

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

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

CASE NO. 12635

OIL CONSERVATION DIV.
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**McELVAIN'S RESPONSE IN OPPOSITION
TO REQUEST FOR STAY OF ORDER NO. R-11663**

McElvain Oil and Gas Properties, Inc. ("McElvain") files this response in opposition to the request by D. J. Simmons to stay Order R-11663.

1. On March 13, 2001, McElvain filed its compulsory pooling application. After requests for continuances by both parties, McElvain's pooling application was heard by Division Examiner Michael Stogner on May 17, 2001.

2. D. J. Simmons appeared at the May 17th hearing in opposition to McElvain's pooling application and presented testimony from a landman, a geologist and an engineer. D. J. Simmons asserted that an E/2 spacing unit should be preserved in Section 25 for up-hole gas completions in the Blanco-Mesaverde Pool in the event D. J. Simmons drilled Gallup-Dakota oil wells in the NE/4 and the SE/4 of Section 25.¹

3. At the May 17th hearing, Edward B. Dunn (a landman for D. J. Simmons) testified that while D. J. Simmons had discussed plans to drill two Gallup-Dakota oil wells in the E/2 of Section 25, D. J. Simmons had no definitive plans for drilling the wells, had not sent any drilling proposals to the working interest owners in the E/2 of Section 25, and had filed no APDs with the Division for any

¹ The West Lindrith Gallup-Dakota Oil Pool is developed on 160-acres under the special pool rules issued by the Division.

well in the E/2 of Section 25. Tr. at 68-70, 77.² Mr. Dunn also testified that the special pool rules for the Blanco-Mesaverde Gas Pool would allow a Gallup-Dakota oil well in the NE/4 or the SE/4 of Section 25 to be re-completed, if necessary, as an in-fill gas well in the Mesaverde formation. Tr. at 70-71. Mr. Dunn also observed that D. J. Simmons' acreage position in the SE/4 is similar to that held by Dugan Production Corporation, that Dugan supported McElvain's application, and that it was reasonable for the parties in the S/2 "to have the financial risk [of a Mesaverde completion] reduced by the use of an existing wellbore and to share the risk among several parties." Tr. at 72-73.

4. At the end of the 3.5 hour hearing, Examiner Stogner made the following observations about D. J. Simmons' absence of due diligence:

I've been involved in those instances where you have had dual applications for compulsory pooling in which the orientation was questioned and one was taken over the other or they were reoriented because one necessarily -- *but I don't have that in this instance.....* You're wanting them [McElvain] to form a standard standup proration unit, but *there hasn't been any like application file by D. J. Simmons or, for that matter, due diligence to drill a well.* They say they have, but there hasn't been anything written. They haven't talked to---or put anything in writing. So yeah, I understand that downhole commingling would have made it easier. Yes, there could be some precedent set on that. *But given where we are now, why should I reorient or deny this and force them [McElvain] to form a standard standup 320-acre proration unit simply because D. J. Simmons decided to drag their feet on something?*

Tr. at p. 129-30. Examiner Stogner took McElvain's application under advisement and allowed the attorney for D. J. Simmons to submit a post-hearing brief on the matter.

5. On July 12, 2001, almost two months after the hearing on McElvain's application, four months after McElvain filed its pooling application for a S/2 spacing unit, and eight months after McElvain first proposed its re-entry project to the working interest owners, D. J. Simmons filed an

² Indeed, the West Lindrith Gallup-Dakota Oil Pool was tested in the SW/4 of Section 25 and found to be non-productive. See Order R-11663 at p. 1, paragraph 4.

application with the Division seeking to establish an E/2 orientation for a Mesaverde well. *See* Case No. 12705. However, McElvain has moved to dismiss the application in Case No. 12705 as untimely and D. J. Simmons has asked that its application be stayed pending its *de novo* appeal of Order R-11663.

6. On September 24, 2001, the Division issued Order R-11663 granting McElvain's pooling application and forming a S/2 spacing unit in Section 25. The Division found that "the cumulative evidence presented in this matter serves to support McElvain's position." *See* Order R-11663 at p. 2, paragraph 10. The Division thus rejected D. J. Simmons' claims at the hearing that the drainage patterns in Section 25 supported stand-up units, or that McElvain's pooling order would prevent development of the Gallup-Dakota formation. *Id.*

7. After all of the delay, testimony, briefing and consideration that finally resulted in Order R-11663, D. J. Simmons now asks the Division to stay that Order and further delay McElvain's re-entry project.

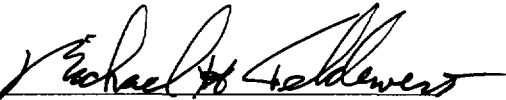
8. Rule 1220(B) of the Rules and Regulations of the Oil Conservation Division, 19 NMAC 15.N.1220(B) (7-15-99), permits the Director to enter a stay of a Division order "...if necessary to prevent waste, to protect correlative rights, to protect fresh water, or to prevent gross negative consequences to any affected party." None of these circumstances exist here. The other working interest owners in the SE/4 of Section 25 support McElvain's proposal to re-enter an existing well in the SW/4 of Section 25 and test the Mesaverde formation with a S/2 spacing unit. Order R-11663 does not prevent D. J. Simmons from drilling a Gallup-Dakota oil well in the NE/4 or the SE/4 of Section 25, nor does it prevent any such oil well from being recompleted as an in-fill gas well in the Mesaverde formation, if necessary. As a result, there is no threat of waste, no impairment

of correlative rights and no gross negative consequences to any affected party.

WHEREFORE McElvain requests that the Division deny D. J. Simmons' request to stay
Order No. R-11663.

Respectfully submitted,

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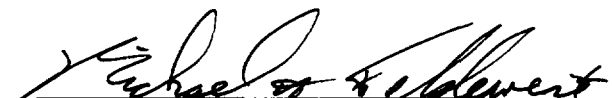
Certificate of Service

The undersigned hereby certifies that on October 16, 2001 a true copy of the foregoing document was hand-delivered to the following:

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