

**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 TO CONSIDER:**

**CASE NO. 16336
ORDER NO. R-20044**

**APPLICATION OF MCELVAIN ENERGY, INC FOR A NON-STANDARD WELL
LOCATION, NON-STANDARD SPACING AND PRORATION UNIT, AND
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 July 26, 2018, at Santa Fe, New Mexico, before Examiner William V. Jones.

NOW, on this 12th day of October, 2018, 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 the subject matter.

(2) Cases No. 16336 and 16337 were consolidated at the hearing but separate orders will be issued.

(3) In Case No. 16336, McElvain Energy, Inc (the "Applicant") seeks approval of a 240-acre (more or less) non-standard spacing and proration unit for oil and gas production from the Bone Spring formation, E-K; Bone Spring Pool (Pool code 21650), comprising the E/2 W/2 of Section 30 and the E/2 SW/4 of Section 19, both in Township 18 South, Range 34 East, NMPM, Lea County, New Mexico. Applicant further seeks an order pooling all uncommitted interests in the Unit for the Bone Spring formation.

(4) The Unit will be dedicated to the following "proposed well" to be completed at a standard horizontal well location:

EK 30 BS2 Federal Com Well No. 3H, API No. 30-025-43150

SHL: 100 feet from the South line and 1050 feet from the West line,

(Lot 4 or Unit M) of Section 30, Township 18 South, Range 34 East, NMPM.

BHL: 2440 feet from the South line and 1980 feet from the West line
(Unit K) of Section 19, Township 18 South, Range 34 East, NMPM.

(5) The proposed well will be drilled horizontally and completed in the Bone Spring formation [E-K; Bone Spring Pool]. Said pool is subject to Special Rules promulgated in Order R-4981, as amended, issued in Case 5422. Said order requires 80-acre oil spacing and proration units with [vertical] wells to be located within 150-feet of the center of a quarter-quarter section or Lot.

(6) The allowed setback footage distance for the proposed horizontal oil well is specified in Paragraph (1) of Subsection C of 19.15.16.15 NMAC effective June 26, 2018. Said rules allow the first or last take points to be no closer than 100 feet, and the setbacks measured perpendicular to the well path to be a minimum of 330-foot from the outer boundary of the horizontal spacing unit.

(7) No other party appeared or otherwise opposed this application.

(8) Applicant appeared through counsel and presented the following land and technical evidence:

- (a) The Bone Spring formation in this area is suitable for development by horizontal drilling.
- (b) The proposed orientation of the horizontal well from south to north is appropriate for the Unit.
- (c) The requested non-standard location is no longer necessary under the new horizontal well rules.
- (d) All quarter-quarter sections to be included in the Unit are expected to be substantially productive in the Bone Spring formation, so that the Unit as requested will not impair correlative rights.
- (e) Notice by certified mail was provided to all uncommitted interest owners in the proposed Unit whose interests were evidenced by a conveyance instrument, either of record or known to Applicant when the Application was filed, and to heirs known to Applicant of deceased persons who appear as owners in such instruments.
- (f) All affected parties were successfully contacted and provided with notice.

The Division Concludes That

(9) The application in this case was filed after the June 26, 2018 date in which the horizontal rule amendments became effective (see Order No. R-14689). In addition, the proposed well was permitted for drilling prior to June 26, 2018.

(10) Pursuant to rule amendments effective June 26, 2018 (see Order No. R-14689), the acreage dedicated to a horizontal well must consist of a "horizontal spacing unit," as defined in Subsection F of 19.15.16.7 NMAC, as amended, rather than a "project area." However, the project area proposed in this case has been previously approved. Pursuant to Paragraph (4) of Subsection E of 19.15.16.15, as amended, any project area approved for an existing or proposed well prior to June 26, 2018 remains in effect as a standard, or approved non-standard, horizontal spacing unit for the well(s) to which it was previously dedicated.

(11) The area defined above which was previously approved as a project area for purposes of drilling a horizontal well should be dedicated to the proposed well(s) as a standard horizontal spacing unit (the "Unit"). The Unit will comprise six adjacent governmental quarter-quarter section equivalents oriented from south to north.

(12) As requested, the portions of the case asking for a non-standard spacing and proration unit and for a non-standard well location should be dismissed.

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

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

(15) There are interest owners in the Unit that have not agreed to pool their interests.

(16) 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 a 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 Unit.

(17) McElvain Energy, Inc (OGRID 22044) should be designated the operator of the proposed well and the Unit.

(18) Infill wells within the Unit should be subject to Division Rules 19.15.13.9 NMAC through 19.15.13.10 NMAC, and to the terms and conditions of this order.

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

(20) Reasonable charges for supervision (combined fixed rates) should be fixed at \$7000 per month, per well, while drilling and \$700 per month, per well, while producing, provided that these rates should be adjusted annually pursuant to the overhead adjustment provision of the COPAS form titled "*Accounting Procedure-Joint Operations*."

IT IS THEREFORE ORDERED THAT

(1) All uncommitted interests, whatever they may be, in the oil and gas in the Bone Spring formation underlying a 240-acre (more or less) standard Horizontal Oil Spacing Unit (the "Unit") in the E-K; Bone Spring Pool (Pool code 21650), comprising the E/2 W/2 of Section 30 and the E/2 SW/4 of Section 19, both in Township 18 South, Range 34 East, NMPM, Lea County, New Mexico, are hereby pooled.

(2) The portions of the case asking for approval of a non-standard spacing and proration unit and non-standard well location are hereby dismissed.

(3) The Unit shall be dedicated to the following "proposed well" to be completed at a standard horizontal well location:

EK 30 BS2 Federal Com Well No. 3H, API No. 30-025-43150

SHL: 100 feet from the South line and 1050 feet from the West line,
(Lot 4 or Unit M) of Section 30, Township 18 South, Range 34 East,
NMPM.

BHL: 2440 feet from the South line and 1980 feet from the West line
(Unit K) of Section 19, Township 18 South, Range 34 East, NMPM.

(4) McElvain Energy, Inc (OGRID 22044) is hereby designated the operator of the proposed well and the Unit.

(5) The operator of the Unit shall commence drilling the proposed well on or before October 31, 2019 and shall thereafter continue drilling the proposed well with due diligence to test the Bone Spring formation.

(6) In the event the operator does not commence drilling on or before October 31, 2019 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.

(7) The proposed well must be completed within 120 days after commencement of drilling, else Ordering Paragraph (1) shall be of no further effect, unless the operator

requests in writing an extension of the time for completion of the proposed well or well for good cause shown by satisfactory evidence and the Division issues written approval.

(8) Upon final plugging and abandonment of the proposed well and any other well drilled on the Unit pursuant to Division Rule 19.15.13.9 NMAC, the pooled Unit shall terminate, unless this Order has been amended to authorize further operations.

(9) Infill wells within the Unit shall be subject to the terms and conditions of this order.

(10) 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 Unit, including unleased mineral interests, who are not parties to an operating agreement governing the Unit.) After the effective date of this order, the operator shall furnish the Division and each known pooled working interest owner in the Unit a separate itemized schedule of estimated costs of drilling, completing and equipping the proposed well ("well costs").

(11) Within 30 days from its receipt of the schedule of estimated well costs for any well, any pooled working interest owner shall have the right to pay its share of estimated well costs of such well 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 for any well shall remain liable for operating costs but shall not be liable for risk charges for such well. 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."

(12) 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 of each well 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.

(13) Within 60 days following determination of reasonable well costs for any well, any pooled working interest owner who has paid its share of estimated costs of such well or wells 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.

(14) The operator is hereby authorized to withhold the following costs and charges from each non-consenting working interest owner's share of production from each well:

- (a) The proportionate share of reasonable well costs attributable to such interest; and
- (b) As a charge for the risk involved in drilling the well, 200% of the above costs.

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

(16) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$7000 per month, per well, while drilling and \$700 per month, per well, while producing, provided that these rates may, at the election of the operator, be adjusted annually pursuant to the overhead adjustment provisions of the COPAS form titled "*Accounting Procedure-Joint Operations*." The operator is authorized to withhold from each pooled working interest owner's share of production from each well the proportionate share of both the supervision charges and the actual expenditures required for operating such well, not more than what are reasonable.

(17) During the cost recovery period, the operator shall furnish to the Division and to each known non-consenting pooled working interest owner, annually, and within 90 days after payout occurs, a schedule of all revenues attributable to each proposed well, and all charges for supervision and operating costs charged against such revenues. Operating costs shall include all reasonable costs incurred for the maintenance and operation of the well, except for "well costs" reported pursuant to requirements herein, that are properly chargeable to the joint account pursuant to COPAS procedures. If no objection to the operating costs is received by the Division, and the Division has not objected, within 45 days following receipt of any schedule, the costs shall be deemed to be the reasonable operating costs. If there is an objection to the accuracy or reasonableness of operating costs reported within the 45-day period, the Division will determine reasonable operating costs after public notice and hearing.

(18) Except as provided above, all proceeds of production from the proposed well that are not disbursed for any reason shall be held for the account of the person or persons entitled thereto pursuant to the Oil and Gas Proceeds Payment Act (NMSA 1978 Sections 70-10-1 through 70-10-6, as amended). If not disbursed, such proceeds shall be turned over to the appropriate authority as and when required by the Uniform Unclaimed Property Act (NMSA 1978 Sections 7-8A-1 through 7-8A-31, as amended).

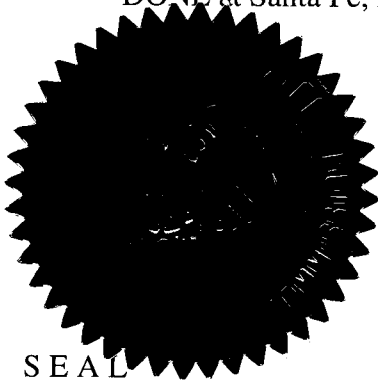
(19) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for allocating costs and charges under this Order. Any costs that are to be paid out of production shall be withheld only from the working interests' share of production,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

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

(21) The operator of the well and the Unit shall notify the Division in writing of the subsequent voluntary agreement of any party subject to the compulsory pooling provisions of this order.

(22) 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.



STATE OF NEW MEXICO
OIL CONSERVATION DIVISION


HEATHER RILEY
Director