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

**ORIGINAL**

IN THE MATTER OF THE HEARING CALLED  
BY THE OIL CONSERVATION DIVISION FOR  
THE PURPOSE OF CONSIDERING:

CASE NO. 14471

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

REPORTER'S TRANSCRIPT OF PROCEEDING  
EXAMINER HEARING

2010 MAY 25 P 2:53  
RECEIVED OOD

May 13, 2010  
Santa Fe, New Mexico

BEFORE: TERRY WARNELL: Hearing Examiner  
DAVID BROOKS: Legal Adviser

This matter came for hearing before the New Mexico  
Oil Conservation Division, Terry Warnell Hearing Examiner,  
on May 13, 2010, 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, NM 87102

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E X H I B I T S

Page

APPLICANT'S EXHIBITS:

Exhibit No. 1 6

COURT REPORTER'S CERTIFICATE 9

A P P E A R A N C E S

FOR THE APPLICANT: OCEAN MUNDS-DRY, ESQ.  
Holland and Hart, LLC.  
110 North Guadalupe, Suite 1  
Santa Fe, NM 87504

1 HEARING EXAMINER: Let's call Case No. 14471,  
2 the Application of McElvain Oil and Gas Properties, Inc.  
3 for Compulsory Pooling, San Juan County, New Mexico. Call  
4 for appearances.

5 MS. MUNDS-DRY: Good morning, Mr. Examiner,  
6 Ocean Munds-Dry with the law firm of Holland and Hart, LLC  
7 here representing McElvain Oil and Gas Properties this  
8 morning, and I am presenting this case by affidavit.

9 HEARING EXAMINER: Any other appearances? Okay.

10 MS. MUNDS-DRY: Mr. Examiner, I'm here today to  
11 present this case by affidavit, McElvain's application for  
12 compulsory pooling.

13 Exhibit No. 1 is the affidavit of Rick Harris  
14 who is the landman responsible for knowing the status of  
15 these lands in Section 3, Township 29 North, Range 13 West  
16 in San Juan County.

17 McElvain is seeking to pool the interest owners  
18 in the south half of Section 3 from the surface to the  
19 base of the Pictured Cliffs formation to form a 320 acre  
20 spacing unit in the south half of the Fruitland Coal, and  
21 a 160 acre spacing unit in the southeast quarter of the  
22 Pictured Cliffs formation. They intend to dual complete  
23 this well.

24 McElvain is the working interest owner in the  
25 south half of Section 3 and plans to dedicate the proposed

1 spacing unit to its Ruby Well No. 2 to a depth of  
2 approximately 1,465 feet.

3 As you can see from Attachments A and B, it  
4 lists both the proposed spacing units for the Pictured  
5 Cliffs and the Fruitland Coal; it shows you the  
6 configurations for both of those formations.

7 Attachments C and D show you all of the interest  
8 owners in the Fruitland Coal and the Pictured Cliffs. I  
9 believe the color coding on here shows those interest  
10 owners who have agreed to participate in yellow, those  
11 interest owners who McElvain has been unable to locate are  
12 in red, and the sort of purple color are those interest  
13 owners who have not reached an agreement with McElvain, a  
14 voluntary agreement with McElvain.

15 And it lays out the name and the percentage of  
16 each of those interest owners there. The folks who are  
17 listed in yellow, although we are not seeking to pool, the  
18 folks in purple and red we are seeking to pool this  
19 morning.

20 McElvain has conducted a diligent search to  
21 locate those interest owners where we do not have an  
22 address, and Mr. Harris lists for you his good-faith  
23 efforts to locate them including searches of the Internet,  
24 searches of county records, and searching the Lexis/Nexis  
25 data base.

1           The other interest owners have been located but  
2 have not yet reached a voluntary agreement with McElvain  
3 despite numerous offers to either lease or sell their  
4 mineral rights to McElvain.

5           This is in an area of Farmington, so it's a very  
6 populated area so there are many, many interest owners.  
7 And McElvain has been undergoing efforts to try to gain  
8 their voluntary participation since 2006. And Mr. Harris  
9 outlines that in more detail for you.

10           Attachment E is the AFE for the well showing dry  
11 hole costs of \$500,200 and a completed well cost of  
12 \$1,089,500. McElvain proposed overhead charges of \$6,000  
13 per month while drilling, and \$600 per month while  
14 producing.

15           And Affidavit F is the affidavit of publication  
16 as it was published in the San Juan County paper and also  
17 includes our notice letter to all interest owners.

18           Exhibit A includes all the parties that we  
19 notified. And at the end, of course, is the green card  
20 showing evidence of the mailing.

21           With that, Mr. Harris indicates in his affidavit  
22 that the approval of this application will avoid the  
23 drilling of unnecessary wells, will prevent waste, and  
24 will protect correlative rights and will allow McElvain  
25 and the other interest owners in the south half of Section

1 3 an opportunity to obtain their just and fair share of  
2 the oil and gas under the subject lands.

3 And Mr. Warnell, we would ask that Exhibit 1 and  
4 all of its attachments be admitted into evidence.

5 HEARING EXAMINER: Exhibit 1 and all the  
6 attachments associated with that exhibit are admitted.  
7 You say that this is within the city limits?

8 MS. MUNDS-DRY: It is. And I should also  
9 probably note for you, Mr. Hearing Examiner, that McElvain  
10 does seek to drill this well during the summertime. They  
11 have worked out an agreement. There's a school near by.  
12 And the City has requested that they drill this well  
13 during the summer while the children are out of school.  
14 It's near a park.

15 HEARING EXAMINER: Any questions, Mr. Brooks?

16 MR. BROOKS: I can't read this Attachment F.,  
17 Even with my glasses. I'd have to have a magnifying glass  
18 too. But it doesn't look long enough to list all of these  
19 people in it.

20 MS. MUNDS-DRY: The affidavit of publication and  
21 locatable owners?

22 MR. BROOKS: The copy of the publication.

23 MS. MUNDS-DRY: No, sir, we do not list them in  
24 there.

25 MR. BROOKS: Okay. Well, you know how I feel

1 about that.

2 MS. MUNDS-DRY: We do.

3 MR. BROOKS: I have pointed out before, the  
4 rules don't require it, which is probably a good reason  
5 why we shouldn't do so, but at the same time, I'm not at  
6 all sure if it wasn't ever litigated if that wouldn't be  
7 held to be the way it ought to be. So. I will allow the  
8 Examiner to make his own determination on that.

9 HEARING EXAMINER: Well, if that's going to be a  
10 problem, I think it very well could be, we should  
11 republicize.

12 MS. MUNDS-DRY: If you would like McElvain to  
13 publicize this again for the unlocatable interest owners,  
14 we can do that.

15 MR. BROOKS: Yeah. Do you have any constraints  
16 that would make that a hardship in terms of timing?

17 MS. MUNDS-DRY: Only as I mentioned, they want  
18 to drill this well during the summertime. So we have a  
19 little bit of time. So we can republish.

20 MR. BROOKS: Okay. I think that would be wise.  
21 I really think that if somebody was to construe our rules  
22 and what constitutes notice, they would tend to take the  
23 New Mexico rules of court into consideration, and the  
24 rules of court do require parties being served be named in  
25 a publication notice.

1 MS. MUNDS-DRY: We can do that. And then we  
2 would request that we continue this case to the June 10th  
3 docket.

4 HEARING EXAMINER: And you'll just supplement us  
5 with that on June 10th then?

6 MS. MUNDS-DRY: Yes, sir, I'll just supplement  
7 with a new affidavit of publication.

8 HEARING EXAMINER: Okay. With that, then, Case  
9 No. 14471 will be continued to the ~~June 10th docket~~  
10 (Whereupon, the proceedings concluded.)

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I do hereby certify that the foregoing is  
a true and correct record of the proceedings in  
the above hearing of Case No. \_\_\_\_\_,  
heard by me on \_\_\_\_\_.

\_\_\_\_\_, Examiner  
Oil Conservation Division

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

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REPORTER'S CERTIFICATE

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

Dated at Albuquerque, New Mexico this 21st day of May, 2010.

  
PEGGY A. SEDILLO, CCR NO. 88  
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