

## 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. 12,633

APPLICATION OF McELVAIN OIL AND GAS )  
 PROPERTIES, INC., TO REOPEN COMPULSORY )  
 POOLING CASE 12,633 FOR THE LIMITED )  
 PURPOSE OF INCLUDING ADDITIONAL MINERAL )  
 INTERESTS UNDER ORDER R-11,471-A AND TO )  
 AMEND SAID ORDER TO FORM A STANDARD )  
 640-ACRE SPACING UNIT, RIO ARRIBA )  
 COUNTY, NEW MEXICO )

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGSEXAMINER HEARING

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

August 23rd, 2001

Santa Fe, New Mexico

01 SEP -6 AM 11:09

OIL CONSERVATION DIV

This matter came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, August 23rd, 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.

\* \* \*

STEVEN T. BRENNER, CCR  
 (505) 989-9317

## I N D E X

August 23rd, 2001  
 Examiner Hearing  
 CASE NO. 12,633

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\* \* \*

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

## FOR THE DIVISION:

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## 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 8:27 a.m.:

3 EXAMINER STOGNER: Let's go to page 3. At this  
4 time I will call Case Number 12,633, which is the  
5 Application of McElvain Oil and Gas Properties, Inc., to  
6 reopen compulsory pooling Case Number 12,633 for the  
7 limited purpose of including additional mineral interests  
8 under Order Number R-11,471-A -- and I guess this would  
9 include somewhat Order R-11,471 -- and to amend this order  
10 to form a standard 640-acre spacing unit in Rio Arriba  
11 County, New Mexico.

12 At this time call for appearances.

13 MR. FELDEWERT: Mr. Examiner, my name is Michael  
14 Feldewert with the law firm of Holland and Hart and  
15 Campbell and Carr, for the Applicant in this case, McElvain  
16 Oil and Gas Properties, Inc., and I have one witness today.

17 EXAMINER STOGNER: Any other appearances?

18 Will the witness please stand to be sworn?

19 (Thereupon, the witness was sworn.)

20 MONA L. BINION,

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

23 DIRECT EXAMINATION

24 BY MR. FELDEWERT:

25 Q. Ms. Binion, would you please state your full name

1 and address for the record?

2 A. Mona Binion, 4824 Prospect, Littleton, Colorado,  
3 80123.

4 Q. And by whom are you employed and in what  
5 capacity?

6 A. McElvain Oil and Gas Properties, Inc., land  
7 manager.

8 Q. And have you previously testified before this  
9 Division and had your credentials as an expert in petroleum  
10 land matters accepted and made a matter of public record?

11 A. Yes, I have.

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

14 A. Yes, I am.

15 Q. And are you familiar with the status of the lands  
16 in the subject area?

17 A. Yes, I am.

18 MR. FELDEWERT: Mr. Examiner, are the witness's  
19 qualifications acceptable?

20 EXAMINER STOGNER: They are.

21 Q. (By Mr. Feldewert) Would you briefly explain to  
22 the Examiner what McElvain seeks with this Application?

23 A. McElvain seeks to reopen Case Number 12,633 for  
24 the limited purposes of including additional working  
25 interest owners under Order Number R-11,471-A, and we seek

1 to amend Order R-11,471-A to form a 640-acre spacing unit  
2 comprising all of Section 4, Township 25 North, Range 2  
3 West, to be dedicated to McElvain's existing Cougar Com  
4 Well 4 Number 2A.

5 Q. Why don't you -- Is McElvain Exhibit Number 1  
6 Order Number R-11,471, which was entered by the Division on  
7 October 13th, 2000?

8 A. I think -- Is it October 13th? I thought it was  
9 December 10th.

10 MR. FELDEWERT: Hold on one minute. I may have  
11 pulled up the wrong order, Mr. Examiner --

12 THE WITNESS: I think the hearing was --

13 MR. FELDEWERT: -- hold on one second.

14 EXAMINER STOGNER: If you're referring to Order  
15 Number R-11,471-A, that was heard on April 5th, and an  
16 order was released on July 10th; is this the one?

17 THE WITNESS: No, he's talking about the original  
18 11,471 --

19 EXAMINER STOGNER: Oh, the original --

20 MR. FELDEWERT: You know, I'm looking here at --  
21 If you look, Mr. Examiner, I have Order 11,471 marked as  
22 McElvain Exhibit Number 1, and it looks like it was entered  
23 on October 13th, 2000.

24 EXAMINER STOGNER: I'll accept that.

25 Q. (By Mr. Feldewert) Is that -- And is this the

1 order that formed a 320-acre spacing unit for the west half  
2 of Section 4?

3 A. That's correct.

4 Q. Okay. Then is McElvain Exhibit Number 2 Order  
5 R-11,471-A, which was entered on July 10th, 2001?

6 A. That's right.

7 Q. And did it dedicate the west half 320-acre  
8 spacing unit that was formed by R-11,471 to your Cougar Com  
9 4 Well Number 2A?

10 A. That's correct.

11 MR. FELDEWERT: I would note, Mr. Examiner, it  
12 looks like Order R-11,471-A may contain an incorrect date  
13 for Order R-11,471. That's what threw me here this  
14 morning.

15 Q. (By Mr. Feldewert) Would you then, having those  
16 two orders set aside, would you identify for the Examiner  
17 which additional working interest you now seek to include  
18 under Order R-11,471-A?

19 A. We seek to include the interests of Noseco  
20 Corporation and Neumann Family Trust to original Order  
21 Number R-11,471-A, dedicated to the McElvain Cougar Com 4  
22 Number 2A well.

23 Q. Okay, would you turn to McElvain Exhibit Number 3  
24 and identify that for the Examiner, please?

25 A. McElvain Exhibit Number 3 is a combined

1 representation of leasehold, working interest ownership for  
2 both the west half 320-acre spacing unit that was covered  
3 under the order R-11,471-A and also shows the combined  
4 working interest leasehold ownership in all of Section 4,  
5 representing the same depths on both lists of ownerships,  
6 which the depths were the original depths covered under the  
7 west half.

8 Q. Okay, does this exhibit show the interests of  
9 Noseco Corporation and the Neumann Family Trust?

10 A. That's correct.

11 Q. Those are the two working interest owners that  
12 you seek to include now under Order R-11,471-A?

13 A. That's correct.

14 Q. All right. You also show the status of the other  
15 working interest owners in this 640-acre unit, correct?

16 A. That's correct.

17 Q. You show down here Huntington Walker as being  
18 voluntarily committed to the 320-acre spacing unit only.  
19 Would you explain that, please?

20 A. It's the current status of the Hunt Walker  
21 interest currently owned. They have executed an operating  
22 agreement and did participate with McElvain in the original  
23 drilling of the well and to the Dakota formation, and we  
24 anticipate they will execute the amendment to the operating  
25 agreement which expands the area circumference to cover the



1 entire 640 and that they will participate with us in the  
2 completion of the Gallup. We just have not heard from them  
3 yet and have not had a chance to call them to seek their  
4 election, so we expect they just are not timely and  
5 responding, but they will join us, and we've always been  
6 able to reach voluntary agreement with them.

7 Q. So at this point in time do you seek to include  
8 them in the pool, in the 640 acres?

9 A. We intended to go ahead and allow the name to  
10 remain on the list for force pooling, however we do intend  
11 to seek their voluntary joinder and advise the Commission  
12 later.

13 Q. Okay. Now, why don't you explain for the  
14 Examiner why the interests of Noseco and Neumann were not  
15 included in the Application that resulted in Order  
16 R-11,471-A?

17 A. At the time the Application was filed for  
18 R-11,471-A, McElvain understood that there was a voluntary  
19 agreement among the parties for a farmout agreement that  
20 had been executed with McElvain that included all of  
21 Section 4. These two interest owners now dispute that  
22 farmout agreement, and the matter is now before district  
23 court, and it's pending.

24 Q. So you're seeking now to pool them and include  
25 them in the order that was entered by the Division in Order

1 11,471-A?

2 A. That's correct.

3 Q. Okay. Now, would you explain for the Examiner  
4 why McElvain also seeks to amend Order 11,471-A to form a  
5 standard 640-acre spacing unit comprised of all of Section  
6 4 for this well?

7 A. McElvain drilled the Cougar Com 4 Number 2A well  
8 down to the Dakota formation, which we found was  
9 noncommercial for the Basin Dakota Gas Pool, and we now  
10 seek to move uphole to test the Mancos formation, which  
11 would fall under the Gavilan-Mancos Oil Pool under the  
12 Commission Rules.

13 Q. Is that 640-acre spacing?

14 A. That's correct.

15 Q. Okay. Why don't you turn to McElvain Exhibit  
16 Number 4 and just briefly identify that and review that for  
17 the Examiner?

18 A. McElvain Exhibit Number 4 is a land plat which  
19 represents on a tract basis the leasehold working interest  
20 ownership of the parties in all of Section 4 and which also  
21 depicts the location of the Cougar Com 4 Number 2A well as  
22 a legal location in the southwest quarter of the section.

23 Q. Does this tie into your Exhibit Number 3?

24 A. Correct. The leasehold ownership that's  
25 represented in the Exhibit Number 4 land plat has been

1 combined to a 640-acre representative spacing unit, the  
2 results of which are depicted on Exhibit Number 3 under  
3 "All - 640" column.

4 The combination of these same owners in different  
5 percentage combinations for the west half of Section 4, as  
6 you would see on the land plat, result in the combined  
7 interests that are shown in the column "West Half of the  
8 320".

9 And if you would, under close examination, look  
10 at this, there are no owners that are in the east half that  
11 are not also in the west half. It is the same working  
12 interest owners completely, and the interest between the  
13 west half combination versus the "all of Section 4" [sic]  
14 combination are very slight variations in percentages when  
15 you combine the interest. But every party has an interest  
16 in both scenarios.

17 Q. Okay. Now, is McElvain Exhibit Number 5 the  
18 special rules and regulations for the Gavilan-Mancos Oil  
19 Pool?

20 A. Yes, McElvain Exhibit Number 5 are the special  
21 rules for the pool that we seek to test, which is the  
22 Gavilan-Mancos Oil Pool.

23 Q. Okay, and have you reviewed Rule 4, which is the  
24 well-location requirements under these pool rules, and does  
25 your Cougar Com 4 Well Number 2A comply with those setback

1 requirements?

2 A. Yes, the Cougar Com 4 Number 2A well is a  
3 standard location for this pool, which is described on page  
4 2 of the rules -- or page 2 of Exhibit 5, Rule Number 4.  
5 The physical location for the well is 935 feet from the  
6 south line and 835 feet from the west line of Section 4.

7 Q. Okay, is McElvain Exhibit Number 6 an affidavit  
8 with letters giving notice of this hearing?

9 A. Yes, McElvain Exhibit Number 6 is the affidavit  
10 verifying for the Commission that notice has been given to  
11 all parties affected by this hearing.

12 Q. Okay, and we have return receipts for all parties  
13 listed on Exhibit Number 3 except for Mesa Grande  
14 Resources, Inc.; is that correct?

15 A. That's correct.

16 Q. Okay. Now, it shows an address of 1200 Philtower  
17 Building, Tulsa, Oklahoma, 74103. Have you used this  
18 address before to contact Mesa Grande?

19 A. Yes, I have.

20 Q. And were you successful in those efforts when you  
21 used this address?

22 A. Yes, I have.

23 Q. Do you know the status of Mesa Grande Resources,  
24 Inc., today?

25 A. Currently we don't know the status of the

1 corporation called Mesa Grande Resources, Inc., We don't  
2 find them listed as the -- a valid corporation in the State  
3 of Oklahoma, which is where we had previously seen them, so  
4 we're uncertain about their legal existence.

5 There was also a quitclaim deed that we had been  
6 provided that was an execution of Alex Phillips, who is the  
7 main principal and president of Mesa Grande Resources,  
8 Inc., into Peter Neumann as a nominee for certain parties  
9 that appeared to attempt to convey all right, title and  
10 interest to Mesa Grande Resources, although it was a  
11 conflicting document and we couldn't really determine if  
12 that actually took place. So it appears that they don't  
13 think they have an interest or may not have an interest.  
14 It's uncertain at this point, so....

15 Q. Is it your opinion that the granting of this  
16 Application will be in the best interests of conservation,  
17 the prevention of waste and the protection of correlative  
18 rights?

19 A. We do.

20 Q. And what are you trying to do with this  
21 Application, concerning this well?

22 A. We're trying to incorporate a larger spacing  
23 pattern for another zone that we intend to test in the well  
24 that we had not originally anticipated would warrant a  
25 test, and we're looking to incorporate in the original

1 pooling on the west half and the -- now pooling on the  
2 entire 640 two interest owners that we had previously  
3 understood had voluntarily committed their interest under  
4 arrangement with McElvain and are now disputing that  
5 interest.

6 Q. Did you, in the drilling of this well, did you  
7 have a showing of a potential oil producing zone, and that  
8 would be the Gavilan formation?

9 A. Yes, we did.

10 Q. And are you trying to use this wellbore now to  
11 test that formation?

12 A. That's correct.

13 Q. And trying to salvage what so far has been a  
14 noncommercial effort?

15 A. That's correct.

16 Q. All right. Were Exhibits 1 through 6 prepared by  
17 you or compiled under your direction and supervision?

18 A. Yes, they were.

19 MR. FELDEWERT: Mr. Examiner, at this time, then,  
20 we would move the admission into evidence of McElvain  
21 Exhibits 1 through 6.

22 EXAMINER STOGNER: Exhibits 1 through 6 will be  
23 admitted into evidence at this time.

24 MR. FELDEWERT: That concludes my examination of  
25 this witness.

1 EXAMINER BROOKS: Mr. Stogner? I don't think I  
2 have any questions.

3 EXAMINER STOGNER: Just a couple of quick follow-  
4 ups.

5 EXAMINATION

6 BY EXAMINER STOGNER:

7 Q. Why didn't McElvain include the 640 originally in  
8 the infill well?

9 A. We've drilled quite a number of wells out here,  
10 and the Mancos formation has typically not been a  
11 potentially good target geologically and from a reservoir  
12 standpoint, because the existing Gavilan-Mancos production  
13 in the area is old and it, under our reservoir analysis,  
14 was expected to have been depleted at this location. They  
15 would have never expected to receive the test or the  
16 characteristics that they saw as they were drilling through  
17 the formation like they did. It was a complete surprise to  
18 them.

19 And they're still not certain whether or not,  
20 when we actually open the hole in that formation, whether  
21 or not they're not going to find indication of a reservoir  
22 pressure too low to even produce it, that it may have just  
23 been a quick spurt of good indication, and when they test  
24 it, it's not going to produce economically. We don't know.

25 Q. Was it a pleasant surprise?

1           A.    I'll let you know after we test it.  So far it  
2 is, but it's going to cost us money to go in there and test  
3 it, so...

4           EXAMINER BROOKS:  Well, given that the Dakota was  
5 evidently an unpleasant surprise...

6           THE WITNESS:  Very unpleasant.

7           Q.    (By Examiner Stogner)  Referring to Exhibit  
8 Number 3, you were talking about the Mesa Grande Resources,  
9 Inc., unable to find them.  Is there any -- or could you  
10 see if there was -- or do you know of any relationship  
11 between Mesa Grande and NM&O Operating Company, also out of  
12 Tulsa?

13          A.    The only relationship between the two is an  
14 acquaintance in prior business relationships, and I have  
15 inquired from NM&O.  I've also spoken to Mr. Phillips' son,  
16 who is Christopher Phillips, inquiring does he know what's  
17 going on?  And apparently Mr. Alex Phillips has not kept  
18 Mr. Christopher Phillips very well informed about what's  
19 been going on with this company.  He was surprised to hear  
20 about the quitclaim deed that we were informed of.

21                So we just have not been able to get to the  
22 bottom of understanding this.  And Mr. Alex Phillips  
23 apparently is up in his years, he is of ill health, and,  
24 you know, we're just not certain that he really understands  
25 everything that's happening, although he does still have an



1 office location in that building. He just doesn't frequent  
2 his office like he used to. And I think what happens is,  
3 some days he just doesn't pick up his mail.

4 EXAMINER STOGNER: Anything further in this  
5 matter?

6 MR. FELDEWERT: No, Mr. Examiner.

7 EXAMINER STOGNER: Do you have anything further?

8 EXAMINER BROOKS: No.

9 EXAMINER STOGNER: If nobody has anything further  
10 in this matter, then Case Number 12,633 will be taken under  
11 advisement.

12 MR. FELDEWERT: Thank you.

13 (Thereupon, these proceedings were concluded at  
14 8:45 a.m.)

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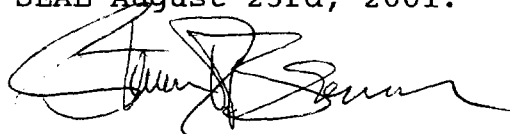
CERTIFICATE OF REPORTER

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 August 23rd, 2001.

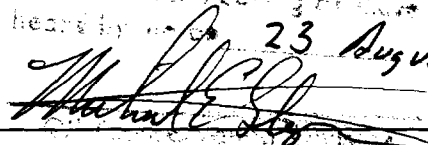



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STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 14, 2002

I hereby certify that the foregoing is a complete record of the proceedings of the Oil Conservation Division heard by me on 23 August 2001. 12633 (Reopened)



STEVEN T. BRENNER, CCR  
(505) 989-9317