

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. 12,452

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

July 13th, 2000

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, MARK ASHLEY, Hearing Examiner on Thursday, July 13th, 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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OIL CONSERVATION DIV.
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I N D E X

July 13th, 2000
Examiner Hearing
CASE NO. 12,452

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A P P E A R A N C E S

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* * *

1 WHEREUPON, the following proceedings were had at
2 11:30 a.m.:

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7 EXAMINER ASHLEY: At this time the Division calls
8 Case 12,454, Application of McElvain Oil and Gas
9 Properties, Inc., for compulsory pooling, Rio Arriba
10 County, New Mexico.

11 Call for appearances.

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

16 EXAMINER ASHLEY: Additional appearances?

17 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe,
18 representing NM&O Operating Company. I have no witnesses.

19 EXAMINER ASHLEY: Additional appearances?

20 MR. CROSS: Mr. Examiner, I'm Spencer Cross
21 representing Dennis Hopper, and I don't have any witnesses.

22 EXAMINER ASHLEY: Okay. Will the witnesses
23 please rise to be sworn in?

24 (Thereupon, the witnesses were sworn.)

25 EXAMINER ASHLEY: Mr. Carr?

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MONA L. BINION,

the witness herein, after having been first duly sworn upon
her oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CARR:

Q. Would you state your name for the record, please?

A. Mona Binion.

Q. Ms. Binion, where do you reside?

A. Littleton, Colorado.

Q. By whom are you employed?

A. McElvain Oil and Gas Properties, Inc.

Q. And what is your position with McElvain?

A. Land Manager.

Q. Have you previously testified before this
Division?

A. Yes.

Q. At the time of that testimony, were your
credentials as an expert in petroleum land matters accepted
and made a matter of record?

A. Yes, it was.

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

A. Yes.

Q. Are you familiar with the status of the lands in
the subject area?

1 A. Yes.

2 MR. CARR: We tender Ms. Binion as an expert in
3 petroleum land matters.

4 EXAMINER ASHLEY: Any objections? Ms. Binion is
5 so qualified.

6 Q. (By Mr. Carr) Would you briefly state what
7 McElvain seeks with this Application?

8 A. McElvain seeks an order pooling all the minerals
9 from the base of the Pictured Cliffs formation to the base
10 of the Mesaverde formation under the east half of Section
11 14, which is a survey variation containing Lots 1 and 2,
12 the south half of the northeast, the southeast quarter,
13 which make up the east half, in order to have these
14 minerals dedicated to our Cougar Com 4-1A well, which is a
15 re-entry of the Dewey Bartlett Number 1, at a standard
16 location in the northeast quarter of the southeast quarter
17 of Section 4, a dedicated spacing unit being a 320-acre
18 standard unit, being approximately 320.73 acres.

19 Q. Have you prepared exhibits for presentation here
20 today?

21 A. Yes, I have.

22 Q. Let's refer to what has been marked for
23 identification as McElvain Exhibit Number 1. Would you
24 identify this and review the information on this exhibit?

25 A. Exhibit Number 1 depicts the location of the

1 Cougar Com 4-1A well, re-entry. It shows the spacing
2 proration unit, which is identified in yellow, it shows the
3 ownership of the two different tracts within the east half
4 of Section 4, one tract being Federal and also one tract
5 being fee minerals.

6 Q. What is the primary objective in this well?

7 A. Our primary objective is the Mesaverde formation,
8 Blanco-Mesaverde Gas Pool.

9 Q. Ms. Binion, this acreage was previously pooled by
10 the Division; is that correct?

11 A. That's correct.

12 Q. Would you identify and review McElvain Exhibit
13 Number 2?

14 A. Exhibit Number 2 is Commission Order Number
15 R-11,182-A, heard under Case Number 12,251, for the
16 compulsory pooling of the east half of Section 4, for the
17 dedication to the McElvain Cougar Com 4-1 well, located in
18 the northeast quarter at 825 feet from the north line and
19 1330 feet from the east line, pooling the minerals from the
20 base of the Pictured Cliffs formation to the base of the
21 Mesaverde formation.

22 McElvain was designated operator for the unit,
23 and we now seek to extend the pooling to cover the infill
24 location, which is the re-entry well of the Dewey Bartlett,
25 now known as the McElvain Cougar Com 4-1A.

1 Q. So the acreage has already been pooled?

2 A. Yes, sir.

3 Q. And what we're really here today addressing is
4 the terms under which those who don't voluntarily join will
5 be required to participate in the well under a pooling
6 order?

7 A. Yes.

8 Q. What is Exhibit Number 3?

9 A. Exhibit Number 3 is a composite of the ownership
10 of the east half of Section 4 when both tracts are
11 combined. It lists the owners and the respective
12 percentages showing of record.

13 There is a notation of a before-payout and an
14 after-payout ownership, and that is based on some
15 indication from our record check that there are
16 reversionary rights between the parties that are not, you
17 know, clearly identified of record.

18 Q. At this point in time, what percentage of the
19 working interest has voluntarily agreed to participate in
20 the re-entry?

21 A. Including McElvain Oil and Gas Limited
22 Partnership, we have approximately 42 percent which is
23 voluntarily committed, their interest to this well.

24 Q. In your opinion, have you made a good faith
25 effort to obtain the voluntary participation of all working

1 interest owners in this well?

2 A. Yes.

3 Q. Could you summarize for Mr. Ashley the efforts
4 you've made to obtain their participation?

5 A. Our efforts to obtain participation began by a
6 letter dated April 8th that was sent out by McElvain to
7 propose the re-entry of the Dewey Bartlett, to test the
8 Mesaverde formation.

9 Subsequent to that, there were conversations by
10 phone and various independent communications in writing to
11 offer information to various owners. There's also a
12 subsequent proposal that was sent from NM&O Operating to
13 counter-propose the re-entry of the same well for the
14 purpose of opening a different zone than the Mesaverde,
15 which -- Their proposal was for the Dakota formation.

16 Subsequent to that, McElvain sent out a response
17 to NM&O's proposal, which indicated that McElvain also was
18 indicated in the Dakota formation, but as a secondary
19 target, not a primary target, and that it continued to
20 leave its proposal to do the Mesaverde on the table and
21 requested again voluntary participation of the parties in
22 our proposal.

23 Q. Ms. Binion, Exhibit Number 4 is the
24 correspondence between the parties concerning your effort
25 to obtain voluntary participation in this well; is that

1 correct?

2 A. That's correct.

3 Q. And it starts with your original proposal dated
4 April 18?

5 A. That's correct.

6 Q. And it includes the counterproposal from NM&O and
7 the your response to that?

8 A. Right.

9 Q. Just generally, could you explain why it is
10 McElvain prefers to at this time drill to the Mesaverde and
11 not to the Dakota?

12 A. In general, without getting into the technical
13 aspect, which is not my area of expertise, McElvain's
14 opinion is that the Mesaverde has the highest economic
15 potential of recovery, based on the amount of money to
16 spend to conduct the operation.

17 And the target for the Mesaverde has been well
18 proven in the area, and the Dakota being a secondary
19 objective that will not be damaged as far as being able to
20 re-enter after we recomplete the Mesaverde, gave us the
21 final decision to propose the Mesaverde, as opposed to the
22 Dakota, as the first objective.

23 Q. And the reasons for selecting the Mesaverde as
24 the primary target will be reviewed by a subsequent
25 witness; is that correct?

1 A. Right, our engineering witness will go into more
2 of the technical detail as to why we chose the Mesaverde.

3 Q. Does the operating agreement which McElvain has
4 proposed provide a means for parties to later propose and
5 participate in a Dakota completion if it's determined that
6 is prudent?

7 A. That's right, the operating agreement that was
8 sent out with the initial April 18th proposal included all
9 depths between the base of the Pictured Cliffs, all depths
10 below the base of the Pictured Cliffs, which would include
11 the Dakota formation.

12 So voluntary commitment to this operating
13 agreement would allow any party to propose opening the
14 Dakota formation up at a later date after the Mesaverde is
15 opened and completed.

16 Q. Is Exhibit Number 5 a copy of the joint operating
17 agreement proposed by McElvain for this well?

18 A. Yes, it is.

19 Q. Has this agreement been executed by other working
20 interest owners in the well?

21 A. Yes, it has.

22 Q. And this is what we have 42 percent commitment to
23 at this time?

24 A. This operating agreement and identical duplicates
25 of this operating agreement that were signed in

1 counterpart.

2 Q. And you have indicated the status of those
3 joinders on the ratification pages to the JOA; is that
4 right?

5 A. Right, the signature pages indicate those parties
6 that have committed to this exact duplicate or to an
7 identical operating agreement covering the same lands.

8 Q. When NM&O proposed a well to the Dakota, did they
9 provide you with a joint operating agreement?

10 A. No, there was no operating agreement or any
11 contractual arrangement provided.

12 Q. Has NM&O, in fact, participated by paying their
13 share in any of the other wells which McElvain has drilled
14 in this area?

15 A. No, they have not.

16 Q. Is Exhibit Number 6 a copy of an affidavit
17 confirming that notice of today's hearing has been provided
18 to affected interest owners in accordance with Oil
19 Conservation Division rules?

20 A. Yes, it is.

21 Q. Will McElvain call an engineering witness to
22 review the technical portions of this case?

23 A. Yes.

24 Q. Were Exhibits 1 through 6 either prepared by you
25 or compiled under your direction and supervision?

1 A. Yes, they have.

2 MR. CARR: At this time, Mr. Ashley, we would
3 move the admission into evidence of McElvain Exhibits 1
4 through 6.

5 EXAMINER ASHLEY: Any objections?

6 MR. BRUCE: No objection.

7 EXAMINER ASHLEY: Exhibits 1 through 6 will be
8 admitted as evidence.

9 MR. CARR: And that concludes my direct
10 examination of Ms. Binion.

11 EXAMINER ASHLEY: Mr. Bruce?

12 MR. BRUCE: I have no questions for Ms. Binion?

13 EXAMINER ASHLEY: Mr. Cross?

14 MR. CROSS: (Shakes head)

15 EXAMINER ASHLEY: I have a few questions.

16 EXAMINATION

17 BY EXAMINER ASHLEY:

18 Q. Now, this well was originally pooled under Order
19 R-12,251?

20 A. No, sir, the well that was pooled -- well, the
21 lands were pooled under R- -- the original order that was
22 described in my testimony. It was pooled for a new well
23 but was drilled in the northeast quarter, which is the
24 Cougar Com 4-1, in the same spacing unit. It's not
25 depicted on that map, but it's located in the northeast

1 quarter, the standard spacing pattern. That well has been
2 drilled and completed.

3 And our request today is to add the infill
4 location to that original order under this order and to
5 force pool the uncommitted owners.

6 Q. Okay, and then the original well was drilled in
7 the northeast quarter; is that right?

8 A. The original well was drilled in the northeast
9 quarter under that prior order, correct.

10 Q. So this is the infill well?

11 A. That's correct.

12 Q. Okay.

13 A. And it's a re-entry.

14 EXAMINER ASHLEY: Okay, thank you. I have
15 nothing further.

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

17 JOHN STEUBLE,
18 the witness herein, after having been first duly sworn upon
19 his oath, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. CARR:

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

23 A. John Steuble.

24 Q. And where do you reside?

25 A. I reside in Denver, Colorado.

1 Q. By whom are you employed?

2 A. McElvain Oil and Gas Properties.

3 Q. And what is your position with McElvain?

4 A. I'm the engineering manager.

5 Q. Mr. Steuble, have you previously testified before
6 this Division?

7 A. Yes, I have.

8 Q. At the time of that testimony, were your
9 credentials as an expert in petroleum engineering accepted
10 and made a matter of record?

11 A. Yes, they were.

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

14 A. Yes, I am.

15 Q. Have you made a technical study and engineering
16 study of the area which is involved in this case?

17 A. Yes, I have.

18 Q. Are you prepared to share the results of that
19 work with the Examiner?

20 A. I am.

21 MR. CARR: Mr. Ashley, we tender Mr. Steuble as
22 an expert witness in petroleum engineering.

23 EXAMINER ASHLEY: Mr. Steuble is so qualified.

24 Q. (By Mr. Carr) Mr. Steuble, let's go to what has
25 been marked as McElvain Exhibit Number 7. Would you

1 identify that and review the information on the exhibit for
2 the Examiner?

3 A. Exhibit Number 7 is a map of the area around the
4 Elk Com -- or Cougar Com 4 Number 1 A, showing the
5 Mesaverde production with the initial potential of the
6 wells and the cumulative production of the wells in the
7 area.

8 Q. What does this show you about the Mesaverde
9 production in the immediate area of the proposed re-entry?

10 A. In the immediate area, it shows the variability
11 within the wellbores themselves and that there is not a
12 real high consistency at this point because of lack of
13 Mesaverde wells, but it does show that you can get very
14 good wells and very poor wells.

15 Q. In your opinion, could a well at this location be
16 an economic failure?

17 A. Yes, it could.

18 Q. And you are actually on the western edge of what
19 appears to be the Mesaverde production in this immediate
20 area; is that correct?

21 A. That's correct, there's no other Mesaverde
22 production to the west. In Section 1 of 25-3 we attempted
23 a Mesaverde production -- or Mesaverde recompletion, which
24 was a failure.

25 Q. Let's go to Exhibit Number 8. Would you identify

1 this, please?

2 A. Exhibit Number 8 is, again, showing the Basin-
3 Dakota wells -- let me rephrase that -- is showing wells
4 that are completed in the Basin-Dakota zone, but there are
5 multiple pools within this area, so a lot of the numbers as
6 far as cumulative productions don't adequately reflect the
7 total -- or only the Basin-Dakota production.

8 Q. Mr. Steuble, if we look at this exhibit and the
9 preceding one, Exhibit Number 7, first of all as to the
10 Mesaverde wells, has McElvain drilled the five Mesaverde
11 wells which offset the proposed location to the east?

12 A. Yes, we have.

13 Q. If we go to the development of the Dakota, has
14 McElvain drilled the wells that offset the proposed well in
15 the Dakota formation?

16 A. We have drilled one Basin-Dakota well in Section
17 33.

18 Q. And when was that well drilled?

19 A. That was drilled in January of 2000.

20 Q. And what are you currently doing with that well?

21 A. Right now, the well is shut in for pressure
22 buildup. We're in the process of recompleting that well in
23 the Mesaverde.

24 Q. And why are you doing that?

25 A. We've established production in the Dakota and

1 don't think it's economic for the long term, so we're going
2 to open up the Mesaverde and commingle it with the Dakota.

3 Q. Now, you're aware that NM&O Operating Company has
4 proposed that this well be re-entered and taken to the
5 Dakota?

6 A. Yes, sir.

7 Q. Could you explain McElvain's reasons for
8 proposing, first, to complete the well in the Mesaverde
9 formation?

10 A. The biggest problem with completing in the Dakota
11 is, there's a Mancos zone open, about a 300-foot Mancos
12 interval, that would have to be dealt with, and which would
13 include frac'ing down a frac string of tubing.

14 The Mesaverde in this well has approximately 123
15 feet of net pay, net pay being defined density porosity
16 over 8 percent. The Dakota zone is somewhat less than 20
17 feet, I believe. And the chance of getting an economic
18 well out of 123 feet of pay versus 20 feet of Dakota pay is
19 a lot better.

20 Q. In your opinion, do you increase the potential
21 for economic reserves by first completing in the Mesaverde?

22 A. Oh, most definitely.

23 Q. If you first complete the Mesaverde and then go
24 back to the Dakota at a later date, would that ultimately
25 result in an increase in cost in terms of the Dakota

1 completion?

2 A. No, because all we would do is open up the
3 Mesaverde. You've already got a set of Mancos perfs open,
4 which you have to deal with. Adding more perfs in the
5 Mesaverde is not going to change significantly the method
6 you go about completing the Dakota, so it would not change.

7 Q. Can you see any negative impact on first going
8 ahead with the Mesaverde formation?

9 A. No, sir.

10 Q. Has NM&O Operating Company ever participated with
11 McElvain in any well in this area by paying a share of the
12 cost?

13 A. No, they have not. I can recall approximately --
14 in excess of six wells that they have not participated in.

15 Q. Are you prepared to make a recommendation to the
16 Examiner concerning the risk associated with this attempt
17 to make a well in the Mesaverde formation?

18 A. Yes, sir.

19 Q. And upon what do you base that recommendation?

20 A. I base it on the lack of consistent production in
21 the area. And it is a re-entry, which is additional high
22 risk; you have to deal with old casing and items that you
23 don't know.

24 Q. And what percentage risk penalty do you
25 recommend?

1 A. 200 percent.

2 Q. Let's go to what has been marked as McElvain
3 Exhibit Number 9. Would you identify and review that for
4 Mr. Ashley?

5 A. Exhibit Number 9 is the AFE I prepared for the
6 re-entry and stimulation of the Mesaverde formation.

7 Q. Are the costs depicted on this exhibit consistent
8 with the actual costs incurred by McElvain in similar wells
9 in the area?

10 A. Yes, they are.

11 Q. Are you prepared to make a recommendation to the
12 Examiner concerning the overhead and administrative costs
13 to be incurred while drilling the well and also while
14 producing it, if it is successful?

15 A. Yes, I am.

16 Q. And what are those figures?

17 A. We're recommending the drilling rate be \$5455.67
18 per month and the producing rate to be \$545.55 per month.

19 Q. These numbers are the result of a number that has
20 subsequently been adjusted pursuant to a COPAS form; is
21 that not right?

22 A. That is correct.

23 Q. And what you're attempting to do is have all
24 interest owners in the well subject to the same overhead
25 and administrative costs?

1 A. That's correct.

2 Q. So those who voluntarily signed the JOA and those
3 who would be pooled would be paying at the same rate?

4 A. That's correct.

5 Q. How do these figures compare with other overhead
6 and administrative costs approved by this Division?

7 A. These are consistent with other orders that we've
8 received and other force-pooling.

9 MR. CARR: Mr. Examiner, recently there were
10 several cases that similar rates have been approved for
11 McElvain. In Case 12,395 -- that's Order R-11,386, entered
12 May the 17th of this year -- rates were approved of
13 \$5484.66 and \$548.47. Those are slightly higher than the
14 figures requested, but they have been adjusted in
15 accordance with COPAS figures since that time.

16 Q. (By Mr. Carr) Mr Steuble, do you request that
17 the figures you recommend be incorporated into any order
18 which results from this hearing?

19 A. Yes, I do.

20 Q. Does McElvain request that the rates approved be
21 adjusted in accordance with the accounting provisions of
22 the COPAS forms attached to the joint operating agreement?

23 A. To be consistent, yes.

24 Q. Does McElvain Oil and Gas Properties seek to be
25 designated operator of the proposed well?

1 A. Yes, we do.

2 Q. In your opinion, will approval of this
3 Application and the re-entry of the well as proposed be in
4 the best interest of conservation, the prevention of waste
5 and the protection of correlative rights?

6 A. Yes, it will.

7 Q. Were Exhibits 7 through 9 prepared by you?

8 A. Yes.

9 MR. CARR: At this time, Mr. Ashley, we move the
10 admission into evidence of McElvain Exhibits 7 through 9.

11 MR. BRUCE: No objection.

12 EXAMINER ASHLEY: Exhibits 7 through 9 will be
13 admitted as evidence.

14 MR. CARR: And that concludes my direct
15 examination of Mr. Steuble.

16 EXAMINER ASHLEY: Mr. Bruce?

17 CROSS-EXAMINATION

18 BY MR. BRUCE:

19 Q. Mr. Steuble, could you look at your Exhibit 7,
20 please?

21 A. Seven?

22 Q. Yes.

23 A. Okay.

24 Q. What are -- You've got data on here with, I
25 believe, the initial potential and then cumulative

1 production as of the end of February?

2 A. Yes.

3 Q. Starting at the top in Section 34, 26 North, 2
4 West, what is the current rate on that well?

5 A. This is as of last week, okay? It's making 105
6 MCF a day.

7 Q. And what is its cumulative?

8 A. The cumulative through 5 of 2000, okay --

9 Q. Okay.

10 A. -- is 62,132.

11 Q. In Section 3, what about the same figures for the
12 well in the northwest quarter of Section 3?

13 A. Elk Com, that well is making 310 a day right now.
14 Its cumulative is 306,583.

15 Q. And the well in the southwest -- Oh, that one is
16 not completed yet; is that correct?

17 A. We're in the process of completing this --

18 Q. Okay.

19 A. -- as we speak.

20 Q. Then the well -- I guess it would be the Number 1
21 well in the northeast quarter of Section 4?

22 A. That's our 4 Number 1. It is producing right at
23 500 a day, and we have just added zone to that. And its
24 cumulative through 5 of 2000 was 35,994.

25 Q. Nine hundred and ninety- -- ?

1 A. -- four. And those are standard cubic feet,
2 that's not MCF.

3 Q. Okay, okay. Then in Section 10 in the northeast
4 quarter, the same figures?

5 A. That well is making 140 a day, and our cumulative
6 on that is 32,165.

7 Q. And then really just one final question, Mr.
8 Steuble. Down in Section 15 it says "Recompletion in
9 Mesaverde". Is that a McElvain well?

10 A. Yes, it is.

11 Q. What is the status of that well?

12 A. That well has been recompleted in the Mesaverde,
13 and we have not been able to establish economical
14 production due to water, and we're in the process, probably
15 tomorrow, of running rods in that and trying to pump the
16 water off.

17 Q. If you can pump the water off and establish
18 economical water disposal, do you have any idea what that
19 well would produce, insofar as far as gas rates are
20 concerned?

21 A. We have not been able to establish any gas rate
22 out of it.

23 Q. Okay. And finally, I probably asked you this
24 question before, Mr. Steuble: In the southeast quarter of
25 Section 3 there is a well. That is not a McElvain well, is

1 it?

2 A. No, that is not. That's a Mallon well.

3 MR. BRUCE: That's all I have, Mr. Examiner.

4 EXAMINER ASHLEY: Mr. Cross?

5 MR. CROSS: No questions.

6 THE WITNESS: I told you wrong. Those are MCFs,
7 62,000 -- I'm sorry.

8 MR. BRUCE: Thank you.

9 EXAMINATION

10 BY EXAMINER ASHLEY:

11 Q. Earlier, Mr. Steuble, you commented that there
12 was a well that you drilled in this area that was
13 unsuccessful in the Mesaverde; is that correct?

14 A. Or that re-entry down in Section 15 does not look
15 like it's going to be an economical well.

16 The well over in Section 1 of 25-3 was a re-entry
17 that we -- or recompletion in the Mesaverde that was
18 unsuccessful. And the well up in the southeast quarter of
19 Section 22 and 26-2 was a Mesaverde re-entry that has been
20 unsuccessful.

21 And quite frankly, the well in Section 34 is not
22 very good.

23 Q. And that's currently producing 105 a day?

24 A. Yes, but we've also recompleted that one into the
25 Lewis section also. Everything is open in that wellbore.

1 Q. Does the Number 1 well in Section 4 -- is it just
2 open in the Mesaverde, or do you have that open in the
3 Dakota as well?

4 A. We opened it in the Point Lookout originally, and
5 then we went back and opened it up in the Menefee, and it's
6 only open in the Mesaverde section, the Menefee and the
7 Point Lookout.

8 EXAMINER ASHLEY: Okay. I have nothing further.
9 thank you.

10 Anything further in this --

11 MR. BRUCE: Just one thing, Mr. Examiner. I have
12 just a brief statement, Mr. Examiner.

13 I informed Mr. Carr last Friday that I was going
14 to file a pooling application on the east half on behalf of
15 my client and that I would ask for a continuance. Due to
16 some miscommunication as of Monday, I was under the
17 impression that McElvain would repropose their proposed
18 Cougar 1 A well as a Dakota well.

19 I left town on Monday and returned last night and
20 found out that this case was going to proceed. As a
21 result, this morning I filed NM&O's pooling application
22 pertaining to the Dakota formation. That is what I have
23 submitted to you as NM&O's Exhibit Number 1. I would move
24 the admission of that exhibit.

25 And because of the counterapplication, I would

1 request that this case, 12,452, be continued to your next
2 docket, whenever that may be, so that evidence may be
3 presented on NM&O's Application, and a consolidated order
4 can be entered.

5 Thank you.

6 MR. CARR: May it please the Examiner, as you're
7 aware there were two cases for McElvain on this docket
8 involving compulsory pooling of two wells, both of which
9 bear the name Cougar Com.

10 Mr. Bruce contacted me on Friday, I advised him I
11 thought we were continuing this case to repropose it to the
12 Dakota, I was in error, and it was the Cougar Com Number 2,
13 the case that was dismissed and will be reproposed.

14 Mr. Bruce was advised by telephone on Tuesday
15 that we were going forward with this Application, and he
16 advised me at that time that he would go ahead and at the
17 hearing seek a continuance of it, filing his own case.

18 There are several things that I think need to be
19 called to your attention, because we do oppose the
20 continuance, and we oppose it for the following reasons.

21 First of all, any motion to continue the case, I
22 believe, should have been made prior to the time we
23 presented our testimony. The case is now before you.

24 Secondly, I think it's important to note that
25 this is not a standard pooling application. This acreage

1 is not available to be pooled or the wellbore to be used.
2 It has been pooled, we are the operator of the acreage, and
3 we have every right to use this wellbore to go and test the
4 Mesaverde formation.

5 That's what we're doing. We're not pooling the
6 lands, we're not seeking another operator. The well isn't
7 available to be operated by anyone else. It's on acreage
8 that we, by order of this Division, operate.

9 And we're going forward with our plans, not to
10 pool the acreage but to extend pooling provisions to the
11 proposed new well so those who will not pay and have not
12 paid in the past can be brought into the well and we can go
13 forward with our plans to develop the acreage in a prudent
14 manner.

15 As to this moment in time, 42 percent of the
16 interest owners have signed a joint operating agreement, an
17 operating agreement that covers the Dakota and which
18 establishes provisions whereby we can go down and drill the
19 Dakota after the fact, after we finish with the Mesaverde.
20 And the operating agreement has been made available to
21 NM&O, but they refuse to execute ours, they don't propose
22 one when they come back. They have an application before
23 you.

24 If they don't like the outcome of this case, the
25 case can be appealed -- they're a party of record -- and

1 the whole matter can be set for hearing before the
2 Commission. We recommend that that's the appropriate way
3 to go at this point in time. We oppose the continuance.
4 We request that the case be taken under advisement and an
5 order entered which would bring those parties in this
6 spacing unit into the well which we are now proposing to
7 recomplete.

8 MR. BRUCE: One thing, Mr. Examiner. Mr. Carr
9 can rebut me, but in the Dakota pooling, compulsory pooling
10 is available.

11 The other orders on this half-section of land
12 only pertain down to the Mesaverde. They do not -- The
13 pooling orders do not pertain to the Dakota, which is my
14 client's primary objective in this well.

15 MR. CARR: Well, we do have a right to use the
16 wellbore. We are the operator of the acreage in the
17 Mesaverde, and we intend to do it one way or the other. We
18 submit the wellbore is not available.

19 EXAMINER ASHLEY: Anything further?

20 MR. BRUCE: No, sir.

21 EXAMINER ASHLEY: Okay. Before I make a decision
22 on that, we're going to take a lunch break.

23 So let's recess and reconvene at 1:30, and at
24 that time I'll have a decision for you on the continuance.

25 (Thereupon, a recess was taken at 12:05 p.m.)

1 (The following proceedings had at 1:45 p.m.)

2 EXAMINER ASHLEY: This hearing will now come back
3 to order.

4 We left off with Case 12,452 and the motion by
5 Mr. Bruce to continue the case for two weeks -- or, excuse
6 me, for four weeks, to my next docket in order to have time
7 to prepare your client's case.

8 MR. BRUCE: Yes, sir.

9 EXAMINER ASHLEY: And I've reviewed your
10 Application, and I've decided that we will continue that
11 for a month, until the 10th of August. At that time you'll
12 have witnesses to present your case?

13 MR. BRUCE: Yes, Mr. Examiner.

14 EXAMINER ASHLEY: Is there anything else?

15 MR. CARR: If we reach an agreement between now
16 and then on any of the issues in this case and advise you,
17 would you then at that time take the case under advisement
18 without continuing the time frame?

19 MR. BRUCE: That would be acceptable to me, yes.

20 EXAMINER ASHLEY: Okay, yes, I'll do that.

21 Is there anything further in this case, then,
22 today?

23 MR. CARR: Nothing further.

24 EXAMINER ASHLEY: Mr. Bruce?

25 MR. BRUCE: Nothing further.

1 EXAMINER ASHLEY: Okay, there being nothing
2 further in this case today, we will continue it until the
3 August 10th hearing.

4 (Thereupon, these proceedings were concluded at
5 1:46 p.m.)

6 * * *

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12 I do hereby certify that the foregoing is
13 a complete record of the proceedings in
14 the Examiner hearing of Case No. 12452
15 heard by me on 7-1-06 19
16 Mark Ashley, Examiner
17 of Conservation Division
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24
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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 July 18th, 2000.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 2002