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HAND DELIVERED

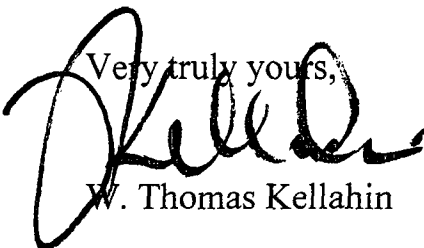
Mark Fesmire, P.E. Director  
Oil Conservation Division  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

Re: NMOCD Cases 13605, 13606 and 13607  
Application of McElvain Oil & Gas Properties  
for Compulsory Pooling  
San Juan County, New Mexico

2005 DEC 8 PM 4 48

Dear Mr. Fesmire:

In behalf of Lance Oil & Gas Company, please find enclosed our Motion to Dismiss the three referenced cases currently set for hearing on December 15, 2005.

Very truly yours,  
  
W. Thomas Kellahin

Cc:

Gail McQuesten, Esq.  
Attorney for the OCD  
Ocean Munds-Dry, Esq.  
Attorney for McElvain

**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:**

**APPLICATION OF McELVAIN OIL & GAS PROPERTIES, INC.      CASE NO. 13605  
FOR COMPULSORY POOLING,  
SAN JUAN COUNTY, NEW MEXICO**

**APPLICATION OF McELVAIN OIL & GAS PROPERTIES, INC.      CASE NO. 13606  
FOR COMPULSORY POOLING,  
SAN JUAN COUNTY, NEW MEXICO**

**APPLICATIONS OF McELVAIN OIL & GAS PROPERTIES, INC.      CASE NO. 13607  
FOR COMPULSORY POOLING  
SAN JUAN COUNTY, NEW MEXICO**

**LANCE OIL & GAS COMPANY'S  
MOTION TO CONSOLIDATE  
AND  
MOTION TO DISMISS**

Lance Oil & Gas Company ("Lance") moves that the New Mexico Oil Conservation Division consolidate and dismiss these cases because the applicant, McElvain Oil Gas Properties, Inc. ("McElvain") prematurely filed these cases and failed to comply with the custom and practice of the Division concerning Section 70-2-17.C NMSA 1978 by instituting an application for compulsory pooling prior to conducting good faith efforts to reach a voluntary agreement with Alamo Development Company ("Alamo") Lance's predecessor as to part of Lance's working interest in this spacing unit. In addition, McElvain filed its compulsory pooling application prior to proposing this well to Lance and apparently failed to send notice of hearing to any interest except Alamo. And in support states:

## RELEVANT FACTS

### Case 13605

(1) The working interest ownership within the Picture Cliffs formation in the NE/4 of Section 5, T29N, R13W, San Juan County, NM is as follows:

Prior to November 23, 2005 (date of Alamo lease to Lance)

(a) McElvain	= 54.398%
(b) Alamo	= 25.000%
(c) Lance	= 0%
(d) Bayless	= 0%
(e) others	= 20.592%

After November 23, 2005 (date of Alamo lease to Lance)

(a) McElvain	= 54.398%
(b) Alamo	= 0%
(c) Lance	= 25.00%
(d) Bayless	= 0%
(e) others	= 20.592%

(2) By letter dated November 7, 2005, McElvain sent a well proposal and AFE to Alamo for its Wildwood Well No. 1 to be dedicated to a Pictured Cliffs spacing unit consisting of the NE/4 of Section 5.

(3) Eight days after, on November 15, 2005, McElvain filed a compulsory pooling application with the Division requesting a hearing on December 15, 2005.

(4) McElvain's application only seeks to pool the interest of Alamo. At the time of filing there were other working interest owners including Lance who have not agreed to McElvain's proposal.

(5) On December 1, 2005, Lance recorded the Oil & Gas Lease, dated November 23, 2005 that it had obtained from Alamo for Alamo's interest in this and other lands.

(6) At the request of Lance, representatives of Lance and McElvain met on Monday, December 5, 2005 to commence discussions concerning the development of Section 5 and have not yet reached a conclusion

**Case 13606**

(1) The working interest ownership within the Picture Cliffs formation in the SW/4 of Section 5, T29N, R13W, San Juan County, NM is as follows:

Prior to November 23, 2005 (date of Alamo lease to Lance)

- (a) McElvain = 29.40%
- (b) Alamo = 25%
- (c) Lance = 15.625%
- (d) Bayless = 9.375%
- (e) others = 20.60%

After November 23, 2005 (date of Alamo lease to Lance)

- (a) McElvain = 29.40%
- (b) Alamo = 0%
- (c) Lance = 40.625%
- (d) Bayless = 9.375%
- (e) others = 20.60%

(2) By letter dated November 7, 2005, McElvain sent a well proposal and AFE to Alamo for its Wildwood Well No 2 to be dedicated to a Pictured Cliffs spacing unit consisting of the SW/4 of Section 5.

(3) Eight days after, on November 15, 2005, McElvain filed a compulsory pooling application with the Division requesting a hearing on December 15, 2005.

(4) McElvain's application only seeks to pool the interest of Alamo. At the time of filing there were other working interest owners including Lance who have not agreed to McElvain's proposal.

(5) Three days after filing its compulsory pooling application, sent its well proposal and AFE dated November 18, 2005 to Lance who received it on November 21, 2005.

(6) On December 1, 2005, Lance recorded the Oil & Gas Lease, dated November 23, 2005 that it had obtained from Alamo for Alamo's interest in this and other lands.

(7) At the request of Lance, representatives of Lance and McElvain met on Monday, December 5, 2005 to commence discussions concerning the development of Section 5 and have not yet reached a conclusion.

**Case 13607**

(1) The working interest ownership within the Picture Cliffs formation in the SE/4 of Section 5, T29N, R13W, San Juan County, NM is as follows:

Prior to November 23, 2005 (date of Alamo lease to Lance)

- (a) McElvain = 25%
- (b) Alamo = 50%
- (c) Lance = 25%
- (d) Bayless = 0%
- (e) others = 0%

After November 23, 2005 (date of Alamo lease to Lance)

- (a) McElvain = 25%
- (b) Alamo = 0%
- (c) Lance = 75%
- (d) Bayless = 0%
- (e) others = 0%

(2) By letter dated November 7, 2005, McElvain sent a well proposal and AFE to Alamo for its Wildwood Well No 2 to be dedicated to a Pictured Cliffs spacing unit consisting of the SE/4 of Section 5.

(3) Eight days after, on November 15, 2005, McElvain filed a compulsory pooling application with the Division requesting a hearing on December 15, 2005.

(4) McElvain's application only seeks to pool the interest of Alamo. At the time of filing there were other working interest owners including Lance who have not agreed to McElvain's proposal.

(5) Three days after filing its compulsory pooling application, sent its well proposal and AFE dated November 18, 2005 to Lance who received it on November 21, 2005.

(6) On December 1, 2005, Lance recorded the Oil & Gas Lease, dated November 23, 2005 that it have obtained from Alamo for Alamo's interest in its have other lands.

(7) At the request of Lance, representatives of Lance and McElvain met on Monday, December 5, 2005 to commence discussions concerning the development of Section 5 and have not yet reached a conclusion.

## ARGUMENT

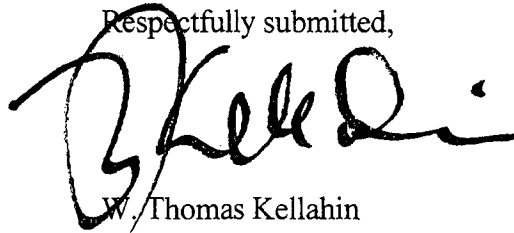
It has been the Division's longstanding interpretation of NMSA 1978 Section 70-2-17.C of the New Mexico Oil & Gas Act that an applicant is first required to make a good faith effort to obtain the voluntary commitment of interests in a spacing unit before seeking their compulsory pooling. Generally, that effort is commence by sending a written well proposal letter, including an AFE, that specifies the spacing unit, the well locations, estimated costs and depth and then waiting approximately 30-day thereafter before filing. The waiting period follows the industry's custom set forth in standard Joint Operating Agreements and is meaningful because it provides a period for the party to received the proposal, respond and to obtain further information from the proposing party or otherwise and then make an informed decision.

It is premature for any party, including McElvain, to proceed with compulsory pooling at this time. At Lance's request, Lance and McElvain met on December 1, 2005 and commenced discussion about the development of Section 5. If these issues are not resolved to the mutual satisfaction of the parties, then Lance intends to file competing compulsory pooling applications after providing an opportunity for voluntary agreements. That will cause the Division to address issues including: (a) operationship--allowing a minority working interest owner to operated when the majority working interest owner has proposed to a similar wellbore for substantial less costs, (b) the inclusion of 320-acre Fruitland coal-gas well completion; (c) acreage dedications and (d) pool production allocations.

McElvain's actions in these cases are contrary to this practice and if allowed by the Division will encourage McElvain and others to use compulsory pooling as a negotiating weapon rather than as a remedy of last resort. The Division's files are replete with cases that were dismissed for the same reasons that McElvain's case should be dismissed. For example, See NMOCD Cases 9939, 106635, 106636, 11107, 11434, 11461, 11927, 11999 and 12014.

To the best of Lance's knowledge there are no expiring leases or other deadlines that constitute an emergency such that the Division should commence hearing McElvain's pooling cases at this time. To do so, will require the Division to proceed to hearing cases in a piecemeal fashion that ultimately may have been unnecessary.

Respectfully submitted,



W. Thomas Kellahin  
Attorney for Lance Oil & Gas Company

#### CERTIFICATION OF SERVICE

I hereby certify that a copy of this pleading was served upon the following counsel of record this 8<sup>th</sup> day of December, 2005, by facsimile.

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Oil Conservation Division  
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Attorney for McElvain Oil & Gas Properties, Inc.  
Fax: (505) 983-6043



W. Thomas Kellahin