

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. 12,689

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 26 AM 7:45
JUL 26 2001

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. 12,689

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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 8:15 a.m.:

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6 EXAMINER BROOKS: We'll go on the record, then.
7 Call Case Number 12,689, Application of McElvain Oil and
8 Gas Properties, Inc., for compulsory pooling, Rio Arriba
9 County, New Mexico.

10 Call for appearances.

11 MR. FELDEWERT: May it please the Examiner, my
12 name is Michael Feldewert.

13 I'm with the law firm of Holland and Hart and
14 Campbell and Carr, representing the Applicant in this case,
15 and I have two witnesses.

16 EXAMINER BROOKS: Very good. Any other
17 appearances?

18 Will the witnesses please stand, state your name
19 and be sworn?

20 MR. STEUBLE: John Steuble.

21 MS. BINION: Mona Binion.

22 (Thereupon the witnesses were sworn.)

23 EXAMINER BROOKS: Okay, you may call your first
24 witness, Mr. Feldewert.

25 MR. FELDEWERT: Thank you, Mr. Examiner

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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. FELDEWERT:

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

A. Mona Binion, Littleton, Colorado.

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

A. I'm the land manager for McElvain Oil and Gas.

Q. Have you previously testified before this
Division as an expert in petroleum land matters?

A. Yes, I have.

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

A. Yes, I am.

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

A. Yes, I am.

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

EXAMINER BROOKS: The witness's qualifications
will be accepted.

Q. (By Mr. Feldewert) Ms. Binion, would you please

1 briefly state what McElvain seeks with this Application?

2 A. McElvain seeks an order pooling oil and gas
3 interests from the base of the Pictured Cliffs formation to
4 the base of the Dakota formation in the north half of
5 Section 32, 26 North, 2 West, for the formations and pools
6 that are developed on a 320-acre spacing, to be dedicated
7 to the McElvain Cougar Com Number 32-1 well, to be located
8 at a standard location in the northeast quarter of Section
9 32.

10 Q. Okay, why don't you identify and review for the
11 Examiner what has been marked as McElvain Exhibit Number 1?

12 A. McElvain Exhibit Number 1 is a land plat covering
13 all of Section 32, which depicts the oil and gas ownership
14 at the depths covered under this Application. Under the
15 north half of 32, which is the applied spacing, it depicts
16 the acreage shown as federal acreage, and it depicts the
17 ownership on a tract or on a lease basis. It shows the
18 location of the well at a standard location.

19 Q. Okay, so these breakdowns are on a lease basis?

20 A. That's correct.

21 Q. Okay, and why don't you identify and review for
22 the Examiner McElvain Exhibit Number 2?

23 A. McElvain Exhibit Number 2 is an ownership
24 breakdown, which is a combined tract basis interest that
25 adds up all the interest in the entire spacing unit of the

1 north half of Section 32. It also shows the percentage of
2 the parties and the status of their commitment to the
3 proposal.

4 Q. Okay, based on this exhibit, how many interest
5 owners are subject to this pooling Application?

6 A. There are four interests listed that are
7 subject -- that are uncommitted still.

8 Q. They're located at the bottom of the exhibit?

9 A. That's correct.

10 Q. Okay. Has McElvain been able to locate the four
11 interest owners that are listed as uncommitted on Exhibit
12 Number 2?

13 A. Yes, McElvain has been able to locate each of
14 these and has been communicating directly with them.
15 However, our location of Christopher Phillips has just been
16 recent. The original attempt to locate them by mail failed
17 because we had a bad address. So our recent communication
18 has been short of the standard, normal review period, the
19 notice period.

20 Q. Did we have difficulty getting timely notice to
21 Mr. Phillips of this Application because of the wrong
22 address?

23 A. That's correct.

24 Q. Okay. So is Mr. Phillips subject to this pooling
25 Application?

1 A. Currently we would recommend to pull Christopher
2 Phillips' interest off of the Application in the effort to,
3 you know, obtain voluntary approval, because our
4 communication with him so far has indicated he'll
5 voluntarily commit. So there's -- you know, should be no
6 need to include him.

7 MR. FELDEWERT: Okay. So Mr. Examiner, we
8 propose that we would take Mr. Phillips off of the list of
9 parties to be pooled, and in the event that we're not able
10 to reach an agreement we would come back later and seek and
11 amendment to the order.

12 EXAMINER BROOKS: Well, I have some hesitation
13 about that and think perhaps the better way to do would be
14 to keep the case open until you make a decision on that,
15 the reason being that the statute directs that we pool all
16 interests, but let's defer that matter till the end of
17 presentation of testimony.

18 MR. FELDEWERT: Okay.

19 Q. (By Mr. Feldewert) Okay, with respect to the
20 remaining -- or actually with the four parties on here,
21 recognizing the situation with Mr. Phillips, why don't you
22 summarize for the Examiner your efforts to obtain voluntary
23 joinder of these interest owners?

24 A. McElvain Exhibit Number 3 is a copy of the first
25 letter that I sent out to the parties, dated May 7th, 2001,

1 which identifies the proposal itself, the cost estimates,
2 the percentage of the parties, and provides a place for
3 their election to either participate with us or not and
4 also offers alternative arrangements in lieu of
5 participation if they so choose. That was sent out to all
6 the parties around the May 7th date.

7 Since then we've had verbal contact with all the
8 parties off and on, and it's our understanding so far that
9 it looks like most of them will be willing to make some
10 sort of alternative arrangement, but none of the four
11 uncommitted parties seem to be wanting to participate.

12 Q. Okay, so you don't have the paperwork in line
13 yet?

14 A. No.

15 Q. Did you include an AFE with this proposal letter
16 that went out in May?

17 A. Yes, there was a McElvain authorization for
18 expenditure included in the proposal, which detailed the
19 estimate of the cost to drill and complete the well as
20 proposed.

21 Q. Okay. Why don't you identify and review for the
22 Examiner, then, McElvain Exhibit Number 4?

23 A. McElvain Exhibit Number 4 is an affidavit giving
24 notice to the parties that were subject to the Application
25 that was sent out.

1 Q. And is this -- as indicated on here, we had --
2 the notice that went out to Christopher Phillips was
3 returned by U.S. Mail; is that correct?

4 A. That's correct.

5 Q. And since then you've found a correct address for
6 Mr. Phillips?

7 A. That's correct.

8 Q. And you've been in contact with Mr. Phillips?

9 A. I've been in contact with him verbally, yes.

10 Q. Okay.

11 A. And he is aware that the hearing is being held
12 today.

13 Q. Were McElvain Exhibits 1 through 4 prepared by
14 you or compiled under your direction and supervision?

15 A. Yes, they were.

16 MR. FELDEWERT: Mr. Examiner, at this time, then,
17 I would move the admission into evidence of McElvain
18 Exhibits 1 through 4.

19 EXAMINER BROOKS: Okay, Exhibits 1 through 4 will
20 be admitted.

21 MR. FELDEWERT: And that concludes my examination
22 of this witness.

23 EXAMINATION

24 BY EXAMINER BROOKS:

25 Q. Let's see, do you have the -- Is there somewhere

1 in here the exact location of the well? I assume the star
2 here on Exhibit 1 is the well location --

3 A. Yes, sir, but that --

4 Q. -- but I didn't see --

5 A. -- that is not to scale --

6 Q. Yeah, I didn't --

7 A. -- we just had footage.

8 Q. I didn't see the footages on here, but...

9 A. I think the exhibits to come that Mr. Steuble
10 will introduce will have a more precise location of the
11 well.

12 Q. Very good.

13 A. It's at a standard location, but it's not, you
14 know, exactly in the center.

15 EXAMINER BROOKS: Thank you. Witness may stand
16 down.

17 JOHN D. 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. FELDEWERT:

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

24 A. John Steuble, and I reside in Littleton,
25 Colorado.

1 Q. And by whom are you employed and in what
2 capacity?

3 A. I'm employed by McElvain Oil and Gas as the
4 engineering manager.

5 Q. Have you previously testified before this
6 Division and had your credentials accepted as an expert in
7 petroleum engineering?

8 A. Yes, I have.

9 Q. And are you familiar with the Application that
10 has been filed by McElvain in this case?

11 A. Yes, I am.

12 Q. Have you made an engineering study of the area
13 that's the subject of this Application?

14 A. Yes.

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

17 A. Yes.

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

20 EXAMINER BROOKS: They are.

21 Q. (By Mr. Feldewert) Mr. Steuble, what is the
22 primary target for McElvain's proposed well?

23 A. The primary target in this case is the Dakota.

24 Q. Okay, why don't you turn to McElvain Exhibit
25 Number 5 and review that for the Examiner, please?

1 A. Exhibit 5 is a nine-section plat around the
2 wellbore that we've staked, and it shows the existing
3 Dakota wells, either producing or nonproducing, within that
4 nine-section area.

5 Q. It shows your standard -- Is your location for
6 your Cougar Com 32 Well Number 1 standard?

7 A. Yes, it is.

8 Q. It's going to be in the northeast quarter?

9 A. Yes.

10 Q. Okay. You show your spacing unit on here as
11 well; is that correct?

12 A. That's correct.

13 Q. What observations can you make about the Dakota
14 production in this nine-section area?

15 A. In this nine-section area, you can see that there
16 are four Dakota wells. The one in Section 4 was tested as
17 a noncommercial well. The two in 33 and the one in 29 have
18 been completed during the year 2000, and the production
19 shows the initial production volume in MCF per day, and
20 then the cumulative volume up to 4-30 of this year.

21 Q. How would you characterize the production from
22 the commercial -- or the wells in Section 33 and 29?

23 A. I'd call these marginal wells.

24 Q. So you have three marginal wells in Section 33
25 and 29 and then a noncommercial well in Section 4?

1 A. That's correct.

2 Q. Are these the only Dakota wells in this nine-
3 section area?

4 A. Yes, sir.

5 Q. Would you then identify and review for the
6 Examiner McElvain Exhibit Number 7?

7 A. Number 7 is just --

8 Q. I'm sorry, Number 6.

9 A. Okay, Number 6 is just a larger scale of the
10 area, showing the various Dakota wells in a larger area in
11 relation to our 32-1. As you can see, we are trying to
12 work our way to the west. One thing that has to be noted
13 is that the Ojito Gallup-Dakota and the Lindrith Gallup-
14 Dakota are two pools, and the numbers reflected on this map
15 are not specifically Dakota production but a combination of
16 production, because they're multiple-zone pools.

17 Q. You show another noncommercial Dakota test on
18 here; is that right?

19 A. Yes, up in Section 20, we drilled that well to
20 the Dakota and did not complete that well because the sands
21 weren't there.

22 Q. Okay. So you're drilling into sands when you're
23 drilling into the Dakota formation?

24 A. Yes.

25 Q. And has it been your experience that those sands

1 tend to shift and are sometimes difficult to hit?

2 A. Yes, they come and they go in this area, because
3 we're on the southeast edge of the Basin and they're not
4 evenly deposited throughout this area.

5 Q. Based on your study of the area, are you prepared
6 to make a recommendation to the Examiner as to the risk
7 penalty that should be assessed against the nonconsenting
8 interest owners for this well?

9 A. Yes, I am.

10 Q. And what is that recommendation?

11 A. Two hundred percent.

12 Q. Mr. Steuble, in your experience with your study
13 of this area, do you believe that there's a chance that you
14 could drill a well at the proposed location that would not
15 be a commercial success?

16 A. Most definitely.

17 Q. Let me turn you back to McElvain Exhibit Number
18 3. There is an AFE that is attached -- I believe it's the
19 last page of that exhibit.

20 A. Yes, sir.

21 Q. Are you familiar with this AFE?

22 A. Yes, I am.

23 Q. Okay. Has McElvain drilled other Dakota wells --
24 Well, I think you've indicated McElvain has drilled other
25 Dakota wells in this area?

1 A. Yes.

2 Q. Are the costs that are reflected on this AFE
3 consistent with what McElvain has incurred for drilling
4 Dakota wells in this area?

5 A. Yes, they are.

6 Q. Okay. Mr. Steuble, have you made an estimate of
7 the overhead and administrative costs while drilling this
8 well and also while producing this well if it is
9 successful?

10 A. Yes.

11 Q. And what are those estimates?

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

14 Q. Are these overhead rates consistent with what
15 McElvain and other operators in the area have charged for
16 these types of wells?

17 A. Yes, they are.

18 Q. Has there recently been Division orders -- orders
19 entered by the Division for Dakota wells in this area that
20 have awarded these overhead and administrative costs?

21 A. Yes.

22 Q. Do you recommend that these figures be
23 incorporated into any order that results from this hearing?

24 A. Yes, I do.

25 Q. And would you request that these rates be

1 adjusted annually pursuant to the appropriate provisions of
2 the COPAS form entitled "Accounting Procedure, Joint
3 Operations"?

4 A. Yes, I do.

5 Q. Does McElvain Oil and Gas Properties, Inc., seek
6 to be designated operator of the proposed well?

7 A. Yes, we do.

8 Q. In your opinion, will the granting of this
9 Application be in the best interests of conservation, the
10 prevention of waste and the protection of correlative
11 rights?

12 A. Yes, sir.

13 Q. Were McElvain Exhibits 5 and 6 prepared by you or
14 compiled under your direction and supervision?

15 A. Yes, they were.

16 MR. FELDEWERT: Mr. Examiner, I would then move
17 the admission into evidence of McElvain Exhibits 5 and 6.

18 EXAMINER BROOKS: McElvain Exhibits 5 and 6 will
19 be admitted.

20 MR. FELDEWERT: And that concludes my direct
21 examination of this witness.

22 EXAMINATION

23 BY EXAMINER BROOKS:

24 Q. Yes, do you -- I didn't see anything on any of
25 these exhibits that give the location of the proposed well

1 by footage. Do you have that information?

2 A. I don't have it with me, sir, no.

3 EXAMINER BROOKS: Do you have that, Mr.
4 Feldewert, in any of your materials?

5 MR. FELDEWERT: I do not -- I'm looking to see if
6 it's on the AFE.

7 THE WITNESS: No, it's not.

8 MR. FELDEWERT: No, it's not, but we certainly
9 can get that information to the Examiner.

10 Q. (By Examiner Brooks) Has an APD been filed for
11 this well?

12 A. Yes, sir, this is a federal permit, and I believe
13 we have filed an APD on this well.

14 Q. Okay. Well, if the APD has made its way down to
15 us by this time, then we would have that information in our
16 file.

17 A. I doubt if it has, because we just had our on-
18 sites --

19 Q. Okay.

20 A. -- I think last Tuesday, is when the BLM was
21 available.

22 EXAMINER BROOKS: Okay, could you supplement the
23 record, then, with a copy of the APD --

24 MR. FELDEWERT: Certainly.

25 EXAMINER BROOKS: -- give us that information?

1 Very will, the witness may stand down. Oh, I had
2 one other question, I'm sorry.

3 Q. (By Examiner Brooks) What is the proposed depth
4 of the well?

5 A. Our Dakotas are going to about 8450, somewhere in
6 there.

7 EXAMINER BROOKS: Thank you, witness may stand
8 down.

9 MR. FELDEWERT: Mr. Examiner, that concludes our
10 presentation.

11 With respect to Mr. Phillips, because of
12 McElvain's drilling program that they have in this area, we
13 would request that the matter be taken under advisement.
14 We think we can reach agreement with Mr. Phillips, and so
15 we request that the matter not be held up because of the
16 lack of notice to Mr. Phillips, and so we would suggest
17 that we just exclude him as a party to be pooled in this
18 matter and that it be taken under advisement, and proceed
19 with the remaining three parties who are properly noticed
20 for the hearing.

21 EXAMINER BROOKS: Okay. Do you by any chance
22 have a copy of the Oil and Gas Act with you?

23 MR. FELDEWERT: I sure do.

24 EXAMINER BROOKS: I didn't bring my rule book
25 down.

1 MR. FELDEWERT: It has all my cheating -- or my
2 notes on it. May or may not be correct, but...

3 EXAMINER BROOKS: It would be Section 17 over
4 here.

5 MR. FELDEWERT: I can tell the Examiner that I
6 know in the past we have handled notice issues like this
7 either by keeping the record open for purposes of providing
8 notice, if we were concerned about that, or we just went
9 ahead and excluded the individual from the pooling
10 application and just proceeded with an order for the --

11 EXAMINER BROOKS: Right.

12 MR. FELDEWERT: -- individuals who were properly
13 noticed.

14 EXAMINER BROOKS: Well, I was misremembering the
15 language of the statute so I stand corrected. It says
16 shall pool all or any part of such lands or interests, so
17 Case Number 12,689 will be taken under advisement.

18 MR. FELDEWERT: Thank you, sir.

19 (Thereupon, these proceedings were concluded at
20 8:35 a.m.)

21 * * *

22 I do hereby certify that the foregoing is
23 a complete record of the proceedings in
24 the Examiner hearing of Case No. 12689,
25 heard by me on July 13, 2001.
David K. Brooks
Off 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 20th, 2001.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 2002