

STATE OF NEW MEXICO
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES
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

REQUEST FOR STAY OF ORDER NO. R-11663

D. J. Simmons, Inc., ("Simmons"), through its counsel and pursuant to Division Memorandum No. 3-85, requests the Division enter its order temporarily staying Order No. R-11663. The grounds for staying the Division's compulsory pooling order are as follow:

1. Presently pending before the agency are two conflicting applications that both seek the compulsory pooling of working interests in the **SE/4** of Section 25, T-25-N, R-3-W, NMPM, one for the creation of a **S/2** unit in this case, and the other for the creation of an **E/2** unit in Case No. 12705 (Application of D. J. Simmons, Inc. for Compulsory Pooling, Rio Arriba County, New Mexico.) The Division entered Order No. R-11663 in this case on September 24, 2001, and the matter is currently pending a hearing *de novo* pursuant to Simmons's application.

2. The Applicant in this proceeding, McElvain Oil and Gas Properties, Inc., ("McElvain"), owns 100% of the oil and gas leasehold working interests underlying the **W/2** of Section 25, T-25-N, R-3-W, NMPM, upon which its Naomi Com No. 1 well was drilled at a previously approved unorthodox well location 1650' FSL and 450' FWL. McElvain proposes to re-enter and re-complete its P&A'd well in the Blanco-Mesaverde pool. However, rather than logically dedicate its pre-existing 320 acre **W/2** stand-up unit to the well, McElvain instead applied to the Division to force pool working interests in

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the **SE/4** of the section in order to create a new **S/2** lay-down unit. McElvain does not plan to develop the Gallup-Dakota reserves underlying the **SE/4**.

3. Simmons opposed McElvain's application for the reasons, among others, that given the availability of a pre-existing **W/2** unit, the compulsory pooling proceeding would result in the unnecessary expenditure of time, effort and legal expense and would impair Simmons's ability to develop the Gallup-Dakota reserves it owns in the **SE/4** of Section 25 in conjunction with a Blanco-Mesaverde production unit consisting of the **E/2** of the same section.

4. Simmons also opposed McElvain's application for the reasons that (1) the prevailing north-south fracture drainage patterns in the area supports the creation of a **W/2** unit, (2) the Naomi Com No. 1 well, at its unorthodox location encroaching on the southwest corner of the Section is not situated to economically or efficiently drain any of the Blanco-Mesaverde reserves from the **SE/4**, and (3) because McElvain failed to meet the applicable legal standards of "good faith" in negotiating for the voluntary participation of the non-joined working interests.

5. At the May 17, 2001 examiner hearing on its Application, McElvain's witnesses were asked to explain why it was necessary to force pool the interests of the other owners in the **SE/4** when the company already controlled 100% of the working interest in the **W/2** of the section. Significantly, McElvain's witnesses represented that they sought the pooling of the **SE/4** in order to force the other working interest owners there to bear a portion of the economic risk associated with the proposed re-entry and re-completion operation. At the hearing, McElvain's witnesses acknowledged that the economic "risk mitigation" scheme was the "primary" motivation behind their pooling

application. By so doing, McElvain avoids having to assume one-hundred percent of the costs and risk of its recompletion were it to dedicate its more logical **W/2** unit to the well.

6. The invocation of the State's considerable police powers to force pool another owner's working interests for the purpose of mitigating an operator's risk is not among the specific circumstances authorized in the Division's compulsory pooling statute, NMSA 1978 §70-2-17. As such, the use by operators of the Division's compulsory pooling authority in such a manner presents a significant policy question for consideration by the Commission. If it is eventually determined that the use of the compulsory pooling for such a purpose is wrong, then the harm caused by a denial of a stay will significantly outweigh any that would result if an interim stay is granted.


7. McElvain will not be prejudiced by the stay of Order No. R-11663: (1) None of the lease acreage underlying the **W/2** or the **SE/4** of Section 25 is subject to imminent expiration. (2) As the re-entry and re-completion of the Naomi Com No. 1 well involves only the use of a readily available work-over rig, McElvain will not have any drilling rig scheduling problems. (3) McElvain will not lose the opportunity to drill (or, more accurately, re-complete) as it will continue to have the ability to dedicate the **W/2** of the section to its well. It should also be noted that McElvain originally asked that its Application be set for the April 5th examiner docket, but then immediately sought its continuance on two subsequent occasions.

8. A proposed form of Order of Stay is enclosed with this Request.

WHEREFORE, D. J. Simmons, Inc. requests the Division enter its order temporarily staying Order No. R-11663 pending the conclusion of the *de novo* proceedings before the New Mexico Oil Conservation Commission in this matter.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, P.A.

By 
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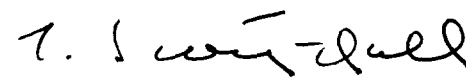
Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing was mailed to counsel of record on the 4th day of October, 2001, as follows:

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J. Scott Hall

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TEMPORARY STAY OF ORDER

BY THE DIVISION:

This matter came before the Division pursuant to the Request For Stay Of Order
No. R-11663 filed on behalf of D. J. Simmons, Inc. on October 4, 2001.

NOW, on this ____ day of October, 2001, the Division Director, being duly
advised,

FINDS THAT:

The Request For Stay is well-taken and should be granted.

IT IS THEREFORE ORDERED THAT:

Order No. R-11663 is stayed pending the conclusion of the *de novo* proceedings
before the New Mexico Oil Conservation Commission in this matter.

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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