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MICHAEL H. FELDEWERT
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May 23, 2001

VIA HAND DELIVERY

Michael Stogner, Chief Hearing Examiner
Oil Conservation Division
New Mexico Energy, Minerals &
Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87504

01 MAY 23 PM 3:43
OIL CONSERVATION DIV.

***Re: Application of McElvain Oil & Gas Properties, Inc. for
Compulsory Pooling, Rio Arriba County, New Mexico;
Naomi Well No. 1 (proposed re-entry and recompletion)
Case No. 12635; Heard May 17, 2001***

Dear Mr. Stogner:

At the May 17th hearing on the above referenced matter, McElvain referenced and offered to provide precedent for imposing a 200 percent risk penalty for McElvain's proposed re-entry and recompletion in the Mesaverde formation.

Enclosed please find Order No. R-11182-B entered by the Division on September 12, 2000. You will see that the Division on page 9, paragraph 12(b), imposed a 200% risk penalty against non-consenting working interest owners for McElvain's re-entry and recompletion in the Mesaverde formation for the Cougar Com "4" Well No. 1A (API No. 30-039-24079).

I hope that this Order assists you in bringing the above referenced matter to a close.

Sincerely,



Michael H. Feldewert

MHF/ras
Enclosure

cc: J. Scott Hall, Esq., attorney for D.J. Simmons
Mona Binion, McElvain

**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. 12452

**APPLICATION OF NM&O OPERATING
COMPANY FOR COMPULSORY POOLING,
RIO ARriba COUNTY, NEW MEXICO.**

CASE NO. 12467

OIL CONSERVATION DIV.
01 MAY 2001 PM 3:43

ORDER NO. R-11182-B

ORDER OF THE DIVISION

BY THE DIVISION:

These cases came on for hearing at 8:15 a.m. on July 13, 2000, and August 10, 2000, at Santa Fe, New Mexico, before Examiner Mark W. Ashley.

NOW, on this 12th day of September, 2000, 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) McElvain Oil & Gas Properties, Inc. ("McElvain"), in Case No. 12452, seeks an order pooling all mineral interests 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 or pool spaced on 320 acres within that vertical extent, which presently includes the Blanco-Mesaverde Gas Pool.

(3) McElvain requested that this unit be dedicated to the proposed Cougar Com "4"

Well No. 1A (API No. 30-039-24079), formerly known as the Dewey Bartlett Well No. 1, to be re-entered, drilled and recompleted at a standard gas well location 1700 feet from the South line and 800 feet from the East line (Unit I) of Section 4. The subject well is the first optional infill well pursuant to Division Order No. R-10987, as amended, issued in Case No. 11705 and dated May 7, 1999. The initial well, McElvain's Cougar Com Well No. 4, was 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 under Division Order No. R-11182, as amended, issued in Case No. 12172 and dated May 13, 1999.

(4) McElvain 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) McElvain requested that it be designated the operator of the subject well and unit.

(6) If McElvain's application is granted, it will re-enter the Cougar Com "4" Well No. 1A to initially complete in the Mesaverde formation, and subsequently test and complete in the Dakota formation after pooling Dakota interests.

(7) There are interest owners in the proposed proration unit who have not agreed to pool their interests.

(8) Dennis Hopper and NM&O Operating Company ("NM&O") appeared at the hearing through legal counsel. Counsel for Dennis Hopper did not present any evidence or testimony in support of or in opposition to the application.

(9) Counsel for NM&O stated that an application to pool the same acreage, the E/2 of Section 4, Township 25 North, Range 2 West, and re-enter the same well was filed on the day of the July 13, 2000 hearing and requested Case No. 12452 be continued.

(10) On August 8, 2000, Dennis Hopper, through legal counsel, notified the Division in writing of his intent to enter into a lease agreement with McElvain for the E/2 of Section 4.

(11) On August 8, 2000, James M. Raymond and Cougar Capital, LLC, interest owners in the subject unit who have already entered into a lease agreement with McElvain for the E/2 of Section 4, objected in writing to NM&O's application.

(12) Case No. 12452 was continued to August 10, 2000, at which time NM&O presented Case No. 12467 seeking an order pooling all mineral interests from the base of the Pictured Cliffs formation to the base of the Dakota 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 or pool spaced on 320 acres within that vertical extent, which presently includes the Blanco-Mesaverde Gas Pool and Basin-Dakota Gas Pool.

(13) NM&O requested this unit be dedicated to the Dewey Bartlett Well No. 1, to be re-entered, drilled and recompleted at a standard gas well location 1700 feet from the South line and 800 feet from the East line (Unit I) of Section 4.

(14) NM&O 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.

(15) NM&O requested it should be designated the operator of the subject well and unit.

(16) If NM&O's application is granted, it will re-enter the Dewey Bartlett Well No. 1 for the sole purpose of testing and completing in the Dakota formation. If the Dakota completion proves to be non-commercial, or in the alternative if it is commercial but reaches a predetermined minimum rate of production, then NM&O will turn over operations to McElvain for re-completion in the Mesaverde formation.

(17) At the time of the August 10, 2000 hearing, Cases No. 12452 and 12467 were consolidated for the purposes of testimony.

(18) No other interested or affected party appeared at the hearings.

(19) NM&O presented the following evidence in support of its application:

(a) the well logs on the subject well indicate the potential for hydrocarbon production exists in the Dakota formation. The Dakota formation has approximately 20 feet of net pay with a porosity of over 6 percent;

(b) the Mesaverde formation has approximately 15 feet of net pay with a porosity of over 13 percent;

(c) the amount of reserves within the Dakota formation do not justify drilling a stand-alone Dakota well, but the reserves do justify the re-entry of the subject well as a Dakota completion;

(d) the Jicarilla Apache A 118 Well No. 14, located in the NW/4 of Section 36, Township 26 North, Range 3 West, NMPM, has produced approximately 2.2 bcf, with an average of 442 mcfpd from the Dakota formation of the Northeast Ojito Gallup-Dakota Pool;

(e) the Howard Federal 15 Well No. 43, located in the SE/4 of Section 15, Township 25 North, Range 2 West, NMPM, has produced approximately 1.2 bcf, with an average of 1,800 mcfpd from the Dakota formation of the Gavilan Greenhorn-Graneros-Dakota Pool; and

(f) completing in the Mesaverde formation first might preclude a completion in the Dakota formation due to downhole mechanical complications and, if so, any reserves associated with the Dakota formation would be lost.

(20) Division records indicate that the production associated with Jicarilla Apache A 118 Well No. 14 and the Howard Federal 15 Well No. 43 is from the commingled Northeast Ojito Gallup-Dakota Pool and Gavilan Greenhorn-Graneros-Dakota Pool respectively; therefore, the production numbers do not strictly reflect Dakota production alone.

(21) McElvain presented the following evidence in support of its application:

(a) completing the deeper Dakota formation first would put the Mesaverde formation at just as much risk of downhole mechanical complications as the Dakota formation if the Mesaverde formation were completed first;

(b) the Mesaverde formation in the subject well has approximately 123 feet of net pay with a porosity of over 8 percent. The Dakota formation has less than 20 feet of net pay;

(c) the Elk Com Well No. 1A, a recently completed offset well, located in the SW/4 of Section 3, Township 25 North, Range 2 West, NMPM, is currently producing 1,300 mcfpd from the Mesaverde formation;

(d) the Elk Com Well No. 1 located in the NW/4 of Section 3 has produced approximately 307,000 mcf, with a current average of 310 mcfpd from the Mesaverde formation;

- (e) cumulative production from the Elk Com Well No. 1 for the first 117 days of production was approximately 119,000 mcf;
- (f) the Cougar Com 4 Well No. 1 located in the NE/4 of Section 4 has produced approximately 36,000 mcf, with a current average of 500 mcfpd from the Point Lookout member of the Mesaverde formation;
- (g) the Elk Com 10 Well No. 1 located in the NE/4 of Section 10 has produced approximately 32,000 mcf, and is currently producing approximately 1,000 mcfpd from the Mesaverde formation;
- (h) the Cougar Com 33 Well No. 1, which is completed in the Dakota formation, located in the SE/4 of Section 33, Township 26 North, Range 2 West, NMPM, currently produces approximately 200 mcfpd from the Dakota formation, and its cumulative production for the first 113 days of production was approximately 36,000 mcf;
- (i) the Elk Com Well No. 34 located in the SW/4 of Section 34 has produced approximately 62,000 mcf, with an average of 105 mcfpd from the Mesaverde formation; and
- (j) based on current production data from these wells, the amount of reserves at risk in the Dakota formation is less than the amount of reserves at risk in the Mesaverde formation.

(22) McElvain and NM&O both testified that an inherent risk of downhole mechanical complications that could render the wellbore useless always exists when re-entering a wellbore for recompletion purposes. Therefore, in these cases, the amount of mechanical risk associated with recompleting the subject well appears to be the same regardless of which zone is completed first.

(23) However, based on the data presented at the hearings, NM&O's application will put a larger amount of reserves in the Mesaverde formation at risk of being lost due to downhole mechanical complications than in the Dakota formation. The application of NM&O should therefore be denied.

(24) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste, and afford each interest owner in the unit the opportunity to recover or receive without unnecessary expense its just and fair share of the production underlying the unit, the

application of McElvain should be approved by pooling all mineral interests, whatever they may be, within the unit.

(25) McElvain should be designated the operator of the subject well and unit.

(26) 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.

(27) Any non-consenting working interest owner who does not pay its share of estimated well costs should have withheld from production its share of the reasonable well costs plus an additional 200 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(28) 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.

(29) Following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of estimated well 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.

(30) Reasonable charges for supervision (combined fixed rates) should be fixed at \$5,455.00 per month while drilling and \$ 545.00 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.

(31) 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.

(32) If the operator of the pooled unit fails to commence drilling the well to which the units are dedicated on or before December 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.

(33) The operator of the well and unit 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. in Case No. 12452, all mineral interests from the base of the Pictured Cliffs formation to the base of the Mesaverde formation underlying Lots 1, 2, S/2 NE/4, SE/4 (E/2 equivalent), of Section 4, Township 25 North, Range 2 West, NMPM, Rio Arriba County, New Mexico, are hereby pooled thereby forming a standard 320.73-acre gas spacing and proration unit for any formation or pool spaced on 320 acres within that vertical extent, which presently includes the Blanco-Mesaverde Gas Pool.

(2) This unit is to be dedicated to the applicant's proposed Cougar Com "4" Well No. 1A (API No. 30-039-24079), formerly known as the Dewey Bartlett Well No. 1, to be re-entered, drilled and recompleted at a standard gas well location 1700 feet from the South line and 800 feet from the East line (Unit I) of Section 4. The subject well is the first optional infill well pursuant to Division Order No. R-10987, as amended, issued in Case No. 11705 and dated May 7, 1999. The initial well, McElvain's Cougar Com Well No. 4, was 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 under Division Order No. R-11182, as amended, issued in Case No. 12172 and dated May 13, 1999.

(3) The application of NM&O Operating in Case No. 12467, seeking an order pooling all mineral interests from the base of the Pictured Cliffs formation to the base of the Dakota 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 or pool spaced on 320 acres within that vertical extent, which presently includes the Blanco-Mesaverde Gas Pool and Basin-Dakota Gas Pool, is hereby denied.

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

(5) In the event the operator does not commence drilling the well on or before December 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 unit.

(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 working interest owner in the unit 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 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) shall be fixed at \$5,455.00 per month while drilling and \$ 545.00 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 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 forced pooling 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 unit 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.

Cases No. 12452 and 12467
Order No. R-11182-B
Page 10

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

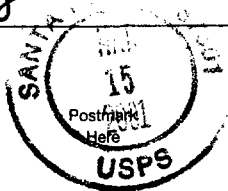
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Director

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 c/o Forest Oil Corp.
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 Denver, CO 80202

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