

**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. 14262
ORDER NO. R-12837-A**

**APPLICATION OF MCELVAN OIL & GAS PROPERTIES, INC. FOR
COMPULSORY POOLING, SAN JUAN COUNTY, NEW MEXICO**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on January 8, 2009, at Santa Fe, New Mexico, before Examiners David K. Brooks, and Terry Warnell.

NOW, on this 25th day of February, 2009, the Division Director, having considered the testimony, the record and the recommendations of the Examiners,

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., ("McElvain" or "Applicant"), seeks an order pooling all uncommitted interests from the surface to the base of the Fruitland Coal formation in the S/2 of Section 3, Township 29 North, Range 13 West, NMPM, in San Juan County, New Mexico, to form a standard 320-acre gas spacing unit for all formations or pools spaced on 320 acres within this vertical extent, including but not necessarily limited to, the Basin-Fruitland Coal Gas Pool (71629).

(3) The above-described spacing and proration unit ("the Unit") is to be dedicated to the applicant's Ruby Well No. 1 API No. 30-045-33266 ("proposed well"), which is located at a standard location in the SW/4 (Unit L) of Section 3 and was originally drilled to the Pictured Cliffs formation and casing was set to a depth of 1689 feet in March of 2008.

(4) Applicant appeared at the hearing through counsel and presented testimony that ownership in this well is common to all depths for 320-acre gas spacing and proration units.

(5) The Division granted McElvain its application for compulsory pooling in Case No. 14009, Order No. R-12837, on October 29, 2007. Said order pooled 160-acre spacing unit from surface to the Pictured Cliffs formation and included costs to drill, complete, and equip the Ruby Well No. 1. The well was drilled through the Pictured Cliffs formation and tested.

(6) Applicant is an owner of an oil and gas working interest within the Units. Applicant has the right to re-complete and proposes to re-complete the proposed well to a common source of supply within the Units.

(7) No other parties entered an appearance in this case or otherwise opposed the application.

(8) Two or more separately owned tracts are embraced within the Units, and/or there are royalty interests and/or undivided interests in oil and gas minerals in one or more tracts included in the Units that are separately owned.

(9) There are interest owners in the Unit that have not agreed to pool their interests. No party, other than applicant, appeared at the hearing, and no one indicated opposition to this application. Moreover most of the interest owners could not be located.

(10) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to the owner of each interest in the Units 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 interests, whatever they may be, in the oil and gas within the Units.

(11) McElvain Oil & Gas Properties, Inc. should be designated the operator of the proposed well and of the Unit.

(12) Any pooled working interest owner who does not pay its share of estimated re-completion 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.

(13) Reasonable charges for supervision (combined fixed rates) should be fixed at \$6,000 per month while drilling or re-entering 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.*"

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the application of McElvain Oil & Gas Properties, Inc., all uncommitted interests, whatever they may be, in the oil and gas from the surface to the base of the Fruitland Coal formation in the S/2 of Section 3, Township 29 North, Range 13 West, NMPM, in San Juan County, New Mexico, are hereby pooled to form standard

320-acre gas spacing "Units" for all formations or pools spaced on 320 acres within this vertical extent, presently including but not necessarily limited to, the Basin-Fruitland Coal Gas Pool (71629).

(2) This Unit shall be dedicated to the applicant's Ruby Well No. 1 API No. 30-045-33266 ("proposed well"), which is at a standard location 1755 feet from the South line and 860 feet from the West line (Unit L) of Section 3, Township 29 North, Range 13 West, NMPM, in San Juan County, New Mexico.

(3) McElvain Oil & Gas Properties, Inc., (OGRID 22044) is hereby designated the operator of the subject well and of the Unit.

(4) The operator of the Unit shall commence re-completion of this well on or before March 1, 2010 and shall thereafter continue recompletion operations of this well with due diligence to test gas bearing zones in the Fruitland Coal formation.

(5) In the event the operator does not commence recompletion of this well on or before March 1, 2010, Ordering Paragraph (1) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause.

(6) Should the subject well not be re-completed within 120 days after commencement thereof, Ordering Paragraph (1) shall be of no further effect, and the Units created by this Order shall terminate unless the operator, prior to the expiration of such 120-day period, files an application with the Division for extension of the time for recompletion of the proposed well. The Division Director may grant such extension without hearing.

(7) Upon final plugging and abandonment of the proposed well and all other wells drilled on any of these Units pursuant to Division Rule 13, the pooled Unit created by this Order shall terminate, unless this order has been amended to authorize further operations.

(8) After pooling, uncommitted working interest owners are referred to as pooled working interest owners. ("Pooled working interest owners" are owners of working interests in the Units, including unleased mineral interests, who are not parties to an operating agreement governing the Units.) After the effective date of this order, the operator shall furnish the Division and each known pooled working interest owner in the Units an itemized schedule of estimated costs of recompleting and equipping the proposed well ("well costs").

(9) Within 30 days from the date the schedule of estimated well costs is furnished, any pooled 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. Pooled working interest owners who elect not to pay their

share of estimated well costs as provided in this paragraph shall thereafter be referred to as "non-consenting working interest owners."

(10) The operator shall furnish the Division and each known pooled working interest owner (including non-consenting working interest owners) an itemized schedule of actual well costs within 90 days following recompletion of the subject well, but in no event later than one (1) year of the date of issuance of this order. 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.

(11) Within 60 days following determination of reasonable well costs, any pooled 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 the amount, if any, that the estimated well costs it has paid exceed its share of reasonable well costs.

(12) 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; and
- (b) as a charge for the risk involved in re-completing the well, 200% of the above costs.

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

(14) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$6,000 per month while drilling or re-entering 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 pooled working interest owners.

(15) Except as provided in Ordering Paragraphs (12) and (14) above, all proceeds from production from the well that are not disbursed for any reason shall be placed in escrow in San Juan County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership. The operator shall notify the Division Records Clerk in Santa Fe of the name and address of the escrow agent within one (1) year from the date of issuance of this order.

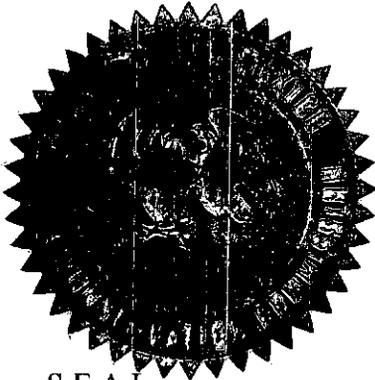
(16) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under this order. Any well costs or charges that are to be paid out of production shall be withheld only from the working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

(17) 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.

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

(19) 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.



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STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

A handwritten signature in black ink, appearing to read "Mark E. Fesmire".

MARK E. FESMIRE, P.E.
Director