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October 11, 1999

HAND DELIVERED

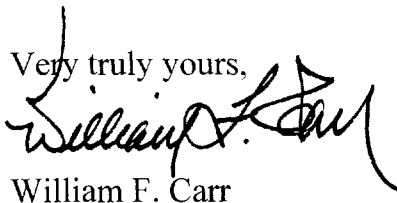
Michael E. Stogner, Hearing Examiner
Oil Conservation Division
New Mexico Department of Energy,
Minerals and Natural Resources
2040 South Pacheco Street
Santa Fe, New Mexico 87505

Re: Oil Conservation Division Case No. 12251: Application of McElvain Oil &
Gas Properties, Inc. for Compulsory Pooling, Rio Arriba County, New Mexico.

Dear Mr. Stogner,

Enclosed for your consideration in hard copy and on disc is McElvain Oil & Gas Properties, Inc.'s Proposed Order of the Division in the above-referenced case.

If you need any additional information from McElvain to assist you with your consideration of this application, please advise.

Very truly yours,

William F. Carr

WFC/md
enclosure

cc: Mr. Steve Jordan
McElvain Oil & Gas Properties, Inc.

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. FOR COMPULSORY
POOLING, RIO ARriba COUNTY, NEW MEXICO.**

**CASE NO. 12251
ORDER NO. R-_____**

McELVAIN OIL & GAS PROPERTIES INC.'S PROPOSED ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a. m. on October 7, 1999 at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this ____ day of October, 1999, the Division Director, having considered the testimony, the record and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) The applicant, McElvain Oil & Gas Properties, Inc. ("McElvain") seeks an order pooling all mineral interests in all formations from the base of the Pictured Cliffs formation to the base of the Mesaverde formation underlying Lots 1 and 2, S/2 NE/4, and SE/4 (E/2 equivalent) of Section 4, Township 25 North, Range 2 West, NMPM, Rio Arriba County, New Mexico, thereby forming a standard 320.73-acre gas spacing and proration unit for any formation and/or pool spaced on 320-acres within that vertical extent, which presently includes the Blanco- Mesaverde Gas Pool.

(3) This unit is to be dedicated to the Cougar 4 Well No. 1, previously named the Elk Case No. 12251

Com Well No. 4-7, to be drilled at a standard gas well location 1825 feet from the North line and 1330 feet from the East line (Unit G) of Section 4.

(4) The Applicant is a working interest owner within the 320.73-acre unit and therefore has the right to drill for and develop the minerals underlying this unit,

(5) On April 29, 1999, Case No. 12172 was heard by a Division Examiner and on May 13, 1999, the Division entered Order No. R-11182 which granted the application of McElvain and compulsory pooled the S/2 equivalent of Section 4; the same acreage which is the subject of this application. Ordering Paragraph 1 of Order No. R-11182 required McElvain, as operator of the subject unit, to commence drilling of the Elk Com Well No. 4-7 thereon before August 15, 1999 and to drill with due diligence to a depth sufficient to test the Mesaverde formation. Pursuant to this order, the operator could obtain a time extension for good cause shown.

(6) McElvain encountered delays in reaching an agreement with the owner of the surface of the land on which this well will be drilled and was therefore unable to commence the drilling of the well before August 15, 1999. However, McElvain failed to seek an extension of Order No. R-11182 before August 15, 1999, and on that date, the Order No. R-11182 expired of its own terms.

(7) McElvain now has entered all agreements necessary to permit it to proceed with this well and proposes to drill before the end of 1999.

(8) McElvain plans to proceed with the drilling of this well but has changed the well name from the Elk Com Well No. 4-7 to the Cougar 4 Well No. 1.

(9) At the hearing, McElvain testified that the evidence and exhibits which were offered in Case 12172 on April 29, 1999 are identical to the testimony and exhibits it would offer at this hearing, except for the change in well name, and the record of Case 12172 was incorporated by reference into the record of this hearing.

(10) NM&O Operating Company, a working interest owner is the acreage to be pooled, appeared at the hearing through legal counsel. Although McElvain was questioned concerning a farmout agreement covering NM&O's interest in the subject acreage, NM&O did not present evidence of testimony in support of or in opposition to this application.

(11) No affected party of offset operator and/or interest owner appeared at the hearing in opposition to this application.

(12) To avoid the drilling of unnecessary wells, to protect correlative rights, to prevent waste and to afford to the owner of each interest in the E/2 of said Section 4 the opportunity to recover or receive without a just and fair share of hydrocarbon production in any pool resulting from

this order, this application should be approved by pooling all mineral interests, whatever they may be, within the units.

(13) McElvain Oil & Gas Properties, Inc. should be designated operator of the well and subject unit.

(14) Any non-consenting working interest owner should be afforded the opportunity to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production.

(15) Any non-consenting 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 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(16) Any non-consenting interest owner should be afforded the opportunity to object to the actual well costs but actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(17) Following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(18) Reasonable charges for supervision (combined fixed rates) should be fixed at \$5,184.00 per month while drilling and \$518.40 per month while producing. The operator should be 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 each non-consenting working interest.

(19) All proceeds from production from the well that are not disbursed for any reason should be placed in escrow to be paid to the owner thereof upon demand and proof of ownership.

(20) If the operator of the pooled units fails to commence drilling the well thereon on or before February 1, 2000, or if all the parties to this forced pooling reach voluntary agreement subsequent to the entry of this order, this order should become of no effect.

(21) The operator of the well and units should notify the Director in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of his order.

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the application of McElvain Oil & Gas Properties, Inc. ("McElvain"), all mineral interests, whatever they may be, in all formations from the base of the Pictured Cliffs formation to the base of the Mesaverde formation underlying Lots 1 and 2, S/2 NE/4, and SE/4 (E/2

equivalent) of Section 4, Township 25 North, Range 2 West, NMPM, Rio Arriba County, New Mexico, are hereby pooled forming a standard 320.73-acre gas spacing and proration unit for any formation and/or pool spaced on 320-acres within that vertical extent, which presently includes the Blanco- Mesaverde Gas Pool. This unit is to be dedicated to applicant's proposed Cougar 4 Well No. 1 to be drilled at a standard location 1825 from the North line and 1330 feet from the East line (Unit G) of Section 4.

PROVIDED HOWEVER THAT, the operator of said unit shall commence the drilling of said well on or before the first day of February, 2000, and shall thereafter continue the drilling of said well with diligence to a depth sufficient to test the Mesaverde formation.

PROVIDED FURTHER THAT, in the event said operator does not commence the drilling of said well on or before the first day of February, 2000, Ordering Paragraph No. (1) shall be of no further effect, unless said operator obtains a time extension from the Division Director for good cause shown.

PROVIDED FURTHER THAT, should said well not be drilled to completion, or abandonment, within 120 days after commencement thereof, said operator shall appear before the Division Director and show cause why Ordering Paragraph No. (1) of this order should not be rescinded.

(2) McElvain Oil & Gas Properties is hereby designated operator of the subject well and units.

(3) After the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish the Division and each known working interest owner in the subject unit an itemized schedule of estimated well costs.

(4) Within 30 days from the date the schedule of estimated well costs is furnished, any non-consent 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, 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.

(5) The operator shall furnish the Division and each known non-consenting working interest owner an itemized schedule of actual well costs within 90 days following completion of the 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 the reasonable well costs; provided, however, that 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.

(6) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of estimated well 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 its share of the amount that estimated well costs exceed reasonable well costs.

(7) 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 who has not paid its share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished; and

(b) as a charge for the risk involved in drilling the well, 200 percent of the above costs.

(8) The operator shall distribute the costs and charges withheld from production pursuant to this order to parties who advanced the well costs.

(9) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$5,184.00 per month while drilling and \$518.40 per month while producing, provided that this rate should be adjusted annually pursuant to Section III.1.A.3 of Exhibit "C" (*Accounting Procedures-Joint Operations*) to the Operating Agreement dated February 1, 1999, which was McElvain's Exhibit 3. The operator is hereby 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 each non-consenting working interest.

(10) 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.

(11) Any well costs or charges that are to be paid out of production pursuant to this order 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.

(12) All proceeds from production from the well that are not disbursed for any reason shall immediately 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.

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

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

(15) Jurisdiction is hereby 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.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

LORI WROTENBERY
Director

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