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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:

ORIGINAL

CASE NO. 14262

APPLICATION OF McELVAIN OIL AND
GAS PROPERTIES, INC. FOR COMPULSORY
POOLING, SAN JUAN CONTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

January 8, 2009
Santa Fe, New Mexico

RECEIVED
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BEFORE: TERRY WARNELL: Hearing Examiner
DAVID BROOKS: Technical Advisor

This matter came for hearing before the New Mexico
Oil Conservation Division, Terry Warnell, Hearing
Examiner, on January 8, 2009, at the New Mexico Energy,
Minerals and Natural Resources Department, 1220 South
St. Francis Drive, Room 102, Santa Fe, New Mexico.

REPORTED BY: PEGGY A. SEDILLO, NM CCR NO. 88
Paul Baca Court Reporters
500 Fourth Street, NW, Suite 105
Albuquerque, New Mexico 87102

1 Examiner's Hearing
Case No. 14262

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I N D E X

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Page

5 APPLICANT'S WITNESS:

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RICHARD HARRIS

Direct Examination by Ms. Munds-Dry

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10 APPLICANT'S EXHIBITS

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Exhibits 1 through 7

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COURT REPORTER'S CERTIFICATE

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A P P E A R A N C E S

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FOR THE APPLICANT:

OCEAN MUNDS-DRY, ESQ.

20

Holland & Hart

P. O. Box 2208

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Santa Fe, NM 87504-2208

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1 HEARING EXAMINER: Case No. 14262, Application
2 of McElvain Oil and Gas Properties, Inc. for compulsory
3 pooling, San Juan County, New Mexico. Call for
4 appearances.

5 MS. MUNDS-DRY: Mr. Examiner, Ocean Munds-Dry
6 with the law firm of Holland and Hart here representing
7 McElvain Oil and Gas Properties, Inc. this morning. I
8 have one witness this morning.

9 HEARING EXAMINER: Would the witness please
10 stand and identify yourself and be sworn in?

11 MR. HARRIS: Rick Harris. I'm a landman from
12 McElvain Oil and Gas.

13 RICK HARRIS,
14 the witness herein, after first being duly sworn
15 upon his oath, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. MUNDS-DRY:

18 Q. Would you please state your full name for the
19 record?

20 A. Richard Harris.

21 Q. And where do you reside?

22 A. Centennial, Colorado.

23 Q. And by whom are you employed?

24 A. McElvain Oil and Gas Properties, Inc.

25 Q. And what is your position with McElvain?

1 A. I'm a landman.

2 Q. And have you previously testify before the
3 Division?

4 A. Yes.

5 Q. At that time, were your credentials accepted and
6 made a matter of record?

7 A. Yes.

8 Q. Are you familiar with the pooling application
9 filed in this matter?

10 A. Yes.

11 Q. Are you familiar with the status of the lands
12 that are the subject of this application?

13 A. Yes.

14 MS. MUNDS-DRY: Mr. Examiner, we would tender
15 Mr. Harris as an expert witness in petroleum land matters.

16 HEARING EXAMINER: Mr. Harris is so recognized.

17 Q. Mr. Harris, would you please turn to -- Well,
18 before we do that, you would please explain to the
19 Examiner what McElvain seeks with this application?

20 A. McElvain is seeking an order pooling all the
21 uncommitted mineral interests in the Fruitland Coal
22 formation in the south half of Section 3, Township 29
23 north, Range 13 west in San Juan County, New Mexico for
24 our Ruby No. 1 well.

25 Q. Thank you, Mr. Harris. Would you turn to what's

1 been marked as McElvain Exhibit No. 1 and review that for
2 the Hearing Examiner?

3 A. Exhibit No. 1 is two pages. The first page
4 shows the spacing unit for our Ruby No. 1 well. And then
5 the second page is an aerial photo of the same spacing
6 unit.

7 Q. So on the first page, it shows the outline of
8 the proposed spacing unit in red; is that correct?

9 A. Yes.

10 Q. And then also the well location you mentioned?

11 A. Yes, the well location.

12 Q. What gas pool is involved in this application?

13 A. The Basin Fruitland Coal and Gas Pool.

14 Q. Would you please turn to what has been marked as
15 McElvain Exhibit No. 2 and review that for the Hearing
16 Examiner?

17 A. Exhibit No. 2 is the Compulsory Pool Order we
18 got on the well that covered the southwest quarter of the
19 section for the Pictured Cliffs formation, and it didn't
20 pool the southeast quarter.

21 Q. And on this application, we're seeking to pool
22 the south half of this section?

23 A. Yes, the south half of the section that covers
24 the Fruitland Coal formation.

25 Q. And is that Division Order R12837?

1 A. Yes.

2 Q. Why is McElvain proposing this application
3 today?

4 A. Because this first order did not cover the
5 southeast quarter quarter so we needed to pool the whole
6 spacing unit for the completion of our operation.

7 Q. And the Fruitland Coal requires a 320 acre
8 spacing unit?

9 A. Yes.

10 Q. What is the status of the acreage in the subject
11 space unit?

12 A. It's fee.

13 Q. Okay. Would you please turn to McElvain Exhibit
14 No. 3?

15 A. Okay.

16 Q. What is this document?

17 A. This is a quick ownership summary on net acres
18 on the top of what we have leased and what the additional
19 working interest owners that have committed are under a
20 valid JOA there in that acreage.

21 And then it also shows the uncommitted owners in
22 that acreage. And then the percentage of what that
23 working interest would be is down summarized at the bottom
24 of the page.

25 Q. There are 69.7, roughly, uncommitted acre owners

1 that have net acres in this spacing unit?

2 A. In the 320 acres, yes, that's correct.

3 Q. And what's the percentage of ownership that
4 McElvain has leased or earned?

5 A. 71.7 percent. And then the uncommitted acres,
6 their percentage is 21.81 percent.

7 Q. Has McElvain reached agreement, then, concerning
8 the development of some of the interest owners in the
9 south half?

10 A. Yes, we obtained multiple oil and gas leases
11 covering it.

12 Q. Okay. So those parties that you have been able
13 to locate, would you please explain to the Examiner
14 efforts that you've undertaken to reach voluntary
15 agreement?

16 A. Yes. We got a title opinion dated in 2006. And
17 we hired a field landman to go out there and lease all the
18 unleased mineral acres. And so he's been working on that
19 since that time.

20 We sent out a proposal letter to the parties
21 that we were not able to get to an agreement with on the
22 lease in October of this year.

23 Q. And is that Exhibit No. 4?

24 A. Yes. Exhibit No. 4 is the proposal letter. And
25 since then, we've been making follow-up calls every day

1 since then up until now.

2 Q. And let's then turn again to Exhibit No. 4. On
3 the first page you mention the well proposal letters sent
4 out to all of the interest owners. What is the second
5 document here under Exhibit 4?

6 A. The second document is our most recent contact
7 list. This was sent to me on Monday. So this is the
8 status of all the uncommitted people. And our attempt to
9 contact them is in the far right-hand column.

10 Q. Now, some of these people you have since located
11 and leased, I believe?

12 A. Yes, three parties.

13 Q. And who are those parties?

14 A. Padilla Land and Cattle Company, Louise
15 Thomason, and Alletta Ashley.

16 Q. And what is Exhibit No. 5?

17 A. Exhibit No. 5 is the oil and gas lease executed
18 by Louise Thomason in the name of her trust. It covers
19 Block 5, Lot 1 of the Nygren-Skousen Subdivision and
20 Section 3.

21 Q. And I believe Ms. Thomason submitted a letter to
22 the Division, as well as to McElvain, concerning this
23 application because she had not received a lease from
24 McElvain?

25 A. Yes.

1 Q. And so since that time, you've received her
2 signature?

3 A. Yes.

4 Q. And could you then discuss what efforts you've
5 undertaken to locate those interest owners that you did
6 not have addresses for or were otherwise unable to locate?

7 A. We've used the Accurant People Search software.
8 We've used the phone book in the city of Farmington.
9 We've looked at the assessor's records in San Juan County,
10 the grantor, grantee index in San Juan County. And
11 glanced at probate records in San Juan County.

12 Q. If you did have an address for an interest
13 owner, did you send them a certified letter?

14 A. Yes, we've sent certified letters to last known
15 addresses of all the people. Some of them have been
16 returned. But we have sent certified letters to everybody
17 we could find an address for.

18 Q. And again, all of those efforts are reflected in
19 Exhibit No. 4?

20 A. Yes.

21 Q. In your opinion, has McElvain made a good-faith
22 effort to reach a voluntary agreement with all interest
23 owners and/or locate all those interest owners?

24 A. Yes.

25 Q. Would you turn to Exhibit No. 5 and review the

1 dry hole and computed well costs for the Examiner?

2 A. Yes. Dry hole costs are \$451,576, and completed
3 well costs are \$897,112.

4 HEARING EXAMINER: That's Exhibit 6?

5 MS. MUNDS-DRY: It is marked as Exhibit No. 6,
6 yes. Thank you.

7 Q. Is this the AFE based on the costs that McElvain
8 has incurred for drilling similar wells in this area?

9 A. Yes.

10 Q. And have you also made an estimate of overhead
11 and administrative costs while drilling this well and also
12 while producing this well if it's successful?

13 A. Yes, \$6,000 a month drilling, and \$600
14 producing.

15 Q. Do you ask that these figure be incorporated
16 into any order that results from this hearing?

17 A. Yes.

18 Q. And what entity will be the designated operator
19 of the well?

20 A. McElvain Oil and Gas Properties, Inc.

21 Q. And does McElvain request the Division impose
22 the 200 percent risk penalty authorized by statute against
23 those parties pooled under this application?

24 A. Yes.

25 Q. And is McElvain Exhibit No. 7 an affidavit with

1 attached letters giving notice of this hearing, as well as
2 the Affidavit of Publication?

3 A. Yes.

4 Q. And also includes the green cards?

5 A. Yes.

6 Q. Were McElvain Exhibits 1 through 7 prepared by
7 you or compiled under your direct supervision?

8 A. Yes.

9 MS. MUNDS-DRY: Mr. Examiner, we would move the
10 admission of Exhibits 1 through 7 into evidence.

11 HEARING EXAMINER: Exhibits 1 through 7 are
12 admitted.

13 MS. MUNDS-DRY: And that concludes my direction
14 of Mr. Harris.

15 HEARING EXAMINER: Thank you. Mr. Brooks, any
16 questions?

17 MR. BROOKS: I don't think I have any questions
18 of the witness. I may have some questions about the
19 notice affidavit.

20 MS. MUNDS-DRY: Mr. Brooks, I'll bring to your
21 attention -- because I do know you look for these sorts of
22 things in the Affidavit of Publication, we did list party
23 names of those folks that we could not locate.

24 MR. BROOKS: Okay. Well, I think I will leave
25 it to Mr. Warnell to go through and correlate the list to

1 make sure they're all actually listed one way or the
2 other.

3 MS. MUNDS-DRY: Sounds fair.

4 MR. BROOKS: Did you get return receipts from
5 all the people you mailed notice to where you thought you
6 had goods addresses?

7 MS. MUNDS-DRY: Where we thought we had good
8 addresses, we did get back all the green cards.

9 MR. BROOKS: And do you a have a copy of your
10 actual notice letter that you sent to these people then in
11 here somewhere?

12 MS. MUNDS-DRY: Yes. It's after about six
13 pages.

14 MR. BROOKS: I see it here. Okay. That's all I
15 have.

16 HEARING EXAMINER: Let's talk briefly about the
17 letter that I received the other day.

18 MS. MUNDS-DRY: Yes, sir.

19 HEARING EXAMINER: You've since talked with
20 Ms. Thomason?

21 MS. MUNDS-DRY: Yes, sir. And Mr. Harris -- In
22 fact, Exhibit No. 5 is her lease that she signed. But
23 Mr. Harris can testify as to what was done to gain her
24 signature.

25 THE WITNESS: As soon as we got a copy of the

1 letter -- I had talked to her. She was accurate in her
2 letter on November 7th. And I promptly sent an e-mail as
3 soon as we got off the phone to our field landmand to go
4 ahead and send her a lease. I guess he had contacted her
5 and they couldn't come to an agreement.

6 HEARING EXAMINER: She was pretty feisty there
7 in that letter.

8 THE WITNESS: Yes, she was. She didn't sound --
9 When we talked on the phone, she wasn't like that at all.

10 HEARING EXAMINER: Oh, okay.

11 THE WITNESS: So then, as soon as I got the
12 letter and talked to OSHA, we had our field landman go to
13 her house, and she was fine with it and signed a lease
14 immediately. It wasn't -- it wasn't tough at all.

15 So she just kind of got shot in the dark. I
16 think she kind of got surprised when she got the notice
17 letter from Holland and Hart.

18 Q. Mr. Harris, did you ask her to submit a letter
19 withdrawing her --

20 A. I have not talked to her since, but I think our
21 field landman did talk to her about that.

22 Q. But in any event, she did sign the lease?

23 A. She signed the lease.

24 MR. BROOKS: This is in the city of Farmington?

25 THE WITNESS: Yes, sir.

1 MR. BROOKS: You can tell from the aerial
2 photograph that it's very much in a developed area. There
3 are a number of wells in the city of Farmington.

4 THE WITNESS: There are. And McElvain, we have
5 four or five of them.

6 MR. BROOKS: I did a title opinion on one of
7 them when I was practicing up there. I think we had 300
8 separated mineral interests in that 320 acre unit. Thank
9 you.

10 HEARING EXAMINER: Thank you. That's all.
11 We'll take Case No. 14262 under advisement.

12 MS. MUNDS-DRY: Thank you, Mr. Hearing Examiner.

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I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. _____,
heard by me on _____.

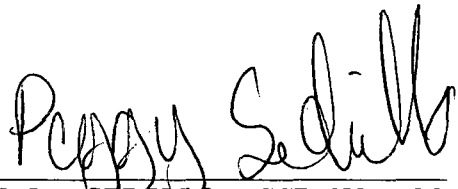
_____, Examiner
Oil Conservation Division

1 STATE OF NEW MEXICO)
 2 COUNTY OF BERNALILLO) ss.

3
 4
 5 REPORTER'S CERTIFICATE

6
 7 I, PEGGY A. SEDILLO, Certified Court
 8 Reporter of the firm Paul Baca Professional
 9 Court Reporters do hereby certify that the
 10 foregoing transcript is a complete and accurate
 11 record of said proceedings as the same were
 12 recorded by me or under my supervision.

13 Dated at Albuquerque, New Mexico this
 14 12th day of January, 2008.

15
 16
 17
 18 
 19 _____
 20 PEGGY A. SEDILLO, CCR NO. 88
 License Expires 12/31/09