

**JAMES BRUCE**

ATTORNEY AT LAW

POST OFFICE BOX 1056  
SANTA FE, NEW MEXICO 87504

3304 CAMINO LISA  
SANTA FE, NEW MEXICO 87501

(505) 982-2043  
(505) 982-2151 (FAX)

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NEW MEXICO DEPARTMENT OF  
ENERGY, MINES AND  
LAND

December 10, 1999

Via Fax and U.S. Mail

Mark Ashley  
Oil Conservation Division  
2040 South Pacheco Street  
Santa Fe, New Mexico 87505

Re: Case No. 12284

Dear Mr. Ashley:

Enclosed are findings of fact which NM&O Operating Company requests be incorporated in the order in this matter.

Very truly yours,



James Bruce

Attorney for NM&O  
Operating Company

cc: Counsel of record (w/encl.)

BEFORE THE NEW MEXICO 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- \_\_\_\_\_

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

ORDER OF THE DIVISION

(Proposed by NM&O Operating Company)

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 Ashley.

NOW, on this \_\_\_\_\_ day of December, 1999, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

(1) NM&O Operating Company ("NM&O") entered an appearance in the case, and requested that compulsory pooling be denied, or in the alternative that the risk penalty be reduced.

(2) The testimony and evidence presented at hearing showed the following:

- (a) The applicant, McElvain Oil & Gas Properties, Inc. ("McElvain") mailed a proposal letter to working interest owners on September 1, 1999.
- (b) NM&O responded by letter dated September 13, 1999, declining to join in the well, but offering to farm out or trade acreage. NM&O called McElvain shortly thereafter, but McElvain declined to accept NM&O's offer.
- (c) **McElvain did not conduct any further negotiations with NM&O before the originally scheduled hearing on November 18, 1999.**
- (d) One day after the scheduled November 18th hearing, McElvain wrote to NM&O stating that it might consider a farmout, but that title defects precluded McElvain from considering a farmout. McElvain did not specify the title defects.

- (e) By letter dated November 23, 1999, NM&O requested title data so it could cure any title defects, and indicated it would consider a farmout along the terms described by McElvain in its November 19th letter.
  - (f) McElvain testified that 1/4 of NM&O's 1.75% working interest is burdened by a re-assignment obligation owed Dugan Production Corp., and that the remaining 3/4 interest is subject to other potential title defects.
  - (g) Although McElvain has previously informed NM&O of the Dugan issue, it has not informed NM&O of any other specific defects. In fact, McElvain has not provided NM&O with the title opinion completed in September 1999, even though the title opinion is a cost of drilling for which NM&O will be liable. **See McElvain AFE, line item 1 (Exhibit No. 7).**
  - (h) McElvain testified that it would not independently cure defects in working interest ownership before drilling the subject well.
- (3) Based on the foregoing, the Division finds that:
- (a) McElvain did not conduct sufficient negotiations to make a good faith effort to obtain the voluntary joinder of interest owners in the subject well, as required by NMSA 1978 §70-2-18.
  - (b) In addition, by not providing NM&O with the title opinion, so that NM&O could cure any possible title defects, and by not curing title defects itself, McElvain stated it could not consider any farmout offers. As a result, it can force pool NM&O's interest, and cure defects later with the benefit of the risk penalty assessed against non-consenting interest owners. Again, this evidences the lack of good faith negotiations on McElvain's part.
- (4) In the alternative, NM&O asserts that the risk penalty assessed against non-consenting interest owners should be reduced below 200%. The evidence shows as follows:
- (a) McElvain requested that a 200% risk penalty be assessed against non-consenting interest owners.
  - (b) McElvain has recently drilled, or is in the process of drilling, Mesaverde or Dakota wells in Sections 3, 4, and 10, Township 25 North, Range 2 West, N.M.P.M., and Section 34, Township 26 North, Range 2 West, N.M.P.M., which immediately adjoin or offset the proposed well.

- (c) In addition, McElvain has plans to drill other wells in this immediate area.
- (d) McElvain submitted little or no geological information upon which to base a risk penalty.
- (5) Based on the foregoing, a 200% risk penalty is not warranted, and a 100% risk penalty should be assessed against any non-consenting interest owners.