

**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. 14409  
ORDER NO. R-13206**

**APPLICATION OF T. H. MCELVAIN OIL &  
GAS LIMITED PARTNERSHIP FOR  
COMPULSORY POOLING, LEA COUNTY,  
NEW MEXICO**

**ORDER OF THE DIVISION**

**BY THE DIVISION:**

This case came on for hearing at 8:15 a.m. on December 17, 2009, at Santa Fe, New Mexico, before Examiner William V. Jones.

NOW, on this 28<sup>th</sup> day of December, 2009, 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) T. H. McElvain Oil & Gas Limited Partnership ("Applicant"), seeks an order pooling all uncommitted interests from the surface to the base of the Bone Spring formation in the W/2 SW/4 of Section 31, Township 18 South, Range 34 East, NMPM, in Lea County, New Mexico, as follows:

Lot 3 (the NW/4 SW/4) to form a standard 38.03-acre oil spacing and proration unit for all formations or pools spaced on 40 acres within this vertical extent, which presently include, but are not necessarily limited to, the undesignated E-K Delaware Pool (21655).

Lots 3 and 4 (the W/2 SW/4) to form a standard 76.12-acre oil spacing and proration unit for all formations or pools spaced on 80 acres within this vertical

extent, which presently include, but are not necessarily limited to, the E-K Bone Spring Pool (21650).

(3) The Units are to be dedicated to Applicant's proposed McElvain Well No. 10 (API No. 30-025-39520), (the "proposed well") to be drilled 2240 feet from the South line and 990 feet from the West line (Lot 3 or Unit L) of Section 31.

(4) The E-K Bone Spring Pool has Special Pool Rules promulgated in Commission Order No. R-4981-A requiring 80-acre oil spacing and proration units and wells to be located no further than 150 feet from the center of each Lot or governmental quarter-quarter section. The proposed well location within Lot 3 is non-standard and was reportedly spotted at this location due to Bureau of Land Management surface use restrictions. The non-standard location was administratively approved November 2, 2009 by Division order NSL-6108.

(5) 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.

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

(7) All interest owners within the Units have been located, but there are interest owners that have not agreed to pool their interests.

(8) 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.

(9) McElvain Oil And Gas Properties, Inc. (OGRID 22044) should be designated the operator of the proposed well and of the Units.

(10) Any pooled 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.

(11) Reasonable charges for supervision (combined fixed rates) should be fixed at \$7,800 per month while drilling and \$780 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 T. H. McElvain Oil & Gas Limited Partnership, all uncommitted interests, whatever they may be, in the oil and gas from the surface to the base of the Bone Spring formation in the W/2 SW/4 of Section 31, Township 18 South, Range 34 East, NMPM, in Lea County, New Mexico, are hereby pooled as follows:

Lot 3 (the NW/4 SW/4) to form a standard 38.03-acre oil spacing and proration unit for all formations or pools spaced on 40 acres within this vertical extent, which presently include, but are not necessarily limited to, the undesignated E-K Delaware Pool (21655).

Lots 3 and 4 (the W/2 SW/4) to form a standard 76.12-acre oil spacing and proration unit for all formations or pools spaced on 80 acres within this vertical extent, which presently include, but are not necessarily limited to, the E-K Bone Spring Pool (21650).

(2) These "Units" shall be dedicated to Applicant's proposed McElvain Well No. 10 (API No. 30-025-39520), to be drilled 2240 feet from the South line and 990 feet from the West line (Lot 3 or Unit L) of Section 31.

(3) The operator of the Units shall commence drilling the proposed well on or before December 31, 2010, and shall thereafter continue drilling the well with due diligence to test the Bone Spring formation.

(4) In the event the operator does not commence drilling the proposed well on or before December 31, 2010, Ordering Paragraph (1) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause demonstrated by satisfactory evidence.

(5) Should the proposed well not be drilled and completed within 120 days after commencement thereof, then Ordering Paragraph (1) shall be of no further effect, and the Units created by this Order shall terminate, unless operator appears before the Division Director and obtains an extension of the time for completion of the proposed well for good cause shown by satisfactory evidence.

(6) Upon final plugging and abandonment of the proposed well and any other well drilled on the Units pursuant to Division Rule Part 13, Sections 9 through 11, the pooled Units created by this Order shall terminate, unless this order has been amended to authorize further operations.

(7) McElvain Oil And Gas Properties, Inc. (OGRID 22044) is hereby designated the operator of the proposed well and of the Units.

(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 drilling, completing 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 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.

(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 drilling 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 \$7,800 per month while drilling and \$780 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.

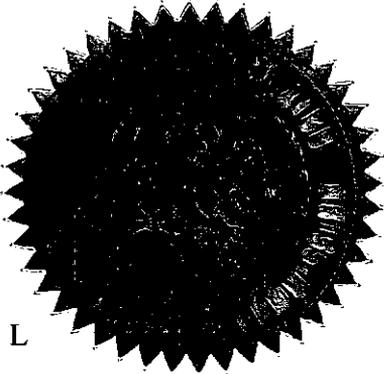
(15) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under this order. Any well costs or charges that are to be paid out of production shall be withheld only from the working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

(16) 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.

(17) 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.

(18) 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

MARK E. FESMIRE, P.E.  
Director