

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

**IN THE MATTER OF THE APPLICATION OF
D. J. SIMMONS, INC. FOR COMPULSORY POOLING,
RIO ARriba COUNTY, NEW MEXICO**

Case No. 12705

McELVAIN'S MOTION TO DISMISS POOLING APPLICATION

McElvain Oil and Gas Properties, Inc. ("McElvain") hereby moves the Examiner for an order dismissing applicant's compulsory pooling application that seeks to pool interests in the **E/2** of Section 25, Township 25 North, Range 3 West to form a 320-acre spacing unit for a well in the Mesaverde formation (Undesignated Blanco Mesaverde Gas Pool). The **SE/4** of said Section 25 not available for pooling since the **S/2** of Section 25 is already dedicated to McElvain's Naomi Well No. 1 to be recompleted in the Mesaverde formation in the **SW/4** of Section 25 (Unit L). *See* Administrative Order NSL-4538 and Division Order No. R-11663 (Attachments 1 and 2). In support of this motion, McElvain states:

1. On November 10, 2000, McElvain proposed by letter to re-enter an existing plugged and abandoned well in the **SW/4** of Section 25 and attempt a completion in the Mesaverde formation at an unorthodox location for the Undesignated Blanco-Mesaverde Pool. McElvain proposed to dedicate the **S/2** of Section 25 to this proposed re-entry and completion effort. D.J. Simmons did not propose any alternative development plan for Section 25 in response to McElvain's letter.

2. On December 29, 2000, the Division approved McElvain's unorthodox gas well location in the **SW/4** of Section 25 for "a proposed 320-acre standard lay-down gas spacing and proration unit comprising the **S/2** of Section 25." *See* Attachment 1.

3. On March 13, 2001, McElvain filed a compulsory pooling application to form a S/2 spacing unit for its proposed Naomi Well No. 1. *See* Case No. 12635. D.J. Simmons did not file a competing pooling application.

4. On May 17, 2001, Division Examiner Michael Stogner heard McElvain's compulsory pooling application. D.J. Simmons appeared at the hearing in opposition to McElvain's pooling application and presented testimony that stand-up spacing units should be formed for the Mesaverde formation in Section 25. D.J. Simmons asserted that an E/2 spacing unit should be preserved 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

5. 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 out 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 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 any 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

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

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* Attachment 2 (Order R-11663) at p. 1, paragraph 4.

by the use of an existing wellbore and to share the risk among several parties.” Tr. at 72-73.

6. At the end of the 3.5 hour hearing, Examiner Stogner made the following observations about D. J. Simmons’ lack 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.

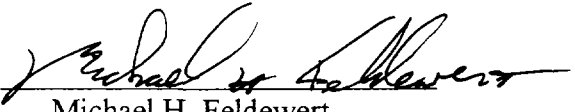
7. On July 12, 2001, almost two months after the hearing on McElvain’s application and four months after McElvain filed its pooling application for a S/2 spacing unit, D. J. Simmons filed the application in this case seeking an E/2 orientation for any Mesaverde well.

8. 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. *See* Attachment 2. The Division found that “the cumulative evidence presented in this matter serves to support McElvain’s position.” *Id.* 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, that McElvain’s pooling order would prevent development of the Gallup-Dakota formation and thereby result in waste, and that McElvain had failed to engage in good faith efforts to obtain D.J. Simmons’ voluntary participation in the well. *Id.*

WHEREFORE McElvain requests that the Examiner dismiss the application of D.J. Simmons for an order pooling the E/2 of Section 25, Township 25 North, Range 3 West, NMPM, on the grounds that the SE/4 of this section is dedicated to McElvain's Naomi Well No. 1 and may not now be dedicated to D.J. Simmons' proposed spacing unit in the E/2 of this section.

Respectfully submitted,

HOLLAND & HART LLP
AND
CAMPBELL & CARR

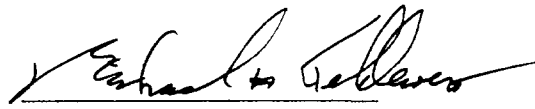
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Certificate of Service

The undersigned hereby certifies that on October 1, 2001 a true copy of the foregoing document was mailed to the following:

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