NMPM, Rio Arriba County, New Mexico, to form a standard 320-acre spacing unit within that vertical extent, which at present includes only the Undesignated Blanco-Mesaverde Pool.

2. On October 3, 2001 Simmons filed an application to have the matter heard *de novo* by the New Mexico Oil Conservation Commission (hereinafter referred to as "the Commission").

3. On October 16, 2001, the Director issued an order consolidating Case No. 12635 with Case No. 12705, a competing application for compulsory pooling filed by Simmons before the Division.

4. On October 5, 2001, Simmons, citing "Memorandum No. 3-85" of the Division, filed a motion to stay Order No. R-11663. As grounds for the motion, Simmons argued that McElvain's argument that risk mitigation was a proper rationale for compulsory pooling pursuant to NMSA 1978, § 70-2-17 (Repl. 1995) was erroneous. Simmons also argued that harm would result from denial of a stay, that McElvain would not be prejudiced by entry of a stay because exploration is not imminent, that rig scheduling is not an issue for McElvain, that McElvain retains the right to re-complete the well in question and dedicate the W/2 to it, and, citing McElvain's two requests for continuances, that McElvain was in no hurry to develop the acreage.

5. McElvain filed a response opposing the motion. McElvain, citing the transcript of the proceedings before the Division Examiner, argued that waste is not threatened and no party would be impaired were the motion denied.

6. Rule 1220(B) of the Rules and Regulations of the Oil Conservation Division, 19 NMAC 15.N.1220(B) (7-15-99), permits the Director to enter a stay of a Division order "... if a stay is necessary to prevent waste, protect correlative rights, protect public health and the environment or prevent gross negative consequences to any affected party ..." Simmons' citation to Memorandum No. 3-85 is erroneous; that memorandum is of no force and effect, having been superceded by Rule 1220.

7. Simmons failed to establish that waste is threatened, that correlative rights are in jeopardy, or that gross negative consequences to any party would result from the Division's order.

8. Simmons alluded to the possibility of "harm" if the Motion for Stay is not granted, but did not develop the argument and a review of the record of the proceedings does not support the assertion. Generalized concerns or suspicions are insufficient to establish entitlement to a stay under Rule 1220(B).

9. Simmons' argument that risk mitigation is not a proper rationale for compulsory pooling pursuant to § 70-2-17 is really an argument on the merits of this matter, which will be presented to the Commission during the hearing. This argument has little relevance to the present inquiry, which is limited to factors set out in Rule 1220(B). Similarly, Simmons' argument that McElvain is free to re-complete the well in question and dedicate the W/2 to that well is an argument that goes to the ultimate issue

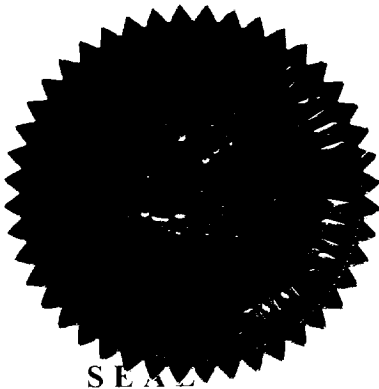
in this matter, of little relevance to the present inquiry. If these arguments are intended to establish justification for a stay pursuant to Rule 1220(B), the Motion fails to make any discernable connection to the prevention of waste, the protection of correlative rights or the prevention of gross negative consequences to any affected party.

10. The argument presented by Simmons that McElvain *would not* be prejudiced by entry of a stay seems to argue against a stay rather than in favor of one. See Rule 1220(B) ("... if a stay is necessary to ... to prevent gross negative consequences to *any* affected party ..."). Likewise, Simmons' argument that McElvain's use of continuances demonstrated it was in no hurry to develop the acreage also suggests that no party is likely to be affected by Order No. R-11663 until the Commission has an opportunity to hear this matter.

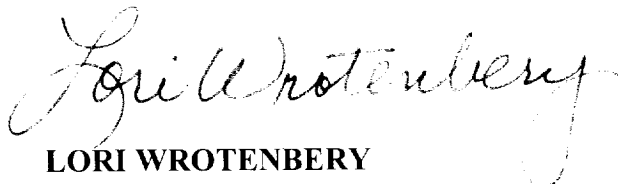
11. As a result of the foregoing, the Motion to Stay of Simmons should be denied.

IT IS THEREFORE ORDERED that the Motion to Stay Division Order No. R-11663 filed herein by D.J. Simmons Inc. is denied. Order No. R-11663 shall remain in force until the Commission has had occasion to issue an Order in this matter.

DONE at Santa Fe, New Mexico, on the 23rd day of October 2001.



**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**


LORI WROTENBERY
Director