

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

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

CASE NO. 12802

RESPONSE TO MOTION TO CONTINUE

D. J. SIMMONS, INC., ("Simmons"), for its Response to the Motion To Continue filed in this case on behalf of McELVAIN OIL AND GAS PROPERTIES, INC. ("McElvain"), states:

Simmons **concurs** with the request to continue to Case No. 12801 to the February 21, 2002<sup>1</sup> Examiner hearing docket. McElvain also correctly represents that Simmons plans to file a compulsory pooling application to consolidate the E/2 of Section 25 T-25-N, R-2-W for its proposed Bishop Federal 25-1 **Blanco-Mesaverde** well which it will ask to be set for hearing at the February 21<sup>st</sup> Examiner hearing docket. Simmons would **also concur** in a request to consolidate the two competing **Blanco-Mesaverde** pooling cases for hearing on February 21<sup>st</sup>.

In addition to the two competing Blanco-Mesaverde pooling cases, Simmons also has pending before the Division its application for the compulsory pooling of interests in the SE/4 of Section 25 for its proposed Bishop 25-2 **Gallup-Dakota** well in Case No. 12802. Simmons **opposes** McElvain's motion to the extent it seeks to continue the hearing in that case.

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<sup>1</sup> We have confirmed with McElvain's counsel that it is the intent of their motion to have Case No. 12802 heard on February 21<sup>st</sup> rather than February 7<sup>th</sup>.

Both Case No. 12801 and Simmons's impending application affect the pooling of interests in the Blanco-Mesaverde formation underlying the E/2 of Section 25. Given that the applications affect the same formation and the same lands, the same ownership equities are involved and it only makes sense that those cases should be heard together on February 21<sup>st</sup>. Case No. 12802, on the other hand, seeks to pool only those interests in the Gallup-Dakota formation underlying the SE/4 of the section. The ownership equities in that 160 acre proration unit are significantly different and formations spaced on 320 acres will not be affected. Moreover, McElvain was prepared to appear on January 24<sup>th</sup> to present testimony in support of its Application in Case No. 12801 until it was ordered to be continued. Presumably, McElvain's witnesses had prepared for and calendared that date anyway. The inconvenience of travel is not a plausible reason to continue the hearing in this circumstance.

Finally, McElvain asserts that settlement negotiations may obviate the need to hear any of the pooling cases. Such an assertion is largely unfounded speculation as McElvain can only negotiate for its own interests. It is in no position to speak for the owners of other interests who have yet to commit to the drilling of Simmons's Gallup-Dakota well. Moreover, it has been our experience that the looming prospect of an imminent hearing provides the parties with an incentive to negotiate in earnest. Continuances, on the other hand, remove that incentive and often lead to further delay.

McElvain does not present adequate grounds to justify the continuance of Case No. 12802 and therefore its motion should be denied.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, P.A.

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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 23 day of January, 2002, as follows:

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