

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: )  
APPLICATION OF McELVAIN OIL AND GAS )  
PROPERTIES, INC., FOR COMPULSORY POOLING )  
RIO ARriba COUNTY, NEW MEXICO )

CASE NO. 12,690

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID BROOKS, Hearing Examiner

July 13th, 2001

Santa Fe, New Mexico

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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JUL 25 2001

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July 13th, 2001  
Examiner Hearing  
CASE NO. 12,690

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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   8:36 a.m.:

3           EXAMINER BROOKS: We'll call Case Number 12,690,  
4   Application of McElvain Oil and Gas Properties, Inc., for  
5   compulsory pooling, Rio Arriba County, New Mexico.

6           Call for appearances.

7           MR. FELDEWERT: Mr. Examiner, Michael Feldewert  
8   with the law firm of Holland and Hart and Campbell and  
9   Carr, for Applicant in this case, and I have two witnesses  
10   here today who have already been sworn.

11          EXAMINER BROOKS: Other appearances? Very good,  
12   you may call your first witness, Mr. Feldewert.

13          MR. FELDEWERT: Ms. Mona Binion.

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

17                   DIRECT EXAMINATION

18   BY MR. FELDEWERT:

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

21           A.   Mona Binion, Littleton, Colorado.

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

24           A.   McElvain Oil and Gas Properties, Inc., as land  
25   manager.

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

4 A. Yes, they have.

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

7 A. Yes, I am.

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

10 A. Yes, I am.

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

13 EXAMINER BROOKS: The witness's qualifications  
14 are accepted.

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

17 A. McElvain seeks an order pooling all oil and gas  
18 interests from the base of the Pictured Cliffs formation to  
19 the base of the Dakota formation under the west half of  
20 Section 11, Township 25 North, Range 2 West, for all  
21 formations and pools developed on a 320-acre spacing, to be  
22 dedicated to McElvain's Badger Number 11-1 well, to be at a  
23 standard location in the southwest quarter of Section 11.

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

1           A.   McElvain Exhibit Number 1 is a land plat covering  
2   Section 11, Township 25 North, Range 2 West, and depicting  
3   the oil and gas ownership, leasehold ownership in the west  
4   half of Section 11 on a lease basis. And it indicates that  
5   the entire west half of the section is fee minerals, fee  
6   oil and gas minerals, and it identifies the ownership on a  
7   lease basis on the depths and the formations that are  
8   subject to this Application. It also includes the location  
9   of the well to be a standard location in the southwest  
10   quarter.

11          Q.   And some of this fee acreage has not been leased;  
12   is that correct?

13          A.   That's correct.

14          Q.   Okay, would you then identify and review for the  
15   Examiner McElvain Exhibit Number 2?

16          A.   McElvain Exhibit Number 2 is a composite  
17   ownership list of the parties owning the leasehold interest  
18   in the west half of Section 11, Township 25 North, Range 2  
19   West, and it also indicates each party's current status of  
20   commitment toward the proposal.

21          Q.   You show six interest owners as being  
22   uncommitted; is that correct?

23          A.   That's correct.

24          Q.   Is that how many interest are subject -- working  
25   interest owners are subject to this pooling Application?

1           A.    Yes.

2           Q.    There's an asterisk down at the bottom of the  
3 page.  Would you just briefly explain that for the  
4 Examiner, please?

5           A.    Our initial title review indicated that 3TEC  
6 Energy Corporation owned the interest that is currently  
7 shown for Floyd Oil and Cheyenne Partners on this exhibit,  
8 and later a more formal title review that was done by title  
9 examination of an attorney through abstract review  
10 indicated that the transfer from Floyd and Cheyenne to 3TEC  
11 had actually not occurred on this property, although it is  
12 our understanding from verbal communication with all three  
13 of these companies that there is a contractual entitlement  
14 of 3TEC, and 3Tec had purchased this interest from Floyd  
15 and Cheyenne, but the transfer had been missed on this  
16 tract.  Therefore we currently show on this exhibit the  
17 interest held in the name of Floyd and Cheyenne are seeking  
18 pooling application for those parties.

19               However, we have been communicating with 3TEC,  
20 and they have indicated that they do not want to  
21 participate, and they are interested in an alternative  
22 arrangement, but we have not reached an agreement on what  
23 that might be.

24               EXAMINER BROOKS:  Have they been notified?

25               THE WITNESS:  Yes, they have been notified of the

1 hearing.

2 EXAMINER BROOKS: Well, let's proceed.

3 Q. (By Mr. Feldewert) So have you included all  
4 three on this --

5 A. So we've included all three, and all three  
6 parties have been notified.

7 EXAMINER BROOKS: Thank you.

8 Q. (By Mr. Feldewert) Now, some of this fee acreage  
9 has been leased, correct?

10 A. That's correct.

11 Q. In your review of the title records, did you  
12 notice anything about these leases with respect to the  
13 pooling clause?

14 A. In the southwest quarter the lease is 1948-  
15 vintage lease, or 1947, and the lease does not contain a  
16 pooling clause, and therefore we have applied in this same  
17 Application, and we're seeking to pool the mineral -- the  
18 royalty interest also.

19 Q. So have we provided notice to all the royalty  
20 owners in this section that you could locate?

21 A. Yes, sir, we have.

22 Q. So this pooling Application is directed at the  
23 six working interests that are contained on McElvain  
24 Exhibit Number 2, as well as the royalty interests that  
25 have been notified?



1 A. Yes, sir.

2 Q. With respect to the six interest owners shown on  
3 Exhibit Number 2, has McElvain been able to locate all of  
4 these six interest owners?

5 A. Yes, we have.

6 Q. Why don't you please summarize your efforts to  
7 obtain voluntary joinder of the interest owners shown on  
8 McElvain Exhibit Number 2?

9 A. April 2nd, we sent out a letter to all of the  
10 original interest owners who we had -- was a result of our  
11 original preliminary title check, which did include 3TEC  
12 Energy Corporation, and included in that proposal the  
13 estimated cost which was detailed on the authorization for  
14 expenditure which was attached. It listed the ownership of  
15 the parties within the outlined spacing unit, the  
16 designated area.

17 It also included an election page which offered  
18 each of the parties an opportunity to either participate or  
19 to not participate. And then if their election was not to  
20 participate, an operating agreement was enclosed for them  
21 to sign and elect to nonconsent, or they had an option of  
22 entertaining an offer from McElvain for either a purchase  
23 or alternative farmout arrangements.

24 Q. Has that letter been marked as McElvain Exhibit  
25 Number 3?

1           A.    Yes, it is.

2           Q.    Okay, why don't you turn to McElvain Exhibit  
3 Number 4 and explain -- identify and review that for the  
4 Examiner, please?

5           A.    McElvain Exhibit Number 4 is a subsequent mailing  
6 of basically the same letter, but it's dated May 18th.  
7 This letter was sent to only Floyd Oil Company and Cheyenne  
8 Partners, Limited, which was subsequent to when we had been  
9 advised that 3TEC Energy did not hold title to the interest  
10 they were entitled to, and this letter is an exact  
11 duplicate and contained the same information that the  
12 original letter did.

13          Q.    Okay. What is the current status of the  
14 discussions with these six interest owners subject to this  
15 pooling Application?

16          A.    Each of the six interest owners that are listed  
17 as uncommitted owners, pooling application, have given us  
18 verbal information they do not intend to participate with  
19 us in the proposal. However, all but Helmerich and Payne  
20 have indicated they would entertain and would be willing to  
21 enter into an alternative arrangement. We have not been  
22 able to negotiate a suitable one yet for each of these  
23 parties.

24                Helmerich and Payne has given us definite  
25 indication that -- not indication, they have told us

1 definitely they would prefer for us to just force pool  
2 them, because they do not have the manpower or the  
3 facilities right now to evaluate a proposal to either  
4 participate or to consider an alternative to participation,  
5 and they've preferred us to just force pool them.

6 Q. Okay, why don't you identify and review for the  
7 Examiner, then, McElvain Exhibit Number 5?

8 A. McElvain Exhibit Number 5 is an affidavit of the  
9 mailing of the notice of this hearing, which listed all six  
10 parties that are on here, including the known royalty  
11 owners and the known addresses of all the royalty owners  
12 that we have on record.

13 Q. Okay, and there's a notice list included, then,  
14 with this affidavit; is that right?

15 A. That's correct.

16 Q. Okay. Now, in going through this notice list  
17 recently, do you observe any omissions with respect to the  
18 six working interest owners shown on McElvain Exhibit  
19 Number 2?

20 A. Yes, through a clerical oversight we have missed  
21 the inclusion of Michael Gold, et ux, interest, on the  
22 notice of this hearing.

23 Q. Okay, have you been in touch with Mr. Gold since?

24 A. I have, I have communicated with his attorney and  
25 advised him that we had missed them, and that we would most

1 definitely not, you know, try to proceed ahead without, you  
2 know, giving proper notice and that we would communicate  
3 with them during a proper notice period and continue the  
4 resolution of this case until that notice had been given  
5 and continue to voluntarily attempt to join them in a  
6 separate arrangement.

7 MR. FELDEWERT: Okay, would you -- So, Mr.  
8 Examiner, at the end of the hearing we're going to ask --  
9 we're going to present our case today, and then we would  
10 ask that the matter be continued for four weeks so that we  
11 can properly notify Mr. Gold and allow him the opportunity  
12 to appear and present whatever opposition he may or may not  
13 have.

14 In the meantime, McElvain is going to try to  
15 reach an agreement with Mr. Gold. In the event that that  
16 happens I will notify you immediately so that the matter  
17 can be taken under advisement.

18 EXAMINER BROOKS: Okay, thank you very much.

19 Q. (By Mr. Feldewert) Ms. Binion, were McElvain  
20 Exhibits 1 through 5 prepared by you or compiled under your  
21 direction and supervision?

22 A. Yes, they were.

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

1 EXAMINER BROOKS: Okay, Exhibits 1 through 5 are  
2 be admitted.

3 MR. FELDEWERT: And that concludes my direct  
4 examination of this witness.

5 EXAMINER BROOKS: Okay, the witness may stand  
6 down, I have no questions.

7 MR. FELDEWERT: Mr. Examiner, I would then call  
8 Mr. John Steuble.

9 JOHN D. STEUBLE,  
10 the witness herein, having been previously duly sworn upon  
11 his oath, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. FELDEWERT:

14 Q. Mr. Steuble, for the record would you again  
15 please state your full name, your address, by whom you are  
16 employed and in what capacity?

17 A. Yes, my name is John Steuble, I reside in  
18 Littleton, Colorado. I'm employed by McElvain Oil and Gas  
19 Properties as the engineering manager.

20 Q. And have you previously testified before this  
21 Division and had your credentials as an expert in petroleum  
22 engineering made a matter of public record?

23 A. Yes, I have.

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

1 A. Yes, I am.

2 Q. Have you conducted a study of the subject area?

3 A. Yes, I have.

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

6 EXAMINER BROOKS: Witness's qualifications are  
7 accepted.

8 Q. (By Mr. Feldewert) What is the primary target  
9 for McElvain's proposed well under this Application?

10 A. This well, the primary target is the Dakota  
11 formation.

12 Q. Okay, and why don't you then identify and review  
13 for the Examiner McElvain Exhibit Number 6?

14 A. Exhibit Number 6 is a nine-section plat showing  
15 the location of the well and the offsetting Dakota wells  
16 within that area. The map shows the initial flow rates in  
17 MCF per day and then the cumulative production.

18 Q. How would you characterize thee wells in this  
19 nine-section area?

20 A. Three of the wells in the nine-section area are  
21 probably -- are not economical. Some of them were original  
22 completions, and the Dakota just did not produce in that  
23 area. The well in the southeast of 15 is a Dakota  
24 completion and that is a very good well. In fact, we  
25 bought that well and do operate it.

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

3 A. Exhibit Number 7 shows the same information, just  
4 on a larger scale, with our proposed well indicated and our  
5 spacing unit highlighted.

6 This also shows the sparseness of the Dakota  
7 completions within the immediate area of the wellbore and  
8 the large area. You can see that the Dakota has not been  
9 fully developed, primarily because of lack of penetrations  
10 to the Dakota in this area. And what we're doing is trying  
11 to play off of the well in Section 15 and see if we can  
12 find a trend in this area that is connected to the well in  
13 15.

14 Q. The Dakota formation, are you drilling into  
15 sands?

16 A. Yes, we are.

17 Q. And are these sands evenly deposited across this  
18 area?

19 A. No, we've found that they are not.

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

24 A. Yes, I have.

25 Q. And what is that recommendation?

1           A.    Two hundred percent.

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

5           A.    Most definitely.

6           Q.    If you turn then, for me, if you return to  
7   McElvain Exhibit Number 4, there is an AFE that is  
8   attached?

9           A.    Yes.

10          Q.    Has McElvain drilled other Dakota wells in this  
11   immediate area?

12          A.    Yes, we have.

13          Q.    And are these numbers that are reflected on this  
14   AFE consistent and in line with what has been incurred by  
15   McElvain for drilling Dakota wells in this area?

16          A.    Yes, they are.

17          Q.    And have you made an estimate of the overhead and  
18   administrative costs while drilling this well and also  
19   while producing if it is successful?

20          A.    Yes.

21          Q.    And what are those estimates?

22          A.    \$6000 per month for drilling and \$600 per month  
23   for producing.

24          Q.    Are these overhead rates consistent with what has  
25   been charged for other Dakota wells in this area?



1 A. Yes, they are.

2 Q. Has there been recently orders entered by the  
3 Division for Dakota wells in this area that contain these  
4 same overhead costs?

5 A. Yes, there has been.

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

8 A. Yes, I do.

9 Q. Do you request that these rates be adjusted in  
10 accordance with the appropriate sections of the COPAS form  
11 entitled "Accounting Procedure, Joint Operations"?

12 A. Yes, I do.

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

15 A. Yes, we do.

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

20 A. Yes, it will.

21 Q. Were McElvain Exhibits 6 and 7 prepared by you or  
22 compiled under your direction and supervision?

23 A. Yes, they were.

24 MR. FELDEWERT: Mr. Examiner, at this time I  
25 would move the admission into evidence of McElvain Exhibits

1 6 and 7.

2 EXAMINER BROOKS: Exhibits 6 and 7 will be  
3 admitted.

4 MR. FELDEWERT: Mr. Examiner, that then concludes  
5 my examination of this witness.

6 EXAMINER BROOKS: Okay, thank you.

7 EXAMINATION

8 BY EXAMINER BROOKS:

9 Q. I notice on this map that in red letters in this  
10 area it says Gavilan Greenhorn Graneros Dakota. Is that a  
11 pool name?

12 A. That's a pool name in this immediate area. I  
13 have talked with the OCD staff up in Aztec, and he  
14 requested we permit all of these as Basin Dakotas, inasmuch  
15 that he does not want to extend the pools in this area,  
16 because there's -- basically right now there's four pools  
17 in this immediate area, and he wants to try and simplify it  
18 just to Basin-Dakota.

19 Q. So you're calling this one Basin-Dakota?

20 A. Yes, sir.

21 Q. Now, again, I do not see on any of these exhibits  
22 the exact location of this well. Do you have that  
23 information?

24 A. I have it, but I don't have it with me.

25 Q. Okay, is this one on federal land also, or --

1           A.    This is a fee permit.  It will be submitted to  
2   the OCD.

3           Q.    But it has not yet been filed?

4           A.    No, we staked it, I believe, last Monday, and  
5   we're in the process of getting it ready to submit.

6           Q.    However, since this hearing is being continued,  
7   presumably the APD will be on file with the Division before  
8   we --

9           A.    Yes, I would hope we get the APD in sometime next  
10   week.

11                  EXAMINER BROOKS:  Okay, very good, if that be the  
12   case it's not necessary to supplement the record, if this  
13   information is on file with the Division.

14                  Thank you very much.

15                  MR. FELDEWERT:  Mr. Examiner, that concludes our  
16   presentation.

17                  Again, we would ask that then this matter be  
18   continued for four weeks and placed on the docket four  
19   weeks from now, so that we can properly notify Mr. Gold,  
20   and that would then contain in the advertisement a  
21   statement that the matter will be taken under advisement in  
22   the absence of objection.

23                  EXAMINER BROOKS:  Very good, this case will be  
24   continued, case Number 12,690 will be continued until the  
25   August 9th docket, at which time it will be taken under

1 advisement in the absence of further objection.

2 Thank you.

3 MR. FELDEWERT: Thank you, Mr. Examiner.

4 (Thereupon, these proceedings were concluded at  
5 8:55 a.m.)

6 \* \* \*

7  
8  
9  
10  
11  
12 I do hereby certify that the foregoing is  
13 a complete record of the proceedings in  
14 the Examiner hearing of Case No. 12690,  
15 heard by me on July 13, 2001.  
16 David K. Bustin, Examiner  
17 On Conservation Division  
18  
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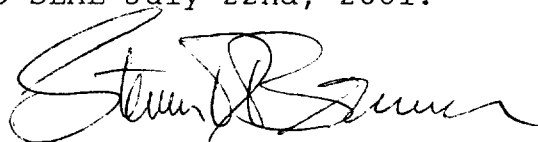
CERTIFICATE OF REPORTER

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 July 22nd, 2001.



STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 14, 2002