

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: ) CASE NO. 12,412  
)  
APPLICATION OF McELVAIN OIL AND GAS )  
PROPERTIES, INC., FOR COMPULSORY )  
POOLING, RIO ARriba COUNTY, NEW MEXICO )

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MARK ASHLEY, Hearing Examiner

June 1st, 2000

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, MARK ASHLEY, Hearing Examiner, on Thursday, June 1st, 2000, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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OL (CR) 1240176

## I N D E X

June 1st, 2000  
Examiner Hearing  
CASE NO. 12,412

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\* \* \*

## A P P E A R A N C E S

## FOR THE DIVISION:

LYN S. HEBERT  
 Attorney at Law  
 Legal Counsel to the Division  
 2040 South Pacheco  
 Santa Fe, New Mexico 87505

## FOR THE APPLICANT:

CAMPBELL, CARR, BERGE and SHERIDAN, P.A.  
 Suite 1 - 110 N. Guadalupe  
 P.O. Box 2208  
 Santa Fe, New Mexico 87504-2208  
 By: WILLIAM F. CARR

\* \* \*

1 WHEREUPON, the following proceedings were had at  
2 8:57 a.m.:

3 EXAMINER ASHLEY: The Division calls Case 12,412.

4 MS. HEBERT: Application of McElvain Oil and Gas  
5 Properties, Inc., for compulsory pooling, Rio Arriba  
6 County, New Mexico.

7 EXAMINER ASHLEY: Call for appearances.

8 MR. CARR: May it please the Examiner, my name is  
9 William F. Carr with the Santa Fe law firm Campbell, Carr,  
10 Berge and Sheridan. We represent McElvain Oil and Gas  
11 Properties, Inc., in this matter, and I have two witnesses.

12 EXAMINER ASHLEY: Any additional appearances?  
13 Will the witnesses please rise to be sworn in?  
14 (Thereupon, the witnesses were sworn.)

15 EXAMINER ASHLEY: Mr. Carr?

16 MONA L. BINION,  
17 the witness herein, after having been first duly sworn upon  
18 her oath, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. CARR:

21 Q. Would you please state your full name for the  
22 record?

23 A. Mona Binion.

24 Q. How do you spell your last name?

25 A. B-i-n-i-o-n.

1 Q. Ms. Binion, where do you reside?

2 A. Littleton, Colorado.

3 Q. By whom are you employed?

4 A. McElvain Oil and Gas Properties, Inc.

5 Q. And what is your position with McElvain?

6 A. Land manager.

7 Q. Have you previously testified before this  
8 Division?

9 A. No, I have not.

10 Q. Would you summarize for Mr. Ashley your  
11 educational background?

12 A. I have an associate of arts degree in business.  
13 I'm a certified professional landman. I've been  
14 continuously employed by oil and gas firms, and I have  
15 performed oil and gas professional land services for  
16 domestic oil and gas land operations since August of 1970,  
17 for the last 30 years.

18 Q. How long have you been employed by McElvain?

19 A. One month.

20 Q. Before McElvain, for whom did you work?

21 A. Tom Brown, Incorporated, for 14 years.

22 Q. And as a landman in --

23 A. As a land manager.

24 Q. Are you familiar with the Application filed in  
25 this case on behalf of McElvain?

1           A.    Yes.

2           Q.    And are you familiar with the status of the lands  
3 in the subject area?

4           A.    Yes, I am.

5           MR. CARR: Mr. Ashley, we tender Ms. Binion as an  
6 expert witness in petroleum land matters.

7           EXAMINER ASHLEY: Ms. Binion is so qualified.

8           Q.    (By Mr. Carr) Would you briefly summarize for  
9 Mr. Ashley what it is that McElvain seeks with this  
10 Application?

11          A.    McElvain seeks an order pooling all the minerals  
12 from the base of the Pictured Cliffs formation to the base  
13 of the Mesaverde formation under the south half of Section  
14 10, Township 25 North, Range 2 West, to be dedicated to the  
15 McElvain Badger Com 10-1 well, to be drilled at a standard  
16 location in the northeast quarter of the southeast quarter  
17 of said Section 10.

18          Q.    Originally when this well was proposed, we were  
19 talking about pooling everything to the base of the Dakota;  
20 is that correct?

21          A.    That's correct.

22          Q.    And at the request of an owner, we have  
23 contracted the Application back to base of Pictured Cliffs,  
24 down to the base of the Mesaverde?

25          A.    That's correct.

1 Q. The well is going to be drilled to test the  
2 Mesaverde; is that right?

3 A. That's correct.

4 Q. Let's go to what has been marked as McElvain  
5 Exhibit Number 1, and I'd ask you to identify that and  
6 review it for Mr. Ashley.

7 A. Exhibit Number 1 is just a depiction of the  
8 location of the Badger Com 10-1 well, and the yellow  
9 highlighted area is the proposed drill site spacing unit  
10 for that well.

11 Q. And that well is in the northeast of the  
12 southwest of 10; is that correct?

13 A. Of Section 10, that's correct.

14 Q. What is the primary objective in the well?

15 A. Mesaverde formation and Blanco Mesaverde.

16 Q. Okay. Let's go to Exhibit Number 2. Will you  
17 identify and review the information on that exhibit for Mr.  
18 Ashley?

19 A. Exhibit Number 2 is a land plat of the south half  
20 of Section 10. It shows the working interest owners for  
21 each of the four tracts that are broken up to divide up the  
22 mineral ownership and the working interest ownership of the  
23 south half of Section 10, from the base of the Pictured  
24 Cliffs down to the base of the Mesaverde.

25 Q. What percentage of the working interest has

1 voluntarily been committed to this well?

2 A. 91 2/3 percent of the working interest owners in  
3 the south half of Section 10 have been committed  
4 voluntarily to this well.

5 Q. What working interest owner remains uncommitted  
6 to the well?

7 A. NMO Operating Company is the only working  
8 interest owner, with a percentage of 8.3333 percent, who  
9 remains uncommitted.

10 Q. In the past, McElvain has had to pool NMO  
11 Operating Company and other wells in this area, has it not?

12 A. Yes, we have had to force pool NMO on numerous  
13 occasions in this area for various operations proposed by  
14 McElvain.

15 Q. Ms. Binion, could you review briefly the efforts  
16 you have made to obtain the voluntary participation of all  
17 interest owners in this well?

18 A. The efforts began on February 22nd, where a US  
19 Postal mail certified proposal was sent out to all working  
20 interest owners in the south half of Section 10. Beyond  
21 that, various follow-up phone conversations have been made  
22 to encourage commitment voluntarily, to answer questions  
23 and to provide additional information, and follow-up  
24 written correspondence has been sent by either telefax or  
25 noncertified mail to various owners, and all working

1 interest owners, with the exception of NMO, have  
2 voluntarily committed their interest toward the drilling of  
3 this well.

4 Q. In this particular Application we're also seeking  
5 the pooling of certain royalty interests; is that correct?

6 A. That's correct.

7 Q. And those royalty interest owners are going to be  
8 non-cost-bearing interest owners, and therefore there was  
9 no need to try and work out some sort of a financial  
10 arrangement to commit their interest; isn't that correct?

11 A. That's correct.

12 Q. It's just a factor that it's an old lease form  
13 and it doesn't provide for pooling?

14 A. That's right.

15 Q. In your opinion, have you made a good-faith  
16 effort to obtain the voluntary participation of all  
17 interest owners in this well?

18 A. Yes, we have.

19 Q. Is Exhibit Number 3 a copy of the February 22nd  
20 letter by which you originally proposed the well to NMO  
21 Operating?

22 A. Yes, it is.

23 Q. Is Exhibit Number 5 -- Well, first let's go to  
24 Exhibit Number 4. Is this a copy of the joint operating  
25 agreement for this well?

1 A. Yes, it is.

2 Q. Has this been executed by other interest owners  
3 in this property?

4 A. It's been executed by all working interest owners  
5 in this property, with the exception of NMO.

6 Q. And this contains the COPAS accounting procedures  
7 as an attachment to the JOA?

8 A. That's correct.

9 Q. Does it provide for escalation of overhead and  
10 administrative costs for the well?

11 A. It provides for escalation and/or any adjustments  
12 by virtue of COPAS guidelines.

13 Q. And our engineering witness is going to review  
14 those costs; is that right?

15 A. That's correct.

16 Q. And do you request that the costs as reviewed by  
17 that witness be escalated or adjusted in accordance with  
18 the provisions of this COPAS form?

19 A. We do request, yes.

20 Q. Is Exhibit Number 5 a copy of an affidavit  
21 confirming that notice of this Application and today's  
22 hearing has been provided to all royalty interest owners  
23 and NMO Operating in accordance with OCD rules?

24 A. That's correct.

25 Q. And so we have notified all working interest

1 owners in the property that will be subject to pooling?

2 A. That's correct.

3 Q. And all the royalty interest owners who do not  
4 have pooling provisions in their leases?

5 A. That's correct.

6 Q. Were Exhibits 1 through 5 either prepared by you  
7 or compiled at your direction?

8 A. That's correct, they have.

9 MR. CARR: At this time, Mr. Ashley, we would  
10 move the admission into evidence of McElvain Exhibits 1  
11 through 5.

12 EXAMINER ASHLEY: Exhibits 1 through 5 will be  
13 admitted as evidence at this time.

14 MR. CARR: And this concludes my direct  
15 examination of Ms. Binion.

16 EXAMINATION

17 BY EXAMINER ASHLEY:

18 Q. Ms. Binion, are there other wells in the  
19 immediate area that McElvain has drilled that NMO have not  
20 participated in, or voluntarily?

21 A. Yes, we have several in this immediate vicinity.

22 Q. Can you give me an idea, like on Exhibit 1, where  
23 some of these are?

24 A. Is the Elk Com 1 -- the north half? The north  
25 half of Section 10, in the same section, there were -- two

1 wells drilled in the north half, one well? -- that NMO has  
2 not participated in.

3 We have -- Section 4 in the same township and  
4 range, there are two wells, Cougar Com, that have NMO a  
5 nonparticipating interest owner that has been force-pooled.

6 The Howard Federal? In Section 15, we have  
7 proposed a recompletion of a Mesaverde formation in an  
8 existing borehole and had force pooled NMO Operating. It's  
9 the Howard Federal 14-15? 15-14, excuse me.

10 Are there any others you can think of?

11 MR. CARR: That's fine.

12 Q. (By Examiner Ashley) What was NMO's reason for  
13 not wanting to voluntarily join?

14 A. It's my understanding their economic analysis of  
15 the proposed operation does not justify the cost of  
16 participating.

17 EXAMINER ASHLEY: Thank you, I have nothing  
18 further.

19 MR. CARR: At this time we call John Steuble.

20 JOHN STEUBLE,  
21 the witness herein, after having been first duly sworn upon  
22 his oath, was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. CARR:

25 Q. Would you state your state your name for the

1 record, please?

2 A. My name is John Steuble.

3 Q. Where do you reside?

4 A. Denver, Colorado.

5 Q. By whom are you employed?

6 A. McElvain Oil and Gas Properties.

7 Q. And what is your position with McElvain?

8 A. I'm the engineering manager.

9 Q. Have you previously testified as an expert before  
10 this Division and had your credentials as an expert in  
11 petroleum engineering accepted and made a matter of record?

12 A. Yes, I have.

13 Q. Are you familiar with the Application in this  
14 case?

15 A. Yes, I am.

16 Q. Have you made an engineering study of the area  
17 which is the subject of this Application?

18 A. Yes.

19 Q. And are you prepared to share the results of that  
20 work with the Examiner?

21 A. Yes, I am.

22 MR. CARR: Are the witness's qualifications  
23 acceptable?

24 EXAMINER ASHLEY: They are.

25 Q. (By Mr. Carr) Mr. Steuble, let's go to what has

1    been marked for identification as McElvain Exhibit Number  
2    6. I'd ask you to first identify it and then review it for  
3    Mr. Ashley.

4            A.    Exhibit Number 6 is a plot of the various  
5    Mesaverde wells in the area around the Badger Com 10-1.  
6    What this shows is the reported initial potential or IP of  
7    the well and the cumulative production through the end of  
8    February of 2000.

9            What we want to use it for is to show the  
10   variance within the Mesaverde formation from wellbore to  
11   wellbore.

12           Q.    What you're drilling here is a sort of a step-out  
13   Mesaverde well from wells you've recently developed -- or  
14   acreage you've recently developed in the area; is that  
15   correct?

16           A.    That's correct, yes.

17           Q.    And you've been required to bring pooling  
18   applications to the Division for the wells which are shown  
19   north of the proposed Badger Com 10 Number 1?

20           A.    Yes, I believe on every one.

21           Q.    And in each of those cases you've had to come to  
22   the Division and seek a penalty because of the high  
23   variation in the performance of the wells you've drilled to  
24   date?

25           A.    That's correct.

1 Q. Are you prepared to make a recommendation to the  
2 Examiner as to the risk penalty which should be assessed in  
3 this case?

4 A. Yes, I am.

5 Q. And what is that?

6 A. Two hundred percent.

7 Q. Do you believe there is a chance at the proposed  
8 location you could drill a Mesaverde well that, in fact,  
9 would not be a commercial success?

10 A. Yes, we do. As you notice to the south and  
11 southwest, there have been no Mesaverde wells drilled down  
12 there, and this is a stepout that we are taking a  
13 relatively high risk on.

14 Q. Let's go to McElvain Exhibit Number 7. Would you  
15 identify and review that, please?

16 A. Exhibit Number 7 is our AFE that we have sent out  
17 to our working interest owners and what we estimate the  
18 costs will be to drill and complete the well.

19 The dryhole costs, if there were no completions,  
20 is \$301,830. The completed well cost will be \$630,210.

21 Q. Are these costs in line with what you've actually  
22 incurred in drilling other Mesaverde wells in the area?

23 A. Yes, they are.

24 Q. Have you made an estimate of the overhead and  
25 administrative costs to be incurred while drilling the well

1 and also while producing it, if it is successful?

2 A. Yes, I have.

3 Q. And what are those figures?

4 A. The drilling rate, which would be consistent with  
5 other wells in the area, is \$5484.67, and the producing  
6 rate is \$584.47.

7 This will be adjusted downward slightly,  
8 according to the COPAS adjustment effective in April. When  
9 we did this, we were doing it in February-March, so we had  
10 those rates.

11 Q. And you do request that the order provide that  
12 these figures not only be adjusted for the April  
13 adjustment, but in the future be adjusted in accordance  
14 with COPAS procedures?

15 A. That's correct.

16 Q. Does McElvain Oil and Gas Properties, Inc., seek  
17 to be designed operator of the proposed well?

18 A. Yes, we do.

19 Q. In your opinion, will granting this Application  
20 be in the best interest of conservation, the prevention of  
21 waste and the protection of correlative rights?

22 A. Yes.

23 Q. Were Exhibits 6 and 7 prepared by you or compiled  
24 at your direction?

25 A. Yes.

1 MR. CARR: At this time, Mr. Ashley, we move the  
2 admission into evidence of McElvain Exhibits 6 and 7.

3 EXAMINER ASHLEY: Exhibits 6 and 7 will be  
4 admitted as evidence.

5 MR. CARR: And that concludes my direct  
6 examination of Mr. Steuble.

7 EXAMINATION

8 BY EXAMINER ASHLEY:

9 Q. Mr. Steuble, was the well in the north half of  
10 Section 10 drilled under a compulsory pooling order, on  
11 Exhibit 6?

12 A. North half of 10? Yes, I believe it was.

13 Q. Do you have an order number?

14 EXAMINER ASHLEY: Or Mr. Carr, do you have an  
15 order number for that?

16 MR. CARR: I don't have the order number, but  
17 I'll be happy to provide the order numbers for the recent  
18 pooling cases in this area. There have probably been five  
19 or six of them in the last year, all of them involving  
20 basically the same parties, and I can provide those order  
21 numbers.

22 EXAMINER ASHLEY: Okay, thank you.

23 I have nothing further, thank you.

24 MR. CARR: That concludes our presentation in  
25 this case.

1 EXAMINER ASHLEY: There being nothing further in  
2 this case, Case 12,412 will be taken under advisement.

3 (Thereupon, these proceedings were concluded at  
4 9:15 a.m.)

5 \* \* \*

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13  
14 I hereby certify that the foregoing is  
15 a complete record of the proceedings in  
the Examiner hearing of Case No. 12412,  
16 heard by me on 6-1-2000.

17 Mark Ashley SEAN  
18 ON Conservation Division  
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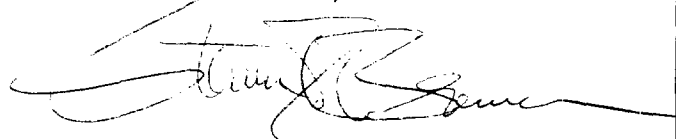
## CERTIFICATE OF REPORTER

STATE OF NEW MEXICO    )  
                              ) ss.  
COUNTY OF SANTA FE    )

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL June 7th, 2000.



STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 14, 2002