

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. 12,692

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID BROOKS, Hearing Examiner

July 13th, 2001

Santa Fe, New Mexico

01 JUL 26 AM 7:46

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. 12,692

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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   9:20 a.m.:

3           EXAMINER BROOKS: Call Case Number 12,692,  
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: May it please the Examiner, my  
8   name is Michael Feldewert, I'm with the law firm of Holland  
9   and Hart and Campbell and Carr, appearing on behalf of the  
10   Applicant in this case. I have two witnesses who have  
11   already been sworn.

12           EXAMINER BROOKS: Very good, you may -- Are there  
13   any other appearances? Very well, you may proceed, Mr.  
14   Feldewert.

15           MR. FELDEWERT: We 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, would you please state your full  
22   name, your address, by whom you are employed and in what  
23   capacity?

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

1 Q. And have you previously testified before this  
2 Division as an expert witness in petroleum land matters and  
3 had your credentials accepted and made a matter of public  
4 record?

5 A. Yes, I have.

6 Q. Are you familiar with the Application that's been  
7 filed in this case and the status of the lands in the  
8 subject area?

9 A. Yes, I am.

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

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

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

16 A. McElvain seeks an order pooling all oil and gas  
17 interests from the base of the Pictured Cliffs formation to  
18 the base of the Mesaverde formation under the north half of  
19 Section 29, 26 North, 2 West, for all formations and pools  
20 that are developed on 320-acre spacing, to be dedicated to  
21 McElvain's Bear Cougar Com Number 29-2 well, at a standard  
22 location in the northeast quarter of Section 29.

23 Q. Okay, now the advertisement for this pooling  
24 request notes that you were seeking a pooling application  
25 to include the deeper Dakota formation. Is McElvain

1 amending its request here today?

2 A. McElvain has amended its request to these parties  
3 that have originally proposed this well and is hereby  
4 amending the Application for force pooling.

5 Q. Okay, now you then -- You're only pooling now  
6 from the base of the Pictured Cliffs to the base of the  
7 Mesaverde; is that correct?

8 A. That's correct.

9 Q. Instead of going down to the base of the Dakota?

10 A. That's correct.

11 Q. So are you seeking to pool today less than what  
12 was advertised?

13 A. That's correct.

14 Q. Okay. Now, does the ownership interest remain  
15 the same whether you're pooling to the base of the  
16 Mesaverde or whether you're pooling to the base of the  
17 Dakota?

18 A. That's correct, it does. It stays the same.

19 Q. So you're pooling less than what you advertised?

20 A. That's correct.

21 Q. And the interests stay the same?

22 A. That's correct.

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

25 A. Exhibit Number 1 is a plat of the oil and gas

1 leasehold ownership in the depths and the formations that  
2 are subject to this Application, and the ownership is  
3 represented by lease, and it indicates that there is both  
4 fee ownership and federal ownership in the spacing area.  
5 It depicts the standard location in the northeast quarter  
6 of Section 29 of the proposed well, and it lists the  
7 ownership of the interests by lease.

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

10 A. McElvain Exhibit Number 2 is a representation of  
11 the combined ownership of the parties as it relates to the  
12 entire north half of Section 29, Township 26 North, Range 2  
13 West. It shows the percentage of the parties relative to  
14 that spacing unit and their current status of commitment to  
15 the proposal.

16 Q. Okay, and this ownership breakdown that you show  
17 here on Exhibit Number 2, it doesn't change as a result of  
18 your decision to now drill only to the Mesaverde formation?

19 A. No, it did not change.

20 Q. Okay. How many working interest owners are  
21 subject to this pooling Application?

22 A. There's only one.

23 Q. And that's designated on this exhibit as the  
24 uncommitted interest held by Hooper, Kimball and Williams,  
25 Inc.?

1           A.    That's correct.

2           Q.    Okay.  Has McElvain been able to locate this  
3 interest owner?

4           A.    Yes, I have.

5           Q.    Okay, then, why don't you summarize for the  
6 Examiner your efforts to obtain voluntary joinder of the  
7 interest owner that's subject to this pooling Application?

8           A.    McElvain Exhibit Number 3 is a copy of a letter  
9 dated May 3, 2001, which was mailed to all affected  
10 interest owners in the north half of Section 29.  It  
11 contained an authorization for expenditure, which detailed  
12 the cost estimate to drill the well, originally to the  
13 Dakota formation.

14                   It offered each of the parties on an election  
15 page an opportunity to participate or not participate.  It  
16 gave all of the parties an alternative to execute an  
17 operating agreement, which was also enclosed, and elect to  
18 nonconsent under the operating agreement if it was not  
19 interested in participating, and there were also  
20 alternatives to receive farmout proposals or a proposal to  
21 sell as an alternative to nonparticipation.

22           Q.    Okay, so McElvain Exhibit Number 3, this letter  
23 was your proposal to drill to the Dakota formation?

24           A.    That's correct.

25           Q.    And was it sent to Hooper Kimball, the interest



1 owner that's subject to this pooling Application?

2 A. Yes, it was.

3 Q. Okay, and then as a result of your discussions  
4 with the parties did you then revise your proposal?

5 A. Yes. After discussion, you know, on the risk  
6 factor to take the well down to the Dakota, it was decided,  
7 and after McElvain's evaluation of the location itself,  
8 McElvain revised its proposal and reduced the depth of the  
9 well and reduced the cost of the well by changing the  
10 objective formation to a single Mesaverde proposal.

11 That was notified to all the parties by telefax,  
12 and subsequently being sent out to all the parties under a  
13 certified mail also.

14 Q. And has that been marked as McElvain Exhibit  
15 Number 4?

16 A. That's correct, it's McElvain Exhibit Number 4,  
17 and it is letter dated July 9th, 2001.

18 Q. And was this letter sent to Hooper Kimball?

19 A. Yes, it was.

20 Q. Okay, and you note on here that it reduced the  
21 cost of the well down to the number that's reflected,  
22 \$814,450; is that right?

23 A. That's correct.

24 Q. Okay. So Exhibit Number 3 was your Dakota  
25 proposal, and then Exhibit Number 4 is your follow-up

1 Mesaverde proposal?

2 A. That's correct.

3 Q. And was a revised AFE provided in connection with  
4 your July 9th, 2001, letter, McElvain Exhibit Number 4?

5 A. Yes, a revised AFE was included in the July 9th  
6 transmittal.

7 Q. Okay. What is the current status of your  
8 discussions with Hooper Kimball?

9 A. Hooper Kimball has indicated they are not  
10 interested in participating. They are interested in either  
11 selling or farming out their interest to us. I have been  
12 advised by my office since I've been down in Santa Fe over  
13 the last few days that we have received a telefax from  
14 Hooper Kimball indicating they're willing to accept one of  
15 the farmout terms that we had offered them. However, I  
16 have not been able to inspect that telefax directly, but we  
17 do anticipate we'll be able to reach an alternative to  
18 force pooling by voluntary commitment of some sort and  
19 we'll be able to withdraw this Application soon.

20 Q. Okay, so in the even that -- So you haven't  
21 gotten the paperwork finished yet?

22 A. We don't have paperwork, except a telefax which I  
23 have not been able to inspect and assure that, you know,  
24 it's a firm commitment from the company.

25 Q. Okay, and in the event that you reach an

1 agreement with Hooper Kimball, then we will notify the  
2 Division and withdraw the Application?

3 A. Yes.

4 Q. In your opinion, have you made a good faith  
5 effort to obtain voluntary joinder of all the interest  
6 owners?

7 A. Yes.

8 Q. Why don't you identify then and review for the  
9 Examiner McElvain Exhibit Number 5?

10 A. McElvain Exhibit Number 5 is a copy of the notice  
11 that was sent to all the affected parties who were at that  
12 point in time yet uncommitted to the proposal.

13 Q. Okay, and does it show a return receipt for  
14 Hooper Kimball?

15 A. Yes, it does.

16 Q. Okay. Were Exhibits 1 through 5 prepared by you  
17 or compiled under your direction and supervision?

18 A. Yes, they have.

19 MR. FELDEWERT: Mr. Examiner, at this time I  
20 would move the admission into evidence of McElvain Exhibits  
21 1 through 5.

22 EXAMINER BROOKS: Exhibits 1 through 5 will be  
23 admitted.

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

## EXAMINATION

BY EXAMINER BROOKS:

Q. Okay, to get the information once again in the record of this case as well, would you state the relationship between T.H. McElvain Oil and Gas Limited Partnership, on the one hand, and McElvain Oil and Gas Properties, Inc., on the other?

A. McElvain Oil and Gas Properties, Inc., is the sole general partner and managing partner -- I mean, manager of the properties owned by of T.H. McElvain Oil and Gas Limited Partnership, who is the entity who owns vested title in the properties that are subject to this Application. McElvain Oil and Gas Properties, Inc., is submitting this Application in behalf of and as operator for the parties that have elected to participate, as well as T.H. McElvain Oil and Gas Limited Partnership.

Q. And there exists an operating agreement, then, between T.H. McElvain Oil and Gas -- between McElvain Oil and Gas Properties, Inc., and T.H. McElvain Oil and Gas Limited Partnership?

A. Yes, there does. Yes, there --

Q. And --

A. -- exists an operating agreement, which I have here.

Q. And T.H. McElvain -- I'm sorry, McElvain Oil and

1 Gas Properties, Inc., is authorized on behalf of T.H.  
2 McElvain Oil and Gas Limited Partnership to file this force  
3 pooling proceeding?

4 A. Yes, they are.

5 Q. And does McElvain Oil and Gas Properties, Inc.,  
6 seek to be designated as operator of this well --

7 A. Yes, they do.

8 Q. -- in this unit?

9 EXAMINER BROOKS: Thank you. The witness may  
10 stand down.

11 MR. FELDEWERT: Then call Mr. John Steuble.

12 JOHN D. STEUBLE,

13 the witness herein, having been previously duly sworn upon  
14 his oath, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. FELDEWERT:

17 Q. Mr. Steuble, this is going to come as a surprise  
18 but could you please state your full name, your address, by  
19 whom you are employed and in what capacity?

20 A. Get my cheat sheet out here. My name is John  
21 Steuble, I reside in Littleton, Colorado. I'm employed by  
22 McElvain Oil and Gas Properties, Inc., as the engineering  
23 manager.

24 Q. Have you previously testified before this  
25 Division as an expert witness in petroleum engineering and

1 had your credentials accepted and made a matter of public  
2 record?

3 A. Yes.

4 Q. Are you familiar with the Application filed in  
5 this case by McElvain?

6 A. Yes, I am.

7 Q. And have you made an engineering study of the  
8 area which is the subject of this Application?

9 A. Yes.

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

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

14 Q. (By Mr. Feldewert) What is the primary target  
15 for McElvain's proposed well in this case?

16 A. The primary target for this well is the Mesaverde  
17 formation.

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

20 A. Exhibit Number 6 is a nine-section plat showing  
21 Mesaverde production information, with the initial flow  
22 rate in MCF per day on top and the cumulative production  
23 below. It shows the wells that are in the area that have  
24 been completed and produced.

25 Q. Now, we show a well -- let's see, directly due

1 west, almost directly due west in Section 30; is that  
2 right?

3 A. Yes, sir.

4 Q. How would you characterize the production from  
5 that well to date?

6 A. That well I've looked at, it's interesting. It  
7 came on very strong, but it died and it never really  
8 produced. So I would say that was a noncommercial well.

9 Q. Now, there's a well that's shown in the northwest  
10 quarter in the south half of Section -- well in the  
11 northwest quarter of Section 20; is that right? Well,  
12 there's a number of wells.

13 A. A number of wells up in that area, yes.

14 Q. And then there's a well shown in the south half  
15 of Section 20. How would you characterize those wells?

16 A. Those are probably your more typical Mesaverde  
17 wells in this area, and that's the play -- or those are the  
18 wells that we're playing off of, trying to get our --  
19 develop a trend to the south and east.

20 Q. Now, you show a well in the southeast quarter, a  
21 recent completion in the southeast quarter of Section 29?

22 A. Yes.

23 Q. What has been -- Is that operated by McElvain?

24 A. If I can clarify, the well in the northeast  
25 quarter of 20, the well in the southeast quarter of 29 and

1 both wells in 33 are operated by McElvain.

2 Q. Okay, and how would you characterize the well in  
3 the southeast quarter of Section 29?

4 A. The southeast quarter of 29, that well was just  
5 turned on the day before yesterday. We're trying to  
6 establish a production rate. We frac'd it a month or so  
7 ago, and it looks like a marginal to a good well. We're  
8 not sure yet, we're still recovering our frac fluids.

9 The same with the well in the northeast quarter  
10 of 20.

11 Q. Have you experienced any water production with  
12 these wells?

13 A. Yes, we have. In fact, the well in Section 29,  
14 in the southeast quarter, is currently making almost 200  
15 barrels a day.

16 Q. Of water?

17 A. Of water.

18 Q. Is that good or bad?

19 A. That is really bad.

20 Q. Okay. The well down there shown in Section 33,  
21 how would you characterize the production from that well?

22 A. Section 33 we have two wells.

23 We have a recent completion in the northwest  
24 quarter. That one we have a swabbing unit on. We've  
25 frac'd it and we're trying to swab it back and establish



1 production. The well in the southeast quarter is a  
2 relatively okay well. It's not a real barn-burner by any  
3 means. It currently is making about 150 to 200 MCF a day.

4 Q. I think you testified you're trying to play off  
5 the wells in Section 20; is that right?

6 A. Yes, sir.

7 Q. Okay. Why don't you then identify and review for  
8 the Examiner McElvain Exhibit Number 7, please?

9 A. This is a larger area showing the Mesaverde wells  
10 within that area. You can see there's a group of wells to  
11 the northwest of the proposed well and a group of wells to  
12 the southeast. All of the wells to the southeast -- I  
13 should say the majority of the wells to the southeast, are  
14 McElvain-operated wells that we've developed since 1999.  
15 That has been our primary focus for drilling and  
16 completion.

17 The older wells to the northwest are operated by  
18 various companies, and they are significantly older wells,  
19 and that explains some of the differences in the cum  
20 volumes here.

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

25 A. Yes, I am.

1 Q. And what is that recommendation?

2 A. Two hundred percent.

3 Q. I'm sorry?

4 A. Two hundred percent.

5 Q. And do you believe that there's a chance that you  
6 could drill a well at the proposed location that would not  
7 be a commercial success?

8 A. Yes, I do.

9 Q. If you turn to McElvain Exhibit Number 4, it  
10 contains a revised AFE for this proposed Mesaverde well. I  
11 think you've testified that McElvain has drilled other  
12 Mesaverde wells in this area?

13 A. Yes, we have.

14 Q. Are these costs in line with what has been  
15 incurred by McElvain for drilling Mesaverde wells in this  
16 area?

17 A. Yes, they are.

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

21 A. Yes.

22 Q. And what are those estimates?

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

25 Q. Do the overhead rates change as a result of the

1 depth of the well?

2 A. No, sir.

3 Q. Okay. And are these overhead rates consistent  
4 with what has been charged for other wells in this area?

5 A. Yes, they are.

6 Q. And are these overhead rates consistent with what  
7 the Division has recently awarded in pooling orders for  
8 wells in this area?

9 A. Yes, they are.

10 Q. And do you recommend that they be incorporated  
11 into this order?

12 A. Yes, I do.

13 Q. Any order that results from this hearing?

14 A. Yes, sir.

15 Q. And do you request that these administrative and  
16 overhead rates be adjusted in accordance with the  
17 appropriate sections of the COPAS form accounting  
18 procedures?

19 A. Yes, I do.

20 Q. And I think Ms. Binion testified, would you  
21 confirm, does McElvain Oil and Gas Properties, Inc., seek  
22 to be designated operator of the proposed well?

23 A. Yes, we do.

24 Q. And in your opinion, will the granting of this  
25 Application be in the best interests of conservation, the

1 prevention of waste and the protection of correlative  
2 rights?

3 A. Yes, I do.

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

6 A. Yes, they were.

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

10 EXAMINER BROOKS: McElvain Exhibits Number 6 and  
11 7 are admitted.

12 MR. FELDEWERT: That concludes my examination of  
13 this witness.

14 EXAMINER BROOKS: Very good.

15 EXAMINATION

16 BY EXAMINER BROOKS:

17 Q. I'm sure you said it, but I apparently missed it.  
18 My mind must have wandered or something. I assume you  
19 recommended 200-percent penalty --

20 A. Yes, I did, sir.

21 Q. -- risk penalty in this case?

22 Okay, you also said that the recommendation for  
23 \$6000/\$600 overhead allowance does not change by virtue of  
24 the reduction of this well from the 8000-foot zone to the  
25 6000-foot zone. Is that usual and customary in this area?

1           A.    In this area it is. Now I'm not sure, you know,  
2   on the PC zones or anything like that. I don't know those.

3           Q.    Yes.

4           A.    But I know between the Mesaverde and the Dakota  
5   they're consistently --

6           Q.    We heard testimony yesterday in a case from the  
7   southeast where they recommended \$4000/\$400, from 4000 feet  
8   to 8000 feet, and Mr. Catanach expressed some surprise at  
9   that, and I think his surprise was at how low they were  
10   requesting rather than how high they were requesting, but  
11   that's --

12          A.    You don't hear those rates up in this area.

13               EXAMINER BROOKS: Okay, very good. Thank you  
14   very much. That will conclude my examination, the witness  
15   may stand down.

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

17               We have nothing further.

18               EXAMINER BROOKS: Very good, Case Number 12,692  
19   will be taken under advisement.

20          MR. FELDEWERT: And I think that's all.

21               EXAMINER BROOKS: I believe so, thank you.

22   Proceedings are closed.

23               (Thereupon, these proceedings were concluded at  
24   9:40 a.m.)

25                               \* \* \*  
I do hereby certify that the foregoing is  
a complete report of the proceedings in  
the Examiner hearing of Case No. 12692  
heard by me on July 13, 2001.

STEVEN T. BRENNER, *David K. Brooks* Examiner  
(505) 989-9317 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