

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

**IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
DIVISION FOR THE PURPOSE OF  
CONSIDERING:**

**CASE NO. 12693  
ORDER NO. R-11681**

**APPLICATION OF MCELVAIN OIL & GAS PROPERTIES, INC. FOR  
COMPULSORY POOLING, RIO ARRIBA COUNTY, NEW MEXICO.**

**ORDER OF THE DIVISION**

**BY THE DIVISION:**

This case came on for hearing at 4:15 p.m. on September 20, 2001, at Santa Fe, New Mexico, before Examiner David K. Brooks.

NOW, on this 30th day of October, 2001, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

**FINDS THAT:**

(1) Due public notice has been given, and the Division has jurisdiction of this case and of the subject matter.

(2) McElvain Oil & Gas Properties, Inc., general partner of T. H. McElvain Oil & Gas Limited Partnership, acting as authorized agent for and on behalf of T. H. McElvain Oil & Gas Limited Partnership ("Applicant"), seeks an order pooling all uncommitted mineral interests from the base of the Pictured Cliffs formation to the base of the Mesaverde formation underlying the E/2 of Section 5, Township 25 North, Range 2 West, NMPM, Rio Arriba County, New Mexico, in the following manner:

The E/2, forming a standard 320-acre gas spacing and proration unit (the "Unit") for all formations or pools spaced on 320 acres within this vertical extent, which presently include, but are not necessarily limited to, the Blanco Mesaverde Pool.

(3) The above-described unit (the Unit) is to be dedicated to Applicant's proposed Cougar Com. 5 Well No. 2 to be drilled at a standard gas well location within the SW/4 SE/4 of Section 5.

(4) Two or more separately owned tracts are embraced within the Unit, and/or there are owners of royalty interests and/or undivided interests in oil and gas minerals in one or more tracts included in the Unit which are separately owned.

(5) T. H. McElvain Oil & Gas Limited Partnership is an owner of an oil and gas working interest within the Unit. T. H. McElvain Oil & Gas Limited Partnership has the right to drill and, McElvain Oil & Gas Properties, Inc., as authorized agent of T. H. McElvain Oil & Gas Limited Partnership, proposes to drill its Cougar Com. 5 Well No. 2 (the "proposed well") to a common source of supply at a standard well location within the SW/4 SE/4 (Unit J) of Section 5.

(6) Noseco Corporation, Gavilan Dome Properties, Mesa Grande Limited Partnership, Mesa Grande Resources and Neuman Family Trust ("Protestants"), all of whom are owners in the proposed unit, appeared in opposition to the application of McElvain Oil & Gas Properties, Inc. However, said parties presented no competing proposal for development of this Unit.

(7) Protestants offered as evidence an operating agreement which by its terms purports to cover the NE/4 of Section 5. However, said operating agreement, which was admitted in evidence as Noseco Exhibit A, is unambiguous, and does not purport to incorporate any part of the E/2 of Section 5 into a unit, nor to cover any interest in the SE/4 of Section 5.

(8) The evidence presented by Applicant is sufficient to demonstrate that there are interest owners in the proposed unit that have not agreed to pool their interests.

(9) Although title to certain interests in the proposed unit is contested between Applicant and Protestants in pending litigation, the evidence presented by Applicant demonstrates, and Protestants do not dispute, that Applicant owns a working interest in the Unit title to which is not contested.

(10) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to the owner of each interest in the Unit the opportunity to recover or receive without unnecessary expense its just and fair share of hydrocarbons, this application should be approved by pooling all uncommitted mineral interests, whatever they may be, within the Unit.

(11) Applicant should be designated the operator of the proposed well and of the Unit.

(12) After pooling, uncommitted working interest owners are referred to as non-consenting working interest owners. ("Uncommitted working interest owners" are owners of working interests in the Unit, including unleased mineral interests, who are not parties to an operating agreement governing the Unit.) Any non-consenting working interest owner should be afforded the opportunity to pay its share of estimated well costs of the proposed well to the operator in lieu of paying its share of reasonable well costs out of production.

(13) Any non-consenting working interest owner who does not pay its share of estimated well costs should have withheld from production its share of reasonable well costs plus an additional 200% thereof as a reasonable charge for the risk involved in drilling the well.

(14) Any non-consenting working interest owner should be afforded the opportunity to object to the actual well costs, but actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(15) Following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid, estimated well costs exceed reasonable well costs.

(16) Reasonable charges for supervision (combined fixed rates) should be fixed at \$6000 per month while drilling and \$600 per month while producing, provided that these rates should be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations*." The operator should be authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(17) Except as noted in Findings (13) and (16) above, all proceeds from production from the well that are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

**IT IS THEREFORE ORDERED THAT:**

(1) Pursuant to the application of McElvain Oil & Gas Properties, Inc., all uncommitted mineral interests from the base of the Pictured Cliffs formation to the base

of the Mesaverde formation underlying the E/2 of Section 5, Township 25 North, Range 2 West, N.M.P.M., Rio Arriba County, New Mexico, are hereby pooled, as follows:

The E/2, forming a standard 320-acre gas spacing and proration unit for all formations or pools spaced on 320 acres within this vertical extent which presently include but are not necessarily limited to the Blanco Mesaverde Pool.

The Unit shall be dedicated to Applicant's Cougar Com. 5 Well No. 2 to be drilled at a standard gas well location within the SW/4 SE/4 (Unit J) of Section 5.

(2) The operator of the Unit shall commence drilling the proposed well on or before January 31, 2002, and shall thereafter continue drilling the well with due diligence to test the Mesaverde formation.

(3) In the event the operator does not commence drilling the proposed well on or before January 31, 2002, Ordering Paragraph (1) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause.

(4) Should the proposed well not be drilled to completion, or be abandoned, within 120 days after commencement thereof, the operator shall appear before the Division Director and show cause why Ordering Paragraph (1) should not be rescinded.

(5) McElvain Oil & Gas Properties, Inc. is hereby designated the operator of the proposed well and of the Unit.

(6) After pooling, uncommitted working interest owners are referred to as non-consenting working interest owners. After the effective date of this order, the operator shall furnish the Division and each known non-consenting working interest owner in the Unit an itemized schedule of estimated well costs of the proposed well.

(7) Within 30 days from the date the schedule of estimated well costs is furnished, any non-consenting working interest owner shall have the right to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production as hereinafter provided, and any such owner who pays its share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(8) The operator shall furnish the Division and each known non-consenting working interest owner an itemized schedule of actual well costs within 90 days following completion of the proposed well. If no objection to the actual well costs is

received by the Division, and the Division has not objected within 45 days following receipt of the schedule, the actual well costs shall be deemed to be the reasonable well costs. If there is an objection to actual well costs within the 45-day period, the Division will determine reasonable well costs after public notice and hearing.

(9) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of estimated costs in advance as provided above shall pay to the operator its share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator its share of the amount that estimated well costs exceed reasonable well costs.

(10) The operator is hereby authorized to withhold the following costs and charges from production:

- (a) the proportionate share of reasonable well costs attributable to each non-consenting working interest owner who has not paid its share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished; and
- (b) as a charge for the risk involved in drilling the well, 200% of the above costs.

(11) The operator shall distribute the costs and charges withheld from production, proportionately, to the parties who advanced the well costs.

(12) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$6000 per month while drilling and \$600 per month while producing, provided that these rates shall be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations*." The operator is authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(13) Except as provided in Ordering Paragraphs (10) and (12) above, all proceeds from production from the well that are not disbursed for any reason shall be placed in escrow in Rio Arriba County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership. The operator shall notify the Division of the name and address of the escrow agent within 30 days from the date of first deposit with the escrow agent.

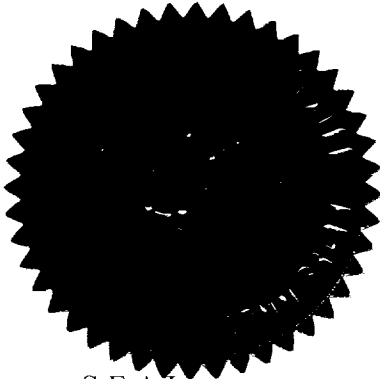
(14) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under this order. Any well costs or charges that are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(15) Should all the parties to this compulsory pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(16) The operator of the well and Unit shall notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(17) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



SEAL

STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION

  
LORI WROTENBERY  
Director