

HOLLAND & HART^{LLP}



Ocean Munds-Dry
Associate

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2006 MAR 14 PM 4:00

March 14, 2006

HAND-DELIVERED

Mark E. Fesmire, P.E.
Director
Oil Conservation Division
New Mexico Energy, Minerals and
Natural Resources Department
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

Case 13693

Re: Application of McElvain Oil & Gas Properties, Inc. for
compulsory pooling, Rio Arriba County, New Mexico.

Dear Mr. Fesmire:

Enclosed is the application of McElvain Oil & Gas Properties, Inc. in the
above-referenced case as well as a copy of a legal advertisement. McElvain
requests that this matter be placed on the docket for the April 13, 2006
Examiner hearings.

Sincerely,

Ocean Munds-Dry
Ocean Munds-Dry

Enclosures

cc: Ms. Denise Greer
McElvain Oil & Gas Properties, Inc.

Holland & Hart^{LLP}

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Aspen Billings Boise Boulder Cheyenne Colorado Springs Denver Denver Tech Center Jackson Hole Salt Lake City Santa Fe Washington, D.C. ♻

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

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**IN THE MATTER OF THE APPLICATION
OF MCELVAIN OIL & GAS PROPERTIES, INC.
FOR COMPULSORY POOLING,
RIO ARriba COUNTY, NEW MEXICO.**

CASE NO. 13693

APPLICATION

MCELVAIN OIL & GAS PROPERTIES, INC. ("McElvain"), through its undersigned attorneys, hereby makes application pursuant to the provisions of NMSA 1978, Section 70-2-17, for an order pooling all uncommitted mineral interests in all formations from the surface to the base of the Blanco-Mesaverde formation underlying the W/2 of Section 14, Township 25 North, Range 2 West, N.M.P.M., Rio Arriba County, New Mexico for all formations and/or pools developed on 320-acre spacing within that vertical extent which includes but is not necessarily limited to the Blanco-Mesaverde Gas Pool. In support of this application McElvain states:

1. McElvain is a working interest owner in the W/2 of Section 14 and has a right to drill thereon.

2. Pursuant to Division Order No. R-12226, all uncommitted mineral interests from the surface to the base of the Mesaverde formation were pooled, McElvain was designated operator of a 320-acre spacing unit located in the W/2 of said Section 14 and the Badger Com 14 Well No. 1 was dedicated to said unit. See Exhibit B attached (Order No. R-12226).

3. The Special Pool Rules and Regulations for the Blanco-Mesaverde Gas Pool currently provide up to four wells on a 320-acre spacing unit and the W/2 of Section 14 is therefore not fully developed in the Blanco-Mesaverde Gas Pool.

4. McElvain proposes to dedicate the above-referenced existing spacing or proration unit to its Badger 14 Well No. 1A, to be drilled at a standard location 2120 feet from the South line and 660 from the West line in the NW/4 SW/4 of Section 14 to test the Blanco-Mesaverde formation at a depth of approximately 5832 feet. This well will be the FIRST OPTIONAL INFILL WELL as to the Mesaverde formation in the W/2 of Section 14.

4. McElvain has sought and been unable to obtain a voluntary agreement for the development of these lands from the interest owners identified on Exhibit A to this application.

5. Said pooling of interests will avoid the drilling of unnecessary wells, will prevent waste and will protect correlative rights.

6. In order to permit McElvain the opportunity to obtain its just and fair share of the oil and gas underlying the subject lands, all mineral interests should be pooled, and McElvain should be designated the operator of the well.

WHEREFORE, McElvain requests that this application be set for hearing before an Examiner of the Oil Conservation Division on April 13, 2006, and, after notice and hearing as required by law, the Division enter its order:

- A. pooling all mineral interests in the subject spacing and proration unit;
- B. designating McElvain operator of the unit and the well to be drilled thereon;
- C. authorizing McElvain to recover its costs of deepening, equipping and re-completing the well;
- D. approving the actual operating charges and costs of supervision while drilling and after completion, together with a provision to adjust the rates pursuant to the COPAS accounting procedures; and
- E. imposing the 200% risk penalty provided by Division Rule 19.15.1.35 against any working interest owner who does not voluntarily participate in the drilling of this well.

Respectfully submitted,

HOLLAND & HART, LLP

By: Ocean Munds-Dry
Michael H. Feldewert
Ocean Munds-Dry
P.O. Box 2208
Santa Fe, NM 87504
Telephone: (505) 988-4421

ATTORNEYS FOR MCELVAIN OIL &
GAS PROPERTIES, INC.

EXHIBIT A

**APPLICATION OF MCELVAIN OIL & GAS PROPERTIES, INC.
FOR COMPULSORY POOLING, RIO ARRIBA COUNTY, NEW MEXICO**

Badger 14 Well No. 1A

Mr. Christopher Phillips
c/o Natural Evolutions, Inc.
5719 E. 13th Street #B
Tulsa, OK 74112

Mr. Alex Phillips
San Juan Gas Corporation
1318 Philtower Building
Tulsa, OK 74101-3100

CASE 13693:

Application of McElvain Oil & Gas Properties, Inc. for compulsory pooling, Rio Arriba County, New Mexico. Applicant in the above-styled cause seeks an order pooling all uncommitted mineral interests in all formations from the surface to the base of the Blanco-Mesaverde formation underlying the W/2 of Section 14, Township 25 North, Range 2 West, N.M.P.M., Rio Arriba County, New Mexico, to form a standard 320-acre spacing and proration unit for all formations and/or pools developed on 320-acre spacing within this vertical extent including but not limited to the Blanco-Mesaverde Gas Pool. This unit is to be dedicated to the Badger 14 Well No. 1A, to be drilled at a standard location 2120 feet from the South line and 660 feet from the West line in the NW/4 SW/4 of said Section 14 to test the Blanco-Mesaverde formation at a depth of approximately 5832 feet. Also to be considered will be the cost of drilling and completing said well and the allocation of the cost thereof, as well as actual operating costs and charges for supervision, designation of applicant as operator of the well and, pursuant to NMRA 19.15.1.35, the imposition of a 200% risk charge against the working interest of any party that elects not to participate in this project. Said area is located approximately 5 miles northeast of Lindreth, New Mexico.

**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:**

**CASE NO. 13340
ORDER NO. R-12226**

**APPLICATION OF MCELVAIN OIL AND GAS PROPERTIES, INC., FOR
COMPULSORY POOLING, RIO ARriba COUNTY, NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on September 16, 2004, at Santa Fe, New Mexico, before Examiner Richard I. Ezeanyim

NOW, on this 26th day of October, 2004, 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 of the subject matter.

(2) The applicant, McElvain Oil and Gas Properties, Inc., ("Applicant"), seeks an order pooling all uncommitted mineral interests in all formations from the surface to the base of the Mesaverde formation underlying the W/2 of Section 14, Township 25 North, Range 2 West, NMPM, Rio Arriba County, New Mexico, in the following manner:

The W/2 to form a standard 320-acre gas spacing and proration unit for all formations and/or pools developed on 320-acre spacing within that vertical extent, which includes but is not necessarily limited to the Blanco-Mesaverde Gas Pool.

(3) The above-described unit ("the Unit") is to be dedicated to the applicant's proposed Badger Com 14 Well No. 1 to be drilled at a standard gas well location in Unit D of the NW/4 of said Section 14, at a point 785 feet from the North line and 1290 feet from the West line to a depth sufficient to test any and all formations to the base of the Mesaverde formation.

EXHIBIT B

(4) Two or more separately owned tracts are embraced within the Units, 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.

(5) Applicant is an owner of an oil and gas working interest within the Unit. Applicant has the right to drill and proposes to drill its Badger Com 14 Well No. 1 at a standard well location 785 feet from the North line and 1290 feet from the West line to a depth sufficient to test any and all formations to the base of the Mesaverde formation.

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

(7) 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 its 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.

(8) The applicant should be designated the operator of the subject well and of the Unit.

(9) Any pooled working interest owner who does not pay its share of estimated well costs should have withheld from production its share of reasonable well costs plus an additional 200% (pursuant to rule 35.A) thereof as a reasonable charge for the risk involved in drilling the well.

(10) Reasonable charges for supervision (combined fixed rates) should be fixed at \$5,500.00 per month while drilling and \$550.00 per month while producing, provided that these rates should be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations*."

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the application of McElvain Oil and Gas Properties, Inc., all uncommitted mineral interests in all formations from the surface to the base of the Mesaverde formation underlying the W/2 of Section 14, Township 25 North, Range 2 West, NMPM, Rio Arriba County, New Mexico, are hereby pooled in the following manner:

The W/2 to form a standard 320-acre gas spacing and proration unit for all formations and/or pools developed on 320-acre spacing within that vertical extent, which includes but is not necessarily limited to the Blanco-Mesaverde Gas Pool.

The above-described unit ("the Unit") is to be dedicated to the applicant's proposed Badger Com 14 Well No. 1 to be drilled at a standard gas well location in Unit D of the NW/4 of said Section 14, at a point 785 feet from the North line and 1290 feet from the West line to a depth sufficient to test any and all formations to the base of the Mesaverde formation.

(2) McElvain Oil and Gas Properties, Inc., is hereby designated the operator of the subject well and of the Unit.

(3) The operator of the Unit shall commence drilling the proposed well on or before January 30, 2005 and shall thereafter continue drilling the well with due diligence to test the Morrow formation.

(4) In the event the operator does not commence drilling the proposed well on or before January 30, 2005, Ordering Paragraph (1) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause.

(5) Should the subject well not be drilled and completed within 120 days after commencement thereof, Ordering Paragraph (1) shall be of no further effect, and the Unit created by this Order shall terminate unless the operator appears before the Division Director and obtains an extension of time to complete the well for good cause demonstrated by satisfactory evidence.

(6) Upon final plugging and abandonment of the subject well, the pooled Unit created by this Order shall terminate, unless this order has been amended to authorize further operations.

(7) 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 un-leased mineral interests, who are not parties to an operating agreement governing the Units.) After the effective date of this order, the operator shall furnish the Division and each known pooled working interest owner in the

Unit an itemized schedule of estimated costs of drilling, completing and equipping the subject well ("well costs").

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

(9) 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 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.

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

(11) The operator is hereby authorized to withhold the following costs and charges from production:

- (a) the proportionate share of reasonable well costs attributable to each non-consenting working interest owner; and
- (b) as a charge for the risk involved in drilling the well, 200% of the above costs.

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

(13) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$5,500.00 per month while drilling and \$550.00 per month while producing, provided that these rates shall be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations*." The operator is authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to pooled working interest owners.

(14) Except as provided in Ordering Paragraphs (11) and (13) above, all proceeds from production from the well that are not disbursed for any reason shall be placed in escrow in Rio Arriba County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership. The operator shall notify the Division of the name and address of the escrow agent within 30 days from the date of first deposit with the escrow agent.

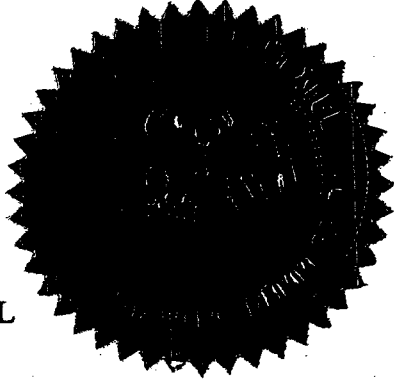
(15) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under this order. Any well costs or charges that are to be paid out of production shall be withheld only from the working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

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

(17) The operator of the well and Unit shall notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(18) 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.



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

A handwritten signature in black ink, appearing to read "Mark E. Fesmire".

MARK E. FESMIRE, PE
Director



March 16, 2006

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Re: Application of McElvain Industries, Inc. for compulsory
pooling, Rio Arriba County, New Mexico.

Ladies and Gentlemen:

This letter is to advise you that McElvain Oil & Gas Properties, Inc. has filed the enclosed application with the New Mexico Oil Conservation Division seeking an order pooling all mineral interests from the surface to the base of the Blanco-Mesaverde formation in a certain spacing and proration unit in the W/2 of Section 14, Township 25 North, Range 2 West, N.M.P.M., Rio Arriba County, New Mexico. McElvain proposed to drill the Badger 14 Well No. 1A at a standard location 2120 feet from the South line and 660 feet from the West line to a depth of approximately 5832 feet to test the Blanco-Mesaverde formation. This well will be dedicated to an existing 320-acre spacing or proration unit as the first optional infill well under the Special Poll Rules and Regulations for the Blanco-Mesaverde Gas Pool.

This application has been set for hearing before a Division Examiner on April 13, 2006. The hearing will be held in Porter Hall in the Oil Conservation Division's Santa Fe Offices located at 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505. You are not required to attend this hearing, but as an owner of an interest that may be affected by this application, you may appear and present testimony. Failure to appear at that time and become a party of record will preclude you from challenging the matter at a later date.

Parties appearing in cases are required by Division Rule 1208.B to file a Pre-hearing Statement four days in advance of a scheduled hearing. This statement must be filed at the Division's Santa Fe office at the above specified address and should include: the names of the parties and their attorneys; a concise statement of the case; the names of all witnesses the party will call to testify at the hearing; the approximate time the party will need to present its case; and identification of any procedural matters that are to be resolved prior to the hearing.

Sincerely,

Ocean Munds-Dry
ATTORNEY FOR MCELVAIN OIL & GAS
PROPERTIES, INC.