

**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. 12636
ORDER NO. R-11294-A**

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

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on April 5, 2001, at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this 19th day of June, 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 its subject matter.

(2) On December 2, 1999, in Case No. 12284, the Division entered Order No. R-11294 pooling all uncommitted mineral interests from the base of the Pictured Cliffs formation to the base of the Dakota formation underlying the S/2 of Section 33, Township 26 North, Range 2 West, Rio Arriba County, New Mexico, to form a standard 320 acre gas spacing and proration unit (the "Unit") for any and all formations and/or pools spaced on 320 acres within this vertical extent, including but not limited to the Blanco-Mesaverde Gas Pool and the Basin-Dakota Gas Pool. Pursuant to Ordering Paragraph (20) of Order No. R-11294, the Division retained jurisdiction for entry of such further orders with respect to the Unit as might be deemed necessary.

(3) The applicant, McElvain Oil & Gas Properties, Inc. ("McElvain"), seeks an order amending Order R-11294 to provide for the drilling of an additional well on the Unit.

(4) The applicant is the owner of an oil and gas interest within the Unit, has the right to drill, and proposes to drill, its Cougar Com "33M" Well No. 1 (the "additional well")

at a standard location within the SW/4 of said Section 33.

(5) The Unit is to be dedicated to the applicant's proposed Cougar Com "33M" Well No. 1 to be drilled at a standard location within the SW/4 of said Section 33.

(6) The applicant presented evidence that demonstrates:

- (a) by Order No. R-11294 issued in Case No. 12284 on December 10, 1999, the Division, upon application of McElvain Oil & Gas Properties, Inc., pooled all uncommitted mineral interests from the base of the Pictured Cliffs formation to the base of the Dakota formation underlying the S/2 of Section 33, Township 26 North, Range 2 West, NMPM, thereby forming a standard 320-acre spacing and proration unit for the Basin-Dakota and Blanco-Mesaverde Gas Pools. This unit was dedicated to its Cougar Com "33" Well No. 1 to be drilled at a standard gas well location in the NW/4 SE/4 of Section 33;
- (b) pursuant to the provisions of Division Order No. R-11294, McElvain drilled the Cougar Com "33" Well No. 1 to test the Dakota formation;
- (c) the Cougar Com "33" Well No. 1 encountered commercial production in the Basin-Dakota Gas Pool; and
- (d) there is a possibility that the well will be completed in the Blanco-Mesaverde Gas Pool and the production from both pools will be downhole commingled.

(7) There are interest owners in the Unit 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 proration unit the opportunity to recover or receive without unnecessary expense its just and fair share of hydrocarbons, this application should be approved by amending Order No. R-11294 to authorize the drilling of the additional well on the Unit.

(9) McElvain should be designated the operator of the additional well.

(10) Production from the Cougar Com “33” Well No. 1 and the Cougar Com “33M” Well No. 1 should be separately metered, and drilling costs and risk penalties to be recovered from production from these wells should be accounted for separately.

(11) After pooling, uncommitted working interest owners are referred to as non-consenting working interest owners. Any non-consenting working interest owner should be afforded the opportunity to pay its share of estimated well costs of the additional well to the operator in lieu of paying its share of reasonable well costs out of production.

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

(13) Any non-consenting 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.

(14) 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.

(15) Reasonable charges for supervision (combined fixed rates) should be fixed at \$6,000.00 per month while drilling and \$600.00 per month while producing, provided that the 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.

(16) All proceeds from production from the additional 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.

(17) If the operator fails to commence drilling the additional well on or before September 1, 2001, or if all the parties to this forced pooling reach voluntary agreement

subsequent to the entry of this order, this order should become of no effect.

(18) The operator of the Unit should notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of Order No. R-11294.

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the application of McElvain Oil & Gas Properties, Inc., Order No. R-11294 shall be amended to authorize the drilling of the additional well on the Unit. The unit shall be dedicated to the applicant's proposed Cougar Com "33M" Well No. 1 to be drilled at a standard location within the SW/4 of Section 33.

(2) The operator of the additional well shall commence drilling the additional well on or before September 1, 2001, and shall thereafter continue drilling the well with due diligence to test the Dakota formation.

(3) In the event the operator does not commence drilling the well on or before September 1, 2001, Ordering Paragraph (1) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause shown.

(4) Should the additional 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 additional well.

(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 additional 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, 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 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 the reasonable well costs; provided, however, that 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 of the additional well 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 from the additional well:

- (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 of the additional well 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 additional well, 200 percent 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 \$6,000.00 per month while drilling and \$600.00 per month while producing, provided that the rates should 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) 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.

(14) 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) All proceeds from production from the additional 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.

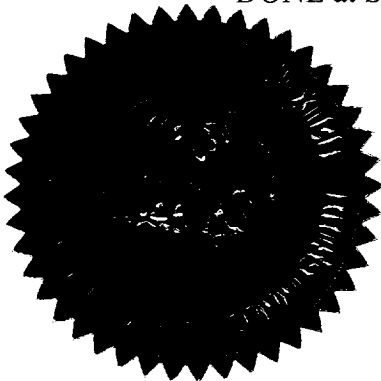
(16) Should all the parties to this compulsory pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

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

(18) Production from the Cougar Com "33" Well No. 1 and the Cougar Com "33M" Well No. 1 shall be separately metered, and drilling costs and risk penalties to be recovered from production from these wells shall be accounted for separately.

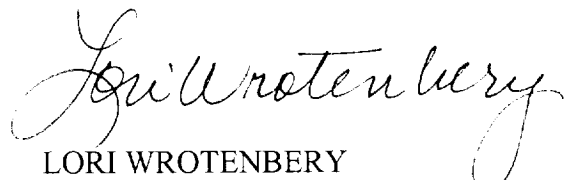
(19) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

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



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION


LORI WROTENBERY
Director