STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE APPLICATION OF
McELVAIN OIL & GAS PROPERTIES, INC.
FOR COMPULSORY POOLING,
RIO ARRIBA COUNTY, NEW MEXICO **CASE NO. 12635, *de novo***

Consolidated with:

IN THE MATTER OF THE APPLICATION OF
D.J. SIMMONS INC. FOR COMPULSORY POOLING,
RIO ARRIBA COUNTY, NEW MEXICO

CASE NO. 12705

ORDER NO. R-11663-C

ORDER OF THE COMMISSION

THIS MATTER has come before the New Mexico Oil Conservation Commission (hereinafter referred to as "the Commission") on the application of McElvain Oil & Gas Properties Inc. (hereinafter referred to as "McElvain"), *de novo*, for compulsory pooling, and the application of D.J. Simmons Inc. (hereinafter referred to as "Simmons") for compulsory pooling in the same section, and the Commission, having conducted an evidentiary hearing on the applications on November 6, 2001, and being fully advised in the premises,

FINDS:

1. Due notice has been given, and the Commission has jurisdiction of these cases and their subject matter.

2. In Case No. 12635, McElvain seeks an order pooling all uncommitted mineral interests from the base of the Pictured Cliffs formation to the base of the Mesaverde formation underlying the S/2 of Section 25, Township 25 North, Range 3 West, NMPM, Rio Arriba County, New Mexico to form a standard 320-acre lay-down gas spacing and proration unit for any pool developed on 320-acre spacing within that vertical extent, which presently includes only the Undesignated Blanco-Mesaverde Pool.

3. In Case No. 12705, Simmons seeks an order pooling all uncommitted mineral interests from the surface to the base of the Mesaverde formation (less the Fruitland Coal) underlying the E/2 of the same section to form a standard 320-acre stand-up gas spacing

and proration unit for any pool developed on 320-acre spacing within that vertical extent, which presently includes only the Undesignated Blanco-Mesaverde Pool.

4. The competing applications were consolidated for hearing in Order No. R-11663-A on October 16, 2001 and an evidentiary hearing on the consolidated cases took place on November 6, 2001.

5. In its application, McElvain proposes to re-enter its plugged and abandoned Wynona Well No. 1 (API No. 30-039-24222), which it intends to designate as the Naomi Well No. 1. The well is located at an unorthodox gas well location, but the unorthodox location was approved by the Oil Conservation Division in its Administrative Order NSL-4538 (December 29, 2000), and administrative notice is taken of the proceedings in that matter. The Naomi Well No. 1 is located 1650 feet from the South line and 450 feet from the West line (Unit L) of Section 25.

6. Records of the Oil Conservation Division disclose that the Naomi Well No. 1 was originally drilled in 1988 by McElvain to a depth of 8,113 feet and completed in the West Lindrith Gallup-Dakota Oil Pool at a standard oil well location within a standard 160-acre oil spacing and proration unit for this oil pool comprising the SW/4 of Section 25.

7. In its application, McElvain proposes to re-enter the Naomi Well No. 1 by removing the dry hole marker, drilling out six cement plugs, and completing it in the Mesaverde formation at an approximate depth of 5,970 feet.

8. In its application, Simmons proposes to drill its Bishop 25-1 Well to a total depth of 8714 feet at a standard gas well location 1303 feet from the north line and 710 feet from the east line of Section 25 to test the Gallup-Dakota formation.

9. McElvain owns the working interest in the W/2 of Section 25. Simmons owns the working interest in the NE/4 of Section 25, and Simmons, Forest Oil Corp, McElvain and Dugan Production Co. have fractional working interests in the SE/4 of Section 25.

10. McElvain appeared at the hearing through counsel and claimed that it is entitled to compulsory pooling as a result of its ownership interest in Section 25, that one interest owner (Simmons) had not consented to its proposed S/2 dedication, and that McElvain had in good faith and diligently proposed the recompletion of the Naomi Well No. 1 to Simmons, who had not agreed to voluntary pooling of that acreage.

11. McElvain further claimed at the hearing that the sands that comprise the Mesaverde formation are oriented in an east-west direction in Section 25 which McElvain claimed was indicative of east-west drainage trends. See McElvain Exhibits 16 and 17;

Simmons Exhibit 25. McElvain's geologist testified that the trend of sand containing 8% or greater porosity is generally east-to-west and the location of the existing McElvain well was well suited to drain the resources because of the east-west trend and the east-west trend would act as a control on the drainage pattern.

12. Simmons appeared at the hearing through counsel and claimed that it is entitled to compulsory pooling of a 320-acre unit comprising the E/2 of Section 25, that it had in good faith proposed its Bishop 25 No. 1 Well to the interest owners in the proposed E/2 unit, but McElvain had not agreed to voluntary pooling of its acreage. Simmons also noted its primary objective with the Bishop 25 No. 1 Well was the Gallup-Dakota formation.

13. Simmons' experts testified that the orientation of the sand bodies are largely immaterial to the drainage issue because fracturing in the Mesaverde formation is in a north-south to north-40-degrees-east orientation, and that production patterns in nearby wells demonstrate this natural fracturing exists. Simmons claims that natural gas production would follow the north-south to north-40-degrees-east fractures, establishing an elliptical drainage pattern in a north-south to north-40-degrees-east orientation. Because of this, Simmons claims that McElvain's well, situated near the west line of Section 25, will not drain the SE/4.

14. References were made by both parties to the Division's Blanco-Mesaverde spacing case, Case No. 12069, in which 320-acre spacing was established in the Blanco-Mesaverde Pool. The Commission takes administrative notice of Order No. R-10987-A and Case No. 12069.

15. The applications of McElvain and Simmons for compulsory pooling should be denied.

16. It appears that the Mesaverde formation in the SE/4 of Section 25 is the chief issue in the competing applications. McElvain owns the working interest in the W/2 of the section and could dedicate a stand-up 320 acre unit to its Naomi Well No. 1 without the necessity of pooling, and Simmons owns the working interest in NE/4 of the section to which it could dedicate production from a Gallup-Dakota formation unit (160 acres) without the necessity of pooling. A 320-acre Mesaverde unit dedicated to the S/2 or E/2 would require pooling because four parties own the working interest in the SE/4.

17. The evidence presented suggests that the sands of the Mesaverde formation in Section 25 are fractured in a north-south to north-40-degrees-east orientation. The evidence supports a conclusion that north-south to north-40-degrees-east drainage patterns are the norm within Section 25 as a result of the natural fracturing and that fracture stimulation would follow this natural pattern.

18. McElvain's isopach study of the sands with greater than 8% porosity is of limited assistance because fracture orientation and the resulting drainage patterns are the most important factors, not the depth of sand. McElvain's contention that the east-west orientation of the sands would control drainage and its further contention that the SE/4 will be drained from the Naomi Well No. 1 near the western section line was based almost entirely on this proposition. However, it appears upon review of the evidence that the geology of Section 25 favors a north-south to north-40-degrees-east drainage pattern and a W/2 unit is more suited to the prevailing drainage pattern.

19. Granting McElvain's application in this case for a S/2 unit in an area where north-south drainage patterns are the norm would potentially implicate the correlative rights of interest owners and could lead to the drilling of unnecessary wells. See NMSA 1978, § 70-2-17(C). McElvain has thus failed to meet its burden of demonstrating it is entitled to compulsory pooling and its application should be denied.

20. McElvain's reasoning for a S/2 unit was that all parties in the S/2 should have the opportunity to reap the rewards of its completion, if successful, and should share in the burden, if unsuccessful. Viking Petroleum v. Oil Conservation Commission, 100 N.M. 451, 672 P.2d 280 (1983) shows that the Commission may base its decision on an application for compulsory pooling on economic considerations so long as the statutory conditions are met and the application is otherwise protective of correlative rights, prevents waste and avoids the drilling of unnecessary wells. However, in this case, where evidence suggests that a W/2 unit is more appropriate given the geology, purely economic considerations should not prevail.

21. Simmons' witnesses testified that the primary target of its Bishop 25-1 well was the Gallup-Dakota formation (spaced on 160 acres) and that it did not expect significant results from the Mesaverde formation, which is McElvain's principal target. Simmons' engineering witness testified that Mesaverde production would be "uneconomic" and that Simmons was not committed to a Mesaverde completion.

22. The evidence referred to does not support compulsory pooling of the Mesaverde formation in the E/2 of Section 25 because Simmons did not establish that it will ever complete in the Mesaverde formation. The Viking case, cited above, also establishes that compulsory pooling of multiple formations is permissible so long as the evidence presented to the Commission justifies pooling in each formation at issue. Simmons failed to convince the Commission that it in fact "proposes" a Mesaverde completion and thus failed to meet its burden of establishing entitlement to a compulsory pooling order in the E/2. NMSA 1978, § 70-2-16(C) (compulsory pooling limited to situations where an owner "... who has the right to drill has drilled *or proposes to drill* a well ...").

23. Both parties urge the Commission to establish a uniform standard for establishing good faith and diligence in proposing a well. The parties devoted extensive time at the hearing attempting to establish their good faith and diligence and the opposing party's corresponding failure to meet standards in this regard.

24. It has long been the practice of the Commission to require parties to show good faith and diligence in proposing a well to other interest owners in the unit as a pre-requisite of a compulsory pooling order. See Morris, Richard, Compulsory Pooling of Oil and Gas Interests in New Mexico, 3 Nat. Res. J. 316 (1963). The Oil and Gas Act may require such efforts. See NMSA 1978, § 70-2-18(A).

25. The Commission has not set out specific standards for establishing what constitutes good faith and diligence, preferring to address these issues on a case-by-case basis.

26. Both McElvain and Simmons adopted a slightly different methodology to gain the other party's consent to their project. But in general, each party seems to have met reasonable standards of good faith and diligence, and because of this, the Commission declines the invitation to set forth more explicit standards. It is also unnecessary to reach this issue as the applications fail for other reasons.

IT IS THEREFORE ORDERED, AS FOLLOWS:

1. The applications for compulsory pooling shall be and hereby are denied.

2. McElvain should dedicate its completion in the Mesaverde formation in its Naomi Well. No. 1 to the W/2 of Section 25, and Simmons should dedicate its completion in the Basin-Dakota formation in its Bishop 25-1 Well to the NE/4.

3. Simmons' Exhibit No. 34, submitted after the close of evidence in this case but without objection of McElvain to its admission, should be and hereby is admitted.

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

5. Should voluntary agreement be reached concerning the lands described in the two applications subsequent to the date of this order, the parties may apply to the Commission for any necessary amendment pursuant to the continuing jurisdiction of the Commission of this matter.

DONE at Santa Fe, New Mexico, on this 5th day of December, 2001.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

LORI WROTENBERY, Chair

JAMI BAILEY, Member

ROBERT LEE, Member

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