

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. 12,634
)
APPLICATION OF McELVAIN OIL AND GAS)
PROPERTIES, INC., FOR AMENDMENT OF)
DIVISION ORDER NO. R-11,392 FOR) ORIGINAL
COMPULSORY POOLING OF ADDITIONAL)
FORMATIONS FOR AN INFILL WELL, RIO)
ARRIBA COUNTY, NEW MEXICO)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

April 5th, 2001

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, April 5th, 2001, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

01 APR 19 AM 7:58
OIL CONSERVATION DIV.

* * *

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April 5th, 2001
Examiner Hearing
CASE NO. 12,634

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* * *

A P P E A R A N C E S

FOR THE APPLICANT:

HOLLAND & HART, L.L.P., and CAMPBELL & CARR
 110 N. Guadalupe, Suite 1
 P.O. Box 2208
 Santa Fe, New Mexico 87504-2208
 By: MICHAEL H. FELDEWERT

* * *

1 WHEREUPON, the following proceedings were had at
2 10:32 a.m.:

3 EXAMINER CATANACH: At this time we'll call Case
4 12,634, the Application of McElvain Oil and Gas Properties,
5 Inc., for amendment of Division Order Number R-11,392 for
6 compulsory pooling of additional formations for an infill
7 well, Rio Arriba County, New Mexico.

8 Call for appearances in this case.

9 MR. FELDEWERT: Mr. Examiner, Michael Feldewert
10 with the Santa Fe office of Holland and Hart and Campbell
11 and Carr, appearing on behalf of the Applicant, McElvain
12 Oil and Gas Properties. I have two witnesses here today
13 who have already been sworn.

14 EXAMINER CATANACH: Okay, any additional
15 appearances?

16 Let the record show that the witnesses have
17 previously been qualified and sworn in.

18 MONA L. BINION,
19 the witness herein, having been previously duly sworn upon
20 her oath, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. FELDEWERT:

23 Q. Ms. Binion, I need you to state your full name
24 and address for the record again, as well as by whom are
25 you employed and in what capacity?

1 A. My name is Mona Binion, address is 4824 Prospect,
2 Littleton, Colorado, 80123. I'm employed by McElvain Oil
3 and Gas Properties, Inc., in the capacity of land manager.

4 Q. Ms. Binion, are you familiar with the Application
5 filed in this case and the status of the lands in the
6 subject area?

7 A. Yes.

8 MR. FELDEWERT: Mr. Examiner, I think Ms. Binion
9 has already been qualified as an expert in petroleum land
10 matters.

11 EXAMINER CATANACH: She has.

12 MR. FELDEWERT: Ms. Binion, if you would please
13 briefly outline for the Examiner what McElvain seeks with
14 this Application.

15 A. McElvain seeks an order to amend Order Number
16 11,392 to include all minerals from the base of the
17 Pictured Cliffs formation to the base of the Dakota
18 formation under the south half of Section 10 for all
19 formations and pools developed on a 320-acre spacing to be
20 dedicated to the McElvain Badger Com 10 Number 1A, to be
21 drilled at a standard location in the southeast quarter of
22 Section 10, intended to test the Blanco-Mesaverde Gas Pool
23 and the Basin-Dakota Gas Pool.

24 Q. Would you identify for the Examiner McElvain
25 Exhibit Number 1?

1 A. McElvain Exhibit Number 1 is a reproduction of
2 Order Number R-11,392, entered June 8th, 2000, which is a
3 pooling order from the base of the Pictured Cliffs
4 formation to the base of the Mesaverde formation, under the
5 south half of Section 10, for the McElvain Badger Com
6 Number 10-1 well, which was located in the southwest
7 quarter of Section 10.

8 Q. Are you seeking today to amend this order to
9 include the deeper Dakota formation and then to -- for
10 purposes of an infill well in the southeast quarter of
11 Section 10?

12 A. That's correct.

13 Q. Would you then identify for the Examiner McElvain
14 Exhibit Number 2?

15 A. Exhibit Number 2 is a land plat showing the tract
16 ownership in the south half of Section 10, which is the
17 proration unit that is the subject of this Application. It
18 also shows the location of the infill well, the Badger Com
19 10 Number 1 A, and it covers the working interest ownership
20 under the horizons that are covered under this Application.

21 Q. And the status of the acreage in the south half,
22 it looks to be federal, fee and state; is that right?

23 A. No, it is just fee and federal.

24 Q. Okay. Would you then identify for the Examiner
25 McElvain Exhibit Number 3?

1 A. McElvain Exhibit Number 3 is a composite of the
2 working interest ownership for the horizons covered under
3 this Application as they relate to the proration unit known
4 as the south half of Section 10, which is the subject of
5 this Application.

6 Q. And does it show McElvain as the largest interest
7 owner?

8 A. Yes.

9 Q. How many of these interest owners shown on this
10 Exhibit Number 3 are subject to this pooling Application?

11 A. There are only two remaining owners that are
12 shown on this exhibit that would remain subject to this
13 pooling Application. Since the initial Application we've
14 had subsequent voluntary commitment from Georgia
15 Fundingsland, Ernest Fundingsland and Dugan Production
16 Companies, which leaves the only two remaining uncommitted
17 owners as Joanne Rasmussen and Energen Resources.

18 Q. Have you been able to locate Rasmussen and
19 Energen?

20 A. Yes.

21 Q. Why don't you summarize your efforts to obtain
22 voluntary joinder of these interest owners?

23 A. The initial contact was made through the mail
24 under certified receipt mailing on January 23rd, 2001. The
25 Rasmussen mailout was not received by Rasmussen, it was

1 returned to McElvain intact.

2 We subsequently sent out a Federal Express
3 package of the same Application, the same proposal, which
4 was received by them because it was not returned to us. We
5 also subsequently phoned Rasmussen on more than one
6 occasion, left voice mail messages, were never able to
7 contact them directly and have not received any phone calls
8 back from them.

9 Energen was sent a mailout under a separate
10 letter which was dated February 5th, 2001, the reason being
11 their interest in the original well was committed to a
12 farmout agreement, and so the proposal to them was a little
13 bit modified because the Mesaverde portion was under a
14 farmout.

15 Subsequent to that we contacted them by phone,
16 they communicated with us by phone, we subsequently
17 submitted to them cost estimates for Dakota only, and
18 subsequently heard back from them that they have elected to
19 commit all of their interest under this original farmout.
20 But we have yet to receive any written documentation to
21 that effect, so we've allowed them to remain as a subject
22 party under this Application.

23 Q. So you have a verbal farmout from Energen at this
24 point?

25 A. Yes.

1 Q. Okay. And just to clean up the record, is
2 McElvain Exhibit Number 4 the January 23rd letter that you
3 just referenced?

4 A. Yes.

5 Q. And then McElvain Exhibit Number 5 is the follow-
6 up letter to Rasmussen --

7 A. Right.

8 Q. -- that you discussed?

9 A. That's correct.

10 Q. Is McElvain Exhibit Number 6 a similar follow-up
11 letter to Georgia Ann and Ernest Laurell Fundingsland?

12 A. That's correct.

13 Q. And then you referenced the letter to Energen
14 dated February 5th. Is that that McElvain Exhibit Number
15 6A?

16 A. That's correct.

17 Q. Okay. In your opinion, have you made a good-
18 faith effort to obtain voluntary joinder of all working
19 interest owners in the proposed unit?

20 A. Yes.

21 Q. And is McElvain Exhibit Number 7 an affidavit
22 giving notice -- or indicating that notice was provided of
23 this hearing to the parties that are subject to this
24 pooling Application?

25 A. Yes.

1 Q. Were Exhibits 1 through 7 prepared by you or
2 compiled under your direction and supervision?

3 A. Yes.

4 MR. FELDEWERT: Mr. Examiner, I would move the
5 admission into evidence of McElvain Exhibits 1 through 7.

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

8 MR. FELDEWERT: Mr. Examiner, we intend to
9 continue with our presentation today, particularly the
10 engineering portion, but at this time I want to apprise you
11 that it's come to our attention that there are royalty
12 owners who may need to be pooled at this case.

13 It's unclear at this point whether the applicable
14 lease contains a standard pooling clause, so we would ask
15 that after the presentation today that the matter be
16 continued to May the 3rd so that we can investigate this
17 further and, if necessary, notify the working interest
18 owners to allow this matter to be placed on the docket of
19 May the 3rd and tie up this loose end.

20 And that concludes my examination of this
21 witness.

22 EXAMINATION

23 BY EXAMINER CATANACH:

24 Q. Ms. Binion, this is the second well on this
25 south-half spacing unit?

1 A. Yes, sir.

2 Q. And the first well was a Mesaverde well?

3 A. Yes, sir.

4 Q. And this well is projected to be what?

5 A. It's to be drilled to the Dakota, Basin-Dakota.

6 Q. Is it going to be a Dakota well?

7 A. It's going to be completed in the Dakota

8 formation if tests indicate that it's warranted.

9 Q. Okay. Is this the first Dakota well on this
10 spacing unit?

11 A. In this spacing unit, yes.

12 Q. Okay. You don't anticipate reaching agreement
13 with the Rasmussen interests, do you?

14 A. I think it is possible still that they may,
15 because they did execute the operating agreement under the
16 first well and elected to nonconsent, which is why we, you
17 know, continued to follow up with additional phone calls
18 and ask them to execute the amendment to the operating
19 agreement to take it down to the Dakota and then elect to
20 go nonconsent, which is what Fundingsland did.

21 The Fundingsland parties had executed the
22 original operating agreement down to the Mesaverde, elected
23 to nonconsent the original well. Subsequent to that, they
24 elected to nonconsent again on the infill well and executed
25 the amendment to the operating agreement, which lowered the

1 zone coverage in the operating agreement to the Dakota, to
2 incorporate that lower zone.

3 And we expected Rasmussen to do the same thing.
4 We have no reason to believe they wouldn't be willing to do
5 that, we just have not been able to contact them directly
6 to get a response.

7 Q. Okay. NM&O Operating has executed an agreement?

8 A. NM&O has granted us a farmout of their interest,
9 and I have a written farmout agreement received.

10 Q. Isn't this the same company in the previous case
11 that you could not get an agreement from?

12 A. Yes. The terms they were willing to farm out to
13 us on in this case, and actually the prior case that we
14 just heard, were more reasonable terms that were acceptable
15 to us, you know, economically. The terms that were offered
16 to us before that were very fixed terms they were not
17 willing to move from were not acceptable economically. We
18 were able to comprise and negotiate something reasonable
19 for both parties in this case.

20 Q. If this well turns out to be a Mesaverde
21 completion, that will be the second Mesaverde on the unit;
22 is that correct?

23 A. Correct.

24 Q. As far as handling the well costs and the payouts
25 and the risk penalties and all that, would these two wells

1 be kept separate, as far as the --

2 A. Absolutely, yes.

3 Q. That's how you would handle that?

4 A. Yes.

5 Q. Okay.

6 A. And under the operating agreement, any party
7 that's a joint party under the operating agreement who
8 would elect not to participate as a Dakota well, even if
9 the Dakota is dry, is charged with all of the cost to drill
10 the well down to the original objective depth, and any
11 further completion attempts, whether it be Dakota,
12 Mesaverde or both or, you know, any other uphole costs,
13 those costs are accumulated as a cumulative number from day
14 one, from spudding, all the way down to total depth. There
15 is not splitting of cost between Dakota and Mesaverde.
16 That's the way a nonconsent penalty is calculated under the
17 operating agreement.

18 Q. Under the current JOA, that's the --

19 A. All JOAs, that's a standard form. Unless it's
20 altered in some way, that is the standard way of treating
21 it.

22 Q. So the drilling costs you would charge them would
23 be to the Dakota?

24 A. To the Dakota, and then any subsequent completion
25 attempts of whatever zone, whether a completion is

1 attempted in the original objective or the deepest
2 objective or not.

3 Q. Do you also charge them completion costs or
4 completion attempt costs for a Dakota if it's dry?

5 A. Not if the costs are not incurred, no. If
6 there's no completion attempt made, then there are no
7 actual costs incurred.

8 Q. Well, what if a completion attempt is made on the
9 Dakota, and it turns out --

10 A. Then those costs are incorporated in payout, all
11 costs.

12 Q. That's total well costs? The Mesaverde --

13 A. And that is the same calculation on the payout
14 for farmout also. That's the definition of our cost -- not
15 cost estimate but actual cost applied toward a payout
16 account in the farmouts on these same wells. I've got
17 three farmouts --

18 Q. Uh-huh.

19 A. -- one from Dugan, one from NM&O and one from
20 Energen, all recording the same payout calculation. It's
21 just whether it's 100 percent, 200 percent, 300 percent,
22 that's the only difference between the three different
23 kinds of payout.

24 Q. If I don't own an interest in the deeper horizon,
25 say I don't own an interest in the Dakota but I own an

1 interest in the shallow horizon, am I still charged
2 drilling costs for the deeper horizon?

3 A. No, because if you would have been a
4 participating party you wouldn't have been charged those
5 costs either.

6 Q. Okay, so then they're split out --

7 A. That's correct.

8 Q. -- in that case? Okay.

9 A. But they're split out from the initial proposal
10 of the well, and it has to be proposed as a dual well,
11 because then the costs are completely different, and
12 they're chargeable in a different fashion from day one.

13 EXAMINER CATANACH: Okay, I have nothing further.

14 JOHN D. STEUBLE,

15 the witness herein, having been previously duly sworn upon
16 his oath, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. FELDEWERT:

19 Q. Mr. Steuble, for the record would you please
20 state your name, your address, by whom you are employed and
21 in what capacity?

22 A. My name is John Steuble -- that's S-t-e-u-b-l-e
23 -- address is 6522 South Hoyt Way, Littleton, Colorado.
24 I'm employed by McElvain Oil and Gas Properties,
25 Incorporated, as engineering manager.

1 Q. And are you familiar with the Application filed
2 in this case and have you studied the area which is the
3 subject of this Application?

4 A. Yes.

5 Q. And are you prepared to share the results of your
6 work with the Examiner?

7 A. Yes.

8 MR. FELDEWERT: Mr. Examiner, I think, Mr.
9 Steuble has previously been approved as an expert.

10 EXAMINER CATANACH: He has.

11 Q. (By Mr. Feldewert) Mr. Steuble, what is the
12 primary target of McElvain's proposed well?

13 A. The primary target is the Basin-Dakota.

14 Q. And has McElvain drilled other wells in and
15 around the area that's the subject of this Application?

16 A. Yes, we have.

17 Q. Are you prepared to make a recommendation to the
18 Examiner concerning a risk penalty that should be assessed
19 against nonconsenting interest owners?

20 A. Yes, I am.

21 Q. What is that recommendation?

22 A. Two hundred percent.

23 Q. Why don't you identify for the Examiner and go
24 through the exhibits that you use to support that 200-
25 percent recommendation?

1 A. Okay. Exhibit Number 8 is a nine-section plat
2 showing the existing or attempted Dakota completions within
3 the area around the well. These show the initial
4 production volumes on top with the cumulative production
5 volumes on the bottom.

6 Notice in Section 4, again we have our
7 noncommercial Dakota test in the northeast -- or northwest
8 quarter.

9 The other wells on the map, with the exception of
10 the one in the southeast of Section 15, were Dakota
11 attempts with no long-term production. The well in the
12 southeast of Section 15 is an active Dakota well that is
13 still currently producing, and it's producing approximately
14 200 MCF a day.

15 Q. Why don't you identify and review for the
16 Examiner McElvain Exhibit Number 9?

17 A. Exhibit Number 9 is just an expansion on the area
18 showing the other wells in the area and the three different
19 Dakota and Gallup pools within the area. I should note,
20 our well is permitted as a Basin-Dakota well.

21 Q. And do you plan a Mesaverde completion in this
22 well?

23 A. That's a possibility, should the Dakota be
24 noncommercial.

25 Q. How does this well in Section 10 compare, to your

1 knowledge, with the other Mesaverde completions in the
2 area?

3 A. Pardon me?

4 Q. How would this well in Section 10 compare with
5 the other Mesaverde completions in the area? Is it within
6 an area that has been tested, has commercial Mesaverde, or
7 are you stepping out in any fashion?

8 A. We are stepping out to the south. There's no
9 real commercial Mesaverde wells to the south of us. We
10 attempted a completion in the well in the southeast of
11 Section 15 and are currently evaluating it, but it
12 currently is making about 100 MCF a day and 120 barrels of
13 water a day.

14 Q. Okay. So do you believe there's a chance you
15 could drill this well at your proposed location that would
16 not be a commercial success?

17 A. Yes, I do.

18 Q. I would like you to turn to McElvain Exhibit
19 Number 4, which is the January 23rd, 2001, letter with an
20 AFE that's attached. Would you review for the record in
21 this case the dryhole and completed well totals?

22 A. Dryhole total is \$436,940. A completed well
23 total is \$996,640, which is inclusive of the Mesaverde and
24 Dakota completions.

25 Q. And McElvain has drilled other Dakota wells in

1 this area, is that correct?

2 A. That's correct.

3 Q. And are these costs in line with what has been
4 charged by McElvain in the area for similar wells?

5 A. Yes, they are.

6 Q. Have you made an estimate of overhead and
7 administrative costs while drilling this well and also
8 while producing it, if you are successful?

9 A. Yes, we have.

10 Q. And what are those estimates?

11 A. \$6000 per month for drilling and \$600 per month
12 for producing.

13 Q. Is there a JOA for this property?

14 A. Yes, there is.

15 Q. And that has been signed by other working
16 interest owners in the area?

17 A. Yes.

18 Q. Are the costs, the overhead costs that you just
19 set forth, are they consistent with those in the JOA as
20 suggested under the COPAS guidelines?

21 A. Yes.

22 Q. And do you recommend that the figures approved by
23 the Division be subject to adjustment in accordance with
24 the COPAS guidelines that are applicable to other interest
25 owners in this well?

1 A. Yes.

2 Q. Does McElvain seek to be designated the operator
3 of the proposed well?

4 A. Yes, we do.

5 Q. And in your opinion will the granting of this
6 Application be in the best interests of conservation, the
7 prevention of waste and the protection of correlative
8 rights?

9 A. Yes.

10 Q. Were McElvain Exhibits 8 and 9 prepared by you or
11 compiled under your direction and supervision?

12 A. Yes, they were.

13 MR. FELDEWERT: Mr. Examiner, I would move the
14 admission into evidence of McElvain Exhibits Numbers 8 and
15 9.

16 EXAMINER CATANACH: Exhibits 8 and 9 will be
17 admitted as evidence.

18 MR. FELDEWERT: And Mr. Examiner, that concludes
19 my examination of this witness subject, though, again to
20 our request that the matter be continued to May 3rd to
21 allow us to address the need to notify royalty owners.

22 EXAMINER CATANACH: Okay, Mr. Feldewert. I have
23 no questions of this witness, and at your request this case
24 will be continued to May 3rd, and I presume you will be
25 here at that time to either wrap it up or present

1 additional evidence and testimony?

2 MR. FELDEWERT: Yes, Mr. Examiner, if our
3 examination of the lease determines that there is a pooling
4 clause, then I will so apprise the Division so that
5 hopefully we can get an order entered before May the 3rd.

6 Thank you.

7 (Thereupon, these proceedings were concluded at
8 10:54 a.m.)

9 * * *

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11
12
13 I do hereby certify that the foregoing is
14 a complete record of the proceedings in
15 the Examiner hearing of Case No. 12634
16 heard by me on April 5 1920.
17 David R. Calant, Examiner
18 Oil 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 April 12th, 2001.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 2002