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October 5, 2001

**HAND-DELIVERED**

Lori Wrotenbery, Director  
Oil Conservation Division  
New Mexico Department of Energy,  
Minerals and Natural Resources  
1220 South St. Francis Drive  
Santa Fe, NM 87505

01 OCT -5 AM 10:36  
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**RE: Case No. 12705 Application of D.J. Simmons, Inc. for  
Compulsory Pooling, Rio Arriba County, New Mexico.**

Dear Ms. Wrotenbery,

D.J. Simmons' October 3, 2001, letter to you requests that the above referenced matter be "continued indefinitely pending the completion of the *de novo* proceedings in Case No. 12635." D.J. Simmons represents that the two cases involve "competing compulsory pooling cases" properly before the Division. That is not the case.

McElvain has filed with the Division a motion to dismiss D.J. Simmons' application in Case No. 12705 precisely because it is untimely. The S/2 of Section 25, T-25-N, R-3-W is already dedicated to McElvain's Naomi Well No. 1 under Division Orders NSL-4538 and R-11663. D.J. Simmons appeared in Case No. 12635 and advocated an E/2 spacing unit in Section 25. Order R-11663 specifically rejected D.J. Simmons' request. It was not until well after Case No. 12635 was taken under advisement by the Division that D.J. Simmons filed its application in Case No. 12705 seeking an E/2 spacing unit.

McElvain therefore respectfully requests that Case No. 12705 be dismissed - rather than continued indefinitely - for the reasons set forth in McElvain's Motion To Dismiss Pooling Application.

Sincerely yours,



Michael H. Feldewert

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MHF/ras

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