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STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
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. 12861

COMPLAINT NO. 10
FILED 1/24/02

McELVAIN'S RESPONSE TO MOTION TO CONTINUE

D.J. Simmons has moved to continue McElvain's pooling application solely on the grounds that the application was filed with the Division on January 2, 2002, rather than on New Years Day, January 1, 2002. D.J. Simmons' motion is without merit.

On December 31st, twenty-four days in advance of the January 24th hearing date, the Division informed the attorneys for McElvain that the Division's offices were closing early for New Year's Eve and that applications for the January 24th hearing date would be accepted on January 2nd. Pursuant to these instructions, McElvain filed its pooling application with the Division on January 2nd.

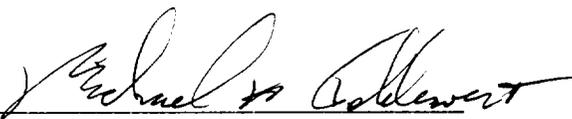
Rule 1203.B does not address the situation where the 23-day filing requirement falls on a legal holiday. However, the New Mexico Rules of Civil Procedure provide that when a filing date falls on a legal holiday, or when the clerk's office is inaccessible for other reasons, the filing period "runs until the end of the next day which is not one of the aforementioned days." N.M.R.Civ.P. 1-006.

In this case, McElvain filed its pooling application with the Division as instructed. Notice was provided to the affected parties in a timely fashion. D.J.

Simmons' contention that this matter should be continue because the pooling application was not "timely received by the Division" is without merit. McElvain therefore respectfully requests that the Division deny D.J. Simmons' motion to continue and that this matter be heard by a Division Examiner on January 24th.

Respectfully submitted,

HOLLAND & HART, LLP

By: 

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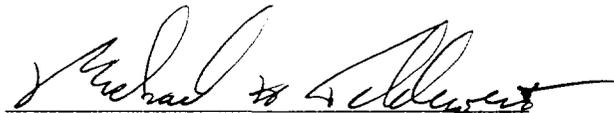
Attorneys for McELVAIN OIL & GAS
PROPERTIES, INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of January, 2002, I have caused to be fax-delivered a copy of the foregoing **McElvain's Response to Motion to Continue** in the above-captioned case to the following named party:

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