

**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. 12284  
ORDER NO. R-\_\_\_\_\_**

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

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**BY THE DIVISION:**

This cause 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, and being fully advised in the premises,

**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 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:

(a) the S/2 to form a standard 320-acre stand-up spacing and proration unit for any and all formations and/or pools developed on 320 acres within that vertical extent, which presently include but are not necessarily limited to the Blanco-Measverde Gas Pool and the Basin-Dakota Gas Pool;

(b) the SE/4 to form a standard 160-acre spacing and proration unit for any and all formations and/or pools developed on 160 acres within that vertical extent, which presently include but are not necessarily limited to the Undesignated Gavilan-Pictured Cliffs Gas Pool and the Undesignated Northeast Ojito Gallup-Dakota Pool; and

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

These units are to be dedicated to McElvain's proposed Cougar Com 33 Well No. 1 to be drilled 1850 feet from the South line and 2125 feet from the East line (Unit J) of Section 33. This location is considered standard for all three sizes of spacing units to be pooled.

(3) The applicant is a working interest owner in each of the proposed spacing units in said Section 33 and has the right to drill for and recover the oil and gas underlying the proposed spacing units.

(4) There are interest owners in the proposed spacing units who have not agreed to pool their interests.

(5) NM&O Operating Company ("NM&O") and Energen Resources Corporation ("Energen") appeared at the hearing and objected to the pooling on the grounds that there had not been a good faith effort to reach a voluntary agreement for development of the subject spacing and proration units.

(6) The evidence presented by McElvain showed that approximately one year ago McElvain contacted NM&O concerning certain problems with the title to the lands which are the subject of this pooling action but that no effort has been undertaken by NM&O to cure these defects. McElvain testified that NM&O had been given an opportunity to participate in the well with whatever interest it actually owned but NM&O had declined to do so. The parties have been attempting to negotiate a voluntary agreement for the development of these lands for more than three months but no agreement has been reached

for the voluntary participation of NM&O. McElvain is prepared to proceed with the drilling of the proposed well.

(7) The evidence presented by Energen showed that it had decided not to participate in the well with its interest but, instead, proposed to farmout the interest to McElvain on terms that were more favorable to Energen. There have been proposals for the voluntary participation of Energen in this well by both McElvain and Energen during their negotiations during the past three months but no voluntary agreement has been reached.

(8) McElvain has made a good faith effort to reach a voluntary agreement with the other interest owners in the subject spacing and proration units for the drilling of the Cougar 33 Well No. 1 but no agreement has been reached with certain interest owners in the subject spacing and proration units.

(9) To avoid the drilling of unnecessary wells, to protect correlative rights, to prevent waste and to afford to the owner of each interest in these units the opportunity to recover or receive without unnecessary expense its just and fair share of hydrocarbon underlying the proposed spacing units, the subject application should be approved by pooling all mineral interests, whatever they may be, within these units.

(10) McElvain Oil & Gas Properties, Inc. should be designated the operator of the subject well and the pooled spacing units.

(11) 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.

(12) The evidence showed that there were no Mesaverde or Dakota wells in the immediate vicinity of the proposed Cougar 33 Well No. 1 and established there was substantial risk associated with the drilling of the well.

(13) 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.

(14) 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.

(15) 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.

(16) Reasonable charges for supervision (combined fixed rates) should be fixed at \$5484.00 per month while drilling and \$548.00 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.

(17) 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.

(18) If the operator of the pooled units fails to commence drilling the well on or before March 15, 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, unless extended by the Director for good cause shown.

(19) 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, 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:

(a) the S/2 to form a standard 320-acre stand-up gas spacing and proration unit for any and all formations and/or pools developed on 320 acres within that vertical extent, which presently include but are not necessarily limited to Blanco-Measverde Gas Pool and the Basin-Dakota Gas Pool;

(b) the SE/4 to form a standard 160-acre spacing and proration unit for any and all formations and/or pools developed on 160 acres within that vertical extent, which include but are not necessarily limited to the Undesignated Gavilan-Pictured Cliffs Gas Pool and the Undesignated Northeast Ojito Gallup-Dakota Pool; and

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

These units are to be dedicated to McElvain's Cougar Com 33 Well No. 1 to be drilled at a standard location for all three units 1850 feet from the South line and 2125 feet from the East line (Unit J) of Section 33.

**PROVIDED HOWEVER THAT**, the operator shall commence drilling the well on or before March 15, 2000, and shall thereafter continue the drilling the well with due diligence to a depth sufficient to test the Dakota formation.

**PROVIDED FURTHER THAT**, in the event the operator does not commence drilling the well on or before March 15, 2000, Ordering Paragraph (1) shall be null and void and of no further effect whatsoever, unless the operator obtains a time extension from the Division for good cause shown.

**PROVIDED FURTHER THAT**, 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 No. (1) should not be rescinded.

(2) McElvain Oil & Gas Properties, Inc. is hereby designated operator of the proposed Cougar Com 33 Well No. 1 and the proposed 320, 160 and 40-acre units.

(3) 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 working interest owner in the units an itemized schedule of estimated well costs.

(5) Within 30 days from the date of receipt of the schedule of estimated well costs, any non-consenting working interest owner shall have the right to pay its share of estimated wells 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.

(6) The operator shall furnish the Division and each known 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.

(7) 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.

(8) 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, an additional 200 percent of such costs.

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

(10) Reasonable charges for supervision (combined fixed rate) are hereby fixed at \$5,484.00 per month while drilling and \$584.00 per month while producing. 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.

(11) 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.

(12) Any well costs or charges that are to be paid out of production shall be withheld only from the working interest's share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(13) 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 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.

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

(15) 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.

(16) 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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