

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. 12,691
)
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: DAVID BROOKS, Hearing Examiner

July 13th, 2001

Santa Fe, New Mexico

01 JUL 25 AM 7:46
OIL CONSERVATION DIV

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID BROOKS, Hearing Examiner, on Friday, July 13th, 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.

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July 13th, 2001
Examiner Hearing
CASE NO. 12,691

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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 8:56 a.m.:

3 EXAMINER BROOKS: At this time we'll call Case
4 Number 12,691, Application of McElvain Oil and Gas
5 Properties, Inc., for compulsory pooling, Rio Arriba
6 County, New Mexico.

7 Call for appearances.

8 MR. FELDEWERT: May it please the Examiner,
9 Michael Feldewert with the law firm of Holland and Hart and
10 Campbell and Carr, appearing on behalf of the Applicant,
11 and I have two witnesses here today who have already been
12 sworn.

13 EXAMINER BROOKS: Are there any other
14 appearances? Very good, you may call your first witness.

15 MR. FELDEWERT: Call Ms. Mona Binion.

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

19 DIRECT EXAMINATION

20 BY MR. FELDEWERT:

21 Q. Ms. Binion, for the record would you please state
22 your full name, your address, by whom you are employed and
23 in what capacity?

24 A. Mona Binion, Littleton, Colorado. I'm employed
25 by McElvain Oil and Gas Properties, Inc., as their land

1 manager.

2 Q. And have your credentials as an expert witness in
3 petroleum land matters been accepted by the Division and
4 made a matter of public record?

5 A. Yes, they have.

6 Q. Are you familiar with the Application in this
7 case and the status of the lands in the subject area?

8 A. Yes, I am.

9 MR. FELDEWERT: Mr. Examiner, are the witness's
10 qualifications acceptable?

11 EXAMINER BROOKS: The witness's qualifications
12 are accepted.

13 Q. (By Mr. Feldewert) Ms. Binion, would you please
14 briefly state what McElvain seeks with this Application?

15 A. McElvain seeks an order pooling all the oil and
16 gas interests from the base of the Pictured Cliffs
17 formation to the base of the Dakota formation underlying
18 the south half of Section 32, Township 26 North, Range 2
19 West, for all formations and pools that are developed on a
20 320-acre spacing, to be dedicated to McElvain's Cougar Com
21 Number 32-2 location, to be at a standard location in the
22 southeast quarter of Section 32.

23 Q. Okay, would you then identify and review for the
24 Examiner McElvain Exhibit Number 1?

25 A. McElvain Exhibit Number 1 is a land plat of

1 Section 32, which depicts the leasehold ownership in the
2 oil and gas formations and depths that are subject to this
3 Application, that are underlying the south half of Section
4 32, and the ownerships are displayed on a lease basis which
5 represent federal minerals and federal oil and gas leases,
6 and it identifies a standard location in the southeast
7 quarter of Section 32.

8 Q. Now, your notation at the bottom of this page
9 indicates some title issues involving some of these
10 interests; is that correct?

11 A. That's correct, it does asterisk various of the
12 interests and represents that there are outstanding title
13 issues affecting some of these interests.

14 Q. With respect to the interests, working interests
15 that are on this exhibit for the Neumann Family Trust and
16 the Noseco Corporation, your notation indicates that there
17 is a title dispute which is pending resolution under a case
18 that had been filed in the District Court for Rio Arriba
19 County, New Mexico; is that correct?

20 A. That's correct.

21 Q. Is it McElvain's position that these entities do
22 not have a working interest in this property?

23 A. It's McElvain's position that these entities
24 had -- they own title to a working interest in these
25 properties currently, and they had entered into an

1 arrangement with McElvain to farm out those interests to
2 McElvain for the purpose of drilling this well.

3 However, that agreement currently is in dispute,
4 and so we have represented these interests for alternative
5 offer for participation in the event the court rules that
6 the alternative arrangement of farmout is actually not
7 valid or in effect.

8 Q. Okay, but for purposes of this record, it is
9 McElvain's position that farmout agreement is in effect and
10 that you have included these parties in this pooling
11 Application only because of the pending dispute in district
12 court; is that right?

13 A. That's correct, as an alternative.

14 Q. Would you then turn to McElvain Exhibit Number 2,
15 identify and review that for the Examiner, please?

16 A. McElvain Exhibit Number 2 is a representation of
17 the combined leasehold ownership of the parties in the
18 south half of Section 32, Township 26 North, Range 2 West,
19 and it also represents the same title issues that were
20 represented on Exhibit Number 1, and it lists the status of
21 commitment for each of these owners toward the McElvain-
22 proposed well.

23 Q. And according to this exhibit, how many interest
24 owners, then, are subject to this pooling Application?

25 A. There are six owners listed on this exhibit that

1 are subject to this pooling Application.

2 Q. Okay, again with the notations that are indicated
3 with the asterisk, right?

4 A. That's correct.

5 Q. Okay. Has McElvain been able to locate addresses
6 and contact the interest owners on Exhibit Number 2?

7 A. We have located addresses for all of the parties
8 that are on Exhibit 2 that are subject to this Application.
9 We have not been successful in obtaining direct contact
10 with all of these parties, however.

11 Q. With respect to -- Well, why don't you then turn
12 to McElvain Exhibit Number 3 and summarize your efforts for
13 the Examiner of -- summarize your efforts to obtain
14 voluntary joinder of the six interest owners that are shown
15 on McElvain Exhibit Number 2?

16 A. McElvain Exhibit Number 3 is a letter, a copy of
17 a letter which was sent out on April 30th to all of the
18 working interest owners or leasehold owners under the south
19 half of Section 32, proposing the drilling and completion
20 of the McElvain proposed Well 32-2 Cougar Com. It included
21 an authorization for expenditure, which details the cost
22 estimate to drill that well, it lists the parties'
23 interests, and it identifies the various title disputes
24 that were in place at that time, the title issues that were
25 in place at that time. It also includes an election page

1 which offers them the opportunity to either participate or
2 not participate. It included an operating agreement, which
3 offered them the opportunity to execute an operating
4 agreement and nonconsent if they chose not to participate
5 as an alternative to participating, and it also offered
6 them the opportunity to receive alternative proposals for
7 farmout or purchase in the alternative that they did not
8 elect to participate.

9 Q. Okay, why don't you then briefly identify for the
10 Examiner McElvain Exhibit Number 4?

11 A. An additional part of Exhibit Number 4 is a copy
12 of the certified notices that was attached to this April
13 30th mailout. Particularly it should be taken to be
14 returned packages that are on the back, the two last pages
15 of this exhibit. One green card and return receipt is for
16 Johansen Energy Partnership, and the last one is for Mesa
17 Grande Resources, Inc.

18 Q. Okay, and I want to get into that in just a
19 minute, but before we do that, would you just -- Is
20 McElvain Exhibit Number 5 an affidavit giving notice of
21 this hearing to the affected parties?

22 A. Yes, it is.

23 Q. Okay, and it also contains a notice list and the
24 return receipt records; is that correct?

25 A. That's correct.

1 Q. Okay. Now, I want to go back, then, to Exhibit
2 Number 4 and take a look. You referenced a return receipt
3 for -- or an unclaimed receipt for the Johansen Energy
4 Partnership, which is one of the parties that they are
5 pooling here today; is that correct?

6 A. That's correct.

7 Q. Okay. Exhibit Number 4 shows an address in
8 Whitefish, Montana, in which the package was unclaimed?

9 A. That's correct.

10 Q. Okay, if you turn to McElvain Exhibit Number 5,
11 which is the notice affidavit, we show a receipt return for
12 that same Johansen Energy Partnership at the same Whitefish
13 address; is that correct?

14 A. That's correct.

15 Q. Has it been your experience that sometimes they
16 pick up their receipts at this address and sometimes they
17 don't?

18 A. That's correct.

19 Q. Okay. We also, then, on exhibit Number 4 show a
20 return receipt for your April 30th letter that was not
21 picked up by Mesa Grande Resources; is that correct?

22 A. That's correct.

23 Q. Okay. And we also show on Exhibit Number 5 that
24 Mesa Grande Resources has not returned their certified mail
25 receipt for notice of this hearing; is that correct?

1 A. That's correct.

2 Q. All right. Do you have any other address for
3 Mesa Grande Resources?

4 A. There's an address we have used in the past that
5 is the same building, a separate suite number, but we have
6 had the packages that we have sent to Mesa Grande Resources
7 at both this suite number and the other suite number on
8 occasion received and on occasion not received. So there
9 have been times they have picked up their mail and times
10 they have not picked up their mail.

11 Q. At the address we used for both your April 30th
12 letter and this notice hearing, the 1318 Philtower
13 Building, Tulsa, Oklahoma, have you had success in the past
14 at reaching Mesa Grande at this --

15 A. Yes, we have.

16 Q. Okay. And have you experienced that sometimes
17 they pick up their mail at this address and sometimes they
18 do not?

19 A. That's correct.

20 Q. Is there also -- Flipping back to Exhibit Number
21 2, there's an asterisk next to Mesa Grande Resources'
22 interest?

23 A. That's correct.

24 Q. What is your understanding of the status of Mesa
25 Grande Resources' interest, if any?

1 A. We have received -- We have been furnished a copy
2 of a document that's been recorded in Rio Arriba County
3 that indicates the interest of Mesa Grande Resources, Inc.,
4 has been fully conveyed to Neumann -- Peter C. Neumann as
5 trustee for the benefit of certain other parties, which are
6 also parties to this Application.

7 Q. So you're not sure that Mesa Grande Resources
8 even holds an interest in this property any longer?

9 A. That's correct.

10 Q. Okay. Now, there's one other party on this
11 Exhibit Number 5 that did not return a receipt yet giving
12 notice of the hearing. It's Gavilan Dome Properties. Do
13 you see that?

14 A. That's correct.

15 Q. At 1800 Cedarwood Drive?

16 A. Yes.

17 Q. Have you had success in the past at reaching
18 Gavilan Dome Properties at this address?

19 A. Yes, we have. In fact, they received and
20 accepted and picked up our April 30th proposal which was
21 sent certified to that same address, a copy of which is in
22 here.

23 Q. Exhibit Number 4?

24 A. That's correct.

25 Q. Okay.

1 A. On the first page.

2 Q. Now, have you recently received from some of
3 these interest owners an election not to participate?

4 A. Yes, I have. In fact, yesterday I did just
5 receive an election from Noseco Corporation, and it was
6 also executed by Mary Walta, which I believe was for the
7 benefit of Neumann Family Trust, but I don't know whether
8 or not -- It just says attorney for Neumann Family Trust,
9 making an election for them. You know, I don't know
10 whether that's an acceptable election, but we're willing to
11 at least consider his representation of his intent --

12 Q. Okay.

13 A. -- on that election.

14 Q. And you received that yesterday from their
15 attorney?

16 A. That's correct.

17 Q. All right. Have you -- With respect to what I
18 would call the Neumann Group, which includes Noseco, the
19 Neumann Family Trust, Gavilan Dome Properties and Johansen
20 Energy Partnership, have you had experience with these
21 interest owners in the past for other McElvain wells?

22 A. Yes, we have.

23 Q. And what as been your experience with them?

24 A. Our experience in the past has been that they
25 either will not respond whatsoever to a proposal that we've

1 made or, if they are responding -- some of the parties we
2 had made verbal contact with because we could reach them
3 and we had been able to locate phone numbers for them --
4 they have always in the past most definitely elected not to
5 participate in any wells that we've drilled.

6 Q. Okay.

7 A. In fact, we've been before the Commission on at
8 least seven separate occasions in the last three years
9 force pooling these same parties, some or all of them.

10 Q. Were Exhibits 1 through 5 prepared by you or
11 compiled under your direction and supervision?

12 A. Yes, they have.

13 MR. FELDEWERT: Mr. Examiner, then at this time I
14 would move the admission into evidence of McElvain Exhibits
15 1 through 5.

16 EXAMINER BROOKS: Exhibits 1 through 5 will be
17 admitted.

18 MR. FELDEWERT: And that concludes my examination
19 of this witness.

20 EXAMINATION

21 BY EXAMINER BROOKS:

22 Q. Okay, I need to straighten this out, because it's
23 all a little bit confusing, but it appears that -- let's
24 see, going down this list, Cougar Capital, LLC, where do
25 they appear on this notice list?

1 MR. FELDEWERT: They --

2 EXAMINER BROOKS: They're voluntary --

3 MR. FELDEWERT: They're voluntarily committed,
4 Mr. Examiner.

5 EXAMINER BROOKS: Okay. Yeah, I better go back
6 to my exhibit. Okay.

7 Noseco Corporation was one of the ones which
8 filed a protest and therefore filed an appearance in this
9 case. Neumann Family Trust likewise was one of the parties
10 for whom Ms. Walta appeared. Gavilan Dome, Ms. Walta
11 appeared; Johansen Energy Partnership, Ms. Walta appeared.
12 Williams Production Company did return their notice, so the
13 only one for which a notice was given that has not been
14 returned and did not appear in the proceeding would have
15 been, then, Mesa Grande, right?

16 MR. FELDEWERT: Correct.

17 THE WITNESS: That's correct.

18 Q. (By Examiner Brooks) Okay. What is the
19 relationship between McElvain Oil and Gas, Inc., and
20 McElvain Oil and Gas -- and -- let's see, what is the name
21 of the Applicant? What is the relationship between
22 McElvain Oil and Gas Properties, Inc., that filed this
23 Application, and T.H. McElvain Oil and Gas Limited
24 Partnership?

25 A. McElvain Oil and Gas Properties, Inc., is the

1 sole general partner of T.H. McElvain Limited Partnership.
2 The limited partnership is the entity that holds title to
3 the properties, and their agreement with McElvain Oil and
4 Gas Properties, Inc., as their general partner, they
5 institute all -- and conduct all operations and are named
6 operator --

7 Q. So --

8 A. -- in all of the agreements for T.H. McElvain
9 Limited Partnership.

10 Q. So that you are requesting that McElvain Oil and
11 Gas Properties, Inc., be designated the operator of this
12 well --

13 A. That's correct --

14 Q. -- in unit --

15 A. -- that's correct, that is the entity named in
16 the operating agreement that has been executed by the
17 parties who've elected to participate.

18 Q. So that pursuant to this operating agreement,
19 then, is McElvain Oil and Gas Properties, Inc., authorized
20 to file this proceeding on behalf of T.H. McElvain Oil and
21 Gas Limited Partnership?

22 A. That's correct, as their sole general partner and
23 as operator designated to drill the well.

24 EXAMINER BROOKS: Thank you. The witness may
25 stand down.

1 MR. FELDEWERT: Mr. Examiner, I would then call
2 Mr. John Steuble.

3 EXAMINER BROOKS: Very good.

4 JOHN D. STEUBLE,
5 the witness herein, having been previously duly sworn upon
6 his oath, was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. FELDEWERT:

9 Q. Mr. Steuble, could you please state your full
10 name, your address, by whom you are employed and in what
11 capacity?

12 A. Yes, John Steuble, I reside in Littleton,
13 Colorado. I'm employed by McElvain Oil and Gas Properties,
14 Inc., as the engineering manager.

15 Q. Have you previously testified before this
16 Division as an expert witness in petroleum engineering and
17 had your credentials made a matter of public record?

18 A. Yes, I have.

19 Q. Are you familiar with the Application that's been
20 filed by McElvain in this case?

21 A. Yes, I am.

22 Q. And have you made a study of the area?

23 A. Yes, I have.

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

1 A. Yes, I am.

2 MR. FELDEWERT: Mr. Examiner, are the witness's
3 qualifications acceptable?

4 EXAMINER BROOKS: The witness's qualifications
5 are accepted.

6 Q. (By Mr. Feldewert) Mr. Steuble, what is the
7 primary target of McElvain's proposed well in this
8 Application?

9 A. The primary target is the Dakota formation.

10 Q. Okay, why don't you then turn to McElvain Exhibit
11 Number 6, identify and review that for the Examiner,
12 please?

13 A. Exhibit Number 6 is a nine-section plat showing
14 the Dakota wells within those nine sections around our
15 proposed well, the Cougar Com 32 Number 2. It shows
16 initial flow rates in MCF per day and then cumulative
17 productions through 4-30 of 2001.

18 Q. Do you show a noncommercial Dakota well in
19 Section 4?

20 A. Yes, sir, we drilled that well recently and
21 attempted a Dakota completion and determined it was
22 noncommercial and have since abandoned that zone.

23 Q. With respect to the other three Dakota wells
24 shown on this nine-section plat, how would you characterize
25 their production to date?

1 A. I would characterize them as marginal.

2 Q. Would you then turn to McElvain Exhibit Number 7,
3 identify that and review that for the Examiner, please?

4 A. Exhibit Number 7 shows the same production
5 information on a larger scale. It also shows the four
6 different pools that are involved in this area, and
7 basically what it shows is how sparse the Dakota density is
8 in this area.

9 Q. Are you attempting to move towards the productive
10 area to the west?

11 A. Yes, we are.

12 Q. And what is the characteristic of the Dakota
13 formation in this area? I mean, is it sands?

14 A. These are sands that are not really continuous
15 from well to well and do not have fully developed porosity
16 between the wells.

17 Q. Okay. Based on your study of this area, are you
18 prepared to make a recommendation to the Examiner as to the
19 risk penalty that should be assessed against nonconsenting
20 interest owners?

21 A. Yes, I am.

22 Q. And what is that recommendation?

23 A. Two hundred percent.

24 Q. Do you believe that there's a chance that
25 McElvain could drill a well at this proposed location that

1 would not be a commercial success?

2 A. Most definitely.

3 Q. Would you please turn to McElvain Exhibit Number
4 3, which is the April 30th letter?

5 A. Yes.

6 Q. It has an AFE attached to it. Has McElvain
7 drilled other Dakota wells in the immediate area?

8 A. Yes, we have.

9 Q. And are these costs that are shown on this
10 authority for expenditure that's attached to McElvain
11 Exhibit Number 3 in line with the costs that McElvain has
12 incurred for drilling Dakota wells in this area?

13 A. Yes, they are.

14 Q. Have you made an estimate of the overhead and
15 administrative costs while drilling this well and also
16 while producing the well if it is successful?

17 A. Yes, I have.

18 Q. And what are those estimates?

19 A. \$6000 per month for drilling and \$600 per month
20 for producing.

21 Q. Are these overhead rates consistent with what has
22 been charged by other operators in the area for Dakota
23 wells?

24 A. Yes.

25 Q. Are these administrative and overhead rates

1 consistent with monthly rates that have been awarded by the
2 Division under recent orders --

3 A. Yes.

4 Q. -- for Dakota wells in this area?

5 A. Yes, they are.

6 Q. And do you recommend that these figures be
7 incorporated into any order that results in this case?

8 A. Yes, we do.

9 Q. Do you request that these rates be adjusted
10 annually --

11 A. Yes.

12 Q. -- in accordance with the appropriate provisions
13 of the COPAS guidelines?

14 A. Yes, sir. Yes, we do.

15 Q. And does McElvain Oil and Gas Properties, Inc.,
16 seek to be designated operator of the proposed well?

17 A. Yes, we do.

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

22 A. Yes, sir.

23 Q. Were McElvain Exhibits 6 and 7 prepared by you
24 and compiled under your direction and supervision?

25 A. Yes, they were.

1 MR. FELDEWERT: Mr. Examiner, I would then move
2 the admission into evidence of McElvain Exhibits 6 and 7.

3 EXAMINER BROOKS: Okay, Exhibits 6 and 7 will be
4 admitted. I seem to have lost track of Exhibit 4
5 somewhere. Oh, here it is. There we go.

6 1 through 5 have previously been admitted, 6 and
7 7 are admitted.

8 MR. FELDEWERT: That concludes my examination of
9 this witness.

10 EXAMINATION

11 BY EXAMINER BROOKS:

12 Q. Once again, I do not see the exact specification
13 of location. What is the status of that APD on this well?

14 A. This is a federal APD that has been submitted,
15 and the on-sites were conducted, I believe, last Tuesday.

16 Q. Okay.

17 A. So it's in the federal process, but has not been
18 approved yet.

19 EXAMINER BROOKS: Okay, I would then request that
20 you supplement the record by providing us that information,
21 Mr. Feldewert.

22 MR. FELDEWERT: Certainly. Can I do that by
23 letter, Mr. Examiner?

24 EXAMINER BROOKS: You may. The witness may stand
25 down.

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Subject to the supplementation of the information requested, Case Number 12,691 will be taken under advisement.

(Thereupon, these proceedings were concluded at 9:20 a.m.)

* * *

I do hereby certify that the foregoing is a correct record of the proceedings in the Board hearing of Case No. 12691, heard by me on July 13, 2001.
David K. Brooke, Executive
Oil Conservation Division

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 22nd, 2001.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 14, 2002