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** NEW MEXICO BOARD OF SPECIALIZATION RECOGNIZED SPECIALIST IN REAL ESTATE LAW

January 11, 2002

Ms. Lori Wrotenbery, Director
New Mexico Oil Conservation Division
1220 St. Francis Drive
Santa Fe, New Mexico 87505

Re: NMOCD Case No. 12747; Application of McElvain Oil and Gas Properties, Inc. for
Compulsory Pooling, Rio Arriba County, New Mexico

Dear Ms. Wrotenbery:

Enclosed please find for filing, an original and one copy of the Motion to Dismiss in the
above-referenced matter.

Very truly yours,



J. Scott Hall

JSH/glb
enclosures a/s

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

IN THE MATTER OF THE APPLICATION
OF McELVAIN OIL & GAS PROPERTIES, INC.
FOR COMPULSORY POOLING,
RIO ARRIBA COUNTY, NEW MEXICO

CASE NO. 12747

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MOTION TO DISMISS

D. J. Simmons, Inc., (“Simmons”), through its counsel, moves the Division enter its Order dismissing Case No. 12747. As grounds for its motion, Simmons states:

In Case No. 12747, McElvain Oil and Gas Properties, Inc., (“McElvain”), seeks the pooling of all formations developed on 320 acre units from the base of the Pictured Cliffs formation to the base of the Mesaverde formation underlying the **N/2** of Section 25, T-25-N, R-3-W, NMPM, in Rio Arriba County. Previously, in consolidated Cases No. 12635 and No. 12705, McElvain sought to pool working interests from the base of the Pictured Cliffs formation to the base of the Mesaverde formation underlying the **SE/4** of Section 25 in order to dedicate a **S/2** 320 acre spacing unit to its Naomi Com No. 1 well located 1650’ FSL and 450’ FWL of the section (case no. 12635). In that same proceeding, Simmons sought to pool the working interests in all formations and pools spaced on 320 acres from the surface to the base of the Mesaverde formation (Blanco-Mesaverde Gas Pool) in the **E/2** of Section 25 in order to dedicate the pooled acreage to its Bishop Federal 25-1 well to be drilled at a standard location in the NE/4 of the Section (case no. 12705).

On December 5, 2001, pursuant to a hearing held before it on November 6, 2001, the New Mexico Oil Conservation Commission entered Order No. R-11663-C denying the applications of both McElvain and Simmons. In addition, in the decretal provisions of Order No. R-11663-C, the Commission directed McElvain to dedicate the **W/2** of Section 25 to its Naomi No. 1 well. The Commission's order effectively determined that the Mesaverde formation in section 25 is best developed on "stand-up" 320 acre proration units, consistent with its findings that drainage of Mesaverde reserves will occur generally along a north-south drainage pattern.

As a consequence of Order No. R-11663-C, McElvain's application for the creation of a **N/2** proration unit in Case No. 12747 is made moot.¹

Additionally, on January 2, 2003, subsequent to its Application in this case, McElvain filed yet another application for compulsory pooling, this time for the creation of an **E/2** unit in Section 25 for its Naomi No. 3 well proposed to be drilled to the Mesaverde formation at an unspecified location in the **SE/4** of the section. (NMOCD Case No. 12801; Application of McElvain Oil and Gas Properties, Inc. for Compulsory Pooling, Rio Arriba County, New Mexico.) This application, too, is in direct conflict with McElvain's application in Case No. 12747.

For all of the above reasons, McElvain's Application in Case No. 12747 should be dismissed.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, P.A.

By J. Scott Hall

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Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing was mailed to counsel of record on the 11th day of January, 2002 as follows:

Michael Feldewert, Esq.
P.O. Box 2208
Santa Fe, New Mexico 87504

J. Scott Hall

J. Scott Hall

¹ McElvain did not seek rehearing of Order No. R-11663-C, and it is therefore final.