

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., FOR COMPULSORY)
POOLING, RIO ARriba COUNTY, NEW MEXICO)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

April 5th, 2001

Santa Fe, New Mexico

OIL CONSERVATION DIV
01 APR 19 AM 7:57

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.

* * *

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April 5th, 2001
Examiner Hearing
CASE NO. 12,633

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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 10:05 a.m.:

3 EXAMINER CATANACH: At this time I'll call Case
4 12,633, the Application of McElvain Oil and Gas Properties,
5 Inc., for compulsory pooling, Rio Arriba County, New
6 Mexico.

7 Call for appearances in this case.

8 MR. FELDEWERT: If it please the Examiner,
9 Michael Feldewert with the Santa Fe office of Holland and
10 Hart and Campbell and Carr, on behalf of the Applicant,
11 McElvain Oil and Gas Properties, Inc. I have two witnesses
12 today.

13 EXAMINER CATANACH: Any additional appearances?
14 Okay, will the two witnesses please stand to be
15 sworn in?

16 (Thereupon, the witnesses were sworn.)

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

20 DIRECT EXAMINATION

21 BY MR. FELDEWERT:

22 Q. Ms. Binion, would you please state your full name
23 and address for the record?

24 A. Mona Binion, 4824 Prospect, Littleton, Colorado,
25 80123.

1 Q. Ms. Binion, by whom are you employed and in what
2 capacity?

3 A. McElvain Oil and Gas Properties, Inc., land
4 manager.

5 Q. Have you previously testified before this
6 Division?

7 A. Yes.

8 Q. At that time were your credentials as an expert
9 in petroleum land matters accepted and made a matter of
10 public record?

11 A. Yes.

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

14 A. Yes.

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

17 A. Yes.

18 MR. FELDEWERT: Mr. Examiner, I would tender Ms.
19 Binion as an expert in petroleum land matters.

20 EXAMINER CATANACH: She is so qualified.

21 Q. (By Mr. Feldewert) Would you please briefly
22 outline for the Examiner what McElvain seeks with this
23 Application?

24 A. McElvain seeks an order pooling all of the
25 mineral interests from the base of the Pictured Cliffs

1 formation to the base of the Dakota formation under the
2 west half of Section 4, Township 25 North, Range 2 West,
3 Rio Arriba County, New Mexico, for all the formations and
4 pools developed on 320-acre spacing, to be dedicated to the
5 Cougar Com Number 4 2-A well, to be drilled at a standard
6 location in the southwest quarter of Section 4, intended to
7 test the Basin-Dakota Pool.

8 Q. Okay, why don't you identify for the Examiner
9 McElvain Exhibit Number 1?

10 A. McElvain Exhibit Number 1 is a land plat showing
11 the proration unit of the west half of Section 4. It shows
12 the working interest ownership for the horizons covered
13 under this Application as to the west half on a tract-by-
14 tract basis.

15 Q. What is the status of the acreage in the west
16 half of Section 4?

17 A. The acreage is comprised of federal and fee
18 lands.

19 Q. Okay. And why don't you then identify and review
20 for the Examiner McElvain Exhibit Number 2?

21 A. McElvain Exhibit Number 2 is a composite list of
22 working interest owners in the horizons covered under this
23 Application, that is combined on a net-acre basis for the
24 working interests in the west half of Section 4.

25 Q. And this shows McElvain as the largest interest

1 owner in the west half of Section 4; is that correct?

2 A. That's correct.

3 Q. Okay. You have a column there, voluntarily
4 committed. Does this indicate, then, the interest owners
5 that are subject to this pooling Application if they do not
6 have "voluntary commitment" after their names?

7 A. Yes, with two exceptions.

8 Q. And what are they?

9 A. The exceptions are Dugan Production Company and
10 Williams Production Company. Since we have filed this
11 Application, Dugan Production Company has voluntarily
12 committed, so we have removed them from this Application.
13 And Williams Production Company does not have a current
14 working interest in the properties, therefore they have not
15 been noticed and would not be subject to this Application.

16 The balance of the parties who have not been
17 shown as voluntarily committed remain subject to this
18 Application, which make up three parties: Gavilan Dome
19 Properties; Mesa Grande Resources, Inc.; and Johansen
20 Energy Partnership.

21 Q. Now, of those three parties is there any interest
22 owner here that you've been unable to locate?

23 A. No.

24 Q. Why don't you summarize your efforts for the
25 Examiner to obtain voluntary joinders of the three interest

1 owners that you've been able to locate here?

2 A. On January 10th, 2001, we sent the original
3 proposal by certified mail. We did receive indication that
4 all parties have received this proposal. Subsequent to
5 that, if we did have phone numbers, we did attempt phone
6 calls, none of which were returned.

7 There have been indirect contacts attempted
8 through common associations, none of which resulted in any
9 response voluntarily committing any interest from any of
10 these parties.

11 Q. Is McElvain Exhibit Number 3 the January 10th,
12 2001, letter with the attached AFE that you just referenced
13 as your first --

14 A. Yes, that's it.

15 Q. Okay. In your opinion, have you made a good-
16 faith effort to obtain voluntary joinder of the three
17 working interest owners that are subject to this pooling
18 Application?

19 A. Yes.

20 Q. Is McElvain Exhibit Number 4 an affidavit giving
21 notice of this hearing?

22 A. Yes.

23 Q. Now, I note that in that exhibit there is no
24 green card returned for Gavilan Dome properties.

25 A. Yes.

1 Q. We show them at an address of 1180 Cedarwood
2 Drive, Moraga, California?

3 A. Yes.

4 Q. Is that correct?

5 A. That's the correct address.

6 Q. Have you had success in contacting Gavilan Dome
7 Properties in the past at this address?

8 A. Yes, we have.

9 Q. Could you identify for the Examiner McElvain
10 Exhibit Number 4A?

11 A. Exhibit Number 4A is a xerox reproduction of the
12 certified return receipts from the original January 10th
13 mailout, one of which is the return receipt signed by
14 Gavilan Dome Properties, having received the January 10th
15 proposal at the same address that the notice of this
16 hearing was mailed.

17 Q. And it's noted on page 2 of that exhibit?

18 A. Page 2 of the exhibit with Article Number Z 152
19 933 620, received. Date of delivery was January 16th,
20 2001.

21 Q. In the past have you noticed whether Gavilan Dome
22 Properties occasionally either refuses or does not pick up
23 their certified mail at this address?

24 A. Yes, occasionally -- on some occasions we've had
25 the packages returned to us nonreceived, and on other

1 occasions we've had them received with return receipts,
2 returned back to us.

3 Q. Okay. Were Exhibits 1 through 4A prepared by you
4 or compiled under your direction and supervision?

5 A. Yes.

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

8 EXAMINER CATANACH: Exhibits 1 through 4A will be
9 admitted as evidence.

10 MR. FELDEWERT: And that concludes my examination
11 of this witness.

12 EXAMINATION

13 BY EXAMINER CATANACH:

14 Q. Ms. Binion, on Exhibit Number 2 you've got two
15 footnotes on the bottom. Has the dispute between Mesa
16 Grande and Northwest been resolved, as far as you know, as
17 far as the interest owners?

18 A. On the Williams Production, the Number 2?

19 Q. Yes.

20 A. No, it has not. It is not really a dispute, it's
21 just that a payout has never been officially determined,
22 and the information I've received from both sides, both
23 parties, is that the expectation is, that payout that is
24 written up in that purchase agreement will never occur.
25 But right now, legally, it still appears as a pending

1 interest of record, potential pending interest of record.

2 Q. Okay, so who owns the interest?

3 A. Currently, the interest is owned by Gavilan Dome
4 Properties, Neumann Family Trust, Noseco Corporation, NMO
5 Operating, Mesa Grande Resources and Johansen Energy
6 Partners. If the payout would ever occur which is
7 referenced in that agreement, those parties would
8 proportionately reduce by a certain percentage and return a
9 working interest percentage to Williams. At least that's
10 our understanding of the terms of that contract.

11 Q. Okay, you've got Northwest Pipeline down here and
12 Mesa Grande Resources.

13 A. Those are the two original parties to the
14 agreement. Northwest Pipeline ended up being through
15 mergers and sales. It became Williams Production Company;
16 they are the current owner.

17 Mesa Grande Resources, Inc., divested a portion
18 of the interest they acquired under that purchase and sale
19 to the other parties that I just named.

20 Q. Okay. As far as the Dugan interest, there's no
21 dispute as to Dugan's 25 percent?

22 A. No, it's a matter of clearing up the record to
23 reassign that 25 percent to Dugan. We reflect it as though
24 they had received that assignment. And the parties have
25 all -- all the parties that are affected have indicated

1 that they agree the assignment is being prepared and to be
2 delivered to Dugan, so we've recognized their interest, and
3 they have voluntarily committed.

4 Q. Okay. But the parties that you cannot get a deal
5 with, have you actually tried to call them on occasion
6 or --

7 A. Yes, we have, and we've had these parties'
8 interests in numerous locations that McElvain has drilled
9 in the last few years, with the same end result, you know,
10 either no response or -- This time I think we have come as
11 close as we've ever come before, we've had indirect
12 indication they would be willing to do something with us.
13 But everything we've sent to them they have not signed.

14 Q. So you've had experience with all three of these
15 parties before?

16 A. Numerous times, both personally and my
17 predecessor at McElvain.

18 EXAMINER CATANACH: Okay, that's all I have of
19 this witness.

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

23 DIRECT EXAMINATION

24 BY MR. FELDEWERT:

25 Q. Mr. Steuble, would you please state your full

1 name and address for the record?

2 A. John Steuble, I reside at 6522 South Hoyt Way in
3 Littleton, Colorado.

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

6 A. McElvain Oil and Gas Properties, Incorporated, as
7 the engineering manager.

8 Q. And have you previously testified before this
9 Division and had your credentials as a petroleum engineer
10 accepted and made a matter of record?

11 A. Yes, I have.

12 Q. And are you familiar with the Application that's
13 been filed in this case?

14 A. Yes, I am.

15 Q. Mr. Steuble, have you conducted a study of the
16 area which is the subject of this Application?

17 A. Yes.

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

20 A. Yes.

21 MR. FELDEWERT: I would then tender Mr. Steuble
22 as an expert witness in petroleum land -- or petroleum
23 engineering.

24 EXAMINER CATANACH: He is so qualified.

25 Q. (By Mr. Feldewert) Mr. Steuble, what is the

1 primary target of McElvain's proposed well?

2 A. The primary target is the Basin-Dakota formation.

3 Q. And has McElvain drilled other Dakota wells in or
4 around the area that is the subject of this Application?

5 A. Yes, we have.

6 Q. Are you prepared to make a recommendation to the
7 Examiner as to the risk penalty that should be assessed
8 against nonconsenting interest owners?

9 A. Yes, I am.

10 Q. And what is that recommendation?

11 A. Two hundred percent.

12 Q. Would you please identify for the Examiner upon
13 what you base this 200-percent recommendation?

14 A. We base it on the lack of success and lack of
15 drilling in the immediate area, as is shown on Exhibit
16 Number 5.

17 Q. Okay, why don't you identify Exhibit Number 5 and
18 go through it with the Examiner, please?

19 A. This is a nine-section plat showing our proposed
20 well, the Cougar Com 4 Number 2-A, and it shows the other
21 Dakota wells that have been attempted or are producing in
22 the area.

23 As you can see, just to the north we have drilled
24 the Cougar Com 4 Number 2, and it is marked as a
25 noncommercial Dakota test in the same section.

1 The well in Section 3 was a Dakota attempt, that
2 is no longer producing, by another operator. We do have
3 two wells that are producing in Section 33.

4 Q. How would you categorize the production of those
5 wells in Section 33?

6 A. The two wells in Section 33, the farthest north
7 well is probably a marginal well. It's approximately 100
8 MCF a day, and the one in the southeast quarter is somewhat
9 marginal, but it will produce about 200 MCF a day. Both of
10 these wells are less than one year old.

11 Q. Would you identify for the Examiner, then, and
12 review McElvain Exhibit Number 6?

13 A. Exhibit Number 6 is just a map showing the Basin-
14 Dakota wells, or the wells that are completed in the Dakota
15 formation in a larger area around us, just trying to show that
16 there are other wells in the area. But the area is
17 sparsely drilled in the Dakota formation.

18 Q. Do you believe there's a chance that you could
19 drill a well at the proposed location that would not be a
20 commercial success?

21 A. Yes, I do.

22 Q. I'd like to have you now turn to McElvain Exhibit
23 Number 3. There is attached to that an AFE. Would you
24 review the dryhole and completed well totals for the
25 Examiner, please?

1 A. Dryhole cost is \$436,940, completed well cost is
2 \$996,640.

3 Q. Is this for a Dakota completion?

4 A. This is for a Dakota-Mesaverde dual completion.

5 Q. Okay, why did you include the Mesaverde dual-
6 completion figures on this?

7 A. The dual completion because the Dakota is the
8 primary target, but the Mesaverde is also what we call a
9 bailout zone, which would be completed in case the Dakota
10 was not as commercial as we had hoped.

11 Q. So in proposing the well to these interest
12 owners, you submitted an AFE that included costs for both
13 completions; is that correct?

14 A. That's correct.

15 Q. Okay. Have you drilled other Dakota wells -- I
16 think you said McElvain has drilled other Dakota wells in
17 the area?

18 A. Yes, we have.

19 Q. Are these costs in line with what McElvain has
20 incurred in the area for drilling similar wells?

21 A. Yes, they are.

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

25 A. Yes.

1 Q. And what are those estimates?

2 A. \$6000 a month for drilling and \$600 a month for
3 producing.

4 Q. Is there a joint operating agreement for this
5 property that has been signed by the committed working
6 interest owners?

7 A. Yes, there is.

8 Q. Are these rates consistent with the rates in that
9 JOA as adjusted under the COPAS guidelines in effect at
10 that time?

11 A. Yes, they are.

12 Q. Do you recommend that these same drilling and
13 producing overhead and administrative rates be approved for
14 this well?

15 A. Yes, I do.

16 Q. Are there COPAS guidelines attached to that JOA?

17 A. Yes, sir, I believe so.

18 Q. Does McElvain request that the overhead figures
19 approved by the Division here be subject to adjustment in
20 accordance with the COPAS guidelines applicable to other
21 interest owners in the well?

22 A. Yes, sir.

23 Q. Does McElvain seek to be designated the operator
24 of the proposed well?

25 A. Yes, we do.

1 Q. In your opinion, will granting this Application
2 be in the best interests of conservation, the prevention of
3 waste and the protection of correlative rights?

4 A. Yes.

5 Q. And were McElvain Exhibits 5 and 6 prepared by
6 you or compiled under your direction?

7 A. Yes, they were.

8 MR. FELDEWERT: Mr. Examiner, I would move the
9 admission into evidence of McElvain Exhibits Number 5 and
10 6.

11 EXAMINER CATANACH: Exhibits Number 5 and 6 will
12 be admitted as evidence.

13 MR. FELDEWERT: And that concludes my examination
14 of this witness.

15 EXAMINATION

16 BY EXAMINER CATANACH:

17 Q. Mr. Steuble, at this point you don't anticipate
18 dually completing the well in the Dakota and Mesaverde?

19 A. No, we do not. What we do is -- The reason for
20 the dual completion the AFE is an accounting function. We
21 have partners, and rather than having to re-AFE them in
22 case we want to move up to the Mesaverde, they were
23 interested in knowing what the total well costs would be if
24 both zones were completed, the Mesaverde and the Dakota.
25 Currently we are just completing the Dakota zones and

1 producing them for a period of time.

2 Q. Until depletion or --

3 A. Not until depletion but until we get a handle on
4 just how good the Dakota is in this area. As you can see
5 from the sparse drilling, we have numerous drilling plans
6 and we're trying to evaluate if we still want to go to the
7 Dakota depths on each well. So in order to do that, we
8 target the Dakota as the primary objective and then produce
9 it for a period of time until we feel we have a handle on
10 what it will produce, or what its producing characteristics
11 are.

12 Q. And then what?

13 A. And then we'll go up and try to recomplete the
14 Mesaverde. We have not yet applied for a commingling
15 order. There are a number of wells that we're evaluating
16 commingling on.

17 Q. But a Mesaverde completion in this well is
18 certainly possible; is that correct?

19 A. Yes, it is. Well, we would hope so.

20 Q. Would you say that the risk penalty of 200
21 percent should apply to the Mesaverde as well?

22 A. Yes, I would.

23 Q. I'm just curious. If you were to get a dry hole
24 in the Dakota and you came uphole and completed in the
25 Mesaverde, I'm just curious as to what drilling costs would

1 be attributed to the Mesaverde owners. Would it be just
2 down in the Mesaverde?

3 A. Luckily, the interest owners are pretty much the
4 same in both zones, in most of the wells. We have looked
5 at one, and I think we have one where our overriding
6 royalty is a little bit different, but most of these wells
7 have the same working interests and revenue interests in
8 both zones.

9 Q. As far as -- Say these three nonconsenting
10 working interest owners, if they went nonconsent, which
11 they're obviously going to in the Dakota and the Mesaverde,
12 if you didn't make a Dakota completion and you ended up
13 making a Mesaverde, what drilling costs would you charge
14 them for the Mesaverde completion? Would it be just down
15 to the Mesaverde?

16 A. No, sir, because we're proposing it as a Dakota
17 and Mesaverde, so on all of the Mesaverdes that we've done
18 in the area with this same group, none of them went with
19 us. We've had to force pool them even on the Mesaverde
20 completions.

21 Q. Well, I'm a little bit confused. Why would you
22 charge them drilling costs to the Dakota if they were, say,
23 interest owners in the Mesaverde, but you would charge them
24 drilling costs to the Dakota, and if you didn't make a
25 completion in the Dakota; is that your -- ?

1 A. I guess I'm not following you.

2 Q. If you drilled this well and you did not -- it
3 was dry in the Dakota formation --

4 A. Okay.

5 Q. -- okay? So you came uphole and completed and
6 made a successful completion in the Mesaverde formation --

7 A. Okay.

8 Q. -- and these three interest owners that are still
9 out there, what drilling costs would you charge them for
10 this well?

11 A. Well, the drilling costs would be for the entire
12 well.

13 Q. Down to the Dakota?

14 A. Down to the Dakota, because there are interest
15 owners in the Dakota also.

16 The other option -- and I don't think it's ever
17 come up, that's why I'm stammering with the question -- the
18 other option is to consider it just a Mesaverde well and
19 come up with the incremental costs going to the Dakota and
20 then back out those costs and charge the Mesaverde owners
21 with the cost to go to the Mesaverde.

22 Q. Right, that's what I'm getting at. Don't you
23 think that would be more fair? I'm just...

24 A. I guess there's multiple ways of looking at it.
25 We're trying to develop their reserves in the Dakota. They

1 ought not to go with us. Like I say, we have approached
2 them on numerous Mesaverde wells which they've opted not to
3 go with us and ended up in force pooling hearings.

4 Q. Okay. You haven't run across that situation yet?

5 A. No, we have not.

6 Q. Okay. As far as the Mesaverde, it is essentially
7 -- you're kind of off the main producing area of the
8 Mesaverde as well?

9 A. Yes, we've drilled a number of Mesaverdes. We've
10 had some successes, and we've had some uneconomic successes
11 also. Between that section and to the township to the west
12 there are no Mesaverde-producing wells. And basically to
13 the east of that section there is -- In Section 3 there is
14 some producing Mesaverde wells, but east of that there have
15 been some attempts in the Mesaverde but nothing commercial.

16 Q. As far as you know, the well that you're drilling
17 in Section 4, that will be a Basin-Dakota and not one of
18 these other Dakota Pools that's combined with the Gallup?

19 A. This is a problem, because as you can see that --
20 we're right in the middle of the overlap of the three
21 different pools where we happen to be operating.

22 I've talked to the Aztec Office, Steve Hayden,
23 and he has informed me to permit everything as Basin-
24 Dakotas, inasmuch as he does not want to extend pools in
25 these three particular pools, because we're right in an

1 area where the pool rules actually overlap, because of the
2 mileage -- one-mile extensions on them.

3 Q. Okay, so you're not in one of the Gallup-Dakota
4 Pools?

5 A. No.

6 Q. Okay.

7 A. And we don't really have any intentions to
8 complete the Gallup. We've not seen any evidence that we
9 can make a Gallup well there.

10 Q. Okay. Those two wells up in Section 33, are
11 those your wells?

12 A. Yes, they're our wells.

13 Q. And you said those were less than a year old?

14 A. Yes, sir.

15 Q. Producing 100 and 200 MCF a day --

16 A. Yes.

17 Q. -- approximately?

18 A. Now, we have tried the Mesaverde in the southeast
19 quarter. We have a bridge plug over the Dakota, and it was
20 making about 200 a day when we shut it off, and we've tried
21 to complete the Mesaverde, and we've got a lot of water
22 problems there. It currently has not been applied for
23 commingling. We're still trying to dewater the Mesaverde
24 there, and we're not sure if we're going to be able to.

25 EXAMINER CATANACH: Okay. All right, that's all

1 the questions I have in this case.

2 Anything further, Mr. Feldewert?

3 MR. FELDEWERT: No, Mr. Examiner.

4 EXAMINER CATANACH: There being nothing further,
5 Case 12,633 will be taken under advisement.

6 (Thereupon, these proceedings were concluded at
7 10:31 a.m.)

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13 I do hereby certify that the foregoing is
14 a complete record of the proceedings in
the Examiner hearing of Case No. 12633,
15 heard by me on April 5 192007.
16 David R. Catanch, Examiner
Oil Conservation Division
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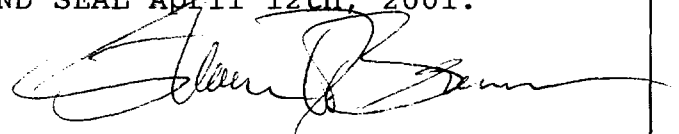
CERTIFICATE OF REPORTER

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