

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. 12,802
APPLICATION OF D.J. SIMMONS, INC., FOR)
COMPULSORY POOLING, RIO ARriba COUNTY,)
NEW MEXICO)
_____)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID K. BROOKS, Hearing Examiner

January 24th, 2002

Santa Fe, New Mexico

02 FEB -1 PM 7:59

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID K. BROOKS, Hearing Examiner, on Thursday, January 24th, 2002, 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.

* * *

I N D E X

January 24th, 2002
 Examiner Hearing
 CASE NO. 12,802

	PAGE
MOTION FOR CONTINUANCE BY MR. FELDEWERT	3
RESPONSE BY MR. HALL	6
REPORTER'S CERTIFICATE	12

* * *

A P P E A R A N C E S

FOR THE APPLICANT:

MILLER, STRATVERT and TORGERSON, P.A.
 150 Washington
 Suite 300
 Santa Fe, New Mexico 87501
 By: J. SCOTT HALL

FOR McELVAIN OIL AND GAS PROPERTIES, INC.:

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

ALSO PRESENT:

MICHAEL E. STOGNER
 Hearing Examiner
 New Mexico Oil Conservation Division
 1220 South Saint Francis Drive
 Santa Fe, NM 87501

* * *

1 WHEREUPON, the following proceedings were had at
2 8:20 a.m.:

3 EXAMINER BROOKS: Okay, we'll go on the record.
4 At this time we'll call Case Number 12,802, Application of
5 D.J. Simmons, Inc., for compulsory pooling, Rio Arriba
6 County, New Mexico.

7 Call for appearances.

8 MR. FELDEWERT: May it please the Examiner,
9 Michael Feldewert for McElvain Oil and Gas Properties, Inc.
10 We have moved for a continuance in this matter.

11 MR. HALL: Mr. Examiner, Scott Hall, Miller
12 Stratvert and Torgerson, Santa Fe, on behalf of the
13 Applicant, D.J. Simmons, Inc., and we oppose the Motion for
14 Continuance and have filed a response in opposition as
15 well.

16 EXAMINER BROOKS: Very good. Mr. Feldewert, do
17 you want to proceed with your Motion for Continuance?

18 MR. FELDEWERT: Mr. Examiner, McElvain requested
19 a continuance on Tuesday, because at that time the parties
20 were engaged in extensive efforts to finalize a settlement
21 concerning the development of the entire east half of
22 Section 25.

23 And because at that time McElvain's pooling
24 Application in Case 12,801, which involved the same parties
25 in the same section, had been continued until February 7th,

1 and up until, I believe, late yesterday morning, the
2 parties were engaged in an effort to agree on the terms of
3 a joint operating agreement that would cover development of
4 the Gallup-Dakota and the Mesaverde formations in the east
5 half of Section 25.

6 That joint operating agreement, as I understand
7 it, would also have covered this Bishop Federal 25-2 well,
8 which is the subject of the pooling Application.

9 EXAMINER BROOKS: Let me interrupt you for a
10 moment. This involves a different pool, versus -- It's the
11 same land, but a different pool as to the other McElvain
12 and Simmons applications that have been considered by the
13 Division?

14 MR. FELDEWERT: There is a -- McElvain has a
15 pooling Application that they have filed for the Blanco-
16 Mesaverde formation. The pooling Application today
17 involves the Gallup-Dakota.

18 EXAMINER BROOKS: Okay.

19 MR. FELDEWERT: And up until yesterday, the
20 parties were engaged in extensive settlement efforts --
21 actually engaged in finalizing terms of a joint operating
22 agreement that was going to cover the development of both
23 the Gallup-Dakota and the Mesaverde formation in this
24 entire east half, and would have covered as well this well
25 in the southeast quarter.

1 And I haven't -- I'm told by my client that they
2 believed on Tuesday, in telephone conversations with D.J.
3 Simmons, that the parties had agreed that a continuance was
4 in order so that they could finalize their agreement, a
5 continuance of both the McElvain pooling case 12,801, and
6 then also the pooling case here under 12,802. And my
7 understanding is, by Tuesday evening McElvain thought they
8 had an agreement and that the parties were in continuance.

9 Well then, they received yesterday morning some
10 last-minute -- well, they received it late Tuesday and saw
11 for the first time yesterday morning last-minute changes to
12 the terms of the joint-operating agreement. They made
13 attempts to contact D.J. Simmons about those changes, were
14 told that they needed to contact Mr. Simmons himself.
15 There were attempts to contact Mr. Simmons without success,
16 and then late yesterday morning we got their response for a
17 motion indicating that they no longer agreed to a
18 continuance of their pooling case, they only agreed to a
19 continuance of the McElvain pooling case.

20 So while McElvain was operating under the belief
21 that the were engaged in good-faith settlement efforts and
22 while McElvain was attempting to contact D.J. Simmons about
23 last-minute changes, apparently D.J. Simmons was on their
24 way down here for a pooling hearing that we all thought was
25 being continued.

1 So at this point in time we have, I believe, Mr.
2 Examiner, a joint operating agreement that the parties are
3 close to finalizing, which would cover the development of
4 the east half, both the Blanco-Mesaverde and the Gallup-
5 Dakota. It's a new joint-operating agreement with new
6 terms that have not been submitted to the other parties for
7 consideration.

8 So I think this pooling Application is premature,
9 because if that agreement is reached, it seems to me that
10 that's an agreement that all parties should have the
11 opportunity to look at, comment on and possibly agree to,
12 and avoid the need of invoking the Division's pooling
13 authority.

14 And also, this pooling Application should not go
15 forward here today because McElvain's witnesses are not
16 present, because up until yesterday they were engaged in
17 good-faith efforts to reach a voluntary agreement, and we
18 didn't learn until late yesterday morning that D.J. Simmons
19 decided to stop those negotiations and head down here to
20 Santa Fe for a pooling.

21 EXAMINER BROOKS: Response?

22 MR. HALL: Mr. Examiner, it is true that the
23 parties were engaged in good-faith negotiations.

24 I would also point out to you that D.J. Simmons
25 first proposed this Gallup-Dakota well back in June, 2001,

1 and it has been involved, has been caught up in the ongoing
2 dispute between Simmons and McElvain over how the Blanco-
3 Mesaverde ought to be developed in the entirety of Section
4 25.

5 But bear in mind again, this is only a Gallup-
6 Dakota proposal that's at issue in Case 12,802.

7 D.J. Simmons has an entirely different
8 perspective about the progress of the negotiations. There
9 are still major substantive differences that are preventing
10 a conclusion of any agreement, and that's why we were
11 compelled to come down here today.

12 In addition to proceeding with the pooling of the
13 McElvain interests, there are also other interest owners
14 with whom Simmons has not been able to reach agreement, and
15 we wish to proceed against those interests as well. So
16 it's not just differences with McElvain that have prevented
17 this well from going forward.

18 Also point out that Case Number 12,801 -- it's
19 McElvain's application for the pooling of an east-half
20 Blanco-Mesaverde unit, also for this same section. Simmons
21 has also filed another case, also for an east-half Blanco-
22 Mesaverde unit, also covering Section 25 lands in the east
23 half, and with the continuance of Case 12,801, we would
24 suggest that that case be consolidated with the newly filed
25 Simmons case and heard on February 21st.

1 EXAMINER BROOKS: Okay. Now, 12,801 is the one
2 that involves the Mesaverde, right?

3 MR. HALL: That's correct, entirely separate
4 pools, entirely separate development proposal.

5 EXAMINER BROOKS: Does Simmons have a competing
6 Application on the Blanco-Mesaverde?

7 MR. HALL: Yes.

8 EXAMINER BROOKS: And what case number is that?

9 MR. HALL: It hasn't been assigned a number yet.

10 EXAMINER BROOKS: But it has been filed?

11 MR. HALL: Yes, it has.

12 EXAMINER BROOKS: Okay, very good. Go ahead.

13 MR. HALL: That's it. We were prepared to come
14 down today. McElvain's case for the Blanco-Mesaverde well
15 was scheduled today. We filed a motion to continue it
16 because it was untimely filed and received by the Division.
17 That motion was granted.

18 But in any event, as of early this week, McElvain
19 was prepared to come down and promote that case, put on
20 testimony for that case. So I think that their argument
21 that they weren't able to come down here today is not
22 plausible. That's not good grounds to grant the motion to
23 continue this case. It's an entirely separate well,
24 entirely separate pool, entirely separate ownership equity
25 interests involved as well.

1 We think we should go ahead and proceed and
2 dispose of this separate case today.

3 EXAMINER BROOKS: Anything further, Mr.
4 Feldewert?

5 MR. FELDEWERT: I wasn't aware that they had
6 filed a -- now, I guess, a second pooling application. I
7 assume that was filed today?

8 MR. HALL: Yes. Well, you indicated in your
9 motion to continue this case that you were aware of it,
10 so --

11 MR. FELDEWERT: That you had filed it?

12 MR. HALL: -- it has been filed.

13 MR. FELDEWERT: It has -- When was it filed?

14 MR. HALL: Today.

15 MR. FELDEWERT: Okay. It was filed, then, today,
16 which is fine. I suggest that that case -- You know, I
17 have no problem with continuing all three and hearing them
18 all at the same time. That seems to make the most sense.

19 I will say, I don't know about this
20 representation about how far apart the parties are to an
21 agreement, because I do have a memo here from Mr. Dunn to
22 Ms. Binion indicating that they're in agreement with most
23 of -- of all of what you've sent, but we did make a few
24 minor changes to clarify a couple points in the letter.

25 So I think the parties are very close to an

1 agreement on a joint operating agreement that is going to
2 cover the operations of both the Mesaverde and the Gallup-
3 Dakota formation on this east half.

4 And it seems to me before we proceed with a
5 pooling application we ought to have the opportunity, we
6 ought to give the parties the -- not only the opportunity,
7 but require them to continue these good-faith efforts,
8 which they're very close to an agreement on, and allow all
9 parties to comment before we start invoking the pooling
10 authority of the Division.

11 EXAMINER BROOKS: Very good, I believe that very
12 likely McElvain has relied upon the Division's granting of
13 the Motion for Continuance in Case Number 12,801 and the
14 ongoing negotiations in not making arrangements to have
15 their people here this morning, so I will grant the Motion
16 for Continuance in 12,802 pursuant to the suggestion that
17 all matters regarding Section 25, 25 North, 3 West, be
18 consolidated -- or not -- well, we wouldn't consolidate the
19 two different formations, but consolidate the competing
20 Applications and have the people here at the same time for
21 the two different pools.

22 Case Number 12,801 and Case Number 12,802 will
23 both be continued till February the 21st, because the new
24 Application will not be ripe until that time. And of
25 course, I would encourage the parties to continue work on

1 the operating agreement. The OCD seems to be making a
2 career of this particular section; maybe we can wind it
3 down.

4 Thank you.

5 (Thereupon, these proceedings were concluded at
6 8:30 a.m.)

7 * * *

8
9
10
11
12
13 I do hereby certify that the foregoing is
14 a complete record of the proceedings in
the Examiner hearing of Case No. 12802
heard by me on Jan 24 2002
15 David R. Batta, Examiner
16 Oil Conservation Division
17
18
19
20
21
22
23
24
25

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 January 24th, 2002.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 2002