

**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. 12284
ORDER NO. R-11294**

**APPLICATION OF MCELVAIN OIL & GAS PROPERTIES, INC. FOR
COMPULSORY POOLING AND AN UNORTHODOX WELL LOCATION, RIO
ARRIBA COUNTY, NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on December 2, 1999 at Santa Fe, New Mexico, before Examiner Mark W. Ashley.

NOW, on this *10th* day of December, 1999, 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 its subject matter.

(2) The applicant, McElvain Oil & Gas Properties, Inc. ("McElvain"), seeks an order pooling all uncommitted mineral interests from the base of the Pictured Cliffs formation to the base of the Dakota formation underlying the following acreage in Section 33, Township 26 North, Range 27 West, NMPM, Rio Arriba County, New Mexico:

(a) the S/2 to form a standard 320-acre lay-down gas spacing and proration unit for formations and/or pools developed on 320-acre spacing within that vertical extent, including the Blanco-Mesaverde Gas Pool and the Basin-Dakota Gas Pool;

(b) the SE/4 to form a standard 160-acre gas spacing and proration unit for formations and/or pools developed on 160-acre spacing within that vertical extent; and

(c) the NW/4 SE/4 to form a standard 40-acre oil spacing and proration unit for formations and/or pools developed on 40-acre spacing within that vertical extent.

NOTE: After pooling, uncommitted working interest owners are referred to as "non-consenting working interest owners."

(3) These units are to be dedicated to the applicant's proposed Cougar Com "33" Well No. 1 to be drilled and completed at a location 1970 feet from the South line and 2125 feet from the East line (Unit J) of Section 33.

(4) This location: (i) is considered standard for the Blanco-Mesaverde Pool, pursuant to Division Order No. R-10987-A, issued in Case No. 12069 and dated February 2, 1999, and for all formations and/or pools spaced on 40 acres; (ii) is unorthodox for all formations and/or pools spaced on 160 acres, pursuant to Division Rule 104.C.(3); and (iii) has been approved as an unorthodox gas well location for the Basin-Dakota Pool by Division Administrative Order NSL-4370, dated October 25, 1999, for topographical and archeological reasons. The applicant requests that the unorthodox location for all formations and/or pools spaced on 160 acres be approved.

(5) The applicant is a working interest owner within the above-described proration units and therefore has the right to drill for and develop the minerals underlying these units.

(6) There are interest owners in the above-described proration units that have not agreed to pool their interests.

(7) Energen Resources Corporation ("Energen") and NM&O Operating Company ("NM&O"), interest owners in the above-described proration units, entered appearances at the hearing through legal counsel. No other affected party appeared at the hearing in opposition to this application.

(8) Energen and NM&O both testified that McElvain did not make a good faith effort to obtain voluntary participation. Energen requested that McElvain's application for compulsory pooling be dismissed. NM&O requested that McElvain's application for compulsory pooling be dismissed or, in the alternative, that the risk penalty be reduced.

(9) The testimony and evidence indicates that McElvain made a good faith effort to obtain voluntary participation.

(10) There were no objections to the unorthodox location by parties being pooled or offset operators and/or interest owners.

(11) The unorthodox location should be approved.

(12) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to the owner of each interest in the above-described proration units the opportunity to recover or receive without unnecessary expense its just and fair share of hydrocarbon production, this application should be approved by pooling all uncommitted mineral interests, whatever they may be, within the above-described proration units.

(13) McElvain should be designated the operator of the subject well and units.

(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 \$5,484.00 per month while drilling and \$ 548.00 per month while producing, provided that this rate should be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations*." 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 true owner thereof upon demand and proof of ownership.

(20) If the operator of the pooled units fails to commence drilling the well to which the units are dedicated on or before March 15, 2000, or if all the parties to this forced pooling reach voluntary agreement subsequent to entry of this order, this order should become of no effect.

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

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the application of McElvain Oil & Gas Properties, Inc., all uncommitted mineral interests from the base of the Pictured Cliffs formation to the base of the Dakota formation underlying the following acreage in Section 33, Township 26 North, Range 2 West, NMPM, Rio Arriba County, New Mexico, are hereby pooled in the following manner:

(a) the S/2 to form a standard 320-acre lay-down gas spacing and proration unit for formations and/or pools developed on 320-acre spacing within that vertical extent, including the Blanco-Mesaverde Gas Pool and the Basin-Dakota Gas Pool;

(b) the SE/4 to form a standard 160-acre gas spacing and proration unit for formations and/or pools developed on 160-acre spacing within that vertical extent; and

(c) the NW/4 SE/4 to form a standard 40-acre oil spacing and proration unit for formations and/or pools developed on 40-acre spacing within that vertical extent.

NOTE: After pooling, uncommitted working interest owners are referred to as “non-consenting working interest owners.”

(2) These units are to be dedicated to the applicant’s proposed Cougar Com “33” Well No. 1 to be drilled and completed at a location 1970 feet from the South line and 2125

feet from the East line (Unit J) of Section 33.

(3) This location is unorthodox for all formations and/or pools spaced on 160 acres, pursuant to Division Rule 104.C.(3). The unorthodox location for all formations and/or pools spaced on 160 acres is hereby approved.

(4) The operator of the units shall commence drilling the well on or before March 15, 2000, and shall thereafter continue drilling the well with due diligence to a depth sufficient to test the Dakota formation.

(5) In the event the operator does not commence drilling the well on or before March 15, 2000, Ordering Paragraph (1) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause shown.

(6) Should the well not be drilled to completion or abandoned within 120 days after commencement thereof, the operator shall appear before the Division Director and show cause why Ordering Paragraph (1) should not be rescinded.

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

(8) After the effective date of this order and within 90 days prior to commencing the well, the operator shall furnish the Division and each known non-consenting working interest owner in the units an itemized schedule of estimated well costs.

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

(10) 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.

(11) Within 60 days following determination of reasonable well costs, any non-consenting 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 its share of the amount that estimated well costs exceed reasonable well costs.

(12) 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.

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

(14) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$5,484.00 per month while drilling and \$548.00 per month while producing, provided that this rate shall be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations*." 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.

(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.

(16) 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.

(17) 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.

(18) 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.

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

(20) 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.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION


LORI WROTENBERY
Director

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