

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE HEARING CALLED BY)	
THE OIL CONSERVATION COMMISSION FOR THE)	
PURPOSE OF CONSIDERING:)	
)	
APPLICATION OF McELVAIN OIL AND GAS)	CASE NO. 12,635
PROPERTIES, INC., FOR COMPULSORY)	
POOLING, RIO ARRIBA COUNTY, NEW MEXICO)	
)	
APPLICATION OF D.J. SIMMONS, INC., FOR)	CASE NO. 12,705
COMPULSORY POOLING, RIO ARRIBA COUNTY,)	
NEW MEXICO)	
)	(Consolidated)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: LORI WROTENBERY, CHAIRMAN
JAMI BAILEY, COMMISSIONER
ROBERT LEE, COMMISSIONER

November 6th, 2001

Santa Fe, New Mexico

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OIL CONSERVATION COMMISSION

This matter came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Tuesday, November 6th, 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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November 6th, 2001
 Commission Hearing
 CASE NOS. 12,635 and 12,705 (Consolidated)

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A P P E A R A N C E S

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* * *

1 WHEREUPON, the following proceedings were had at
2 9:00 a.m.:

3 CHAIRMAN WROTENBERY: Good morning, everybody.
4 If we can get started here.

5 This is a meeting of the Oil Conservation
6 Commission. It's November 6th, 2001, right at nine
7 o'clock, and we're in Porter Hall in Santa Fe, New Mexico.

8 We've got a number of items of business today,
9 but Commissioners, I'd suggest we move on down the agenda.
10 We've got one evidentiary hearing to conduct, and I think
11 we can skip on to that item. That should take up the
12 morning, I believe, based on the estimated time set by the
13 parties in this particular matter.

14 It's actually two cases that have been
15 consolidated. One is Case 12,635. This is the Application
16 of McElvain Oil and Gas Properties, Inc., for compulsory
17 pooling in Rio Arriba County, New Mexico. This Application
18 is being by the Commission *de novo* on the application of
19 D.J. Simmons, Inc.

20 And then also consolidated with this case is Case
21 12,705, the Application of D.J. Simmons, Inc., for
22 compulsory pooling in Rio Arriba County, New Mexico. This
23 is a competing pooling application in the same section.
24 This case has not been heard by the Division or the
25 Commission yet. We went ahead and pulled this one up so

1 that we could hear both cases at the same time, since there
2 are related issues involved in the two cases.

3 And at this point I think we'll call for
4 appearances.

5 MR. FELDEWERT: Madame Chairman and members of
6 the Commission, my name is Michael Feldewert. I'm with the
7 law firm of Holland and Hart and Campbell and Carr here in
8 Santa Fe, and I'm appearing here on behalf of McElvain Oil
9 and Gas Properties, Inc. We have three witnesses here
10 today, and I have a brief opening statement.

11 MR. HALL: Madame Chairman, Commissioners, my
12 name is Scott Hall. I'm with the Miller Stratvert
13 Torgerson law firm in Santa Fe, appearing on behalf of D.J.
14 Simmons, Incorporated. We have three witnesses this
15 morning.

16 CHAIRMAN WROTENBERY: Okay. For the benefit of
17 the witnesses who may not be familiar with the Commission,
18 let me introduce us.

19 I'm Lori Wrotenbery, I serve as chair of this
20 Commission.

21 To my left is Commissioner Robert Lee.

22 To my right is Commissioner Jami Bailey; she
23 represents Land Commissioner Ray Powell on the Commission.

24 We also have here today the Commission's
25 secretary, Florene Davidson, to the far right. And then to

1 Commissioner Lee's left is Steve Ross, who acts as the
2 Commission's legal counsel. And then Steve Brenner will be
3 recording the proceedings today for us.

4 So let's start by swearing in the witnesses,
5 please. If the witnesses will please rise.

6 (Thereupon, the witnesses were sworn.)

7 CHAIRMAN WROTENBERY: Thank you. And Mr.
8 Feldewert, would you like to start with your opening
9 statement?

10 MR. FELDEWERT: If I may approach just quickly, I
11 have a copy of our pooling statute. I've highlighted in
12 there the provisions that I think are applicable to all
13 pooling proceedings, and if you read that statute it states
14 that once certain requirements are met a pooling order is
15 mandatory. It indicates at the end of the first paragraph,
16 paragraph C, that when certain -- when you jump through
17 certain hoops and certain criteria are met, the Division
18 shall pool, and the Division shall pool under an order that
19 has just and reasonable terms.

20 And as I read this statute, it indicates that the
21 requirements are that you have to be a working interest
22 owner with a right to drill, and you have to propose a well
23 to the affected parties. So a well is proposed.

24 You then attempt to reach agreement with good-
25 faith efforts with the other affected parties. And if you

1 cannot reach an agreement you ask for a hearing before the
2 Division, and the Division then enters orders under terms
3 that are just and reasonable.

4 And up until now the procedure has been that a
5 working interest owner with a right to drill will propose a
6 well to the affected parties. If another working interest
7 owner has an alternative development plan, that working
8 interest owner had to diligently act and present that
9 alternative proposal to the affected parties.

10 There would then be attempts to reach agreement
11 with those competing proposals in hand, among all of the
12 affected parties. And if they were unable to reach an
13 agreement, then we would have a hearing before the
14 Division, and the Division would then decide which of the
15 competing proposals should be accepted under terms that are
16 just and reasonable, and it would pool the properties.

17 Now, McElvain's land witness is going to testify
18 here today that McElvain did everything it was required to
19 under the statute. And if you look at the time line which
20 we have in our notebook as Exhibit Number 15, Ms. Mona
21 Binion, our land witness, is going to testify about the
22 events on that time line. It's an 8-1/2-by-14 pullout
23 sheet, and the actions that were taken by McElvain are in
24 red, actions that were taken by the Division are in black,
25 the actions that were taken by D.J. Simmons are in blue.

1 And you'll see that McElvain did what it had to
2 do first. It proposed a well on November 10th, 2000,
3 almost a year ago to this very day. They proposed a well
4 to a common source of supply, the Blanco-Mesaverde Gas
5 Pool. They dedicated, in their proposal letter, the south
6 half of Section 25 to this re-entry project, and they
7 received Division approval of their unorthodox well
8 location for this south-half spacing unit in December of
9 2000.

10 Our land witness will then testify that McElvain
11 thereafter sought to obtain voluntary participation by the
12 affected parties. They were able to reach -- they actually
13 -- one of the parties sold their Mesaverde interest to
14 McElvain.

15 Another party, Dugan Production Corporation,
16 wrote a letter to the Division in April of 2001 supporting
17 McElvain's Application. Dugan actually owns property in
18 the southeast quarter of the section. They have a similar
19 acreage position as other working interest owners who are
20 affected by this proposal. And they indicated to the
21 Division that they wanted to participate now in this
22 Mesaverde test project. This is a project that's going to
23 test the Mesaverde reserves in Section 25, the first well
24 to take a look at those reserves.

25 Another party indicates that, as Ms. Binion will

1 testify, that they're willing to participate once -- or
2 enter an agreement once a final order is entered. And what
3 we had was a situation where D.J. Simmons did not want to
4 agree to participate and in essence forced a hearing in
5 this matter which took place in May of this year.

6 And at that time the Division Examiner
7 entertained and examined McElvain's pooling Application,
8 because that was the only application that had been
9 presented to any of the working interest owners in Section
10 25. That was the only Mesaverde development proposal.

11 So the held their hearing, and at the end of
12 May -- So here we were at the end of May, 2001, and
13 McElvain had done everything that the statute requires it
14 to do. It had met all the statutory requirements. And
15 because of pressing concerns of the Division or whatever,
16 that order which is mandated by our pooling statute did not
17 arrive until September.

18 But one year after McElvain proposed its well and
19 six months after McElvain met all the statutory
20 requirements for a compulsory pooling order, it still, as
21 of November of 2001, does not have a final order. And
22 their question to me is why? And their question to me and
23 their question to you is, what did they do wrong in this
24 case? Why are we sitting here a year later without a final
25 order, a year after we proposed a well, six months after

1 the hearing?

2 We have a situation here where, after McElvain
3 met all the statutory requirements and after the Division's
4 Examiner held a hearing on their pooling Application, D.J.
5 Simmons then files a competing proposal. And they didn't
6 do it shortly before the hearing, they didn't do it after
7 the hearing, they didn't do it right after the hearing.
8 They filed it two months after the hearing.

9 And now they sit before the Commission and they
10 contend that the Commission should not just examine the
11 order entered by the Examiner to determine on a *de novo*
12 appeal whether all the criteria were met, all the statutory
13 criteria, or whether it was entered under terms that are
14 just and reasonable. They say now the Commission should
15 also entertain their competing pooling Application, a
16 proposal that was not submitted until months after the
17 hearing, months after we proposed the well and months after
18 McElvain filed its pooling Application.

19 So it really, this case, I think, presents a
20 policy question for the Commission. I mean, does a working
21 interest owner have an obligation to act diligently in
22 response to a development proposal? Or can that working
23 interest owner sit back and do nothing as they go through
24 the hearing process? I mean, can they wait until after a
25 compulsory pooling hearing to present an alternative

1 proposal to the affected parties?

2 Or for that matter, if they can do that, why
3 don't they just wait until the 30th day after the entry of
4 an order and file a competing pooling application along
5 with their *de novo* appeal of the order from the Division?
6 I mean, is that the policy that we have in place now?
7 That's what McElvain is wondering. Is that the policy that
8 the Commission has in place now? Can an affected party sit
9 back and do nothing in response to a well proposal? Force
10 the Applicant to a hearing before the Division and then
11 once the hearing is over, file a competing pooling
12 application with their *de novo* appeal of the order?

13 So we sit there a year or six months later
14 without a final order. I mean, should I be advising my
15 clients that no due diligence is required in response to a
16 development proposal? Should I be advising my clients that
17 they can drag out these pooling proceedings six months to a
18 year by waiting to file a competing application until after
19 a hearing has been held and after a party has met all the
20 requirements, including going through the hearing process?
21 And should I be telling them that they can drag these
22 things out, drag out these pooling proceedings for six
23 months to a year so that they would have some leverage,
24 then, to try to negotiate and obtain some development
25 concessions.

1 So McElvain has that question, I have that
2 question.

3 But because we are here today, we're going to
4 present testimony -- from landperson Mona Binion; from a
5 geologist, Jane Jackson; from an engineer, John Steuble --
6 in support of the order entered by the Division's Examiner
7 on McElvain's Application which was heard six months ago.

8 And we're also going to show that D.J. Simmons
9 has not been diligent in this mater, that their alternative
10 development plan that they have put together and gotten
11 before the Commission is confusing, that it appears to us,
12 based on their exhibits and their proposals, that they
13 don't have a plan to develop the Mesaverde reserves in
14 Section 25 in the foreseeable future, and that McElvain's
15 south-half unit is the only development plan ready to go
16 now, to develop and test the Mesaverde reserves in Section
17 25.

18 And that is a south-half unit, it is a plan,
19 under which all the parties who are going to benefit from
20 that test are also going to share the risk.

21 The testimony is going to show that the sharing
22 of risk is a common, accepted, reasonable consideration
23 that interest owners take into account when developing
24 properties, because D.J. Simmons' primary argument is that
25 McElvain should have to go out there and pay all the costs

1 to sink a test well out there and determine whether there
2 are recoverable Mesaverde reserves in this area. That's
3 why they're trying to force McElvain to a west-half unit
4 scenario, so that D.J. Simmons does not have to share the
5 cost, although get the benefit, of a Mesaverde test well in
6 this area.

7 And the evidence is going to show that Dugan and
8 other interest owners out here have not taken the position
9 of D.J. Simmons. They support McElvain's proposal, they
10 support the idea, but let's get out there and let's do this
11 project now, and let's all share the risk, because we're
12 all going to benefit from that.

13 And if D.J. Simmons doesn't want to participate
14 in this project they can go nonconsent, but Dugan doesn't
15 want to be left -- I mean, a west-half unit leaves Dugan
16 without a Mesaverde development well, it leaves the other
17 interest owners down there in that southeast quarter
18 without a Mesaverde development well.

19 Dugan wants to participate in this now, they want
20 to share the risk, they want to go forward.

21 And so at the end of the day I think the evidence
22 is going to show that D.J. Simmons has not been diligent
23 with their alternative proposal, that McElvain's proposal
24 is the only proposal that is properly before the
25 Commission, it's the only proposal that's ready to develop

1 the Mesaverde reserves now in Section 25, and there's no
2 reason to overturn the Examiner's order in this matter.

3 With that, we will call Ms. Mona Binion.

4 MR. HALL: May I make a statement as well?

5 CHAIRMAN WROTENBERY: Yes, sir.

6 MR. HALL: Madame Chairman, Commissioners, thanks
7 for the opportunity to present these cases to you. And I
8 appreciate your hearing them on a consolidated basis today.

9 I'd like to present to you in my opening
10 statement a brief summary of what I understand the case to
11 be. I may go a little long, I hope you'll indulge me on
12 that. If things go well I may waive my closing statement,
13 so we'll see how it goes.

14 This case involves two competing compulsory
15 pooling Applications in Section 25, 25 North, 3 West.

16 Now, McElvain comes before you with the ownership
17 of the complete west half of this section. They have their
18 former Wynona Number 1 well located, I believe, 450 feet
19 off the west side of the section in Unit L. And as I say,
20 they own 100 percent of the west half. Yet they filed a
21 compulsory pooling Application to pool a south-half unit.
22 Obvious question: When they own a pre-existing standup
23 unit, why did they do that?

24 D.J. Simmons owns the northeast quarter. It also
25 owns the north half of the southeast quarter, and it

1 proposes a standup east-half unit, to develop not only the
2 Blanco-Mesaverde but the Gallup-Dakota, and probably
3 they'll look at some Chacra formations as well. It's going
4 to take a look at a lot more than McElvain proposes.

5 We will present evidence, and we think the
6 evidence will show to you, that Section 25 is best
7 developed on a standup basis. The geologic and engineering
8 testimony that we will present to you will show that
9 drainage will occur along pre-existing fractures in the
10 formations that run virtually north and south, perhaps a
11 little bit, 5 to 10 to 20 degrees right of north.

12 We'll also show that it's not possible for the
13 Naomi Com Number 1 well to reasonably drain reserves from
14 the southeast quarter. Perhaps it can drain 160 acres in
15 the southwest quarter.

16 I don't think the geologic and engineering issues
17 in this case are particularly complex. I don't think
18 they're exotic at all, but we will address those to you.

19 We did sit through the Division hearing in this
20 case, we did address those questions, but other issues
21 arose that I think bear the Commission's further scrutiny
22 here. And I agree with Mr. Feldewert, I think that there
23 are issues of policy presented by these two consolidated
24 cases that I wish you all would address.

25 My concern that what we learned in the Division-

1 level case was that there was perhaps a misapplication of
2 the Division's compulsory pooling statute. And I too, like
3 Mr. Feldewert, I'll give you another copy of the compulsory
4 pooling statute, as well as Section 18 from the Oil and Gas
5 Act. These are actually highlighted, and you might find it
6 interesting to refer to the statutes through the course of
7 the hearing.

8 Now, what are those policy questions? Why are we
9 here?

10 First question that's apparent to everyone in the
11 room, I think, is why on earth is McElvain seeking to pool
12 a south-half unit when they have a pre-existing west-half
13 standup unit comprised of 100-percent fee acreage? It's
14 not federal acreage, they don't have permitting problems.
15 It's a ready-to-go, prepackaged proration unit for them.
16 Why are we here?

17 That's a question we asked McElvain's land
18 witness at the Division hearing. And I was somewhat
19 astonished at the answer. What we found out was, when we
20 asked, Why are you seeking to pool the south half when you
21 have the west half already, the answer was, We want to
22 mitigate our risk, we want others to share in the cost of
23 our well.

24 And of course I asked the witness about that,
25 where in the compulsory pooling statute is there any

1 provision that allows an operator to invoke the pooling
2 processes of the Division to mitigate its risk, offset its
3 cost? Of course, the witness could point to none. There
4 is none in the statute.

5 Nevertheless, McElvain persists. That's the
6 relief they continue to ask the Commission to afford in
7 this instance.

8 I thought it was an important enough question
9 that it ought to be briefed. I prepared a hearing
10 memorandum for each of you, and it addresses the question
11 of what are the parameters of the powers of the Division
12 and the Commission in a compulsory pooling context? May
13 the Division or the Commission, in fact, pool an unwilling
14 working interest owner simply to offset an operator's risk?

15 The answer to that question is no, and the
16 authorities I cite to you in the brief will tell you why
17 that is so, why you cannot afford that relief.

18 There's another policy question, I think,
19 embedded in this case as well, and that has to do with due
20 diligence, the reasonable efforts of an operator to seek
21 the voluntary participation of the unjoined interests.
22 We've briefed that question for you as well, and I think
23 that is perhaps the most important question in this case.

24 The evidence will show that McElvain has
25 approached these proceedings in a perfunctory manner, and

1 I've been disturbed that, seeing the way they view a
2 compulsory pooling order as their entitlement.

3 What the evidence will show is that McElvain goes
4 out and makes only a bare-bones proposal to an unjoined
5 working interest owner, seeking their participation in the
6 well, but they don't give them enough information to really
7 evaluate the proposal and make a decision. But they'll go
8 through the motions, they'll create an exhibit for an OCD
9 hearing, come to Santa Fe and be in a hearing and expect an
10 order to be handed to them.

11 I don't think that's enough. I think good faith
12 and diligence require more than that.

13 Interestingly, attached to our memorandum brief
14 is a law review article authored in 1963 by Dick Morris,
15 who I believe was at one time a Commission counsel, went on
16 to become president of El Paso Natural Gas Company.

17 He traces the history and the development of the
18 Commission's treatment of the compulsory pooling statute
19 and goes through the various iterations, orders issued by
20 the Commission.

21 When the pooling statute was first enacted, the
22 Commission approached it with some temerity. It wouldn't
23 always grant a pooling order at the simple request of a
24 party. What it would do, parties came before it on the
25 application, and it really queried the parties, what

1 efforts did you make to seek somebody's participation in
2 this well? Were they good-faith efforts? And if they
3 couldn't show it, they would send them home, they would
4 deny the order.

5 In about the early 1960s, the articles show you,
6 the Division and the Commission started making specific
7 findings in their orders, addressing the question of good
8 faith, and that continues today, that practice. There's
9 always a finding in the Division's orders that the
10 Applicant made a good-faith effort to secure the voluntary
11 participation of a joint interest.

12 But what's missing in all of the orders, from my
13 research anyway, is some definition, some explanation of
14 what constitutes good faith. What is a good-faith effort?
15 What is diligence? That's a question I hope that you will
16 answer here today.

17 And I think this case presents the Commission
18 with an opportunity to set the parameters of good faith,
19 what, in fact, constitutes a good-faith effort, what is a
20 reasonable offer, what is diligence. You can define that
21 for the industry with these two consolidated cases.

22 Alternatively, and at the very least, you can
23 enter an order that says the effort that McElvain put forth
24 here is not good faith, it is not reasonable and it's not
25 diligent, and that will give industry some guidance how to

1 proceed in the future.

2 Now, it was about a month ago that the Commission
3 had its Commission Listens session, where members of
4 industry were invited to come down and really bare their
5 grievances. And I was struck by the fact that more than
6 one operator sat down in this chair and complained to you
7 that the Division was just taking too long to get out these
8 compulsory pooling orders. They were heaping blame on the
9 Division.

10 And I thought that was unfair, because there's
11 more than one operator -- we know who they are -- that they
12 will use the processes of the Division to do their land
13 work for them. They expect the Division and the Commission
14 to cure title and create a proration unit for them, and
15 they've come to expect these compulsory pooling orders as
16 if they were an entitlement. Like I say, they make a bare-
17 bones showing, they expect to come to Santa Fe and go home
18 with an approved order. I think that is almost an abuse of
19 the Division's compulsory pooling statute, and I think
20 that's an issue that the Commission ought to give serious
21 consideration to.

22 CHAIRMAN WROTENBERY: Thank you, Mr. Hall.

23 Mr. Feldewert, would you like to call your first
24 witness?

25 MR. FELDEWERT: I sure will. We call Ms. Mona

1 Binion to the stand.

2 CHAIRMAN WROTENBERY: And thank you both, Mr.
3 Feldewert and Mr. Hall, for submitting your exhibits in
4 advance. That does help the Commission prepare for these
5 hearings, and we appreciate that.

6 MONA L. BINION,

7 the witness herein, after having been first duly sworn upon
8 her oath, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. FELDEWERT:

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

13 A. Mona Binion, my address is 4824 Prospect Street,
14 Littleton, Colorado 80123.

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

17 A. I'm employed by McElvain Oil and Gas Properties,
18 Inc., in the capacity of land manager.

19 Q. How long have you been operating as a landman in
20 the oil and gas industry?

21 A. In excess of 25 years.

22 Q. Okay, and have you previously testified before
23 the New Mexico Oil Conservation Division and had your
24 credentials as an expert in petroleum land matters accepted
25 and made a matter of public record?

1 A. Yes, I have.

2 Q. And are you familiar with Order R-11,663, which
3 was entered by the Oil Conservation Division in this case,
4 the case being 12,635?

5 A. Yes, I am.

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

8 A. Yes, I am.

9 MR. FELDEWERT: Members of the Commission, are
10 the witness's qualifications acceptable?

11 MR. HALL: No objection.

12 CHAIRMAN WROTENBERY: The Commission accepts her
13 qualifications, thank you.

14 Q. (By Mr. Feldewert) Would you identify for the
15 Commissioners and review McElvain Exhibit Number 1?

16 A. McElvain Exhibit Number 1 is a land plat which
17 represents the oil and gas leasehold ownership of the south
18 half of Section 25, Township 25 North, Range 3 West, Rio
19 Arriba County, New Mexico, which is the area that was
20 allocated as the spacing unit for the Blanco-Mesaverde Gas
21 Pool under the Division's approved Order R-11,663.

22 It also depicts the location of the McElvain --
23 an approximate depiction of the McElvain re-entry proposed
24 well, which is the Naomi Number 1, which is a pre-approved
25 unorthodox location for the Mesaverde-Blanco Pool.

1 It also represents the lease interests and the
2 lease outline of the various leases that make up the south-
3 half spacing unit.

4 It shows that McElvain owns 100 percent of the
5 southwest quarter of the section, and it shows that D.J.
6 Simmons owns 100 percent of the north half of the
7 Southeast, and then McElvain and Forcenergy and Dugan own
8 100 percent of the south half of the southeast.

9 Q. Is the Naomi Number 1 depicted on here -- it says
10 -- is that a re-entry project?

11 A. That's correct, it's a re-entry of the previously
12 known Wynona Number 1 well, which was plugged and
13 abandoned.

14 Q. And when was that plugged and abandoned?

15 A. The Wynona Number 1 well was plugged and
16 abandoned in approximately December of 1998.

17 Q. Now, that well was originally drilled when? Do
18 you know?

19 A. It was drilled in 1988 as a standard location to
20 test and produce the oil pool known as the West Lindrith-
21 Gallup-Dakota Oil Pool.

22 Q. Okay, and was it a standard location for that oil
23 pool?

24 A. Yes, it was.

25 Q. Now, this West Lindrith Gallup-Dakota Oil Pool,

1 is that developed on 160-acre spacing?

2 A. It was developed on 160-acre spacing. The
3 allocated area for that well was the southwest quarter of
4 the section.

5 Q. Okay, and is that pool still developed on 160-
6 acre spacing?

7 A. Yes.

8 Q. And is that the oil pool that D.J. Simmons wishes
9 to test with a well in the northeast quarter of this
10 Section 25?

11 A. Yes, it's the same pool.

12 Q. Okay. Now, when did McElvain acquire the lease
13 rights necessary to propose a Mesaverde recompletion in
14 this unsuccessful Dakota oil well in the southwest quarter?

15 A. At the time of McElvain's plugging of the Wynona
16 well in December of 1998, it had received demands from the
17 mineral interest owners who were leased under the then
18 current oil and gas lease covering the west half of Section
19 25.

20 Honoring those demands, McElvain secured
21 execution of all the then working interest owners under
22 that lease, which was not 100-percent McElvain, and the
23 original oil and gas lease was released. The well was
24 plugged and abandoned in December of 1998.

25 After that, McElvain continued its exploration of

1 the Lindrith area, pursuing the possibility of Mesaverde
2 production in that area.

3 Approximately 2000, McElvain re-entered the idea
4 of going back in and testing the Mesaverde zone of that
5 same area of the Wynona well. At that time the minerals
6 had remained unleased, up until that point, and on October
7 7th McElvain re-acquired leases from the then mineral
8 interest owners, which were three at that time, that
9 covered the entire west half of the section. The leases
10 run at approximately -- from October 7th of 2000 to about
11 October 7th of 2002.

12 Q. Okay, and when did -- You said you got your lease
13 in October 7th of 2000. When did you propose this re-entry
14 project to the interest owners in the south half of Section
15 25?

16 A. McElvain proposed our re-entry project one month
17 after we took the lease, approximately.

18 Q. Okay, and would you turn to McElvain Exhibit
19 Number 2, identify that and explain that to the
20 Examiners -- or to the Commission?

21 A. McElvain Exhibit Number 2 is our first contact
22 letter, dated November 10th of 2000. It was sent to D.J.
23 Simmons and two other parties that we later determined and
24 understood had no interest in the south half of Section 25.

25 Included in this proposal was an election page

1 which offered participation in the project, it offered
2 alternatives to participation in the way of farmout or
3 sale. It also offered nonparticipation under an operating
4 agreement which could be entered into by the parties and
5 further development terms for future wells.

6 The letter states that the initial cost was --
7 for the re-entry project, was approximately \$364,150, as
8 McElvain had estimated, and it did state that there was an
9 AFE included in the package for perusal and approval.

10 After receiving this proposal, Simmons contacted
11 McElvain and indicated that the AFE was inadvertently left
12 out of their package, they had not received a copy of the
13 AFE, although it was intended to be included. We did find
14 out later that all the other parties that had received the
15 package had their AFEs included, so we inadvertently left
16 out the AFE in Simmons' package. The AFE was sent to them
17 within about a week later.

18 Q. Within about a week after what, this November
19 10th --

20 A. November 10th, right.

21 Q. Okay. Now, you mentioned an election page. Is
22 that the third page of this exhibit?

23 A. I'm sorry, what?

24 Q. The election, the opportunity --

25 A. Right, it's page -- well, it would be considered

1 page 3.

2 Q. Of this exhibit?

3 A. Right.

4 Q. Okay, and the opportunities that you solicited in
5 addition to participation are set forth in the bottom part
6 of that election page; is that right?

7 A. That's correct.

8 Q. Okay. Now, why did McElvain propose a south-half
9 spacing unit in November of 2000?

10 A. There were several reasons which are taken into
11 account when a spacing unit dedication is considered. An
12 obvious reason that the land department would consider is
13 the ownership of the parties, the rights that McElvain has
14 an interest in and is allowed to produce, and obviously the
15 risk consideration of the parties that are involved, what
16 parties are to benefit from the test and what parties would
17 be logical to take the risk, and then the obvious benefit
18 beyond the risk which would be the future development.

19 Planning consists of looking at the orderly and
20 proper timely development of a formation, which would
21 include looking at whether or not the parties can combine
22 interests to expand their overall ability to drill and
23 produce more wells, as opposed to be limited to a single
24 tract, to be able to drill and produce, especially in an
25 untested area.

1 We looked at the particular section in mind, and
2 we felt that laying down a spacing, doing a north-half
3 spacing and a south-half spacing for development of the
4 Mesaverde as an untested zone in the area provided the
5 opportunity for all of the parties to share in a low-cost
6 test of that zone, because it had the opportunity to re-
7 enter an existing wellbore and test that zone at a low
8 cost, as opposed to drilling a new well.

9 It also allowed the risk in testing that zone to
10 be shared by more than just one party. And then obviously
11 the benefit of further development, if that was successful,
12 by all parties in the entire section, as opposed to a
13 limitation of, you know, the parties in the east half, for
14 example, only able to drill and produce the Mesaverde in
15 their east half and not in the west half or vice versa, the
16 west half not being able to share or drill any wells in the
17 east half, not knowing where it would be proven to be the
18 best locations until after the test was done.

19 Q. Ms. Binion, how long have you been putting
20 together projects like this?

21 A. For the 25 years that I've been working as a
22 landman.

23 Q. In your opinion, is this type of risk-sharing
24 among the parties that will benefit from a test in a
25 section, is that a common and reasonable consideration that

1 operators take into account in proposing a spacing unit?

2 A. Yes, in my opinion it's a common and reasonable
3 consideration, and it's normally the predominant reason for
4 the land department's recommendation for a spacing pattern.

5 The other considerations taken into account for a
6 spacing pattern come from the geologic interpretation and
7 the engineering interpretation, which I don't speak to. So
8 McElvain's primary reason, you know, would have been, you
9 know, a combination of all three. The land department
10 primary reason, obviously would be, you know, its
11 considerations that I have just described.

12 Q. Now, you've mentioned this Lindrith area. Is
13 Section 25 in or around the Lindrith area?

14 A. Yes, it's west of the Lindrith area.

15 Q. And that's an area that produces from the
16 Mesaverde formation?

17 A. Correct.

18 Q. Is there a prevailing spacing pattern in the
19 Lindrith area? I mean, are they all on standup or are they
20 all on laydown units, or a combination?

21 A. The patterns are developed independent of each
22 other, and with all those considerations in mind there are
23 some patterns that are north-south and some patterns that
24 are east-west.

25 Q. In your experience do operators in the Lindrith

1 area, do they go out and prove up acreage for other parties
2 without putting together a spacing unit that would include
3 a sharing of the risk and benefit with those other parties?

4 A. I haven't seen any that were willing or that have
5 done this, no.

6 Q. And is that consideration of who's going to share
7 the risk and who's going to share the benefit, is that part
8 of the good-faith negotiation efforts that operators
9 undertake in putting pooling applications and putting
10 spacing units together?

11 A. In my opinion it is. It's a good business
12 practice, in my opinion, to consider all the factors,
13 including your own risk, including the risk of the others
14 in-section, including the sharing of reserves and including
15 the orderly and timely development of those reserves on a
16 joint basis, as opposed to, you know, providing opportunity
17 for unfair drainage, for, you know, unorderly development
18 of a formation and unfair risk.

19 Q. Now in response to your proposal for a south-half
20 spacing unit, did D.J. Simmons or any other interest owner
21 propose any alternative to test the Mesaverde formation in
22 Section 25?

23 A. No.

24 Q. Okay, did McElvain send out additional
25 information to the working interest owners about McElvain's

1 re-entry project?

2 A. Yes, we did. McElvain's Exhibit Number 3 is a
3 letter that we sent out November 20th. It included a
4 recompletion procedure as well as another copy of the
5 authorization for expenditure that McElvain had previously
6 sent in the original proposal, and the recompletion
7 procedure was sent out at the request of 3TEC Energy
8 Corporation, who was one of the parties that had originally
9 received the proposal, which we later determined did not
10 have an interest, and which D.J. Simmons had also requested
11 that we send.

12 It was sent to all the parties, including D.J.
13 Simmons, that were included in the original proposal.

14 Q. Did D.J. Simmons also request a set of the logs
15 for the Wynona well?

16 A. Yes, D.J. Simmons had requested that McElvain
17 provide them with a copy of the set of logs that we had
18 acquired in the drilling and completion of our original
19 well that we proposed to re-enter, and they were provided
20 copies of those logs at the same time.

21 Q. Okay. Now, Mr. Hall has characterized McElvain's
22 efforts here as a bare-bones effort. In your experience,
23 do operators in the region, do they send out well logs in
24 connection with their well proposal letters?

25 A. Typically that's not offered. Typically that's

1 just, you know, beholden to each individual working
2 interest owner to, on its own merits, evaluate any proposal
3 on their own.

4 Q. And do the operators in the area typically send
5 out a recompletion procedure when they are proposing a
6 well?

7 A. Sometimes it's done, sometimes it's not, it just
8 depends on the operation. If it's a pretty typical
9 operation that is done more commonly in an area, a lot of
10 times a detailed procedure is not included.

11 Q. But anyway in this case, by the end of November,
12 is it true that D.J. Simmons had McElvain's well proposal,
13 that they had an AFE, that they had a recompletion
14 procedure, and that they had the well logs from the
15 existing wellbore in Section 25?

16 A. That's true. And in fact, within a 30-day period
17 we had provided quite a bit of information up to that point
18 regarding our proposal to re-enter and test the Mesaverde.

19 Q. Okay, now what did McElvain do next in connection
20 with this recompletion proposal?

21 A. Next, McElvain approached the Commission and
22 sought to receive administrative approval for an unorthodox
23 location in the Blanco-Mesaverde Pool, which was depicted
24 on our Exhibit 1, which we already went over. It was a
25 location that was a standard location for the oil pool that

1 it was originally drilled to test and produce, but it was
2 not a standard location for a Mesaverde test, which was not
3 contemplated to be produced at the time the well was
4 originally drilled.

5 The pool rules for the Blanco-Mesaverde require
6 that a well be no closer than 60 feet from the outer
7 boundary of the spacing unit, and this well did not fit
8 that pattern.

9 Q. This was an oil well that met the 330 setback
10 requirements?

11 A. That's correct.

12 Q. Okay. Did the Division administratively approve
13 the unorthodox Mesaverde well location for a south-half
14 spacing unit?

15 A. Yes, in December of 2000 the Division approved
16 our unorthodox location application administratively.

17 Q. And is that included as McElvain's Exhibit Number
18 4 in the package?

19 A. Yes, McElvain Exhibit Number 4 is the letter from
20 the Division approving the unorthodox location for the
21 Blanco-Mesaverde Pool.

22 Q. And does it reference the proposed south-half
23 spacing unit for this Mesaverde recompletion?

24 A. Yes, it does.

25 Q. Did D.J. Simmons or any other working interest

1 owner propose an alternative to test the Mesaverde
2 formation in Section 25 in November or December of 2000 in
3 response to McElvain's proposal letter and this
4 administrative application?

5 A. No, they did not.

6 Q. When did McElvain file its compulsory pooling
7 Application for a south-half spacing unit for this re-entry
8 project?

9 A. McElvain's Application for compulsory pooling was
10 filed in March of 2001.

11 Q. Okay. Now, you had your proposal sent out in
12 November of 2000 and your approval for your unorthodox
13 location by the end of December, 2000. Why did McElvain
14 wait until March of 2001 to file a pooling application?

15 A. There were several reasons why McElvain ended up
16 waiting until March to file a compulsory pooling
17 application. One was that, as I had mentioned before, we
18 had determined that our preliminary land information was
19 incorrect, we had to re-send proposals, the same proposal,
20 to owners that we later determined had an interest in the
21 tract, because we had incorrectly sent it to two wrong
22 interest owners.

23 After that, we conducted a more thorough title
24 examination by a landman and also secured mineral abstracts
25 and secured a formal drilling title opinion, which everyone

1 has benefitted from and been able to use in their follow-up
2 correspondence and communication with the right parties.

3 Additionally, there was one owner that we had
4 determined had an interest in the south half of the
5 southeast of the section, that we were unable to locate.
6 We spent an exhaustive amount of time and effort but
7 eventually came up with the current custodian of that
8 interest and owner of the interest and have since
9 communicated with that party. All of that took, you know,
10 approximately three months to conclude, and the process
11 gave everybody a more fair chance to review the proposal
12 before any force action would be applied.

13 Q. Now, would you identify and review for the
14 Commission McElvain Exhibit Number 5?

15 A. McElvain Exhibit Number 5 is a series of letters.
16 It's the same language included in all three letters, but
17 they were independently sent to each working interest owner
18 that we later determined had the ownership in the south
19 half of the southeast of that section.

20 Q. Okay. Now, this exhibit has a letter to GWR
21 Operating, a letter to Dugan Production Corporation, and
22 then a letter to Herbert Kai; is that correct?

23 A. That's correct.

24 Q. And it includes the same election page that you
25 sent to D.J. Simmons --

1 A. Correct.

2 Q. -- back in November, it includes the other
3 material that you submitted in connection with this
4 proposal; is that right?

5 A. That's correct.

6 Q. Okay. Now, you said you obtained a title opinion
7 in February, 2001; is that right?

8 A. That's correct.

9 Q. Okay, so you're out there doing your land work,
10 you're not asking the Commission to do your work, you're
11 out there doing your land work; is that right?

12 A. Correct.

13 Q. Okay. Would you identify McElvain Exhibit Number
14 6?

15 A. McElvain Exhibit Number 6 is even yet a
16 subsequent letter, dated February 27th, which was sent to
17 what we later determined were the custodian and subsequent
18 successor in interest to GWR Operating, who was the entity
19 we were unable to locate. And that letter included all of
20 the information that was in the prior letter. It also
21 offered additional alternatives to nonparticipation in the
22 event they found it an illogical project for them to
23 participate in.

24 Q. Was it difficult to find a successor to GWR's
25 interest in the southeast quarter?

1 A. Very difficult. It took quite creative
2 investigative work, and through a series of friends that
3 I've had and people that knew people, of people that knew
4 people, we finally traced the connection between the
5 parties.

6 Q. Okay, so by the end of February had you sent out
7 well proposal letters with AFEs and election pages to all
8 of the interest owners that are shown on McElvain Exhibit
9 Number 1?

10 A. Yes.

11 Q. Including the interest owners in the southeast
12 quarter?

13 A. That's correct.

14 Q. Okay. Now, Mr. Hall has alluded to the fact that
15 some operators out there expect the Commission to do their
16 title work for them. Did McElvain do that in this case?

17 A. No, McElvain did not.

18 Q. And in fact, did D.J. Simmons benefit by
19 McElvain's title work in this?

20 A. Yes, they did.

21 Q. During this effort in December of 2000, again in
22 January and February of 2000 [*sic*], did D.J. Simmons send
23 out any letters proposing a drilling alternative to test
24 the Mesaverde formation in Section 25?

25 A. No, they did not.

1 Q. Did they send out any proposals to drill wells in
2 any formation in Section 25?

3 A. No, they did not.

4 Q. Okay. Now McElvain then filed its pooling
5 Application with the Division on March 13th, 2001; is that
6 right?

7 A. That's correct

8 Q. Okay. What happened after that?

9 A. Subsequent to filing the Application, McElvain
10 submitted to all of the working interest owners known to
11 have an interest in the south half of Section 25 a proposed
12 joint operating agreement for their review and execution,
13 which provided terms to govern operations between the
14 parties in the proposed spacing unit.

15 And it also provided an alternative to
16 nonparticipation in the initial well to test the Mesaverde
17 formation in that spacing unit, which is somewhat unusual
18 because the standard form operating agreement provides that
19 if you execute the operating agreement, you are required to
20 participate in that initial well. That provision was
21 altered to afford the parties an opportunity to -- an
22 alternative to participation in the event they elected not
23 to.

24 Q. Okay, is McElvain Exhibit Number 7 this March
25 28th letter and submission of the JOA, joint operating

1 agreement, that you were just talking about?

2 A. Yes, it is.

3 Q. Okay. And this was sent to -- It shows all the
4 interest owners that it was sent to on the second page; is
5 that right?

6 A. That's correct.

7 Q. And the third page of this exhibit is your
8 election page?

9 A. That's correct.

10 Q. And it's a little different from the election
11 page that you sent previously; is that right?

12 A. Correct.

13 Q. And it contains some of the changes that you
14 talked about?

15 A. Right.

16 Q. Was this another effort by McElvain to obtain
17 voluntary joinder of their project prior to a hearing
18 before the Commission?

19 A. It was, and to offer alternatives in the event
20 the parties did not elect to participate with McElvain in
21 this proposed project.

22 Q. Did you invite discussions in your letter about
23 purchase options or farmout options or other options to
24 reach a voluntary agreement?

25 A. Yes, we did.

1 Q. Okay. During this time, in response to this
2 letter, did D.J. Simmons send out any alternative drilling
3 proposal to test the Mesaverde formation in response to
4 receiving McElvain's pooling Application and the joint
5 operating agreement?

6 A. No, they did not.

7 Q. What happened next?

8 A. Next we received a communication from Dugan
9 Production Company after their receipt of our proposal. It
10 was a copy of the letter that had been sent to the
11 Commission in response to their notice that there was going
12 to be a hearing held for the compulsory pooling of the
13 parties in the south half.

14 The Dugan letter represents Dugan's position and
15 their interest level in the project as it was proposed.

16 Q. Okay. Now, is that letter marked as McElvain
17 Exhibit Number 8?

18 A. Yes, it is.

19 Q. And just to orient everybody, Dugan is the party
20 that owns an interest, if we look at Exhibit 1, in the
21 southeast quarter; is that correct?

22 A. Correct.

23 Q. Of Section 25? Just like Forcenergy and just
24 like T.H. McElvain?

25 A. That's correct.

1 Q. Okay. Now, let me read from this letter, and
2 then I want to ask you some questions about it. Dugan
3 states --

4 MR. HALL: To which we would object, madame
5 Chairman. There's an obvious hearsay problem here. Mr.
6 Poage, the author of the letter, is not present. We don't
7 have the opportunity to cross-examine him. We'd like to
8 know what consideration Dugan received for generating a
9 letter like this. It appears to me it's a letter created
10 for an OCD compulsory pooling hearing, and I'd like to
11 inquire about that, and we don't have the opportunity to do
12 so.

13 So I'm going to object to testimony about Exhibit
14 8.

15 THE WITNESS: Well, maybe you could ask me --

16 MR. HALL: Excuse me, we have a ruling --

17 THE WITNESS: -- since there was consideration --

18 MR. FELDEWERT: Hold it.

19 Madame Chairman, Chairperson, if I could make one
20 comment?

21 This is an exhibit that was introduced at the
22 hearing six months ago. If Mr. Hall had a question about
23 this letter or wanted to subpoena Mr. Poage to appear at
24 this hearing he certainly could have.

25 There was no objection to this letter at that

1 time, it was introduced as an exhibit and accepted by the
2 Division.

3 MR. HALL: Madame Chairman, it's not our
4 obligation to establish a foundation for a letter they seek
5 to introduce. This is a *de novo* proceeding. He's obliged
6 to establish a foundation for it. Can't do it.

7 MR. FELDEWERT: I'd argue they've already waived
8 it.

9 CHAIRMAN WROTENBERY: Thank you, Mr. Hall, Mr.
10 Feldewert.

11 (Off the record)

12 CHAIRMAN WROTENBERY: Okay, we'll come back to
13 this one in a moment, but let's go on and address Exhibit
14 9.

15 Q. (By Mr. Feldewert) Ms. Binion, when was the
16 Examiner Hearing on McElvain's pooling Application?

17 A. The Examiner Hearing on McElvain's Application
18 was held on May 17th, 2001. It was originally scheduled
19 for April 5th. It was delayed for two months at the
20 request of Simmons and McElvain, moving it because of
21 conflicts and various reasons and then, you know, actually
22 held on May 17th.

23 Q. During this two-month delay did D.J. Simmons send
24 to the interest owners in Section 25 any drilling proposal
25 to test the Mesaverde formation?

1 A. No, they did not.

2 Q. Did they send any proposal to the working
3 interest owners in Section 25 to drill any well in that
4 section?

5 A. No, they did not.

6 Q. How many interest owners are subject to Division
7 Order 11,663 that resulted from the May 17th Examiner
8 Hearing?

9 A. Two owners, D.J. Simmons and Forcenergy Onshore,
10 Inc.

11 Q. Okay, would you turn to McElvain's Exhibit Number
12 9, identify that for the Commission and explain that,
13 please?

14 A. McElvain Exhibit Number 9 is a composite of the
15 total working interest ownership in the south half of
16 Section 25, as it relates to the zones in McElvain's
17 Application area, and it combines the interests and totals
18 up 100 percent based on surface acre contribution to the
19 south half.

20 Q. Now, we've talked about -- or you've indicated
21 that Dugan supports McElvain's south-half spacing unit.
22 What happened to the interest that was held by Herbert Kai,
23 who was a recipient of the letters that you sent out after
24 your title opinion?

25 A. Herbert Kai's interest was sold to McElvain. Our

1 communication had indicated that Mr. Kai was not very
2 supportive of wanting to put additional investment into oil
3 and gas exploration. He was not really an oil and gas
4 professional and would want to see something done but was
5 not interested in putting money into it.

6 And so we, you know, described for him and he
7 read from our letter the different alternatives we had
8 offered in lieu of nonparticipation. And after various
9 conversations he chose, you know, to sell and retain an
10 overriding royalty interest, which is a non-cost-bearing
11 interest.

12 Q. Okay, and then you have your hearing on May 17th.
13 Did D.J. Simmons appear in opposition to the pooling
14 Application?

15 A. Yes, they did.

16 Q. Did they present testimony and exhibits to the
17 Examiner?

18 A. Yes, they did.

19 Q. Do you remember how long that hearing took?

20 A. My recollection, it took approximately three
21 hours to conduct the entire hearing.

22 Q. Did Forcenergy Onshore, Inc., a party that's
23 shown on your Exhibit Number 9, did they appear at the
24 hearing in opposition to the Application?

25 A. No, they did not.

1 Q. What's the status of your discussions with
2 Forcenergy at this time?

3 A. Forcenergy currently is just holding their final
4 decision on participating or not participating in this
5 operation until the Commission has issued a final ruling on
6 spacing pattern. It's obvious if the spacing pattern is
7 not the south half of the section, Forcenergy doesn't have
8 an opportunity to be in the project at all.

9 We have been asked by Forcenergy to sit down and
10 explain to them our reasoning behind why the Mesaverde is
11 an objective in this area, they did appear at our offices
12 and visit with our geologist and our vice president and
13 were given an explanation of, you know, what our reasoning
14 was and our justification was for proposing this project to
15 begin with.

16 It was explained to me -- I wasn't present at the
17 meeting, but it was explained to me that their interest
18 level in the project was high, they did like the project,
19 which was later confirmed to me by their landman, that he
20 also felt like they liked the project.

21 But because of their limited amount of acreage in
22 this area, which was contracted around to just this one
23 lease, by their participating in the operation and
24 investing in the testing of this zone, they had no real
25 opportunities to develop that zone anywhere else outside of

1 this spacing unit. And therefore it was a tough decision
2 for them to make, to use their capital to join in the
3 operation, even though they liked the project.

4 So at this point they had elected to just wait
5 until the Commission had issued a final ruling before they
6 made an election.

7 Q. Is D.J. Simmons the only interest owner in
8 Section 25 who has expressed opposition to your re-entry
9 project and a testing of the Mesaverde formation?

10 A. Yes, they are. I will add that Forcenergy did
11 ask for alternatives, options, to participating, and we did
12 submit options in lieu of not participating in the well to
13 them, which they're reviewing.

14 Q. Mr. Hall has alluded to the fact that McElvain
15 just made a bare-bones effort here to comply with the
16 pooling statute and a bare bones effort to reach voluntary
17 agreement with the working interest owners and that
18 McElvain just showed up here in May expecting the Division
19 to enter a pooling Application without undertaking any
20 effort to reach a voluntary agreement with the interest
21 owners.

22 Ms. Binion, in your opinion have you undertaken
23 an exhaustive and extensive effort in this case to present
24 your proposal to the interest owners in Section 25 and
25 attempt to reach a voluntary agreement with them?

1 A. We feel we have, yes.

2 Q. Order 11,663 was entered by the Division on
3 September 24th, 2001; is that correct?

4 A. That's correct.

5 Q. Has D.J. Simmons elected to participate or not
6 participate in McElvain's re-entry project under the terms
7 of that order?

8 A. D.J. Simmons has sent us an election, and their
9 election was to not participate in McElvain's proposed
10 operation.

11 Q. And is that election marked as McElvain's Exhibit
12 Number 10?

13 A. Yes.

14 Q. And that was received on October 8th?

15 A. That's correct.

16 Q. Okay. Now, does McElvain have any plans to
17 develop the north half of Section 25?

18 A. McElvain does plan to develop the north half, if
19 the test in the south half gives us reason to continue the
20 development of that formation.

21 Q. Do you have a pooling application pending before
22 the Division for a north-half spacing unit?

23 A. We do.

24 Q. And have you proposed a well to the interest
25 owners in Section 25 for -- in the north half of Section

1 25?

2 A. We have.

3 Q. Did either your well that you proposed for the
4 north half of the well that you proposed for the south
5 half, did that have any federal permitting issues involved
6 with it?

7 A. No, they did not.

8 Q. Okay, so it was just a matter of getting either
9 an agreement from the parties or getting the spacing unit
10 put together by the Division?

11 A. Correct.

12 Q. Okay. Now, I'm going to switch gears here a
13 minute and talk about D.J. Simmons' actions here.

14 When was the first time, Ms. Binion, that D.J.
15 Simmons made any formal proposal for any well in Section 25
16 to the working interest owners in that section?

17 A. The first proposal that we received was a letter
18 dated June 7th, 2001, which was received three weeks after
19 the hearing that was held on May 17th, and it was received
20 after the Application of McElvain's was under advisement by
21 the Division. And actually it was seven months after the
22 original McElvain proposal.

23 Q. Okay, and is that letter marked as McElvain
24 Exhibit Number 11?

25 A. Yes.

1 Q. Ms. Binion, have you read this proposal?

2 A. Yes, I have.

3 Q. And have you studied it?

4 A. Yes, I have.

5 Q. Okay. What are your observations about this
6 proposal?

7 A. The proposal was confusing to us as to what the
8 intent of D.J. Simmons was. The proposal is for two
9 Gallup-Dakota wells. It lists one well in the northeast
10 quarter of Section 25 and one well in the southeast quarter
11 of Section 25. It does propose that an east-half spacing
12 unit be formed for the Mesaverde in the event that the
13 Mesaverde is commercially productive.

14 Q. And where are you reading that from?

15 A. Page 1, the bottom of the page, the last
16 sentence, "The Fruitland Coal and the Mesaverde spacing is
17 320 acres. Simmons' main objective is the Dakota
18 formation, however, Simmons is proposing an E/2 unit in the
19 event the Mesaverde is commercially productive."

20 It does not state what well would be dedicated to
21 the east half. We assume it would be the northeast-quarter
22 well, inasmuch as it does mention on the second page that
23 that would be the first well they would propose to do out
24 of the two.

25 However, throughout the entire letter there is no

1 commitment in the letter to complete or produce the
2 Mesaverde formation. Their objective is the Dakota, the
3 Mesaverde is a secondary thought. In the event, in their
4 opinion, the Mesaverde could be commercially productive,
5 but under what circumstances and what sharing arrangement
6 between the parties or when, there is no commitment, there
7 is no explanation or understanding.

8 Q. Okay. Now, they sent an AFE with this proposal,
9 did they not?

10 A. There is an AFE sent with the proposal, yes.

11 Q. Okay, does it deal with a Mesaverde completion?

12 A. No, the AFEs -- There were two AFEs attached.

13 I'm not sure if your copy has both, but there were
14 attached, one for each well. Both describe a drilling and
15 completion of a Gallup-Dakota test, and it assumes the
16 completion in both the Gallup and the Dakota formations
17 with two-stage fracs, no mention -- no costs, no
18 description for Mesaverde.

19 Q. Okay. Now, did they send a drilling plan with
20 their letter?

21 A. Yes, the drilling plan was also included with the
22 letter, which -- I think there was a separate drilling plan
23 for each one.

24 Q. Okay. Now, this is -- The fourth page of this
25 letter contains one of the drilling plans; is that right?

1 A. Correct.

2 Q. And it says on the first page, does it not, that
3 the formation for this drilling plan is the Gallup-Dakota?

4 A. Correct.

5 Q. And as you page through this drilling plan, if
6 you go to page 3 of that drilling plan, are you there?

7 A. Yes.

8 Q. It then provides additional information; is that
9 right?

10 A. Correct.

11 Q. Does it say anything in there about a commitment
12 to complete and produce from the Mesaverde formation?

13 A. It does not. In fact, it says the well is to be
14 completed in the Gallup and Dakota formations.

15 Q. Okay. Now, it talks about -- It has a section
16 there for completion information. Does it say anything in
17 there, or does it commit to produce or complete in the
18 Mesaverde formation?

19 A. No, it does not.

20 Q. Did this letter offer the working interest owners
21 in the east half the opportunity to participate or farm out
22 any Mesaverde completion?

23 A. It does mention that they're offering the
24 opportunity to either participate or farm out, but it
25 apparently -- or at least the way I read it, it apparently

1 only applies to Mesaverde formation only, and only as to
2 the well in the northeast quarter.

3 Q. Okay. Now, where are you reading from?

4 A. Page 2, paragraph 3.

5 Q. The one that starts with "Simmons offers...?"

6 A. "Simmons offers you the options to either
7 participate or farmout your interest in the Mesaverde
8 formation only, and only at such time as Simmons completes
9 that zone for the First Test Well..." In other words, I
10 don't know if there are any options available prior to when
11 they elect to complete the well in the Mesaverde, which is
12 not completely consistent with what apparently this letter
13 is supposed to be, which is a proposal for us to elect to
14 participate in the drilling of a well. So it's confusing
15 to us.

16 Q. Does it indicate to you when -- I mean, it says
17 in here, "...only at such times as Simmons completes that
18 zone..." Do you know when you're supposed to make your
19 election as to whether or not you're going to participate
20 in this drilling project?

21 A. No, it's not clear.

22 Q. Now, this is for a northeast-quarter well; is
23 that correct?

24 A. That's what's stated in the first sentence, yes.

25 Q. And then the second sentence talks about "The

1 Bishop Federal #25-2 would be drilled as a Gallup/Dakota
2 test with partners participating as to their interests."

3 Do you see that?

4 A. Yes.

5 Q. Is that Bishop Federal 25-2, is it a southeast-
6 quarter well?

7 A. That's the description they've given for that
8 well, yes.

9 Q. Okay, and in that southeast quarter there's
10 ownership by Dugan, McElvain, Forcenergy and D.J. Simmons,
11 correct?

12 A. That's correct.

13 Q. Does this letter indicate to you or say anything
14 about the options to the working interest owners for a
15 southeast-quarter well?

16 A. No, it doesn't afford any options other than the
17 parties would participate as to their interest in a
18 southeast-quarter well.

19 Q. Okay, does it indicate to you whether they're
20 going to drill a Mesaverde or complete the Mesaverde
21 formation --

22 A. It does not describe any completion for
23 Mesaverde.

24 Q. Does it offer you any options to participate or
25 to participate with respect to your Dakota interests in the

1 southeast-quarter well?

2 A. I see no clear offer to participate for Dakota in
3 that proposal at all.

4 Q. Okay. Now, the second to the last paragraph of
5 this letter -- it begins with "As you are obviously
6 aware.." -- talks about your south-half Application, which
7 has been heard by the Commission and is pending decision;
8 do you see that?

9 A. Yes.

10 Q. Now, the last sentence says, "Obviously, the
11 ability to commingle or re-complete the Mesaverde as to the
12 Bishop Federal #25-2 would be lost." Do you see that?

13 A. Yes.

14 Q. Okay, now they're talking about the southeast-
15 quarter well?

16 A. Correct.

17 Q. All right. Is it true that if your south-half
18 spacing unit was granted by the Division, that interest
19 owners in the southeast quarter would lose the ability to
20 commingle or recomplete the Mesaverde as to the Bishop
21 Federal 25-2, that southeast-quarter well?

22 A. That is not true. The opportunity to recomplete
23 the Mesaverde would not be lost. The parties would have
24 the ability under either of the scenarios to recomplete the
25 Mesaverde and any well drilled in the southeast quarter,

1 whether it be drilled specifically for the Mesaverde or
2 whether it be drilled to a deeper horizon and the Mesaverde
3 additionally completed with that deeper zone commingled.

4 Q. Would this be -- You're familiar with the Blanco-
5 Mesaverde Pool rules?

6 A. Yes, somewhat.

7 Q. And do those pool rules allow for an infill well
8 to be drilled?

9 A. Yes, it does.

10 Q. So it allows one well in one 160 and one well in
11 the other 160 for a south -- in this case, a south-half
12 spacing unit?

13 A. Yes. In fact, it further, I think, allows
14 additional infill drilling beyond the two wells optional to
15 the operator.

16 Q. So in the event that the Dakota well would be
17 drilled in the southeast quarter and not be successful, the
18 interest owners in that southeast quarter would have the
19 opportunity to recomplete that well as an infill well for
20 your south-half spacing unit?

21 A. Yes.

22 Q. Okay. Does this letter indicate how much
23 McElvain has to pay to participate in the proposed east-
24 half spacing unit?

25 A. No, it does not indicate what the cost would be

1 for McElvain's participation in there. There can be some
2 inference. In an attempt to describe the spacing for the
3 east half, there is an ownership description there which we
4 do agree with.

5 However, it's unclear as to how the costs are
6 shared between Dakota owners which are based on 160-acre
7 spacing or Mesaverde owners, which would be based on 320-
8 acre spacing, the ownerships being different and the cost
9 being different.

10 Q. So as you read this letter, Ms. Binion, does it
11 commit D.J. Simmons to produce from the Mesaverde
12 formation?

13 A. No, it does not.

14 Q. And does it identify for you how much you have to
15 pay if you want to participate in a Mesaverde completion
16 if, as they say, in the event that it becomes -- that they
17 decide to recomplete in that formation?

18 A. No, it does not.

19 Q. And does it indicate to you when you have to make
20 your election?

21 A. No, it does not.

22 Q. Okay. When did D.J. Simmons file a compulsory
23 pooling application for this east-half unit that they
24 attempted to proposed with this June 7th letter?

25 A. July 13th was the -- I think it was July 13th is

1 the date I had for when D.J. Simmons filed an application
2 for compulsory pooling for a unit they designated as the
3 east half of Section 25 from the surface to the base of the
4 Dakota formation, to dedicate all formations and pools
5 developed on 320-acre spacing under the guidelines of the
6 Division.

7 That date happened to be five weeks after the
8 June 7th date of their original proposal letter, two months
9 after the hearing date, which is May 17th, and actually
10 eight months after McElvain had originally proposed its
11 operation in the southwest quarter.

12 Q. Does their pooling Application as drafted, does
13 it include -- You said from the surface to the base of the
14 Dakota?

15 A. Yes.

16 Q. So does it include the Fruitland formation?

17 A. It includes the Fruitland formation, which my
18 understanding is, it's developed on 320-acre spacing in
19 this area.

20 Q. Is there any discussion in this June 7th proposal
21 letter about how the parties were to deal with or address
22 the Fruitland production?

23 A. No, it does not.

24 Q. Okay. Was this the only letter that McElvain
25 received from D.J. Simmons prior to filing a pooling

1 application?

2 A. Yes.

3 Q. Okay, what is McElvain's Exhibit Number 12?

4 Would you review that and identify that for the Examiners,
5 please?

6 A. McElvain's Exhibit Number 12 is a letter from
7 D.J. Simmons dated August 6th, 2001, received by McElvain
8 August 9th, although we may have received an earlier fax
9 copy of it, I don't recall. It describes the original June
10 7th letter. It invites the parties -- and it is directed
11 to Forcenergy, McElvain and Dugan, which are all the
12 parties that would own an interest in the east half of
13 Section 25. It describes the June 7th letter and it
14 invites the parties to participate in the drilling and
15 completion of the above-referenced wells. And it is
16 attempting to clarify the cost relative to the 25-1 well,
17 which was the first well they had intended to drill.

18 Q. Does it state -- Does it commit to drilling a --
19 or completing from the Mesaverde formation?

20 A. No, it states once again that if it's productive,
21 in their opinion, the Mesaverde formation would be
22 completed and our proportionate share of the cost to drill
23 the Mesaverde formation and, like I said, if productive,
24 the cost of completing the Mesaverde was represented --
25 Well, no, they didn't include an AFE, that's right. But

1 they were attempting to clarify the cost relative to
2 participation in the Mesaverde, but it made no commitment
3 to complete it.

4 Q. Okay. Now, the second sentence says, "To
5 clarify, your cost in the Bishop Federal #25-1 well..."
6 Now, is that the northeast-quarter well?

7 A. That's correct.

8 Q. Okay. "...would be your proportionate share of
9 drilling to the Mesaverde formation, and if productive, the
10 cost of completing the Mesaverde formation." Do you see --

11 A. Correct.

12 Q. Okay. Did they indicate to you in this letter
13 the cost to drill to the Mesaverde formation?

14 A. No, they did not.

15 Q. Did they indicate to you the cost to complete in
16 the Mesaverde formation?

17 A. No, they did not.

18 Q. Did they submit any AFE with this letter breaking
19 out those costs for a northeast-quarter well?

20 A. No, they did not.

21 Q. Does it indicate to you that you have to make
22 your election and agree to pay these undescribed costs now?

23 A. That's -- Yes, it indicates to me that they were
24 expecting an election of the parties then.

25 Q. But there's no commitment in here to produce --

1 A. Without a commitment to complete the wells, yes.

2 Q. Okay. Now, why is that a problem?

3 A. Because if -- Typically when you drill a well to
4 dual horizons, dual-objective horizons from the inception
5 of the well, the deeper horizon has the primary opportunity
6 to complete first, and it is the option of those deeper
7 horizon owners when the well gets completed to the upper
8 zone. And typically an investment is not requested from
9 the parties until the parties are allowed to complete their
10 zone.

11 Therefore, you typically -- at least my
12 experience says that there is -- you know, you don't --
13 you're not asked to remit your share of drilling costs or
14 completion costs until you're allowed to jointly use the
15 wellbore, or solely use the wellbore for that matter, if a
16 deeper zone is dry.

17 Q. Okay. Now, if this is a northeast quarter well,
18 the Dakota is on 160s?

19 A. Yes.

20 Q. Okay, who owns all of the interest in that -- in
21 the Dakota formation and a northeast-quarter well?

22 A. D.J. Simmons owns 100 percent of the northeast
23 quarter as to the Dakota formation.

24 Q. So the only way that the interest owners in the
25 east half are going to share in the production from that

1 well is if and when D.J. Simmons decides to recomplete in
2 the Mesaverde?

3 A. That's correct.

4 Q. Okay. Now, this letter does indicate to you that
5 with respect to the southeast-quarter well, the Bishop
6 Federal 25-2, that the costs for that well would be the
7 same as for the northeast-quarter well; is that right?

8 A. That's correct. It says here "...cost for the
9 Bishop Federal #25-2 well would be the same as outlined...
10 for the...#25-1 well."

11 Q. Okay. Now, is that -- Based on the AFEs that
12 they submitted to you back in June, is that northeast-
13 quarter well a directional well or is it a straight well?

14 A. The northeast quarter was identified to us as
15 being drilled in a directional pattern, and the cost was
16 higher.

17 Q. Okay, and the southeast-quarter well was
18 identified as what?

19 A. Straight hole. The cost was a little less.

20 Q. Okay, did you have any confusion, then, when they
21 were telling you that your cost for the 25-2 was going to
22 be the same as the 25-1 well?

23 A. Well, it was confusing. If what it says is what
24 they meant, they cost wouldn't -- I mean, it wouldn't be
25 the same if we were participating in both zones or one

1 zone. Either way, the costs were different. But the
2 allocation of the costs relative to the Mesaverde versus
3 the Dakota would understandably be different in the two
4 wells, because they were being drilled differently.

5 Q. Okay. Now, they do set forth some participation
6 percentages on the second page, do they not?

7 A. They set forth percentages on the second page,
8 which also raised confusion to us in respect that the first
9 set of interests, the caption on the top says the "Bishop
10 #25-1 and the #25-2, E/2 Mesavered [sic] Unit and/or #25-1,
11 NE/4 Dakota Unit", which is confusing. I would agree with
12 the combination of interests of the parties as to the east
13 half of Section 25. However, the northeast quarter Dakota
14 zone is owned 100-percent Simmons. So it's unclear as to
15 what they were intending to represent there by stating that
16 was also representing the northeast-quarter Dakota Unit.

17 The southeast-quarter Dakota Unit, it is a clear
18 representation, and we do agree with the representation of
19 ownership for the Bishop 25-2 as to the southeast quarter.

20 Q. Does it indicate for that southeast-quarter well
21 -- Let's say that McElvain just wanted to participate in
22 the Mesaverde formation but not in the Dakota well. Does
23 it indicate to you whether you have that option?

24 A. No, it does not offer an option to participate in
25 one zone and not the other.

1 Q. Now, it does offer an option there in the
2 paragraph beginning with "However", with respect to the
3 Bishop 25-1. That would be the northeast-quarter well; is
4 that right?

5 A. Correct.

6 Q. Do you have an interest in the -- you're only --
7 You do not have an interest in the northeast quarter?

8 A. We do not have an interest in the northeast
9 quarter in any zone, that's correct.

10 Q. Did you understand what they were proposing here
11 with this northeast-quarter well in that paragraph?

12 A. No, we did not understand. It says, "However,
13 Simmons would welcome your participation in drilling to the
14 Dakota formation in the Bishop #25-1 and therefore earn
15 your proportionate percentage of the leasehold in the
16 unit..."

17 First of all, we have no leasehold in the Dakota
18 Unit because we have no interest in the northeast quarter,
19 in the Dakota or the Mesaverde. But it says, "...from the
20 surface...down to the base of the Dakota formation or total
21 depth, which ever is the lesser...for a percentage of the
22 leasehold, drilling and completion costs", which is unclear
23 as to what they mean.

24 Q. That's because you don't own an interest in the
25 northeast quarter?

1 A. No.

2 Q. Okay, all right. Well, you got this letter --
3 Now, you got another letter from D.J. Simmons, then, did
4 you not?

5 A. We had a yet subsequent letter, correct.

6 Q. Is that marked as McElvain Exhibit Number 13?

7 A. Yes, it is.

8 Q. And was this -- This is what, three months after
9 their June Dakota well proposal?

10 A. Well, it was three months after the June
11 proposal, and it was also after they had already filed
12 force pooling. So they're asking the Commission to take
13 force action against parties to either participate or be
14 under a penalty of recovery for a proposal to drill a well
15 to test a different zone than what they're force pooling
16 and to -- without any commitment to complete that zone that
17 they are force pooling, additionally force pooling a zone
18 that has not even been mentioned in the proposal, under the
19 order.

20 Q. Okay. Now -- But to be fair in this letter, they
21 do give you, do they not, for the northeast-quarter well
22 the interests of the parties in the Mesaverde formation?

23 A. Yes --

24 Q. Okay.

25 A. -- they do afford us the interest of the parties,

1 which is the same representation they had given us on
2 August 6th, which we do agree with.

3 Q. And they also gave you an AFE that broke out the
4 Mesaverde cost that the working interest owners would pay
5 if they agreed to participate; is that right?

6 A. Yes, they did break out their original -- Well,
7 apparently what they did -- it's what we presume they did,
8 and it matches that the costs had been broken out from the
9 original AFE to represent only the share of that AFE that
10 they would attribute to the drilling and completion of the
11 Mesaverde formation.

12 Of course, the completion costs for the Mesaverde
13 formation were not included in the original AFE at all --

14 Q. Okay.

15 A. -- but it was included in a clear way in the
16 representation of AFE that was attached to the September
17 13th letter.

18 Q. Okay. Now, they give you, then, an AFE with a
19 total cost of \$461,706?

20 A. Correct.

21 Q. And did you understand that to be the cost that
22 you would have to agree to participate in if you wanted to
23 participate in a Mesaverde completion?

24 A. That would be our understanding of what they were
25 representing, yes.

1 Q. Okay, and what was the AFE that you sent out for
2 your re-entry project?

3 A. The AFE we sent out for our re-entry estimated
4 approximately \$360,000-some-odd to re-enter.

5 Q. This is roughly \$100,000 higher?

6 A. Right.

7 Q. Okay. Now, does this letter provide any
8 commitment that D.J. Simmons is going to produce and
9 complete in the Mesaverde formation with their northeast-
10 quarter well?

11 A. No, it does not.

12 Q. Does this indicate to you how the costs of a
13 northeast quarter well are going to be split out in the
14 event that they drill down to the Dakota?

15 A. No, it does not describe any sharing of the cost
16 between the two zones. It also does not identify when the
17 costs that are represented here for the Mesaverde would be
18 expected to be paid.

19 Q. And does it offer you any kind of a farmout or
20 purchase alternative to their proposal?

21 A. No.

22 Q. Does it address how you are to participate in the
23 drilling of a southeast-quarter well?

24 A. No, it does not.

25 Q. Now, I want to read to you, if I may -- Let me

1 hand you a copy of the transcript from the May 17th hearing
2 before the Division.

3 A. What page?

4 Q. Well, I'm on page 129.

5 MR. FELDEWERT: Mr. Hall, do you have a copy of
6 that?

7 MR. HALL: Yes, I do.

8 Q. (By Mr. Feldewert) Okay, now at that hearing Mr.
9 Stogner made the following observation. I'm going to read
10 it, and then I'll ask you some questions about it.
11 Beginning on line 18, he's responding to, or he's directing
12 his question to Mr. Hall, and he says, "You're wanting
13 them..." that would be McElvain "...to form a standard
14 standup proration unit, but there hasn't been any like
15 application filed by D.J. Simmons or, for that matter, any
16 due diligence to drill a well. They say they have, but
17 there hasn't been anything written. They haven't talked to
18 -- or put anything in writing."

19 Do you see that?

20 A. Yes.

21 Q. Okay. Now, do you agree with Examiner Stogner's
22 observations that D.J. Simmons has not been diligent in
23 proposing a well to the interest owners in Section 25?

24 A. I agree.

25 Q. And as a landman reviewing the three letters that

1 we just went through from D.J. Simmons that they sent out
2 since that hearing, has D.J. Simmons made any clear and
3 firm commitment to the interest owners in Section 25 to
4 complete a Mesaverde well?

5 A. No, they have not.

6 Q. In contrast, Ms. Binion, has McElvain been
7 diligent in pursuing a Mesaverde test well in Section 25?

8 A. We feel that we have. It's been very clear from
9 the very beginning, our objective was Mesaverde. It has
10 not been complicated or given secondary priority for any
11 other zone or any other plan of action. We clearly
12 intended to in the past, and have, and continue to intend
13 to drill, complete and develop the Mesaverde formation
14 jointly with the parties or as -- in alternative
15 arrangements and develop it as a prudent operator.

16 Q. In your opinion, have you made a good-faith
17 effort to obtain the voluntary joinder of all the working
18 owners in the proposed unit?

19 A. Yes, we do feel like we have.

20 If I may just address the Commission, just on
21 a --

22 MR. HALL: Well, I'm going to object to the
23 answer as being beyond the scope of the question. There's
24 a motion on the table, she shouldn't testify.

25 Q. (By Mr. Feldewert) Ms. Binion, do you -- what's

1 your -- in respect to your efforts to be diligent and
2 obtain good-faith efforts, what has McElvain done? What
3 has happened in this case?

4 A. Well, in this case specifically what has happened
5 is, in November of 2000 we entered a proposal to the then-
6 understood parties that owned an interest in a designated
7 area that we felt from McElvain's best interest as well as
8 in a benefitting interest of all the parties in the section
9 and in the south half of the section, we proposed an
10 operation.

11 We diligently pursued securing the right title
12 information, we diligently pursued accepting or offering
13 alternatives to participation from all of the parties in
14 the section, or in the proposed spacing unit. We followed
15 the rules and the regulations and the policies of the
16 Commission as we had been represented those policies
17 existed and as we understood those regulations to be in
18 place.

19 At times we even consulted the Commission in
20 advance for advice for the best way to handle particular
21 situations. I don't know specifically in this case, but I
22 know we have in other cases where there's been an unclear
23 understanding of the policies and procedures, we've asked,
24 you know, for the Commission to clarify that so that our
25 continued development and operation of an area could be

1 done as smoothly as possible, as timely as possible and
2 with the least amount of conflict that we could avoid.

3 We felt like the proposal and the plan that we
4 set in place for the Mesaverde development only was
5 prudent, it was timely, it provided a plan for the orderly
6 and the fair development of the Mesaverde formation, it did
7 not conflict with the idea and the interest of D.J. Simmons
8 in developing and completing the Gallup-Dakota, except for
9 the fact that in the event that their Gallup-Dakota would
10 not be productive to the extent that they would want to
11 merely complete the Gallup-Dakota and they would want to
12 entertain a completion of the Mesaverde, the Mesaverde
13 would be available for completion in any spacing unit that
14 would be put in place. The only matter in question would
15 be who would operate the completion of that Mesaverde zone,
16 which would be a result of the Application that the
17 Commission would approve or not approve.

18 This proposal has not been approached, filed or
19 entered into any differently than any other proposal or
20 application that McElvain has entered or filed or actually
21 drilled over the course of its operations in this area. It
22 has been operating and developing the Mesaverde formation
23 in this area for a number of years. It's done so in an
24 efficient and an orderly fashion. Sometimes it has caused
25 the Commission to take the time to -- or the Examiners of

1 the Commission, to take the time to consider compulsory
2 pooling applications because of circumstances, but it's
3 done so under the rules and regulations that it's known to
4 be in existence, and it's complied with all of those rules
5 and regulations.

6 But yet, having done so in this particular case,
7 we end up here a year later, quite a bit of money out that
8 we wouldn't have expected to have spent, a number of times
9 having to have rescheduled completion rig because we were
10 not able to receive the authority that we thought we were
11 going to be able to receive in order to conduct our
12 operations, and because the --

13 CHAIRMAN WROTENBERY: Mr. Feldewert, I think
14 we're getting into closing argument.

15 Q. (By Mr. Feldewert) Okay. Well let me ask you --
16 Let me ask then, for the record, is McElvain Exhibit Number
17 14 the affidavit with letters giving notice of the hearing
18 that took place in May of this year?

19 A. Yes.

20 Q. Okay. And is McElvain Exhibit Number 15 a
21 document entitled "Timeline for Section 25 Mesaverde
22 Applications" that you helped prepare?

23 A. Yes.

24 Q. And does it accurately reflect the events that
25 you've testified to here today?

1 A. Yes.

2 Q. Okay. Now, were Exhibits 1 through 15 prepared
3 by you or compiled under your direction and supervision?

4 A. Yes.

5 MR. FELDEWERT: At this time, I would move the
6 admission into evidence of McElvain Exhibits 1 through 15.

7 MR. HALL: With the exceptions of Exhibits 15
8 and, I believe, 8, the Dugan letter, we have no objection.

9 CHAIRMAN WROTENBERY: Your objection on Exhibit
10 15?

11 MR. HALL: I'd like the opportunity to examine
12 the witness on this. I can do that on cross-examination if
13 you like.

14 CHAIRMAN WROTENBERY: Okay, let's take a break
15 here. It's about 10:35, is what I've got, so we'll start
16 back up at a quarter of 11:00.

17 (Thereupon, a recess was taken at 10:35 a.m.)

18 (The following proceedings had at 10:50 a.m.)

19 CHAIRMAN WROTENBERY: I believe we're all present
20 now and ready to get started again.

21 Before we took the break we were considering a
22 request of Mr. Feldewert to introduce Exhibits 1 through 15
23 into the record. We have an objection on Exhibit Number 8
24 from Mr. Hall, which I will sustain. This is hearsay, and
25 yes, it was introduced, I believe, at the Division level,

1 but this is a *de novo* proceeding, so that objection has not
2 been waived.

3 MR. FELDEWERT: If I may for the record, I would
4 submit that this is a public record because it was sent to
5 the Oil Conservation Division and is kept within our files,
6 so I believe it falls within an exception to the hearsay
7 rule.

8 And I also would reiterate for the record that I
9 think it was waived previously.

10 But the Commission has ruled, and we'll abide
11 accordingly.

12 CHAIRMAN WROTENBERY: Thank you, Mr. Feldewert.

13 And Mr. Hall, I will reserve ruling on Exhibit 15
14 until you've had a chance to cross-examine.

15 But at this time I will admit Exhibits 1 through
16 7 and 9 through 14 into the records.

17 Did you have any further questions, then, for Ms.
18 Binion?

19 MR. FELDEWERT: In light of the Commission's
20 ruling, just two.

21 CHAIRMAN WROTENBERY: Okay.

22 Q. (By Mr. Feldewert) Ms. Binion, have you had --
23 in connection with your efforts to reach a voluntary
24 agreement here, have you had discussions with Dugan about
25 their position in this matter?

1 A. Yes, I have.

2 Q. And do they agree with the proposition that it
3 makes sense to use the existing wellbore to reduce the cost
4 of a Mesaverde test in Section 25?

5 MR. HALL: Objection, that's both leading and
6 calls for hearsay. I think we can come to terms that Dugan
7 has agreed to participate in the well, if that's what we
8 need to establish. We'll agree to that.

9 CHAIRMAN WROTENBERY: Mr. Feldewert, would you
10 like to ask your question again, please?

11 Q. (By Mr. Feldewert) Has Dugan indicated that they
12 agree with the proposition that it makes sense to reduce
13 the risk of a Mesaverde test by using the existing
14 wellbore.

15 MR. HALL: Same objection.

16 THE WITNESS: Yes, they have, and Dugan --

17 MR. HALL: Just a minute.

18 MR. FELDEWERT: Hold on, Ms. Binion.

19 MR. HALL: Same objection, Ms. Chairman.

20 CHAIRMAN WROTENBERY: Sustained.

21 Q. (By Mr. Feldewert) And Dugan has agreed to
22 participate in this project?

23 A. Yes, they have.

24 MR. FELDEWERT: Okay, that's all I have.

25 CHAIRMAN WROTENBERY: Thank you, Mr. Feldewert.

1 Mr. Hall?

2 MR. HALL: May I proceed?

3 CHAIRMAN WROTENBERY: Yes.

4 CROSS-EXAMINATION

5 BY MR. HALL:

6 Q. Good morning, Ms. Binion.

7 A. Good morning.

8 Q. I think you may have anticipated this question, a
9 very important question to me: Why aren't you creating a
10 west-half standup unit here?

11 A. I will restate what I stated earlier in my
12 testimony. And I'll just clarify, before I make my
13 statement, that my representation is based on and
14 represents my knowledge, and my recommendation and my
15 duties as a land manager does not represent geologic or
16 engineering information or positions or recommendations
17 that are made in our company by others that are responsible
18 for those duties. Okay?

19 So as landman and for land reasons, and as an
20 answer in my -- you know, from my perspective in the
21 position I hold for McElvain, I will answer that question.

22 Q. Please do.

23 A. In an effort of proposing an operation that could
24 not only share the risk of testing a new formation in a
25 spacing pattern to allow the maximum amount of parties to

1 share in that risk, which are the same parties that would
2 benefit from the result of the test, we proposed to form a
3 south-half spacing unit. Okay?

4 Doing a south-half spacing unit and a north-half
5 spacing unit affords the opportunity to the parties in the
6 section to participate in the drilling and development of
7 the Mesaverde formation in the entire section without
8 limitation. It avoids having unfair risk bearing on any
9 side, whether it be the east half or the west half, because
10 those are a separation of ownerships, and it also affords
11 the parties in the southeast quarter the opportunity for a
12 low-cost test of that zone by affording them the
13 opportunity to join McElvain in the re-entry of a wellbore
14 on a 100-percent McElvain-owned tract.

15 It also McElvain the opportunity to develop the
16 southeast quarter, which it also owns an interest in, in
17 the Mesaverde formation, which has not been, you know,
18 actively pursued by any other party in the section.

19 We have an interest in developing the Mesaverde,
20 and that is our primary objective, and that's what we're
21 attempting to do by developing the south half as a limited
22 Mesaverde spacing unit only, not to conflict with spacing
23 units for any other zone that any other party could freely
24 go out and test and produce.

25 Q. Earlier you said that McElvain has incurred some

1 delays by virtue of the opposing Applications here, and
2 McElvain has also occur some costs, legal expenses, I
3 believe I heard you say.

4 A. Yes, sir.

5 Q. Wouldn't it be accurate to say that all that
6 could have been avoided had McElvain created a west-half
7 standup Blanco-Mesaverde unit?

8 A. That's an obvious answer, yes. It would have
9 been avoided, even if that west half would have not been in
10 the best interest of the parties.

11 Q. And the parties in the west half are 100-percent
12 McElvain?

13 A. Yes, it is.

14 Q. Now, so the record is clear here, do you agree
15 with me that the primary motivation for dedicating a south-
16 half unit to the Naomi well was risk mitigation?

17 A. Do I agree with you that the primary motivation
18 by -- The primary motivation of who?

19 Q. McElvain.

20 A. The primary motivation of the land recommendation
21 that was made to McElvain to substantiate a south half I
22 can speak to, which was risk mitigation and orderly
23 development of the Mesaverde in that section, yes.

24 I cannot speak to the primary recommendation and
25 motivation of McElvain with respect to geology and

1 engineering, all of those factors being the considerations
2 given by McElvain's management in final decision of any
3 application.

4 Q. Well, so the record is precisely clear -- and I
5 think this question can be answered yes or no -- the
6 primary motivation for dedicating a south-half unit to the
7 Naomi well is risk mitigation, correct?

8 MR. FELDEWERT: I object to the question. I
9 think she's already answered it, and I think she indicated
10 a problem with the question.

11 MR. HALL: I didn't hear an objection to the
12 question when it was asked earlier.

13 Q. (By Mr. Hall) Can you answer my question?

14 MR. FELDEWERT: I object to the request that she
15 has to answer yes or no.

16 THE WITNESS: The answer to the question from my
17 recommendation and the land position that I hold, the
18 primary reason that I can give you would have been risk
19 mitigation, you know, coupled with the orderly and proper
20 development of the entire section for the Mesaverde.

21 Q. (By Mr. Hall) All right. I want to make the
22 record precisely clear on this. Let me read to you the
23 transcript from the Division Examiner Hearing and ask you a
24 question from that.

25 Page 19, line 6:

1 Question: So the record is clear, you do agree
2 with me that the primary motivation for dedicating a
3 south-half unit to the Naomi well was risk mitigation?

4 Answer: Primary could be, yes. Yes.

5

6 A. Primary could be, because you were asking me to
7 tell you what McElvain's management considerations were.

8 Q. Just a minute. The question was, was this your
9 answer: "Answer: Primary could be -- "

10 A. That was -- was in the record.

11 Q. Excuse me just a minute, let me finish my
12 question.

13 A. Sorry.

14 Q. "Primary could be, yes. Yes." Was that your
15 answer?

16 A. That was my answer, yes, sir.

17 Q. All right, thank you, Ms. Binion.

18 Now, I think I've placed before you there a copy
19 of the compulsory pooling statute. Do you have that there?

20 A. Yes, sir.

21 Q. Section 70-2-17. You've been qualified here this
22 morning as an expert petroleum landman.

23 A. Yes, sir.

24 Q. Can you point to any provision in the compulsory
25 pooling statute that authorizes an operator to pool another

1 interest owner in order to mitigate its risk?

2 A. I'd have to sit here and read through the entire
3 provision, which I haven't done, you know, tooth and nail
4 and inside and out, to be able to interpret any part of
5 this provision which would limit an application to, you
6 know, reduce risk only --

7 Q. All right, so the answer --

8 A. -- that being, you know, the only purpose for an
9 application to pool. I can't sit here and say that without
10 reading it.

11 Q. So the answer to my question, then, is no, you
12 cannot point to a provision here today?

13 A. I -- No, at this point I cannot.

14 Q. Ask you about McElvain's control of the west
15 half. I believe you testified earlier that the Wynona
16 Number 1, now called the Naomi -- someone is a Judds fan,
17 right? -- the Wynona was drilled 1988; is that correct?

18 A. That's what our records reflect, yes.

19 Q. All right. Were you employed with McElvain in
20 1988?

21 A. No, sir, I was not.

22 Q. Do you know how long before that well was drilled
23 in 1988, that McElvain controlled that west-half acreage?

24 A. No, I do not.

25 Q. So we can say, the record is clear on this point,

1 that McElvain controlled the west half of the section as of
2 1988?

3 A. You'd have to define "controlled" because they
4 did not own 100 percent.

5 Q. All right.

6 A. So what do you mean by "controlled"?

7 Q. They were the designated operator for the west-
8 half spacing unit?

9 A. No, there was no west-half spacing unit. There
10 was a southwest-quarter spacing unit, that's it.

11 Q. All right. When did McElvain acquire its
12 interest in the northwest quarter?

13 A. I really don't know. I don't have that record, I
14 did not go back and review that because they were expired
15 leases prior to the time I became employed with McElvain,
16 and they were irrelevant facts.

17 Q. All right. Did McElvain hold a lease in the
18 northwest quarter prior to the reacquisition?

19 A. I couldn't tell you that either, because all I
20 have reviewed in my prior -- in my review of the records
21 was primarily for the southwest quarter.

22 Q. All right. When you say -- Earlier you testified
23 that McElvain reacquired the leases in the west half --

24 A. Right.

25 Q. -- you deal with the same parties who owned --

1 A. No --

2 Q. -- the west-half minerals?

3 A. -- we did not deal with the same parties because
4 the original party that leased when the Wynona well was
5 drilled was a Wynona Hardy -- Hardin, H-a-r-d-i-n, my
6 recollection, who, as I understood, owned 100 percent of
7 the minerals at the time a lease was issued on the west
8 half.

9 Then subsequently, after that lease was released,
10 when McElvain went to reacquire leases on the minerals
11 there were three separate owners of those minerals, and
12 they were not in any way related to Wynona Hardin.

13 Q. Now, earlier you testified that in your view
14 McElvain was diligent about conducting its land work, that
15 it had shared its title work with the other interest owners
16 in the south half anyway; is that correct?

17 A. I said that they had the benefit of the title
18 work that McElvain had done, yes.

19 Q. How did they benefit from that?

20 A. Because you had the ownership of the parties that
21 we had represented throughout all of our dealings and our
22 testimonies.

23 Q. Oh, I see, you didn't mean to say that you
24 provided the title opinion to the other interest owners,
25 did you?

1 A. I have provided the title opinion to the other
2 interest owners who have requested it and who have elected
3 to participate.

4 Q. Did you offer that to D.J. Simmons?

5 A. It was offered to the parties who elected to
6 participate, and so far D.J. Simmons had not elected to
7 participate yet, and they hadn't requested a copy of the
8 title opinion, but it would be available.

9 Q. So the answer to my question was no, it was
10 not --

11 A. No, I have not provided it to them yet.

12 Q. Let me ask you about your Exhibit 2, if you could
13 take that in front of you. We should clarify again for the
14 record that what's been submitted as Exhibit 2 here, the
15 November 10, 2000, initial well proposal, consists of more
16 materials than was actually sent to D.J. Simmons -- and who
17 was the other party?

18 A. Benson-Montin-Greer Corporation and 3TEC Energy
19 Corporation.

20 Q. 3TEC.

21 A. Yes, sir.

22 Q. So D.J. Simmons, Benson-Montin-Greer and 3TEC
23 Energy Corporation did not receive this entire package on
24 November 10th, 2000, did they?

25 A. That's incorrect. In my prior statement I did

1 confirm that Benson-Montin-Greer and 3TEC Energy
2 Corporation did receive the entire package that you see as
3 an exhibit. However, apparently inadvertently the package
4 that was sent to Simmons did accidentally exclude the
5 authority for expenditure that the letter says should have
6 been included.

7 So according to D.J. Simmons' explanation to us,
8 your package did not include the authorization, although it
9 should have.

10 Q. All right. And so we're clear about this, again,
11 Exhibit Number 2 consists of some copies of the certified
12 mail return receipts; do you see those?

13 A. Yes, sir.

14 Q. Those certainly weren't sent to the other
15 interest owners, correct?

16 A. No.

17 Q. And then as well, attached to Exhibit 2, in my
18 set anyway, is your November 20th, 2000, letter?

19 A. Well, it's not with my copy, so -- if the book
20 got mixed up I -- it's not part of our --

21 Q. Okay, maybe mine was the only --

22 A. Okay, sorry, it must have been a confusion.

23 Q. Okay, but --

24 CHAIRMAN WROTENBERY: The November 20th letter is
25 in the record as Exhibit Number 3.

1 THE WITNESS: Right.

2 MR. FELDEWERT: We slipped it in twice, Scott.

3 THE WITNESS: Sorry. We thought it was so good
4 we'd show it to you more than once.

5 Q. (By Mr. Hall) Okay. Now, in the case of Exhibit
6 2, so far as the proposal to D.J. Simmons was concerned,
7 there was, one, no AFE, correct?

8 A. According to some -- Yes, according to D.J.
9 Simmons. And I don't have any reason to dispute that, no.

10 Q. All right, and there was no well plan sent, was
11 there?

12 A. No, sir.

13 Q. And there was no total depth of the well
14 indicated anywhere in those materials, is there?

15 A. Well, this is a re-entry, it's a recompletion, so
16 there isn't what you would consider a total depth of the
17 well. I don't see there's any particular depth on here,
18 but I -- I mean, I don't evaluate the AFEs or the
19 engineering that's described in the AFEs, how you can tell
20 those things from those documents, but I don't see it, no.

21 Q. Okay. Let's look again at the package of letters
22 you discussed earlier. These were the solicitations by
23 D.J. Simmons. They are your Exhibits 11, 12 and 13, if you
24 could refer to those please?

25 A. Okay.

1 Q. Now, unlike the McElvain proposal, your November
2 10th proposal, these materials did provide you with an AFE,
3 they provided you with a well plan and provided you with a
4 total depth, did they not?

5 A. Yes, sir, they did. They provided me with an AFE
6 to drill and complete a Gallup-Dakota well --

7 Q. Yeah.

8 A. -- they provided me with a plan to drill and
9 complete a Gallup-Dakota well, and that's what it provided.

10 Q. All right. Now, you've indicated there was
11 some -- Well, first let me ask you, what was your response
12 to Simmons on each of these three letters? How did you
13 respond to them?

14 A. We did not respond to those particular letters.

15 Q. Didn't call them up, didn't ask them anything
16 about it all?

17 A. No, sir.

18 Q. You indicated there was some confusion, in your
19 mind anyway, about what was being proposed here, correct?

20 A. That's correct.

21 Q. Why didn't you call up Simmons and ask them to
22 clarify it?

23 A. Because at the point that the proposals were
24 made, there was still an outstanding issue, which was the
25 issue of our proposal, and if our proposal was approved as

1 we expected from the Commission, then these proposals had
2 to be re-evaluated completely anyway. There were no issues
3 to discuss until we knew the effect and the conclusion of
4 the original Application. And so it would have been kind
5 of a futile effort at that point to go into trying to
6 understand any of it until we understood the first step of
7 it. So for that reason we didn't attempt to complicate
8 anything any further.

9 Q. So it was McElvain's position that you weren't
10 going to even consider this proposal in the first instance,
11 correct?

12 A. Well, and to -- Yes, that's right.

13 Q. Let me refer you to your Exhibit 15, your time
14 line, if you could look at that, please.

15 A. Okay.

16 Q. Again, what is the purpose of this exhibit?

17 A. It's to give the parties that are reviewing these
18 exhibits an understanding from our perspective of the
19 timing of these Applications and the proposals made by the
20 parties and the effort made by the parties to pursue their
21 objectives.

22 Q. All right. And I believe you've testified that
23 as far as you were concerned this exhibit was complete.

24 Now, on the right-hand side of the time line
25 there are three references to continuance request by D.J.

1 Simmons, on August 21st, September 4th, September 4th and
2 September 17th. Now, isn't it accurate to say that the
3 last two, which you call continuance requests, were in fact
4 requests to the Commission that these proceedings be
5 consolidated?

6 A. You're going to have to be more specific. I'm
7 not sure I understand what your question is.

8 Q. Can you point to me a request for continuance on
9 September 4th and September 17th?

10 A. Okay, I see, yes, "D.J. Simmons requests a
11 continuance for its east half application" on September 4th
12 and September 17th, yes.

13 Q. Do you have a letter or something that indicates
14 that we, in fact, asked for a continuance?

15 MR. FELDEWERT: I believe those are in the
16 Division files, so I'll object. I mean, we have them, but
17 they're in the Division files.

18 Q. (By Mr. Hall) My question to the witness --

19 A. I personally don't have every application for a
20 continuance that was filed in this case.

21 Q. Did you construct this time line?

22 A. Not completely.

23 Q. Oh, who did.

24 A. There was a combination effort of myself and the
25 other witnesses and Mr. Feldewert.

1 Q. Oh, I see. Were any of these requests, in fact,
2 a request that the matters be consolidated for hearing, if
3 you know?

4 A. I don't know for a fact, I can't sit here and
5 tell you that for sure, because I don't have copies of all
6 of the Applications. I'm not sure.

7 Q. Okay. Let me ask you about a couple of other
8 items that I think are missing, and perhaps we should all
9 take our pens and add them to the time line.

10 But isn't it true that on April 18th, that
11 McElvain requested a continuance of its south-half case?

12 A. I'm not aware of a continuance on April 18th, I
13 really don't know. I know about that time we were
14 attempting to try to schedule all of the applicable
15 witnesses for both sides, as well as an overloaded docket
16 that the Commission had, and also other applications that
17 we had before the Commission so that we could consolidate
18 coming down to the Commission at the same time.

19 Q. Let me hand you what I've marked as Exhibit B-2.
20 Could you identify that for the record, please?

21 A. Exhibit B-2 appears to be a letter from Holland
22 and Hart to Lori Wrotenbery for Case 12,635, requesting the
23 Examiner Hearing for that matter which is scheduled for
24 April 19th to be continued to the next available hearing
25 docket.

1 Q. All right, so we should perhaps add that item to
2 the time line so it's complete?

3 MR. FELDEWERT: I'll object, you can add whatever
4 you want.

5 Q. (By Mr. Hall) Well, let me ask it this way: The
6 time line is not complete without this, correct?

7 A. Well, I guess --

8 MR. FELDEWERT: Objection --

9 THE WITNESS: -- I could say it's not complete
10 because there's a lot of other things not there either --

11 Q. (By Mr. Hall) I see.

12 A. -- I mean, when I had a cup of coffee on that
13 morning on the 19th either, I -- you know.

14 Q. Now, let me ask you about McElvain's request to
15 continue the hearing on May 2nd. Do you recall that
16 request?

17 A. Which hearing?

18 Q. Your hearing on your case.

19 A. Oh, the one that was held on the 17th?

20 Q. Yes.

21 A. Our request on the 2nd of May, no.

22 Q. Do you recall that?

23 A. No, I don't.

24 Q. Let me ask you to refer to what I've marked as
25 Exhibit B-3, and this is a letter by me to your counsel,

1 Mr. Feldewert. It's memorializing McElvain's request to
2 continue the May 3rd Examiner Hearing on your Application
3 to May 17th. Do you see that there?

4 A. Well, that's what your letter says, yes.

5 Q. Did you instruct Mr. Feldewert to continue the
6 hearing on that day?

7 A. To continue the hearing until the 17th?

8 Q. Yes.

9 A. I don't recall instructing Mr. Feldewert on any
10 particular date. I remember having discussions on what
11 dates would be available that would meet the request that
12 you had made in behalf of Mr. Simmons, as well as the
13 availability of our personnel to attend the hearing. I
14 don't remember specifically what dates were requested.

15 I mean, I do see the prior letter which you gave
16 me, which requests the next available date from the April
17 19th, which is not May 17th. So whether or not we
18 requested a continuance to May 17th, I mean, I can't say,
19 because that's not sitting here in front of me.

20 Q. Now, do you see also in Exhibit B-3 that we
21 didn't receive the request from McElvain's counsel to
22 continue the hearing until after D.J. Simmons' witnesses
23 had left Farmington to travel to Santa Fe to attend your
24 hearing? Do you see that there?

25 A. Right, that's what the letter says, yes, sir.

1 Q. So we should perhaps add another entry, a May 2nd
2 entry on the time line so that it's going to be showing
3 that McElvain requested another continuance?

4 A. I don't understand where the May 2nd comes from,
5 I guess, from here. Where does that come from?

6 Q. Well, if you'll read the letter it says,
7 "Unfortunately, we did not receive word of the request for
8 continuance until after my client's witnesses had left
9 Farmington and were en route to Santa Fe, just the day
10 before the hearing."

11 The day of the hearing was May 3rd, so the
12 request was received on May 2nd, wouldn't you agree?

13 A. That's what your letter says. I have not seen
14 the request for a continuance, so I -- I mean, you're
15 asking me to testify to something that you wrote in here,
16 so wouldn't that be me just saying, yes, that's what you
17 said? I don't have anything in front of me to really be
18 able to substantiate what you're trying to get me to
19 substantiate here.

20 If there is a continuance, it would be in the
21 record, and we can certainly add it to the line if it's in
22 the record, I don't have any --

23 CHAIRMAN WROTENBERY: Excuse me, Ms. Binion. Mr.
24 Hall and Mr. Feldewert both are putting a lot of emphasis
25 on the request for continuances, and I'm thinking at this

1 time the Commission would really like to get on to the
2 merits of the Application.

3 MR. HALL: I agree, will do.

4 CHAIRMAN WROTENBERY: Thank you.

5 Q. (By Mr. Hall) Ms. Binion, since you've been
6 qualified as an expert petroleum landman here today, can
7 you tell us, what do you understand constitutes a good-
8 faith effort to obtain another interest owner's voluntary
9 participation in a drilling project?

10 A. I think what a -- what in my opinion a good-faith
11 effort to obtain voluntary participation would -- could
12 vary from owner to owner. An owner who would not be as
13 well read in oil and gas operations and understand standard
14 practices and be able to as easily evaluate a proposal, a
15 good-faith effort might be slightly different with regard
16 to assuring that that party had received adequate
17 information to be clear, as would be a proposal made to a
18 more sophisticated party who is well read in oil and gas
19 operations and standard practices.

20 I think a good-faith effort to, say, a party who
21 is well read in oil and gas practices would constitute a
22 proposal that is clear and concise, provides a clear and
23 concise representation of the intent of the proposing
24 party, provides cost estimates, provides terms for joint
25 participation in the form of what is a standard practice to

1 have as a joint operating agreement, terms for a plan to
2 develop after the initial proposed operation is completed,
3 and then also alternatives in the event the party elects
4 not to participate.

5 I think once that proposal is made, adequate time
6 presented, available information within reason that is
7 requested to assist in the evaluation, as long as it's not
8 proprietary information or information that wouldn't
9 ordinarily be shared to an otherwise competitor in the area
10 in good business practice of an oil and gas company, and
11 those efforts as a -- you know, in a combination of events
12 and in a reasonable period of time would constitute a good-
13 faith effort.

14 Q. All right. And we could consider McElvain, as
15 you say, to be well read in oil and gas practices, couldn't
16 we?

17 A. I would say yes, McElvain is well read in oil and
18 gas practices.

19 Q. Does McElvain have an established procedure for
20 evaluating drilling proposals that come its way?

21 A. Not a structured, you know, every-time-we-
22 evaluate-something kind of a procedure, no. It's more of
23 an informal company, a small group of people.

24 Q. Well, tell me this. Does the landman have the
25 unilateral authority to commit the company to a drilling

1 proposal?

2 A. No, it does not.

3 Q. What do you do?

4 A. The proposal is circulated among all of the
5 varying professionals that are looked upon for professional
6 evaluation of their respective skills and disciplines.

7 Q. Okay, so we're talking about information touching
8 upon land ownership issues?

9 A. Correct.

10 Q. Equity positions and acreage?

11 A. Correct.

12 Q. We're talking about geology?

13 A. Correct.

14 Q. Like to know something about the geology?

15 A. Right.

16 Q. What do you typically like to see in terms of
17 geology with your -- ?

18 A. I am not a geologist.

19 Q. Well, from your experience with McElvain, what is
20 typically evaluated by the company, geologically?

21 A. I can't speak to that, I'm not certain what your
22 question relates to. With regard to a proposal being
23 received by an outside party to McElvain or --

24 Q. Yes.

25 A. -- a proposal going from McElvain to another

1 party?

2 Q. No, a proposal received by McElvain. Do you look
3 for some geology?

4 A. I typically don't expect to get any geology from
5 any other outside party, because that's typically not given
6 in a proposal.

7 Q. How about engineering information? Do you look
8 for that?

9 A. Typically not.

10 Q. Okay.

11 A. With regard to -- I'm not sure what you mean by
12 engineering information. I mean, there is mechanical
13 engineering information that's supplied in the guise of an
14 AFE, sometimes a procedure, sometimes a description of an
15 operation. I mean, you're asking me to go outside the
16 scope of my area of responsibility and answer questions
17 that I --

18 Q. Well, I understand. You said you're familiar
19 with McElvain's procedures, it's a small, informal
20 company --

21 A. Right.

22 Q. -- so you are familiar with the procedures?

23 A. Right.

24 Q. Let me discuss engineering information. Would
25 you like to see a well plan with the proposal?

1 A. It depends on the operation. If it's a pretty
2 standard operation that has been performed in an area that
3 we typically know how it's normally performed, and the
4 costs that are submitted match up pretty standard to, you
5 know, what is typically done, then very likely we would not
6 expect to see anything. And then there may be cases where
7 we would.

8 Q. All right. Now, would you like to be provided
9 with some *pro forma* review of the economics behind a well
10 proposal?

11 A. Absolutely not.

12 Q. You don't look for that?

13 A. No --

14 Q. You don't --

15 A. -- because another party's economics have no
16 bearing on our economics.

17 Q. So if I understand your answer correctly, you do
18 not expect an operator to provide you with any sort of *pro*
19 *forma* evaluation of well economics for a proposal?

20 A. No, sir, we don't.

21 Q. And by that same token, McElvain does not expect
22 to provide that to the interest owners when it proposes a
23 well?

24 A. That's correct.

25 Q. All right. Do you -- When you receive a proposal

1 from an outside operator, do you prefer to be provided with
2 some estimate of the production from the well or the
3 recoverabilities from the well that's being proposed?

4 A. Typically we don't. If there is information that
5 we would need in order to perform our own evaluation,
6 normally that information is available to the public. If
7 it is not, then we make inquiry that -- solicit as much
8 information as we can get our hands on to make our own
9 evaluation.

10 Q. All right.

11 A. And that's it. Normally we don't expect that to
12 be just offered or given without being requested, and
13 sometimes it's not given even when requested if it's
14 proprietary data.

15 Q. All right. And by that same token, when McElvain
16 proposes the well to other interest owners, it doesn't
17 provide that well-production -- anticipated well-production
18 information?

19 A. As a matter of routine, usually not, but I have
20 seen cases where we have. So it just depends on the
21 circumstance, so I'm not certain I have answered your
22 question adequately, but --

23 Q. All right.

24 A. -- typically we don't, not as a routine.

25 Q. Let me ask it this way then. What is the minimum

1 amount of information that McElvain would require before it
2 commits capital to a drilling project, proposed by another
3 project?

4 A. For the drilling of a new well?

5 Q. Yes.

6 A. You know, that is just a subjective statement and
7 answer that I can give, because it is very unique to the
8 particular proposal that's being made.

9 You certainly would expect an estimate of the
10 proposing party's cost.

11 You would expect at least a semblance of a clear
12 identification of what the proposal is about and how the
13 party that is being proposed the operation is expected to
14 respond and what they would be expected to participate for,
15 you know, what would be their share of the cost and some
16 basic terms for that sharing.

17 Minimum, you would, I think, need to have at
18 least that to be able to conduct some sort of an
19 evaluation.

20 Q. All right. Now, ask you a little bit different
21 question. What is the minimum amount of information that
22 McElvain would require when it's considering committing its
23 acreage to a well proposal by way of a farmout or some
24 other similar procedure?

25 A. Minimum amount of information that McElvain would

1 require before it would commit its acreage to a farmout?

2 Q. Yes.

3 A. Is that your question?

4 A. Before it would farm out its interest, as opposed
5 to committing capital from your budget to the drilling? Do
6 you understand the question?

7 A. Sort of. I mean, the minimum amount of
8 information before we could commit to a farmout would
9 certainly be the terms of the farmout that are being
10 offered, the basis of earning for the party that would be
11 farming the acreage in, and the timing on which the farmout
12 would be performed under. I think those would be three
13 minimum criteria for us to even understand what we are to
14 evaluate.

15 But here again, that's a subjective question. It
16 depends on the circumstance.

17 Q. Well, again, would you expect to be provided with
18 some land-ownership information?

19 A. Not necessarily.

20 Q. All right.

21 A. I would expect that I would that I would have my
22 own ownership.

23 Q. And would you prefer to be provided with some
24 geologic information?

25 A. Here again, I would expect not to be provided

1 with geologic information.

2 Q. All right. And again, would you expect to be
3 provided with some engineering or economic data to support
4 the --

5 A. I would expect that's not likely that that would
6 change hands, no.

7 Q. Okay. Now, let's talk about the efforts you made
8 to try to obtain Simmons' voluntary participation in the
9 Naomi workover procedure. And I'll go through what I
10 understood you to testify to, and I'll specifically ask you
11 about your communications to Simmons, initiatives taken by
12 McElvain to communicate with Simmons to obtain their
13 joinder. Understand?

14 A. (Nods)

15 Q. You're indicating yes for the record.

16 A. Right, yes, sorry.

17 Q. All right. The first step was, on November 10th,
18 2000, you sent your well proposal letter?

19 A. Correct.

20 Q. And the next communication from McElvain or its
21 agents -- in this case, its attorneys -- was the March 15,
22 2001 compulsory pooling application, correct?

23 A. I don't think so. I think I had a conversation
24 with Lisa regarding our AFE that we had inadvertently
25 missed getting to you guys. I think that was requested of

1 me.

2 Q. Did she call you?

3 A. I think I directly spoke to here, I believe, what
4 my recollection is.

5 Q. Did she call you?

6 A. She called me, correct.

7 Q. All right. My question was initiatives taken by
8 McElvain.

9 A. Oh, you mean that we began or, you know -- okay,
10 whatever.

11 Q. Are you with me?

12 A. Yes, sir, I understand.

13 Q. All right, so we have your first well-proposal
14 letter, November 10th, 2000. Then the next communication
15 from McElvain or its agents was the compulsory pooling
16 application, which was sent to everybody certified mail,
17 correct?

18 MR. FELDEWERT: I'll object at this point --

19 THE WITNESS: Well, how --

20 MR. FELDEWERT: I mean, we have -- Hold on. We
21 just went through -- there's Exhibit Number 3.

22 Q. (By Mr. Hall) Well, let's talk about Exhibit
23 Number 3. This is where you provided the AFE, correct?

24 A. Yes, but it's also where we provided a more
25 detailed description of the actual procedure for the

1 recompletion that we proposed.

2 Q. All right, and Exhibit 3 is your November 20th,
3 2000, letter?

4 A. Yes, sir.

5 Q. And this letter came after you were contacted by
6 Lisa Gusek at Simmons requesting an AFE, correct?

7 A. Yes, sir.

8 Q. All right. What was the next communication
9 initiated by McElvain after that?

10 A. I believe it was the submission of the joint
11 operating agreement to Mr. Simmons' -- or -- I say Mr.
12 Simmons -- to D.J. Simmons' well, as the other interest
13 owners and the --

14 Q. What date did that occur?

15 A. It was submitted March 28th, I believe is the
16 date of the letter.

17 Q. All right. What happened after that?

18 A. I think we had communication with regard to the
19 dates of the hearings.

20 We also -- I spoke to Ed Dunn a couple of times
21 regarding their interest level in participation versus
22 nonparticipation, were they interested in selling? And it
23 was -- related to the -- your interest, or -- the interest
24 of D.J. Simmons was to drill and develop the Gallup, and
25 their preference was to do an east-half spacing, and they

1 disclosed to us their interest in doing something different
2 than what McElvain had proposed.

3 Q. Now, when did you have that conversation with Mr.
4 Dunn?

5 A. Well, I had more than one conversation, but it
6 was shortly before the actual hearing dates.

7 Q. All right. Now again, bear in mind, my question
8 is, what efforts did McElvain make to initiate
9 conversations with Simmons? You indicated there was a
10 conversation with Ed Dunn. Is it accurate to say that the
11 conversation you're speaking of occurred on May 16th, 2001,
12 the day before the hearing on your Application?

13 A. Well, I recall a conversation with him prior to
14 the hearing, and I also recall a meeting right before the
15 hearing. So are you referring to the meeting or the phone
16 conversation?

17 Q. The phone conversation.

18 A. It would have been either the 16th, the 15th, the
19 14th. It was shortly before the hearing date. Now, here
20 again I'll just clarify that this is strictly the
21 conversations and the communications that I personally at
22 McElvain initiated, right?

23 Q. Yes.

24 A. That's what you said.

25 Q. That's correct.

1 A. Correct, okay.

2 Q. Now, so let's go through the list again, and we
3 can correct it if I'm wrong at all. But first you had your
4 well-proposal letter, November 10th, 2000?

5 A. Right.

6 Q. Followed by the compulsory pooling Application
7 for your south-half unit on March 15th, followed by the
8 March 28th, 2001, letter transmitting AFE and a joint
9 operating agreement, followed by a telephone conversation
10 initiated by you on May 16th, the day before the hearing on
11 your Application, correct?

12 A. Plus a meeting that was initiated by me the day
13 before the hearing.

14 Q. Okay, wasn't that the morning of the hearing?

15 A. Or the morning of the hearing, right before the
16 hearing, correct.

17 Q. And the outcome of that meeting was -- ?

18 A. There did not appear to be any agreement that the
19 parties were going to be able to reach that would not
20 conflict with McElvain's ability to be able to develop the
21 Mesaverde.

22 Q. Okay. So before the compulsory pooling
23 Application was filed on March 15th, it appears to be the
24 case that you initiated only one contact with Simmons, and
25 that was your November 10th, 2000, well proposal letter?

1 A. I think we just described at least four or five,
2 if I'm not mistaken, that I personally initiated. But that
3 wasn't the only contact, but those were the ones that I
4 initiated, yes. I think we just listed more than just one.

5 Q. My question was, before the compulsory pooling
6 Application was filed --

7 A. The Application itself?

8 Q. Yes.

9 A. Yes.

10 Q. What else, in your view, could you have done to
11 try to obtain D.J. Simmons' participation in the well
12 before filing the pooling Application?

13 A. I really could not answer anything. I don't know
14 what we could have done. If, you know, D.J. Simmons did
15 not wish to participate, there's not a whole lot you can do
16 to force them to participate, other than offer alternatives
17 that are reasonable, and that would not completely prevent
18 the operation from going forward.

19 Q. Well, couldn't you have just picked up the phone
20 and called?

21 A. Sure.

22 Q. Why didn't you do that?

23 A. Because conversations had been had with members
24 of the firm of D.J. Simmons, among other McElvain
25 personnel, that had indicated clearly Simmons' desires and

1 interest and where they'd like this to go. We presented
2 them the information they requested, as much as we could,
3 within reason, that wasn't proprietary geologic
4 interpretation, we did present them with what we could to
5 offer help in evaluating why we felt this was a good
6 project.

7 There didn't seem to be a need -- They hadn't
8 asked for any subsequent submittals of terms, which we
9 offered in the letters for, you know, terms in lieu of
10 nonparticipation through a force-pooling hearing.

11 Q. But in the four months from the time you made
12 your initial well proposal to the time you filed the
13 compulsory pooling Application, you didn't pick up the
14 phone, call Simmons' landman, say, Hey, what can we do to
15 work out the participation in this project, correct?

16 A. No, I did not.

17 Q. All right. Now, earlier you testified that
18 McElvain confers with the Commission and the Division to
19 try to promote its drilling program and expedite it on an
20 orderly and efficient basis, and on occasion you're obliged
21 to file compulsory pooling applications; is that right?

22 A. My statement refers to areas under the
23 regulations that we were unclear as to how we should have
24 proceeded. In some regard there was either -- coverage
25 under the regulations was not completely in a consistent

1 format as an application or a proposal that we wanted to
2 make, and we were unclear how to proceed, and we wanted
3 some advice on where to go, how to do it, not in regard to
4 just applications when we want to file force pooling or
5 when we do something on a standard operational basis, do
6 we, you know, seek help from the Commission, and I don't
7 think that is what our intent was and I don't think that's
8 what the Commission's duty is, to hold everyone's hand on
9 their operations.

10 It's just when, you know, things are unclear.
11 And we want to make sure that we avoid, if we can, a
12 potential conflict.

13 Q. All right, good. Can you tell me how many wells
14 McElvain has drilled in the last 18 months?

15 A. I couldn't tell you off the top of my head, I
16 don't know.

17 Q. Ballpark?

18 A. It would be a very wild guess. Eighteen months,
19 probably about -- You mean drilled from new wells?

20 Q. Yes.

21 A. Okay, probably about ten.

22 Q. All right. And in the last 18 months do you have
23 any idea how many compulsory pooling applications you
24 filed?

25 A. Probably about eight, nine.

1 Q. Ms. Binion, let me ask you to refer to what's
2 been marked as Exhibit B-1 there --

3 A. Okay.

4 Q. -- and I will represent to you that Exhibit B-1
5 is a compilation of all of the compulsory pooling
6 applications filed by McElvain that have appeared on the
7 OCD's docket in the last 18 months. Why don't we go
8 through these, and we'll count them up, if you want to take
9 the time to go through them and count them for me? I come
10 up with 19. You can tell me if you come up with something
11 different.

12 A. Okay, there are 19 separate entries here which I
13 think have separate case numbers that are listed on what
14 you -- the report that you just handed me.

15 Q. All right. So the record is clear on this, is it
16 accurate to say that in the last 18 months McElvain has
17 filed 19 compulsory pooling applications with the Division?

18 A. By this record I would say yes, that probably
19 would be the case. But I have not looked at each one of
20 these, I haven't looked to see if any of these were
21 dropped, I haven't looked to see if any of these were on
22 new wells or on some of the wells that had been just
23 recompleted in a separate zone, it's the same party, same
24 application, different zone. I mean, I couldn't tell you
25 right now. But there are 19 cases that are listed on this

1 report, yes.

2 Q. Right, and earlier I believe you testified that
3 with your various -- McElvain's various acreage positions
4 in the San Juan Basin you don't always orient your Blanco-
5 Mesaverde wells on a laydown basis; isn't that correct?

6 A. That's correct, I --

7 Q. And we can go through here and see some of the
8 instances of that. For instance, in Case 12,452 you
9 proposed an east-half unit there?

10 A. Yes, sir.

11 Q. And in Case 12,453 you proposed a west-half unit?

12 A. Uh-huh.

13 Q. Same in Case 12,484, although I note, like you
14 say, that's the pooling of a lower formation there for the
15 Cougar Com 4 Number 2; do you recall that?

16 A. Right, yeah. And that, by the way, is just the
17 offset 320 to the same application you just recited, so
18 it's kind of a redundant thing, but yeah --

19 Q. Okay.

20 A. -- it's the other side of the section.

21 Q. Sure. And here, Case 12,633, you have a west-
22 half unit in that instance, do you not?

23 A. There is a west-half unit, yes.

24 Q. And in Case --

25 A. Also again, I will recite, that's the same

1 spacing unit as the one you just recited, though.

2 Q. Okay.

3 A. That's just the infill well.

4 Q. Well, let's talk about some --

5 A. If you want to count the numbers, I don't know
6 what you're heading toward, but I'm just pointing that out.

7 Q. Well, let's look at Case Number 12,693. You
8 asked for an east-half unit there?

9 A. Yes.

10 Q. And then look at Case 12,688. You requested a
11 505.20-acre proration unit for a Blanco-Mesaverde well?

12 A. Yes, and I might add, that is not a compulsory
13 pooling application, by the way.

14 Q. Thank you for pointing that out.

15 A. And I don't know, there may be some other ones in
16 here that are not compulsory pooling applications, they may
17 be strictly spacing requests. I'm not sure because I
18 haven't had time to review this, so you're asking questions
19 and I'm doing my best to answer them from what I can see --

20 CHAIRMAN WROTENBERY: Mr. Hall, where are we
21 going with this?

22 MR. HALL: Well, if you'll allow me to tie up,
23 we've almost completed --

24 CHAIRMAN WROTENBERY: Thank you.

25 MR. HALL: -- this exhibit.

1 Q. (By Mr. Hall) Then Case Number 12,690, you
2 requested a west-half unit there?

3 A. Yes.

4 Q. See that? And then again the same for Case
5 12,633, west-half unit for Section 4 there?

6 A. Same Section 4, yes.

7 Q. Yeah. And then you came back and requested a
8 640-acre unit for that same section in Case 12,633?

9 A. Okay, and that is here again -- well, no, that
10 may be compulsory pooling plus spacing. I don't know.
11 Spacing, that's all it is. There's no compulsory pooling
12 in there.

13 Q. So we're clear on this, McElvain does not always
14 follow the geologic trend when orienting its spacing units
15 on a standup or laydown basis?

16 A. Mr. Hall, I'll say again, I am not a geologist,
17 and I'm not going to sit here and testify the trends,
18 geologic or otherwise, or engineering. I did testify
19 earlier that there are occasions where the spacing is
20 applied for on north-south spacing patterns, and there are
21 times that it's applied for on south-half spacing patterns,
22 and there's a multitude of different criteria that are
23 taken into account when those are applied for.

24 All I can speak to is, when land is requested to
25 make a recommendation with regard to ownership, risk

1 mitigation is one of the very important things that land
2 takes a look at, yes. All those things, as well as an
3 orderly development by the parties across an entire section
4 or across an entire area, I give a recommendation.

5 But I cannot sit here and tell you that doing
6 north, south, east, west is against or in favor of the
7 geologic trend in any particular area. I mean, I won't
8 answer it, and I couldn't even if I tried. It probably
9 would be wrong.

10 Q. Now, in any of the other compulsory pooling
11 applications that McElvain brought shown on Exhibit B-1,
12 was risk-mitigation a consideration in those cases?

13 A. It's a consideration in every one of these.

14 Q. All right. Earlier you discussed Simmons' well
15 proposals with respect to completions in the Mesaverde, and
16 I believe you suggested that it would be possible for
17 Simmons to establish a 160-acre Blanco-Mesaverde unit
18 for --

19 A. No, sir, I never said that.

20 Q. All right. Is it true that McElvain opposes the
21 creation of 160-acre nonstandard proration units for the
22 Blanco-Mesaverde?

23 A. McElvain is not in favor of applying for any
24 nonstandard application of the rules and regulations that
25 the Commission has set forth, merely to satisfy the desire,

1 you know, of a party because of the lack of being able to
2 jointly agree to something. So no, we have not supported
3 that.

4 MR. HALL: That's all I have, madame Chairman.

5 CHAIRMAN WROTENBERY: Thank you, Mr. Hall.

6 MR. HALL: I would move the admission of Exhibit
7 B-1 and ask the Commission to take administrative notice of
8 its docket, this compilation of McElvain Applications
9 appearing in the last 18 months, and Exhibits B-2 and B-3
10 can be authenticated by counsel.

11 MR. FELDEWERT: Well, I mean, B-1 is apparently
12 -- I'm not sure what it's supposed to represent. I mean,
13 it is represented as a printout of the OCD docket. I'm not
14 sure why we need it as an exhibit. I mean, the OCD docket
15 is as it is. But I guess I don't have an objection if we
16 want to have a printout of the OCD docket as an exhibit.

17 Exhibits B-2 and B-3, I think B-2 is certainly a
18 letter from me to Mr. Hall.

19 I'm not sure that B-3 satisfies our hearsay rules
20 unless we put Mr. Hall on the stand and have him testify
21 about the discussions that occurred prior to and during
22 that meeting. So I guess I object to B-3 on hearsay
23 grounds.

24 MR. HALL: There's an exception when the author
25 is present in the room.

1 MR. FELDEWERT: But I will withdraw my objection
2 to B-3.

3 CHAIRMAN WROTENBERY: Okay, D.J. Simmons Exhibits
4 Number B-1 through B-3 are admitted into the record.

5 What did you say, I'm sorry, about taking notice
6 of the --

7 MR. FELDEWERT: Well, B-1 is --

8 CHAIRMAN WROTENBERY: If you've got B-1 as the
9 summary, do you need --

10 MR. HALL: Yes, I think you can also take
11 administrative notice of your own docket.

12 CHAIRMAN WROTENBERY: Do we -- I don't see any
13 reason to do that.

14 MR. HALL: You don't need to, if that's been
15 admitted.

16 CHAIRMAN WROTENBERY: Yeah. At this point I'll
17 also rule on the objection to the entry into the record of
18 Exhibit Number 15. Does that objection stand?

19 MR. HALL: I'll withdraw that objection, I just
20 wanted to make sure it was complete.

21 CHAIRMAN WROTENBERY: Okay, then the Exhibit
22 Number 15 -- that's McElvain's Exhibit Number 15 -- is
23 admitted into the record.

24 Mr. Feldewert, did you have some redirect?

25 MR. FELDEWERT: Just one question, or two

1 questions.

2

REDIRECT EXAMINATION

3

BY MR. FELDEWERT:

4

Q. Has McElvain been very active in the Lindrith
5 area?

6

A. Yes, McElvain has been actually, to my knowledge,
7 the only operator that has been pursuing the testing and
8 developing of the Mesaverde formation in this area, on an
9 active basis.

10

Q. And is that Rio Arriba County?

11

A. That's Rio Arriba County.

12

Q. Have you run into, in your experience in this
13 Lindrith area, various title problems and issues with this
14 property in Rio Arriba County?

15

A. In a particular very structured area, yes, an
16 inordinate amount of issues and title problems and parties
17 who frequently and without fail refuse to respond or did
18 not respond and stayed incognito, with no phone number
19 available, no response to any inquiry, and on occasion
20 accepting mail and on occasion not accepting mail, et
21 cetera, et cetera, which caused us over the course of the
22 past three years to unfortunately appear before the
23 Commission more than one would ever hope to have to do.

24

Q. And there are parties that -- and I'm assuming in
25 that area, you haven't been able to locate?

1 A. Yes, and subsequently been able to locate, and
2 even though force-pooling applications had been instituted
3 or initiated, resolution after the application of the force
4 pooling was reached, resolution between the parties with
5 the few exceptions of the parties that, you know, would
6 just refuse to respond completely.

7 Q. Were your efforts to reach an agreement with the
8 working interest owners in the south half of Section 25 for
9 this case any different than what -- the good-faith efforts
10 that you undertook in all of these other compulsory pooling
11 cases and orders that were issued by the Division?

12 A. Well, any difference would be to the side that
13 there was more effort made and more time given to the
14 parties to evaluate and consider the proposal than any of
15 the other applications on that docket list.

16 MR. FELDEWERT: Okay, that's all I have. Thank
17 you.

18 CHAIRMAN WROTENBERY: Thank you.

19 And I apologize, Commissioner Bailey. You had a
20 question?

21 COMMISSIONER BAILEY: Just one.

22 EXAMINATION

23 BY COMMISSIONER BAILEY:

24 Q. Several times I heard you say that an east-west
25 spacing unit would limit McElvain's ability to develop the

1 Mesaverde in Section 25. Are you saying that if the
2 Commission rules that an east-west unit is proper, that
3 McElvain would be unable to develop the Mesaverde at all in
4 Section 25?

5 A. Not in Section 25, but in the east half of
6 Section 25 our ability to be able to propose and in any way
7 name or even jointly control the timing of when the
8 Mesaverde would be completed, drilled or produced would
9 almost prevented.

10 I mean, you know, we would always have the
11 ability as a nonoperator and as a joint working interest
12 owner to propose a well in the east half, okay. But on
13 east-half spacing and west-half spacing independent of each
14 other, the proposal in the east half would be made to the
15 then named operator who would be the only party designated
16 with the authority to drill a well.

17 And by the admission of D.J. Simmons, if they
18 were named operator, their objectives are Gallup-Dakota,
19 and Mesaverde is a secondary, if and when they saw it as a
20 potential objective economically, and so we would --

21 Q. But McElvain would not be prevented from
22 developing the Mesaverde in the west half?

23 A. Not in the west half, no --

24 Q. Okay, that's all --

25 A. -- we would not be prevented from developing --

1 Q. -- thank you for your statement --

2 A. -- the Mesaverde in the west half.

3 Q. -- but I heard you say it for the entire section
4 several times.

5 A. We would not be able to develop the entire
6 section, okay, on the same pattern across the entire
7 section. We would not be able to develop the east half.

8 So the west half, no, would always be available
9 to McElvain on either scenario.

10 COMMISSIONER BAILEY: Thank you.

11 CHAIRMAN WROTENBERY: Commissioner Lee, did you
12 have any questions?

13 COMMISSIONER LEE: No.

14 CHAIRMAN WROTENBERY: Anything else?

15 MR. HALL: (Shakes head)

16 MR. FELDEWERT: No.

17 CHAIRMAN WROTENBERY: Thank you, Ms. Binion, for
18 your testimony.

19 Mr. Feldewert and Mr. Hall, we would like to
20 continue on. The Commission has ordered lunch in, and it
21 probably should get here in another 20 or 30 minutes or so,
22 so we'll proceed until our lunch arrives.

23 MR. FELDEWERT: Fine. We would call Jane Estes-
24 Jackson.

25 CHAIRMAN WROTENBERY: We do have a request for

1 both Mr. Feldewert and Mr. Hall. We've detected some
2 repetition and redundancy both on direct and on cross, and
3 in the interest of time if we could move it along, we've
4 still got five witnesses, and the Commission has other
5 business to take up this afternoon, so --

6 MR. FELDEWERT: I will be as quick as possible.

7 CHAIRMAN WROTENBERY: -- we need to try to move
8 it along. Cover the issues fully, but move it along.

9 MR. FELDEWERT: Certainly.

10 CHAIRMAN WROTENBERY: Thank you.

11 JANE ESTES-JACKSON,

12 the witness herein, after having been first duly sworn upon
13 her oath, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. FELDEWERT:

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

18 A. Jane Estes-Jackson, 5265 Beech Street, Arvada,
19 Colorado, 80002.

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

22 A. I'm employed by McElvain Oil and Gas as a
23 geologist.

24 Q. And did you previously testify before the New
25 Mexico Oil Conservation in this case and had your

1 credentials as an expert in petroleum geology accepted and
2 made a matter of public record?

3 A. Yes.

4 Q. Are you familiar with Order R-11,663, which was
5 entered by the Oil Conservation Division in Case Number
6 12,635?

7 A. Yes.

8 Q. And have you conducted a geologic study of the
9 area that is the subject of that order?

10 A. Yes, I have.

11 MR. FELDEWERT: Members of the Commission, are
12 the witness's qualifications acceptable?

13 MR. HALL: No objection.

14 CHAIRMAN WROTENBERY: Yes, Ms. Jackson is
15 accepted as an expert.

16 Q. (By Mr. Feldewert) Ms. Jackson, what is the
17 target of McElvain's proposed recompletion?

18 A. The Mesaverde formation and the Blanco-Mesaverde
19 Gas Pool.

20 Q. And I want you to turn to McElvain Exhibit Number
21 16, I want you to identify and explain that exhibit to the
22 Commissioners, please.

23 A. McElvain Exhibit Number 16 is a net sand isopach
24 map of feet greater than 8-percent porosity for the entire
25 Mesaverde formation.

1 What it shows, in my opinion, is a very strong
2 east-to-west trend that goes through Section 25 with good,
3 thick, reservoir-quality sand throughout the entire
4 section. As you move both to the north and to the south
5 this trend thins. There's no substantial increase in sand
6 between the east half and the west half of Section 25.

7 And I think this exhibit shows that there's as
8 good a chance of a successful Mesaverde well with the
9 existing wellbore in Section 25 as with any new well in
10 Section 25.

11 Q. Okay, why don't you turn to McElvain Exhibit
12 Number 17, identify that and review that for the
13 Commission, please?

14 A. McElvain Exhibit Number 17 is also a net sand
15 isopach map of feet greater than 8-percent porosity.
16 However, this map is different in that it's limited to only
17 the Menefee and Point Lookout intervals of the Mesaverde.
18 I have excluded the Cliff House sandstone, and that is
19 because our proposed recompletion target in the Naomi well
20 is the Menefee and Point Lookout intervals, and we feel
21 like those are the best reservoir intervals in this
22 particular well.

23 As you can see from this map, it also shows a
24 very strong east-west trend in the southern portion of the
25 township, including Section 25.

1 Q. Now, where's Section 25? Is this on the right-
2 hand side?

3 A. Yes, to the far right-hand side.

4 Q. Okay. So the difference between -- What's the
5 difference, then, between Exhibit 16 and 17?

6 A. The difference is that Exhibit 16 includes the
7 Cliff House sandstone and Exhibit 17 does not.

8 Q. Okay. In your opinion, is the location of the
9 existing wellbore in Section 25 situated to drain Mesaverde
10 reserves -- is it better situated to drain Mesaverde
11 reserves from the south half of Section 25 or the west half
12 of Section 25?

13 A. The south half of Section 25.

14 Q. And why is that?

15 A. Because I think the trend goes east-west, and I
16 think the orientation of the sandbody is the primary
17 control on the drainage pattern in the Mesaverde.

18 Q. In your opinion, will the use of the existing
19 wellbore in Section 25 afford the interest owners in the
20 south half of that section the opportunity to recover and
21 receive without unnecessary expense their just and fair
22 share of the gas underlying their property?

23 A. Yes.

24 Q. Were you present at the Examiner Hearing that
25 took place in May of this year?

1 A. Yes, I was.

2 Q. And were you present for the testimony of D.J.
3 Simmons' geologist, Ms. Gusek?

4 A. Yes, I was.

5 Q. And did you review the exhibits that were offered
6 by D.J. Simmons to the Examiner at that hearing?

7 A. Yes, I have.

8 Q. Okay. Now, what are your observations with
9 respect to those exhibits?

10 A. Well, my observations are that the exhibits that
11 D.J. Simmons presented at the hearing in May in regard to
12 the Naomi well relied primarily on examples from the
13 literature. In my opinion, none of these papers that were
14 presented specifically address fracturing in the Mesaverde
15 formation in Section 25. So I don't think -- In my
16 opinion, they're not applicable.

17 We can go through them as an example, if you
18 would like.

19 Q. Let me ask you quickly, do you have -- I'm going
20 to hand you -- is D.J. Simmons Exhibit 24 that was provided
21 to the Commission?

22 A. Yes.

23 Q. Okay. Now, is Exhibit 24 the literature that you
24 were just referencing?

25 A. Yes, it is.

1 Q. Okay. Would you then continue with your
2 discussion?

3 A. Well, in the first paper, SPE Paper Number 60295,
4 which I believe is the first one in their exhibit, if you
5 turn to page 2 of that exhibit, on the right-hand side of
6 the page, right under the heading that says "Geostatistical
7 Study", it says that the areas that were studied were
8 Township 29 North, 7 West, and Township 26 North, 5 West.
9 That's approximately 15 to 20 miles away from Section 25 of
10 Township 25 North, 3 West. I don't think that you can
11 extrapolate the findings in this study to Section 25.

12 COMMISSIONER LEE: I agree with you. This is
13 just purely the exercise of one of the graduate students,
14 so you're right.

15 THE WITNESS: Thank you.

16 The next paper that I have is by Alan
17 Emmendorfer. It's titled "Fracture Orientation: Use of the
18 Dipmeter Type Fracture Log". This paper was written about
19 the Gavilan-Mancos Pool, which is just east of the Naomi
20 well. It's a great paper but it only addresses the Gallup
21 or the Mancos. It has no bearing on the Mesaverde in
22 Section 25, in my opinion.

23 The next item that I'm looking at is just simply
24 an abstract by Harry TerBest on open fractures, fracture
25 orientations. This is just a very general -- some general

1 observations over some work that was done somewhere in the
2 San Juan Basin. Once again, because there's no specific
3 information, I don't think that you can extrapolate it to
4 Section 25 in the Mesaverde.

5 And the last paper that I'm looking at is SPE
6 Paper Number 25466, "Determination of Hydraulic Fracture
7 Direction, San Juan Basin, New Mexico". If you will turn
8 to the second page of that exhibit, in the left-hand
9 column, the third paragraph down, it specifically says that
10 "This field study was undertaken in four wells in the San
11 Juan Basin...near Cuba", New Mexico. Once again, that's
12 probably 15 miles from the Naomi well in Section 25. And
13 again, this paper is only talking about the Dakota
14 formation. It has nothing to do with the Mesaverde.

15 Q. (By Mr. Feldewert) Okay, now let me show you
16 what was marked as D.J. Simmons 23. It's a larger map.

17 A. Yes.

18 Q. Do you have a copy of that?

19 A. Yes, I do.

20 Q. Were you present for the testimony on this
21 exhibit that was offered by D.J. Simmons' geologist?

22 A. Yes, I was.

23 Q. Okay, what are your observations about this
24 exhibit?

25 A. This is a montage, and the map that you see at

1 the top of the page, which is a structure map, this was
2 taken from that paper by Alan Emmendorfer in regard to the
3 Gavilan-Mancos Oil Pool. And once again, this is in regard
4 to the Mancos or the Gallup; it has no bearing on the
5 Mesaverde formation.

6 The two wells that are cited at the bottom of the
7 page as an example, again, those have not been completed in
8 the Mesaverde formation. So I feel that this is irrelevant
9 to the Mesaverde formation in the Naomi well.

10 Q. Do you know where the two Meridian wells that are
11 referenced in the bottom were completed?

12 A. I believe they were completed in the Gallup.

13 Q. Okay, all right.

14 COMMISSIONER LEE: One thing I want to point out
15 is, this SPE paper, whenever they have a number it's not a
16 refereed paper. So it's not going through a very serious
17 referee paper.

18 So whenever you want to present an SPE -- Suppose
19 right now I want to present an SPE number there. I just
20 submit the number and I can present it.

21 So next time, if anybody wants to refer to an SPE
22 number, you'd better say this is not a refereed paper.

23 Q. (By Mr. Feldewert) Okay. Now, Ms. Jackson, I'm
24 not sure you testified to this. How were your isopach
25 exhibits prepared? And I'm talking about McElvain Exhibits

1 16 and 17.

2 A. My isopach maps were prepared from porosity logs
3 on all existing Mesaverde penetrations in the area. At
4 McElvain we feel that these isopach maps provide a pretty
5 good indication of the reservoir trend and we use them to
6 high grade our drilling locations.

7 Q. I'm sorry, did you testify that McElvain has
8 found that the isopachs provide a pretty good indication of
9 reservoir --

10 A. We feel that they do, yes.

11 Q. Okay, do you use these isopachs to prioritize
12 McElvain's drilling locations in the Lindrith area?

13 A. Yes, we do.

14 Q. How many Mesaverde wells has McElvain drilled in
15 the Lindrith area for the San Juan Basin?

16 A. Since 1998, McElvain has drilled 19 wells in the
17 Lindrith area. To date, 14 of those have been completed in
18 the Mesaverde, resulting in a total of 35 completed zones.

19 In addition to that, we've also recompleted the
20 Mesaverde in five existing wellbores.

21 Q. Do you know, Ms. Jackson, how many Mesaverde
22 wells D.J. Simmons has drilled in the Lindrith area?

23 A. To the best of my knowledge, they have not
24 drilled any in this area.

25 Q. Would it be accurate to say that rather than

1 forming your opinion based on literature you used the well
2 data and McElvain's drilling experience in the San Juan
3 Basin?

4 A. Yes, I feel that literature can provide good
5 examples or good models to go off of, but in the end, if
6 you have actual well data, it's better to rely on that
7 where you have it.

8 MR. FELDEWERT: Now, I'm going to show you -- I
9 believe that there -- I thought there was an exhibit that
10 D.J. Simmons introduced that had an isopach sand map. Do
11 you have an Exhibit 25, Scott?

12 MR. HALL: Yeah.

13 MR. FELDEWERT: Because I don't have one in my
14 book.

15 Does the Commission have D.J. Simmons' Exhibit
16 25?

17 CHAIRMAN WROTENBERY: Yes, we do.

18 Q. (By Mr. Feldewert) Ms. Jackson, have you had the
19 opportunity to look at what has been marked as D.J.
20 Simmons' Exhibit 25?

21 A. Yes, I have.

22 Q. What are your observations about that exhibit?

23 A. Well, this is also an isopach map. They're
24 calling it a net pay map. The difference between this map
25 and my map is that they're limiting their map to the Point

1 Lookout formation only, and they're using a resistivity
2 cutoff rather than a porosity cutoff.

3 Q. What does it show about the sand trend in the
4 area?

5 A. In my opinion it shows an east-west sand trend.

6 Q. Okay. Based on your well control data and
7 McElvain's experience with Mesaverde wells in the Lindrith
8 area, do you have any evidence that the drainage in that
9 area is different from what is reflected by the sandbodies
10 in that area?

11 A. No.

12 Q. And that would be an east-to-west drainage trend?

13 A. In Section 25, it's east-to-west.

14 Q. Okay. In your opinion, will the re-entry of the
15 existing wellbore in Section 25 to test the Mesaverde
16 formation be in the best interests of conservation, the
17 prevention of waste and the protection of correlative
18 rights?

19 A. Yes.

20 Q. Were McElvain Exhibits Number 16 and 17 prepared
21 by you or compiled under your direction and supervision?

22 A. Yes, they were.

23 MR. FELDEWERT: At this point I would move into
24 evidence McElvain Exhibits Number 16 and 17, as well as
25 D.J. Simmons' Exhibit Number 25.

1 MR. HALL: No objection.

2 CHAIRMAN WROTENBERY: Okay, McElvain Exhibits 16
3 and 17 and D.J. Simmons Exhibit Number 25 are admitted into
4 the record.

5 MR. FELDEWERT: That's all I have, thank you.

6 CHAIRMAN WROTENBERY: Mr. Hall?

7 CROSS-EXAMINATION

8 BY MR. HALL:

9 Q. Ms. Jackson, if we could refer to your Exhibit
10 16, that sand map doesn't tie into any nearby Mesaverde
11 production, does it?

12 A. This map is a smaller segment of a much larger
13 map that covers approximately nine townships in this area
14 and uses 350 to 400 well logs. So what you're seeing here
15 is just a small representation. If you could see the whole
16 map, yes, it does tie into existing Mesaverde production.

17 Q. And how far away is that? Is that nine sections
18 away, you say?

19 A. Probably the closest production is two to three
20 miles away.

21 Q. All right. On your Exhibit 17, let's see if we
22 can understand what this shows here. The way you've
23 contoured Section 25 there, what is your data point to the
24 east, Section 25?

25 A. There are some existing wells -- There's a well

1 in Section 30 of Township 25 North, 2 West, and there are
2 additional wells in that township to the east that are not
3 shown on this map.

4 Q. Okay. When you drew your isopach contours, did
5 you include both the fluvial Menefee with the marine Point
6 Lookout to evaluate your trends?

7 A. Yes, I did.

8 Q. Why did you do that?

9 A. I've also evaluated them separately. I lumped
10 them together in this map because those are the two one
11 that we're completing.

12 Q. Did you have any dipmeter data to help determine
13 the orientation of the Mesaverde --

14 A. Not in the Mesaverde in this area.

15 Q. All right. And again, what is your specific
16 target formation?

17 A. The Menefee and Point Lookout intervals of the
18 Mesaverde formation.

19 Q. All right. Again, on your Exhibit 17, if you'll
20 refer to what appear to be two Mesaverde tests, the
21 northwest quarter of Section 35 there and the northeast
22 quarter of Section 34 there, do you locate those on your
23 exhibit there?

24 A. Yes.

25 Q. Do you know whether those wells are productive or

1 not?

2 A. The Myers Number 1 well, which is in the
3 northwest of 35, produced a small amount from the Mesaverde
4 before it was completed in the Chacra. I'm not sure about
5 the other well.

6 Q. Do you know if the Myers well tested wet in the
7 Mesaverde?

8 A. I don't know that it tested wet, it just wasn't
9 very high volume gas.

10 Q. Okay, and you don't know anything about the
11 Schalk well in Section 34; is that right?

12 A. Not off the top of my head, no.

13 Q. All right. Well, what leads you to conclude from
14 Exhibit 17 that the Naomi will be productive in the
15 Mesaverde?

16 A. We actually looked at some wells in Section 27.
17 That was our -- and also up in Section 17, and that was the
18 basis for our -- and also combined with our experience in
19 the Lindrith area to the east, we thought that this would
20 be a good candidate for recompletion in the Mesaverde.

21 Q. By Exhibit 17 are you trying to establish some
22 sort of correlation between sand thickness and
23 productivity?

24 A. It's not a linear correlation, it's just a
25 general rule of thumb that we use, but there are other

1 factors.

2 Q. All right, but -- so the answer to my question,
3 to a certain degree, anyway, you are trying to establish
4 that correlation?

5 A. It's not a direct correlation, it's only a very
6 general one.

7 Q. I see. Where on Exhibit 17 is the best Mesaverde
8 production shown?

9 A. It's further -- It's up in the northwest. There
10 are some pretty good wells in Section 17 and 18 and further
11 north of that.

12 Q. But yet the sand is contoured thinner in those
13 areas, correct?

14 A. Yes.

15 Q. Let's see, you show a well in the northwest
16 northwest of Section 29 there on the thickest portion of
17 the sand. Do you know what the production from that well
18 was in the Mesaverde?

19 A. I believe that that well is an old well that's
20 been recently recompleted in the Mesaverde and in the past
21 five years has made approximately half a BCF of gas.

22 Q. Do you still have my exhibit notebook in front of
23 you there?

24 A. I think so.

25 Q. Yes.

1 MR. FELDEWERT: Do you want her to look at
2 Exhibit 25?

3 MR. HALL: I want you to look at Exhibit 19.

4 MR. FELDEWERT: Do you have a copy for her?
5 Scott? Or do you have a notebook --

6 MR. HALL: Why don't you just give her that one?

7 Q. (By Mr. Hall) Can you locate that well in the
8 northwest northwest of 29 on Simmons' Exhibit 19 there?

9 A. Yes.

10 Q. Does that reflect the cums for that well?

11 A. Yes.

12 Q. Can you tell us what they are for the record?

13 A. Approximately -- It's 499,338 BCF -- MCF of gas,
14 and 538 barrels of oil.

15 MR. HALL: Okay. Now look at -- May I have that
16 back, please, briefly?

17 CHAIRMAN WROTENBERY: Okay, just for the record
18 can we clarify? You said Section 29, and I think what you
19 were referring to is Section 19.

20 MR. HALL: I'm sorry, I do stand corrected.

21 Q. (By Mr. Hall) Let me hand you Exhibit 19 again,
22 Simmons 19. Okay, I think in the confusion I spoke of
23 Section 19 because I was referring to our Exhibit 19.

24 Refer again to the production for the well in
25 Section 29.

1 A. 47,636 MCF of gas and 2507 barrels of oil.

2 Q. All right. Now, let's look at the production
3 from the well in the southwest quarter of Section 18. Do
4 you see that there?

5 A. Uh-huh.

6 COMMISSIONER LEE: Wait a minute. Where is it?

7 Q. (By Mr. Hall) Again, if you will refer to
8 Exhibit 17, McElvain Exhibit 17, there's a well in the
9 southwest quarter of Section 18. And if you refer to
10 Simmons' Exhibit 19, how do the thickness and cum
11 production compare to the well in Section 29?

12 A. I don't understand your question.

13 Q. Well, let's compare the production for the well
14 in the southwest quarter of Section 18. If you'll look at
15 Simmons Exhibit 19 --

16 A. Yeah.

17 Q. -- do you have that information there?

18 A. Yes, I do.

19 Q. Now, let's compare that well with the production
20 with the -- from the well in Section 29. Do you have both
21 those figures in front of you?

22 A. Yes.

23 Q. Which produced more?

24 A. The one in 18.

25 Q. All right. And let's look at your thickness map

1 again, your Exhibit 17. How does the thickness compare in
2 Sections 18 and 29? Which is thicker?

3 A. It's thicker in 29.

4 Q. And there's better production in Section 18,
5 correct?

6 A. I said there's not a direct correlation, there
7 are other things to consider. For example, what sort of
8 completion they did, what exact zones they completed. You
9 don't have any of that information in front of me. We
10 don't know how long these wells have been on. It's not a
11 direct correlation.

12 Q. Can you tell us why you chose an 8-percent cutoff
13 for your isopach maps?

14 A. That's typically the cutoff that we use when we
15 decide which zones to perforate.

16 Q. And by choosing that 8 percent, what does that
17 buy you? What zones are you going to reflect on your
18 isopach as a result?

19 A. The zones with the highest porosity.

20 Q. All right, do you account for water saturation at
21 all?

22 A. We do not water-saturation calculations.

23 Q. All right. By the way, are you presenting a well
24 log for the Mesaverde in the area, or even a type log for
25 the Mesaverde?

1 A. No.

2 Q. Why aren't you?

3 A. Why should I?

4 Q. It's a Mesaverde pooling Application.

5 A. Public information.

6 Q. You're not presenting one?

7 A. No.

8 Q. And your reasons for not presenting one are what?
9 You don't feel it's necessary?

10 A. Exactly.

11 Q. If you were to map an existing trend, wouldn't it
12 be more precise to utilize bulk hydrocarbon pay as a basis
13 for mapping that trend, rather than an 8-percent cutoff?

14 A. What is hydrocarbon pay? How do you define it?

15 Q. Well, how do you define it?

16 A. Every operator defines it differently, and we're
17 still working on that in our office.

18 Q. Yeah, how do you define it currently?

19 A. Currently we define it as 8-percent porosity.

20 Q. You agree, don't you, that fracture patterns will
21 influence the direction of drainage for the Naomi Com
22 Number 1 well, don't you?

23 A. Not in the Mesaverde, I do not agree.

24 Q. Do you agree that there are fracture patterns in
25 the area?

1 A. There's no evidence of fracturing in the
2 Mesaverde in Section 25, in my opinion.

3 Q. And in other formations?

4 A. In the Gallup.

5 Q. And is it your testimony that that will have no
6 influence on the drainage for the Naomi Com Number 1?

7 A. That is my testimony.

8 Q. The fracture patterns that you know to exist in
9 the Gallup, are they oriented on an east-west or north-
10 south basis?

11 A. It varies, depending on where you are.

12 Q. In the area of the Naomi Com Number 1?

13 A. I don't think we can say conclusively which way
14 they go. We do not have any evidence.

15 Q. All right.

16 A. The log that we have does not show any evidence
17 of fracturing.

18 Q. Do you have an opinion whether or not the
19 fractures would run in a north-south direction or in an
20 east-west direction?

21 A. Where?

22 Q. In the area of the Naomi Com Number 1.

23 A. I don't have an opinion as to which way they
24 would run because I don't have enough information to make
25 that judgment.

1 Q. All right. Earlier you testified you believe
2 that the Naomi Com would drain reserves from the south-half
3 unit, correct?

4 A. Correct.

5 Q. What's the basis for that, how will that well
6 drain reserves from the southeast quarter of the section
7 from its unorthodox location?

8 A. The porosity trends are east-west.

9 Q. Is that the extent of the basis for your opinion?

10 A. Yes, it is.

11 Q. Is it your understanding from your employment as
12 a geologist at McElvain that geology was not the primary
13 consideration for dedicating a south-half unit to this
14 well?

15 A. I was not involved in that decision, so I cannot
16 answer that question.

17 Q. Let me refer you to your testimony from the
18 Division Examiner Hearing on May 17th, 2001. At page 32,
19 beginning on line 24, I ask you this question:

20
21 Question: Is it your understanding from your
22 employment as a geologist at McElvain that geology was
23 not the primary consideration for dedicating a south-
24 half unit to this well?

25 Answer: Yes.

1 Do you recall giving that answer?

2 A. Yes.

3 MR. HALL: Nothing further of this witness.

4 CHAIRMAN WROTENBERY: Commissioner Bailey?

5 EXAMINATION

6 BY COMMISSIONER BAILEY:

7 Q. From your work in the San Juan Basin, have you
8 seen correlations between fracture systems of the different
9 formations?

10 A. Because the lithologies between the Mesaverde and
11 the Gallup are so different -- I think it's widely accepted
12 that the Gallup and Mancos are fractured because they are
13 shales. I don't think it's as conclusive in something like
14 the Mesaverde, which is much shallower, it's not cemented
15 as tightly. And so therefore I don't think fracturing -- I
16 don't think you can make that assumption that just because
17 the Gallup is fractured that it carries up into the
18 Mesaverde.

19 Yes, there may be some fracturing, but it's not
20 as significant as it is with the deeper formations.

21 Q. Are there any major lineaments that go through
22 the Lindrith area that would have an influence on fracture
23 systems?

24 A. Yes, and primarily what we see in the Lindrith
25 area is a conjugate set of northeast-southwest trends and

1 then northwest-southeast trends, at almost a 90-degree
2 angle, from the surface work that we've done and aerial
3 photos and things like that.

4 But we're not sure -- We have not been able to
5 tie anything like that into our Mesaverde production in the
6 Lindrith area. So in my opinion, fracturing does not
7 influence the Mesaverde like it does the deeper formations.

8 Q. I haven't heard a depth estimate for the
9 Mesaverde in these wells.

10 A. Somewhere between 5300 feet, would be the top of
11 the Cliff House, to -- down to the base of the Point
12 Lookout would be around 5800, 6000 feet.

13 COMMISSIONER BAILEY: That's all I have. Thank
14 you.

15 CHAIRMAN WROTENBERY: Commissioner Lee?

16 EXAMINATION

17 BY COMMISSIONER LEE:

18 Q. What's the major mechanism for Mesaverde gas to
19 flow? Is it through the fracture or through the matrix?

20 A. My opinion is that it's primarily matrix. And
21 certainly when you do hydraulic fracturing it connects the
22 porosity. But I feel that the matrix porosity is --

23 Q. So you don't believe it's a natural fracture
24 system?

25 A. I don't believe that it's significant in the

1 Mesaverde.

2 Q. So does anybody say this is definitely, is a
3 natural fracture reservoir?

4 A. I haven't seen anything that definitely says
5 that.

6 Q. And suppose you have an orientation of your flow
7 pattern that coming with the thickness theory. When your
8 reservoir is in a different shape, when you have a
9 different shape, when you bend it like this, are they going
10 to introduce you to natural fracture that way?

11 A. You could. I think that if there is natural
12 fracturing, it's locally influenced by whatever structural
13 features are there.

14 Q. So your conclusion is regardless -- suppose if we
15 have a natural fracture there, and in this area the
16 permeability is -- dramatic differences. It depends on
17 natural fracture, if you have a natural fracture there?

18 A. It could certainly influence it, but I don't know
19 to what degree it would influence it.

20 Q. And nobody knows?

21 A. I don't think anyone knows for this particular
22 area for the Mesaverde.

23 Q. Even other areas?

24 A. Certainly studies have been done in other areas.
25 I believe one of the papers cited earlier was a study that

1 was conducted for infill drilling.

2 COMMISSIONER LEE: No further questions.

3 CHAIRMAN WROTENBERY: Redirect?

4 MR. FELDEWERT: No.

5 MR. HALL: If I might, in response to a question
6 from Dr. Lee. It opened up an area to ask a brief question
7 about.

8 CHAIRMAN WROTENBERY: Yes.

9 FURTHER EXAMINATION

10 BY MR. HALL:

11 Q. Ms. Jackson, you opined about the effects of
12 hydraulic fracturing in response to a question from Dr.
13 Lee. What are the prevailing stress trends in the subject
14 area?

15 A. I don't think we know that in Section 25. I
16 think we only know a general -- for the Mesaverde, the
17 generalized stress trends, because you have further east
18 what's called the Gavilan Dome in the Gavilan area. I
19 think that influences this area, could influence it more.
20 But I think there are local perturbations here that we
21 don't know about.

22 Q. Well, tell us what you know is the general
23 orientation of the stress trends in this area, based on
24 what you know.

25 A. Based on what I know, there is a conjugate set of

1 northeast-southwest and northwest-southeast trends.

2 Q. All right. Is there any east-west, pure east-
3 west stress trend?

4 A. Not that I know of.

5 Q. So when McElvain fracture-stimulates its well,
6 what do you anticipate the direction the fracture will
7 take?

8 A. I think that's a question that's better addressed
9 to our engineer.

10 Q. Well, you opined on it. I want to know what you
11 know about that, if you can answer that question.

12 A. In my opinion, I think it would follow the
13 porosity trend and go east-west.

14 Q. And again, I understand it, it's your contention
15 that the porosity matrix is the predominant factor in
16 determining --

17 A. Yes.

18 Q. -- drainage flow. Isn't it true that the Blanco-
19 Mesaverde is designated as a tight sand gas reservoir?

20 A. Yes.

21 MR. HALL: Nothing further.

22 MR. FELDEWERT: No questions.

23 CHAIRMAN WROTENBERY: Thank you for your
24 testimony in this case.

25 And we will take a break for lunch here until --

1 We will break till 1:30.

2 (Thereupon, a recess was taken at 12:35 a.m.)

3 (The following proceedings had at 1:30 p.m.)

4 CHAIRMAN WROTENBERY: Okay, I think we're ready
5 to go back on the record.

6 MR. FELDEWERT: We would call then Mr. John
7 Steuble.

8 JOHN D. STEUBLE,

9 the witness herein, after having been first duly sworn upon
10 his oath, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. FELDEWERT:

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

15 A. My name is John Steuble, I reside at 6522 South
16 Hoyt Way in Littleton, Colorado.

17 Q. And are you employed by McElvain?

18 A. Yes, I am.

19 Q. In what capacity?

20 A. I'm the engineering manager.

21 Q. Have you previously testified before the New
22 Mexico Oil Conservation Division and had your credentials
23 as an expert in petroleum engineering accepted and made a
24 matter of record?

25 A. Yes, I have.

1 Q. Are you familiar with the Order that was entered
2 by the Division in this case, which is Case Number 12,635?

3 A. Yes, I am.

4 Q. And have you studied the area that is the subject
5 of that Order?

6 A. Yes, I have.

7 MR. FELDEWERT: So the Commission, are Mr.
8 Steuble's qualifications acceptable?

9 MR. HALL: No objection.

10 CHAIRMAN WROTENBERY: Yes, they are.

11 Q. (By Mr. Feldewert) Okay, now what, Mr. Steuble,
12 are McElvain's development plans in the south half of
13 Section 25?

14 A. McElvain plans to re-enter the Naomi Number 1,
15 which used to be the Wynona Number 1, and complete it in
16 the Mesaverde, the Point Lookout and the Menefee sections
17 of the Mesaverde.

18 Q. Okay, why don't you briefly describe to the
19 Commission the history of this existing well?

20 A. The well was originally drilled in 1988 by
21 McElvain as a Gallup-Dakota play, playing off of a paper
22 that we had in our possession at that time concerning
23 fractures. So we thought we had a fractured play there in
24 the Gallup-Dakota.

25 Originally the well was completed only in the

1 Gallup. It pumped -- the initial potential was about 50
2 barrels of oil and 75 MCF a day.

3 Approximately a year later we went in and opened
4 up the Dakota formation below the Gallup and commingled the
5 two zones and produced them. We produced them that way up
6 until 1998, 1997, somewhere in there. The well had chronic
7 problems. It had to be pumped from day one, it was not a
8 flowing well. So we had a pumping unit on it. We had
9 probably some crooked-hole problems; we had continuous rod
10 and tubing problems. And it got to the point where the
11 volume of the well was so low that we couldn't justify to
12 keep repeating the workovers that it took to keep the well
13 on.

14 So at that time we chose to plug the well in
15 1998.

16 Q. Did you find the fracture play that you were
17 looking for?

18 A. No, we did not.

19 Q. Okay. Did you prepare the AFE that was sent out
20 to D.J. Simmons and the other working interest owners in
21 November of 2000?

22 A. Yes, I did.

23 Q. Okay, how was that AFE prepared?

24 A. After we plugged the Wynona well, we were active
25 over to the east of this well in the Lindrith area, what we

1 call the Lindrith area, in a Mesaverde play. We had some
2 pretty good success over there, so as a matter of course
3 one day I just picked up the Wynona and started looking at
4 the well log, and concluded that we have just as good an
5 option to make a well there as we do in some of our other
6 wells.

7 So I took it upon myself to prepare an AFE and a
8 cost estimate -- a cost estimate and an AFE and an outline
9 of a procedure for internal approvals. This I did probably
10 in late August, early September of the year 2000.

11 Q. Okay. Now, the AFE that is attached to
12 McElvain's Exhibit Number 2, do you have that in front of
13 you?

14 A. Yes, I do.

15 Q. Okay. Now, that has a date of September 6th,
16 2000. Do you see that?

17 A. Yes, I do.

18 Q. Okay. Now, the recompletion procedure that went
19 out with McElvain's Exhibit Number 3 has a date of November
20 of 2000. Do you see that?

21 A. Yes, I do.

22 Q. Can you please explain to the Commission the
23 discrepancy in these dates?

24 A. Oftentimes when I prepare procedures and AFEs, I
25 will do a procedure, on the computer, of course, and

1 prepare the AFE to go out.

2 At a later date, when somebody wants the
3 procedure or we get closer that I need to send it to the
4 consultants or outside operated parties that are interested
5 in it, I will go back in and fill in the pertinent data of
6 the history of the well. At that time I'll put it in a
7 final format, and I will go up and adjust the date so I can
8 keep track on my computer of the different revisions.

9 So even though the procedure is later than the
10 AFE date, the procedure was written prior to the AFE ever
11 being made out.

12 Q. Okay, so you had this procedure drafted when you
13 drafted the AFE?

14 A. Yes, I believe it was August or early September.

15 Q. Okay. Let's now turn to the AFE that was sent
16 out to the working interest owners. At the time it was
17 prepared, were these costs in line with what has been
18 charged by McElvain and other operators in the area for
19 similar recompletion projects?

20 A. Yes, they were, bearing in mind that this has
21 been done over a year ago, we have seen significant
22 increases in cost from the service companies and the rig
23 companies. I would estimate this is probably 10 to 20
24 percent low at the present time.

25 Q. Okay. Do you agree with the Examiner's findings

1 in Order R-11,663 that a reasonable charge for overhead and
2 administrative cost for this recompletion proposal is \$5455
3 a month drilling and \$545 a month producing?

4 A. Yes, I do. In fact, I believe that it's probably
5 low compared to today's standards, that we're seeing \$6000
6 per month for drilling and \$600 per month for operating.

7 Q. Now, do you agree with the Examiner's findings in
8 Order R-11,663 that the overhead rates approved by the
9 Division should be adjusted in accordance with the
10 applicable COPAS guidelines?

11 A. Yes, I do.

12 Q. Order R-11,663 provides for a 100-percent risk
13 penalty; is that correct?

14 A. That's correct.

15 Q. Do you agree that a 100-percent risk penalty
16 should be applied against the uncommitted interest owners?

17 A. No, I do not.

18 Q. Okay, what do you feel should be applied?

19 A. I feel that the standard 200-percent penalty
20 should be applied.

21 Q. Okay, what is the basis for your opinion?

22 A. Virtually, this well is going to be a wildcat --
23 I have some exhibits I'll show you in a minute -- where
24 there is no Mesaverde production in the area, and we're
25 just attempting to re-enter an existing wellbore rather

1 than spend the expense of going to the expense of drilling
2 a whole new well. So in actuality, it's no different than
3 a wildcat, we're just using the existing wellbore.

4 Q. Okay, why don't you turn to McElvain Exhibit
5 Number 18, identify that and explain to the Commission why
6 it supports your request for a 200-percent risk penalty.

7 A. 18 was an exhibit that we usually prepare for the
8 Examiners, showing a nine-section area around the proposed
9 well. And as you can see on this, there is only one other
10 Mesaverde in the area. It's in the northwest of Section
11 35.

12 What it shows is the initial potential as
13 reported through the state and the cumulative production.
14 So you can see it only made 6000 MCF of gas before it -- I
15 believe it has been recompleted in the Chacra.

16 Q. Do you recall when it was recompleted in the
17 Chacra?

18 A. No, I do not.

19 Q. Okay. Would you then turn to McElvain Exhibit
20 Number 19, identify that for the Commission and explain why
21 it supports our recommendation?

22 A. Exhibit 19 is basically the same idea. It's an
23 expanded area showing the existing or plugged and abandoned
24 Mesaverde wells in the area on a much larger basis. Again,
25 it shows the initial potential as the top number and the

1 cumulative production number as the bottom number. And
2 this is as of 4-30-2001.

3 Q. Okay, where is the nearest economic Mesaverde
4 production?

5 A. I believe the nearest economic production is in
6 Section 15 t the northwest, which would be approximately
7 three miles to the northwest.

8 Q. Okay. Has the Division previously approved a
9 200-percent risk penalty for a similar project?

10 A. Yes, they have.

11 Q. Okay, why don't you -- McElvain Exhibit Number
12 20, an order that was entered by the Division in September
13 of 2000 for McElvain's Cougar Com 4 Well Number 1A?

14 A. Yes, it is.

15 Q. Okay, and on page 9 of that order, paragraph (12)
16 (b), did the Division in this order approve a 200-percent
17 risk penalty for the -- For McElvain's Cougar Com 4 Well
18 Number 1A?

19 A. Yes, and I would like to reiterate, this was the
20 same deal, we had a plugged and abandoned well that we
21 thought we could go in and test the Mesaverde, so we went
22 ahead and did it, and they did issue this order in
23 conjunction with that re-entry attempt.

24 Q. Okay, so that was a re-entry attempt just like
25 the Naomi here?

1 A. Yes.

2 Q. Okay. How does the Naomi recompletion project
3 that is the subject of this hearing compare to the -- what
4 I will call the Cougar Com 4 recompletion project?

5 A. If you'll look on McElvain's Exhibit Number 21,
6 this was an exhibit that we prepared during the hearing for
7 the 4-1A, and again I was showing the wells in the
8 immediate area. The 4-1A is on the south side of the
9 highlighted yellow spacing unit there, and what it did was,
10 it showed that there are more wells in the immediate area
11 than there are in the Naomi area, and we were awarded the
12 200-percent penalty.

13 Q. Okay, and you were, in essence, stepping out to
14 the east of a known producing area at that time?

15 A. Stepping out to the west.

16 Q. I'm sorry, stepping out to the west, thank you.

17 Can you orient the Commission as to where the
18 Cougar Com 4 is located with respect to the Section 25
19 that's the subject of the hearing today?

20 A. Section 25 would be off of the paper, two
21 sections down, below Section 13, in 25 and 3.

22 Q. Okay, and if we flip back to your Exhibit Number
23 19, for this project you're stepping out to the west from a
24 known producing area -- I think you said what, two or three
25 miles?

1 A. Yes, sir, to the southwest.

2 Q. So do you think that the Naomi project is more
3 risky than the Cougar Com 4 project?

4 A. I do because of the total lack of Mesaverde
5 production in the area. It will be interesting.

6 Q. Now, I want to -- Were you present at the three-
7 hour Division hearing which took place in May of this year?

8 A. Yes, I was.

9 Q. And did you have an opportunity to listen to the
10 testimony and review the exhibits that were offered by D.J.
11 Simmons at the hearing?

12 A. Yes, I have.

13 Q. Did you review the exhibits concerning fracturing
14 studies in the San Juan Basin?

15 A. I realize another witness has gone over this, but
16 I would like to get my two cents' worth in --

17 Q. Briefly.

18 A. -- from an engineering perspective.

19 Q. Briefly.

20 A. SPE Paper 25466, which is in D.J. Simmons'
21 book --

22 Q. Okay, that would be their --

23 A. -- Exhibit 24, I believe. This is a paper --

24 Q. Let me -- you're on -- It's the last paper of
25 Exhibit 24?

1 A. It's called "Determination of Hydraulic Fracture
2 Direction" --

3 Q. Yeah.

4 A. -- in the "San Juan Basin". I just want to
5 reiterate that this paper deals with hydraulically
6 fractured wells, not naturally fractured wells, in the
7 Dakota formation in New Mexico somewhere around Cuba.
8 Nowhere in the paper do they give us specific well
9 locations or anything like that. It's a generalized paper
10 concerning hydraulic fracturing in the Dakota formation.

11 The thing that I found interesting was that they
12 did say that the average fracture direction was 41 degrees
13 to the northeast, but it had a plus or minus 10 degrees
14 variance. So in reality it could be anywhere from 51 to
15 31, and that's the direction when you hydraulically
16 fracture a well.

17 The other thing I found interesting was that in
18 the paper they quoted other investigators at the MWX
19 Project over by Rifle, I believe is where it is --

20 Q. Rifle -- where?

21 A. Rifle, Colorado.

22 Q. Okay.

23 A. -- where Mesaverde studies were done. And they
24 actually found that the stress fields rotated quite
25 significantly within -- as they come up the wellbore. And

1 I could quote it to you, it is in the paper. But what that
2 told me was that just because you have certain stresses in
3 one formation at one depth does not necessarily mean those
4 same stresses or fracture directions equate to formations
5 in the upper part of the hole.

6 The other part of the paper, titled "Fracture
7 Orientation: Use of the Dipmeter Type Fracture Log", again
8 is in the Gavilan-Mancos Pool, which is below the Mesaverde
9 formation. The interesting thing about that paper is that
10 it does show, and by the exhibit in the paper you can see
11 that the fracture direction does follow structure trend.
12 So I think from the engineering perspective that's very
13 interesting. But I don't think you can draw conclusions
14 that the fractures in the structure in the Gavilan-Mancos
15 Pool will necessarily go up to the Mesaverde, unless you're
16 on the same structure.

17 So from those perspectives these papers are very
18 interesting to me as an engineer.

19 The final SPE paper discusses permeability
20 variations in the 27-5 and 29-7 areas, and this was done, I
21 believe, in conjunction with Burlington, or Burlington has
22 presented quite a few papers on this, or talks on this.
23 And it deals with the orientation for infill drilling.

24 It's interesting, and I do use it in some
25 instances. But down in the -- This again is 20 miles away

1 from our location. So I don't know how pertinent what they
2 find up there is to our location.

3 Q. Mr. Steuble, as an engineer do you think that
4 these papers can be used to support a theory that there are
5 going to be north-to-south fractures in the Lindrith area
6 or Section 25?

7 A. These papers alone, no, I do not.

8 Q. Okay. How much experience have you had with
9 McElvain with respect to the Mesaverde formation in the
10 Lindrith area?

11 A. McElvain started a play east of here in our
12 Lindrith area in 1998. Since that time we have drilled 19
13 wells, we've completed 14 in the Mesaverde section, or in
14 the Mesaverde formation, with 35 frac jobs on 35 different
15 zones within the formation. We've also had five wells that
16 we've entered and recompleted in the Mesaverde formation.

17 Q. Have you seen any evidence, Mr. Steuble, of a
18 north-to-south drainage trend in any of these wells as a
19 result of fracturing?

20 A. No, we have not.

21 Q. Did you have the opportunity to review the
22 economic summary that was submitted by D.J. Simmons at the
23 May hearing as their Exhibit Number 15?

24 A. Yes, I have.

25 Q. Okay. Is that economic summary that was

1 submitted by D.J. Simmons at the May hearing before the
2 Division Examiner, is that marked as McElvain's Exhibit
3 Number 22?

4 A. Yes, it is.

5 Q. Okay. Have you had an opportunity to compare
6 that economic summary prepared by D.J. Simmons in May with
7 the economic summary that they have submitted to the
8 Commission in connection with the hearing today?

9 A. Yes, I have.

10 Q. Okay, and is D.J. Simmons' new economic summary
11 contained in Exhibits 31 and 32 of D.J. Simmons' package?

12 A. Yes.

13 Q. Okay. What are your observations when you look
14 at what they submitted to the Division Examiner in May and
15 what they are submitting to the Commission today?

16 A. If I could get a copy of that, I would appreciate
17 it.

18 Q. Always helpful. There we go. Make sure you
19 identify which exhibit you're on.

20 A. I'm on McElvain Exhibit Number 22. In the May
21 hearing D.J. Simmons submitted this as their economics. As
22 you can see, the well investment was \$500,000 with a 22.1-
23 percent rate of return. They also said that they could
24 incrementally complete the Mesaverde for \$50,000 and
25 increase their rate of return to 25.3 percent.

1 I believe at the time that these numbers were
2 somewhat low, but this was their testimony of what they
3 could do.

4 Q. What did they use as a gas price at that time?

5 A. They used \$4.50 per MCF for gas and \$26.90 per
6 barrel --

7 Q. Okay.

8 A. -- for oil.

9 D.J. Simmons Exhibit Number 30, concerning this
10 hearing, they're using the same gas and oil prices, yet
11 they've raised their drilling investment to \$658,153, with
12 a rate of return of 15.5 percent.

13 They also state in there that at the present time
14 it is uneconomic to recover any Mesaverde reserves. They
15 say well logs and mud logs from the new drill may improve
16 the confidence in the Mesaverde.

17 Q. Now, you're on which exhibit?

18 A. I'm on D.J. Simmons Exhibit 30.

19 Q. Okay.

20 A. So what that tells me is that there is no
21 intention of recompleting in the Mesaverde.

22 On their Exhibit Number 31 where it has costs and
23 economics information, they stated in the earlier hearing
24 that the \$50,000 incremental investment would be required
25 to recover the reserves. In this exhibit they say that the

1 incremental investment less the wellbore cost -- this is
2 just completion cost -- is now \$236,400.

3 The cost for owners to buy into their well and
4 complete the well is now estimated at \$461,706, where our
5 proposal is in the \$360,000 range.

6 So I see some discrepancy in their testimony.

7 CHAIRMAN WROTENBERY: We just need to clarify the
8 order of the exhibits. My Exhibit 31, and I see
9 Commissioner Lee's is the same way, has drainage
10 calculations.

11 THE WITNESS: I'm sorry, did I say the wrong
12 number?

13 CHAIRMAN WROTENBERY: 32 has costs and economic
14 information. Is that --

15 MR. FELDEWERT: 32 is --

16 CHAIRMAN WROTENBERY: 32.

17 THE WITNESS: I'm sorry.

18 CHAIRMAN WROTENBERY: Okay.

19 THE WITNESS: I get excited, you know?

20 I guess the important issue here is the \$236,000
21 to recomplete in the Mesaverde and their own economics
22 stating that the Mesaverde is no longer economical. My
23 question becomes, if they're not going to complete in the
24 Mesaverde, then should we not be allowed to have our south-
25 half drainage -- or south-half spacing so we can.

1 Q. (By Mr. Feldewert) Okay, so they originally, in
2 McElvain's Exhibit 22, showed a 22.1-percent rate of return
3 for a Gallup-Dakota well; is that correct?

4 A. That's correct.

5 Q. In your opinion, is that an acceptable rate of
6 return for a Gallup well?

7 A. I would think so, but I believe their testimony
8 was that it was not.

9 Q. Okay. Is that an acceptable rate of return for
10 McElvain?

11 A. For a Gallup-Dakota well, yes.

12 Q. Okay. And they showed a \$50,000 incremental
13 investment for the Mesaverde formation, which has now
14 changed to what, \$236,000?

15 A. \$236,000.

16 Q. Okay. I'm going to skip through some of your
17 testimony because we've already covered most of it.

18 A. Are we done?

19 Q. No. Let me ask you something. In your opinion,
20 is McElvain's proposal to test the Mesaverde formation in
21 Section 25 more economical for the interest owners in that
22 section than drilling a well to the Gallup-Dakota
23 formation?

24 A. Yes, it is. Our re-entry proposal, if they -- if
25 D.J. Simmons wanted to recomplete theirs, ours would still

1 be \$100,000 less expensive.

2 Q. In your opinion, is McElvain's re-entry proposal
3 in the best interests of conservation, the prevention of
4 waste and the protection of correlative rights?

5 A. Yes, I believe so.

6 Q. In your opinion, will the granting of McElvain's
7 Application result in any waste of oil and gas reserves in
8 Section 25?

9 A. No, I do not believe it will.

10 Q. Is McElvain, Mr. Steuble, faced with any drilling
11 window for this recompletion effort, given the delay which
12 has thus far occurred?

13 A. Yes, originally we planned to re-enter this well
14 in the summertime. We have an agreement with the land
15 owner. But because of hunting season now, he will only
16 allow us on the lease during the month of December due to
17 -- he imports hunters on the land.

18 So our plans were to recomplete the well during
19 the summertime and be out of his hair, and everything would
20 be fine. Unfortunately, that didn't happen. We now have a
21 window of December. After December, I'm not sure what will
22 happen. If he -- he has -- There's later hunting seasons
23 in January and February, I know, but I don't know how we
24 have not addressed that with him. Right now he has allowed
25 us to enter in December, and the month of December only.

1 That, combined with the weather and the road
2 situation out there, we feel it's imperative to move
3 forward if we can, to get it done so we're not put off
4 again until next summer.

5 Q. Did McElvain in your opinion, did they do
6 anything different with this well proposal that you've been
7 involved in, in the Lindrith area and the San Juan Basin?

8 A. Not to my knowledge.

9 Q. Were McElvain Exhibits 18 to 22 prepared by you
10 or compiled under your direction and supervision?

11 A. Yes, they were.

12 MR. FELDEWERT: At this time I would move the
13 admission into evidence of McElvain Exhibits 18 to 22.

14 MR. HALL: No objection.

15 CHAIRMAN WROTENBERY: Okay, McElvain Exhibits 18
16 through 22 are admitted.

17 MR. FELDEWERT: And that concludes my direct
18 examination of this witness.

19 MR. HALL: Can we dispose of Exhibits 23 and 24?

20 MR. FELDEWERT: Not yet. I have to see what you
21 guys are going to say.

22 CROSS-EXAMINATION

23 BY MR. HALL:

24 Q. Mr. Steuble, you mentioned your drilling window
25 for getting onto the southwest quarter, your Naomi

1 location. The fact is, you have a compulsory pooling order
2 in hand now, do you not?

3 A. Truthfully, I don't know. I understood that that
4 was not effective, pending this hearing.

5 Q. All right. Is that what prevented you from going
6 onto the location and starting your recompletion, is that
7 you didn't know whether you had a compulsory pooling
8 order --

9 A. No, sir.

10 Q. -- in effect? What was preventing you?

11 A. Our compulsory pooling, I think, came in, in our
12 shop on September 24th. Hunting season starts October 1st.
13 We could not get a -- we did not have a rig sitting there
14 available to go do, or try to do, the completion in six
15 days.

16 Q. All right. Before you received your compulsory
17 pooling Application, there was nothing preventing McElvain
18 from entering onto site and recompleting the Naomi Com as a
19 west-half well, was there?

20 A. I don't believe so, no.

21 Q. So other than your surface-use restriction with
22 your private landowners, you had no federal surface
23 involved, did you?

24 A. No, sir.

25 Q. So you didn't have any sort of permitting problem

1 with the BLM that would have prevented your entry onto the
2 lands?

3 A. No, sir.

4 Q. Early on you testified that when you first looked
5 at the Wynona you utilized McElvain's internal -- I'm
6 sorry, your procedure -- McElvain's procedure for internal
7 approvals, and I want to ask you a little bit about that.

8 I believe you were present when Ms. Binion
9 testified this morning. She said, We don't have an
10 established procedure, it's a small company, we're informal
11 about it.

12 But in fact, do you have different knowledge? Is
13 there, in fact, an established procedure for internal
14 approvals, like you say?

15 A. Not a printed one, no.

16 Q. What is your procedure?

17 A. What is my procedure? If I get an idea or the
18 geologists get an idea, we usually take it, get offset logs
19 or whatever we have, lay it out on the conference-room
20 table, we get my boss and the geologists and the land
21 people together and kind of look at it.

22 Normally, engineering and geology will get
23 together to see if there's a potential there. If there's a
24 potential there, then I usually write up somewhat of a
25 procedure and a cost estimate, and we go from there.

1 Q. What is the procedure from an engineering
2 perspective for evaluating well proposals by third parties
3 brought to McElvain? What do you do?

4 A. We look at the AFE costs and see if they're
5 reasonable. If they're reasonable, then we get with
6 geology and see if there's any interest on McElvain's part
7 to go forward with it, or go nonconsent or whatever the
8 options are.

9 Q. I see. And what's the minimum amount of
10 information that you like to see a third party provide
11 McElvain when it's evaluating a well proposal like that?
12 What's the least amount of information you need before you
13 feel you can commit capital to a project?

14 A. Well, we're partners in many of the units in the
15 San Juan Basin, so what we usually get is an AFE, and there
16 may be a little blurb on the AFE to recomplete into the
17 Lewis or whatever the project is. And that's basically
18 what we receive on the majority of our AFEs that we have to
19 evaluate.

20 Q. Yes. My question is, what do you like to
21 receive? What information do you feel that you need as a
22 minimum to evaluate a proposal?

23 A. As a minimum, we have to receive the AFE and what
24 they want to do. Typically, we don't get much more than
25 that.

1 Q. All right.

2 A. If it's a big-dollar item for us, we'll spend
3 more time and try to look internally to the information
4 that we have in our databases to see if we want to go
5 forward with the project.

6 Q. Do you try to get well logs from the operator?

7 A. No, sir.

8 Q. Do you ask the person proposing the well to give
9 you an idea of the estimated recoveries from the project?

10 A. No, sir.

11 Q. How about initial production rates? Do you ask
12 for that information?

13 A. No, sir.

14 Q. Now, you gave us what you say was your two cents'
15 worth about the literature, the SPE papers. Let me ask you
16 about that briefly. Do you know whether or not industry
17 relies on data such as this, such as shown as Exhibit 24?

18 A. Oh, yes. Now, I'm speaking specifically from the
19 engineering aspect as far as SPE and stuff, but the SPE is
20 very active in promoting papers and paper presentations
21 every year and at different functions in the United States.
22 Yeah, they're active.

23 But you can't take them for face value, you can't
24 take them and apply them worldwide. I mean, papers are
25 research papers, and they're the best -- they're a summary

1 of the best intentions of the authors with the data they
2 have.

3 Q. Are you saying that these articles under Exhibit
4 24 have no value to the Commission in the context of this
5 proceeding?

6 A. No, that's not what I said. Didn't I say that
7 they were very interesting from an engineering aspect?

8 Q. So they do have some value?

9 A. Sure.

10 Q. How large an area do you expect the Naomi to
11 drain in the Mesaverde?

12 A. Numberwise? Acrewise?

13 Q. Areawise.

14 A. Areawise. I don't know, because we don't feel
15 it's fractured. Studies, specifically SPE studies and
16 Burlington studies, have shown that the area of drainage is
17 relatively small. That's why they downspaced to 80-acre
18 spacing, so --

19 Q. Well -- I'm sorry, were you finished?

20 A. Well, I mean the point is, we feel that this area
21 is probably a little bit tighter, less fractured than the
22 main part of the Basin, so it's probably going to drain
23 smaller areas than the main part of the Basin does. And
24 the main part of the Basin, or all of the Blanco-Mesaverde
25 has been downspaced, as you're aware.

1 Q. Now, let's see, the Naomi is located 410 off the
2 west line; is that right?

3 A. Yes, sir, I believe so, something like that.

4 Q. Do you believe that that well is situated to
5 efficiently drain reserves from the southeast quarter,
6 given that -- talking about a tight --

7 A. No, sir, I don't. But I also know that if you
8 have a south-half spacing unit, you have the option to
9 drill an infill well, which by the way we've done in the
10 Lindrith area.

11 Q. So you're not presenting any data today, any
12 engineering data that would support any proposition that
13 the well will drain along an east-west axis; is that
14 correct?

15 A. Other than the geology and the sand trends --

16 Q. All right.

17 A. -- porosity trends.

18 Q. And correct me if I'm wrong, but you do not have
19 an expectation that the Naomi well will drain the reserves
20 in the southeast quarter? Did I misunderstand you on that?

21 A. No, I don't have expectations that they'll drain
22 it in the northwest quarter either. What I'm saying is,
23 the whole entire Blanco-Mesaverde has been downspaced to
24 80s on information provided by people with a lot more
25 information than you or I have. So that would tell me that

1 the area of -- radius or drainage or area of drainage is
2 relatively small in the Blanco-Mesaverde Pool.

3 Q. Am I correct when I say I understand that
4 McElvain opposes the creation of 160-acre nonstandard
5 proration units for this area?

6 A. Yes, that's --

7 Q. You oppose 160s for the Mesaverde?

8 A. Yes.

9 Q. And the reason for that is?

10 A. Because they're spaced on 320s.

11 Q. And isn't it true that the real reason for that
12 is, you need the southeast quarter to mitigate your risk,
13 once again?

14 A. We like to have people that are going to benefit
15 from our development to share the risk, yes. They also
16 share the benefits. That's not unusual in the industry.

17 Q. Now, you're going to fracture-stimulate the well,
18 I assume; is that correct?

19 A. That's correct.

20 Q. Can you tell us what you anticipate what those
21 fracture lengths would be from the job you propose to
22 perform?

23 A. We've not done any fracture-length studies, no,
24 but because of the way we do them, limited-entry-type
25 perforating, I would anticipate that they're less than 300

1 feet.

2 Q. All right. And can you tell us what the
3 orientation of those fractures might be?

4 A. No, I cannot.

5 Q. I'm sorry, I didn't hear --

6 A. No, I cannot.

7 Q. So you can't tell us whether or not they will be
8 on an east-west axis, as opposed to a north-south axis?

9 A. Nor can I tell you if they're clusters, if
10 they're -- if they cluster around the perforations and they
11 only go up 50 feet but they're all interconnected. That's
12 another common theory right now. I don't know that anybody
13 can tell you that.

14 Q. All right. Do you know whether we have enough
15 information to say where the stress trends might be located
16 in Section 25?

17 A. No, I do not.

18 Q. What is McElvain's Mesaverde reserve estimates
19 for the Naomi?

20 A. I haven't reviewed that for a year, so I'd be
21 reluctant to say, but we -- typically, it's probably going
22 to be in the half-to-one-B range.

23 Q. All right. And so you've had those for at least
24 a year or long?

25 A. No, I'm just saying I don't know that. But if I

1 were to sit here and give you a number, it would be between
2 one half and one B.

3 Q. I understand, but you say you reviewed them over
4 a year ago. Did I understand you correctly?

5 A. Yes, I've reviewed them.

6 Q. So they've been in existence for at least a year
7 or more, whatever the number might be?

8 A. Yeah, whatever.

9 Q. Okay. Did you ever provide that number to D.J.
10 Simmons?

11 A. No, it was never requested.

12 Q. Let me ask you about your Exhibits 19 and 21, if
13 you could take those in front of you, please?

14 A. Uh-huh.

15 Q. Those are your Mesaverde cum production maps.
16 And you talked about a well located in the northwest of
17 Section 15, 25 North, 3 West, and you show that that's
18 located in the lower left-hand corner on Exhibit 21 and
19 upper left-hand corner on Exhibit 19. I notice that the
20 cum -- Do you have those?

21 A. Do that again, please?

22 Q. Do you have Exhibits 19 and 21, there?

23 A. Yes, I do.

24 Q. Let's look at the well in Section 15, 25 North, 3
25 west.

1 A. 25-3? Okay.

2 Q. Yeah. If you have that located on both exhibits,
3 on Exhibit 21 --

4 A. It's not on -- it's -- oh.

5 Q. Are you with me?

6 A. Okay, I'm with you.

7 Q. Now, the cum numbers for that well on the two
8 exhibits are different. Can you explain why that is?

9 A. No, I can't.

10 Q. Do you know whether the production reported for
11 that well would include Gallup-Dakota production?

12 A. It should not be. These maps are generated off
13 of Geographics software, which filters -- you can filter --
14 it should be just Mesaverde production, but I'm not --
15 That's one I didn't catch, I don't know.

16 MR. HALL: That's all I have, Mr. Steuble, thank
17 you very much.

18 CHAIRMAN WROTENBERY: Commissioner Bailey?

19 COMMISSIONER BAILEY: I have no questions.

20 COMMISSIONER LEE: No questions.

21 CHAIRMAN WROTENBERY: Any redirect?

22 MR. FELDEWERT: Just a couple.

23 REDIRECT EXAMINATION

24 BY MR. FELDEWERT:

25 Q. Just a couple. Mr. Steuble, you didn't have a

1 chance to look at this.

2 Exhibit 21, does it have a different -- It says
3 down there in the legend, "cum as of 2/28/00". Do you see
4 that?

5 A. Yes, I do.

6 Q. What is the date for the cum on the Exhibit 19?

7 A. 4-30 of 2001.

8 Q. Okay, so this is a much more recent map than the
9 map that's marked as Exhibit 21?

10 A. Yes, it is.

11 Q. Mr. Hall asked you about why you didn't just go
12 ahead out there and drill the well where you had your
13 pooling order for a south-half spacing unit. Did you
14 receive administrative approval for your unorthodox well
15 location?

16 A. Yes, we have.

17 Q. And was that for a west-half unit or was it for a
18 south-half unit?

19 A. I believe it was for a south-half unit.

20 Q. Okay. Mr. Hall asked you also about what you do
21 when you receive a proposal from another working interest
22 owner to develop a property, okay? If McElvain has an
23 alternative plan to develop the property when it receives a
24 proposal from a working interest owner, do you sit around
25 and do nothing?

1 A. No, sir.

2 Q. Do you take action?

3 A. We usually try to get ahold of the other company,
4 yes.

5 Q. Okay, and you discuss with them your alternative
6 development plan?

7 A. Yes, we do.

8 Q. Do you in a diligent fashion send out an
9 alternative proposal to the affected working interest
10 owners?

11 A. I'm sure we would. I can't recall that we've
12 ever had this issue.

13 Q. Okay, all right. I mean, would you recommend to
14 your company that if you received a development proposal
15 for a particular piece of property and you had an
16 alternative plan, that you not also send out your
17 alternative plan to the working interest owners for
18 consideration?

19 A. Yes.

20 Q. Mr. Hall asked you about the literature which
21 they have marked as Exhibit 24, and I think you indicated
22 it has some value; is that correct?

23 A. That's correct.

24 Q. Does it have any value, and would an engineer
25 customarily rely on those studies to determine the drainage

1 pattern in the Lindrith area in the San Juan Basin?

2 A. I think an engineer would use them, given the
3 specific area that they pertain to. I don't know of many
4 engineers that would take them and apply them Basinwide to
5 the -- as a result of the paper being published.

6 Q. Okay, so as an engineer would you take those
7 studies and apply them to the Lindrith area of the San Juan
8 Basin?

9 A. No, I would look for their significance to the
10 Lindrith area, but I don't think I would just blanketly
11 apply them to our properties.

12 MR. FELDEWERT: Okay, that's all I have. Thank
13 you.

14 RE-CROSS-EXAMINATION

15 BY MR. HALL:

16 Q. Brief follow-up on the exhibits again, the cum
17 numbers.

18 Given the, what, 13-month difference between the
19 data points on here, that difference is not enough to
20 account for the difference in the numbers, is it? Because
21 we're talking about 478,702 on Exhibit 19 and then Exhibit
22 21 shows only 87,579 for the cum.

23 A. Yes, again, I don't feel that that would account
24 for the difference, but I think it was a filtering problem
25 within the Geographics software.

1 Q. Okay.

2 A. We have noticed -- and we didn't catch it here,
3 but we have noticed that *P.I. -- Dwight's Production*
4 *Information* is sometimes skewed a little bit also.

5 MR. HALL: Nothing further.

6 CHAIRMAN WROTENBERY: Thank you.

7 Thank you, Mr. Steuble.

8 THE WITNESS: Thank you.

9 CHAIRMAN WROTENBERY: Anything further, Mr.
10 Feldewert?

11 MR. FELDEWERT: Members of the Commission, that
12 concludes our presentation in this case.

13 CHAIRMAN WROTENBERY: Okay.

14 Mr. Hall?

15 MR. HALL: If I might have a moment to set up.

16 CHAIRMAN WROTENBERY: Okay. Do we need like a
17 five-minute break or --

18 MR. HALL: Sure, since you're offering.

19 CHAIRMAN WROTENBERY: Okay, just a quick break.

20 (Thereupon, a recess was taken at 2:15 p.m.)

21 (The following proceedings had at 2:25 p.m.)

22 CHAIRMAN WROTENBERY: Okay, we'll go back on the
23 record.

24 MR. HALL: At this time, madame Chairman, we'd
25 call Ed Dunn to the stand.

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EDWARD B. DUNN,

the witness herein, after having been first duly sworn upon his oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HALL:

Q. Mr. Dunn, if you would, please, state for the record your full name and place of residence.

A. My name is Edward Dunn, I live in Farmington, New Mexico.

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

A. D.J. Simmons, landman.

Q. And let me ask you, you've previously testified before the Division and had your credentials established as a matter of record, have you not?

A. Yes, I have.

Q. You're familiar with the Application that's been filed by both McElvain and Simmons in this case?

A. I am.

Q. And you're familiar with the lands that are the subject of these two Applications?

A. Yes, I am.

Q. So the Commission knows, how long have you been practicing as a landman in the San Juan Basin of New Mexico?

1 A. Oh, probably on and off, ten years, I guess. Not
2 with Simmons but with various other companies.

3 Q. All right. And overall, how long have you been a
4 landman?

5 A. For Simmons?

6 Q. No, overall.

7 A. Oh, 30, 35 years.

8 MR. HALL: All right. At this time, madame
9 Chairman, we'd offer Mr. Dunn as an expert petroleum
10 landman.

11 MR. FELDEWERT: No objection.

12 CHAIRMAN WROTENBERY: We accept Mr. Dunn's
13 qualifications.

14 Q. (By Mr. Hall) Mr. Dunn, if you would, briefly
15 explain to the Commission what it is that Simmons seeks by
16 its Application in this case.

17 A. Simmons seeks to pool interests from the surface
18 to the base of the Mesaverde formation, less the Fruitland
19 Coal, underlying the east half of Section 25, 25 North, 3
20 West, for the drilling of the Bishop 25-1 well. We propose
21 to drill the well in a standard location within the
22 section. The well will be drilled to approximately 8174 to
23 test the Gallup-Dakota formation, as well as the Mesaverde
24 formation.

25 Q. All right. You've prepared certain exhibits in

1 connection with your testimony today?

2 A. I have.

3 Q. Let's look at Exhibits 1 and 2 quickly. First
4 let me ask you, does Simmons propose to dedicate an east-
5 half proration unit to its well?

6 A. Yes.

7 Q. Review briefly -- Why don't you identify Exhibits
8 1 and 2 and explain what they show?

9 A. Exhibits 1 and 2 show the description of the land
10 acreage owned by Simmons 100 percent, interest owned by
11 Forest, McElvain and Dugan in the south half of the
12 southeast, and then interest owned by McElvain in the west
13 half of Section 25.

14 Q. And why don't you identify the owners of the
15 interests you're seeking to pool today?

16 A. We're seeking to pool Forest Oil Company 50
17 percent as to the south half, southeast; McElvain 37.5
18 percent; Dugan 12.5 percent in the south half, southeast.

19 Q. Now tell us, when did Simmons first acquire its
20 acreage in Section 25?

21 A. The federal lease was issued September 1st of
22 2000.

23 Q. Okay. And what percentage of the acreage in the
24 east half is now voluntarily dedicated to your proposed
25 well, the Bishop 25-1?

1 A. The northeast quarter; north half, southeast
2 quarter.

3 Q. All right. Mr. Dunn, in the interests of time
4 I'm going to try to shorten my examination on various
5 matters today. I'd like to discuss your efforts to secure
6 the voluntary participation of the other interest owners in
7 your east-half well. Let's do that this way.

8 Let's refer to, first of all, Exhibit 3, if you
9 would identify that, please, sir.

10 A. Exhibit 3 is a sequence of events. Is that the
11 one you're talking about?

12 Q. Yes.

13 A. It covers the letters and conversations by both
14 Simmons and McElvain.

15 Q. So is it accurate to say that Exhibit 3 would
16 show the history of this dispute in all of the
17 communications back and forth between McElvain and Simmons
18 with respect to their well proposal and your proposal, as
19 well as, in fact, their proposal for a north-half well?

20 A. That's correct.

21 Q. Now, let's refer to Exhibit 4. Identify that,
22 please sir.

23 A. Okay, this is a sequence of events concerning
24 McElvain as to the Naomi Com Number 1 well. This is
25 letters and conversations from November 10th of 2000.

1 Q. All right. And so we're clear on this, I believe
2 we discussed this exhibit with Ms. Binion this morning; is
3 that correct?

4 A. Yes, we did.

5 Q. And what Exhibit 4 shows is all the initiatives
6 undertaken by McElvain to communicate with Simmons?

7 A. That's correct.

8 Q. Now, let's refer to Exhibit 5. Identify that,
9 please, sir.

10 A. Exhibit 5 is a sequence of events pertaining to
11 Simmons concerning the Naomi Com Number 1 well, letters and
12 conversations.

13 Q. So if I understand correctly, Exhibit 5 shows the
14 initiatives taken by Simmons to communicate with McElvain
15 regarding McElvain's well proposal?

16 A. That is correct.

17 Q. Now, let's refer to Exhibit 6. What does that
18 show?

19 A. Exhibit 6 is a sequence of events, starting from
20 November 10th, 2000, concerning our well, the Bishop 25-1
21 and the Bishop 25-2, letters and conversations between the
22 various working interest owners in the south half,
23 southeast, Section 25.

24 MR. HALL: All right. Now, madame Chairman, if
25 it's agreeable with counsel and the Commission, what I

1 would propose to do to shorten the examination is, rather
2 than go over once again the communications relating to the
3 McElvain well proposal, if I skip those and focus on
4 Simmons' well proposal and discuss only the exhibits
5 related to those, I believe we'll save quite a bit of time.

6 However, I think I'd go ahead and tender the
7 chronology exhibits through Mr. Dunn, and they refer to the
8 supporting exhibits.

9 In terms of other exhibits, that would take us up
10 through everything through Exhibit 11. I think we could
11 start there and discuss the efforts of Simmons to obtain
12 McElvain's joinder. If that's agreeable to everyone, I'll
13 do it that way.

14 COMMISSIONER LEE: Do whatever you want to do.

15 MR. FELDEWERT: I have no -- It's his case.

16 CHAIRMAN WROTENBERY: Sounds good to me.

17 MR. HALL: Well, what I'm --

18 COMMISSIONER LEE: You're not doing us any favor,
19 okay?

20 Q. (By Mr. Hall) Let's look at Exhibit 6, please,
21 Mr. Dunn. If you would summarize for the Commission all
22 the efforts you took to secure McElvain's participation in
23 your well.

24 MR. FELDEWERT: We're on Exhibit 6?

25 MR. HALL: Yes. I'm sorry, in -- Yes, summarize

1 the efforts that you made to obtain McElvain's
2 participation in the Bishop 25-1 well.

3 A. Well, on June 7th, 2001, we sent a proposal
4 letter to the parties in the south half, southeast, asking
5 them to -- or proposing a well, proposing two wells, the
6 Bishop 25-1 and the Bishop 25-2, and forming an east-half
7 spacing unit. The letter included a drilling and
8 completion plan and an AFE.

9 On June 14th, 2001, Simmons -- Well, never mind.
10 Let's see. Do you want to go down the entire list?

11 Q. Yes, and you can be brief about it. Just
12 identify the date and what was done on those dates.

13 A. Okay. Well, on June 14th, 2001, Simmons received
14 a certified letter from McElvain proposing a Mesaverde well
15 in the northwest quarter of Section 25, 25-3, the Naomi Com
16 Number 2. We received a JOA and exhibits A through F and
17 an AFE.

18 Q. All right, let me do it this way, might be a
19 little quicker. You talk about your well proposal you sent
20 on June 7th. That's item 3 of Exhibit 6, correct?

21 A. Yes.

22 Q. When you first proposed your well --

23 A. Right.

24 Q. -- to McElvain?

25 A. Right.

1 Q. And that well-proposal letter is Exhibit 11,
2 correct?

3 A. That's correct.

4 Q. Now, and the response you got was Exhibit 12.
5 That's the response on June 14th, referenced in item 4; is
6 that correct?

7 A. Right.

8 Q. And the response was, they were proposing their
9 own well instead?

10 A. That's right.

11 Q. Now, what happened on August 6th?

12 A. August 6th, we received -- Simmons sent out a
13 letter to Forest, McElvain and Dugan. We were clarifying
14 the percentages of cost to drill and complete a Mesaverde
15 well.

16 Q. And that's Exhibit 13?

17 A. That's Exhibit 13.

18 Q. And then let's look at item 7, September 13th,
19 2001. What happened there.

20 A. A letter to Forest, McElvain and Dugan, let's
21 see, setting out interest in the Mesaverde formation,
22 including AFE, drilling and completion procedure for the
23 Mesaverde formation. That would be Exhibit 14.

24 Q. All right, and that's the follow-up AFE, Exhibit
25 14?

1 A. Right.

2 Q. Now, September 13, what did you do?

3 A. Offered to settle. We sent that to McElvain.

4 Simmons offer was to sell to McElvain our interest in the
5 north half of the southeast section of 25, as to all depths
6 from 750 feet below the Huerfano bentonite marker to the
7 base of the Mesaverde formation and, in addition, to form
8 two 160-acre units, the north half of Section 25.

9 Q. What sort of response did you get to that?

10 A. We didn't get any response.

11 Q. Let's look at Exhibit 16.

12 A. Simmons received a letter dated October 3rd,
13 2001, from McElvain. They agreed it would be beneficial to
14 reach an agreement concerning development of the Mesaverde
15 under the north half of Section 25. No proposals were
16 suggested by McElvain.

17 Q. All right. So the next communication you
18 received from McElvain was October --

19 A. -- 11th.

20 Q. -- 11th? And what was that?

21 A. And that was a letter from Holland and Hart, and
22 it was an application for compulsory pooling in the north
23 half of Section 25.

24 Q. And that's Exhibit 17, is it not?

25 A. Exhibit 17.

1 Q. All right. Were there any further efforts by
2 Simmons to try to reconcile the problem here? Let's look
3 at Exhibit 18.

4 A. October 25th Simmons sent a letter overnight to
5 McElvain offering to settle the differences. We asked for
6 two special 160-acre units in the north half. We would
7 drop our appeal concerning their 320-acre south-half unit.
8 We kept the offer open till October 31st, 2001. We didn't
9 get any response.

10 Q. All right. Now let me ask you, as a practicing
11 landman, based on your experience, are you familiar with
12 the industry custom and practice prevailing in the San Juan
13 Basin that operators follow when proposing drilling
14 projects and soliciting the participation of other working
15 interest owners?

16 A. Yes, most of them.

17 Q. When Simmons sent its well proposal to McElvain,
18 it did include an AFE, did it not?

19 A. That's right.

20 Q. And there were follow-up clarification AFEs; is
21 that correct?

22 A. Yes.

23 A. And was there a well plan?

24 A. Yes.

25 Q. Was there a TD specified in the well proposal, if

1 you recall?

2 A. There was a TD mentioned in the letter.

3 Q. All right, that was my question. So the answer
4 is yes?

5 A. Yes.

6 Q. In your opinion, did D.J. Simmons make a diligent
7 and good-faith effort to obtain the voluntary participation
8 of unjoined interest owners in the drilling of the Bishop
9 25-1 well?

10 A. I think we did.

11 Q. Let's talk briefly for the record, the other
12 communications you had with the other interest owners,
13 other than McElvain. Tell us about that.

14 A. Well, I had communication with Forest. I talked
15 to Chuck Ramsey with Forest, and they hadn't made their
16 mind up which way they wanted to go, as far as whether they
17 would join us or McElvain, or commit, whatever, until after
18 the hearing.

19 Q. You communicated directly with Forest --

20 A. Yes.

21 Q. -- and Dugan?

22 A. Dugan I didn't.

23 Q. All right, but you sent them a well proposal, did
24 you not?

25 A. Oh, yes, yes.

1 Q. And they indicated they weren't participating?
2 They were participating with McElvain; is that correct?

3 A. They were going with McElvain.

4 Q. All right. Did you make follow-up efforts to
5 communicate with Forest and the other interest owners?

6 A. Some conversations here and there, yes. And also
7 letters too.

8 Q. Now, let me ask you, you were present for the
9 testimony of McElvain's witnesses this morning, you're
10 familiar with the dispute here. Based on your knowledge of
11 the facts, in your opinion did McElvain's efforts to obtain
12 the voluntary participation of Simmons in the Naomi Com
13 well comply with the prevailing industry custom and
14 practice in the San Juan Basin?

15 A. This is the Naomi 1?

16 Q. Yes.

17 A. They were pretty poor.

18 Q. All right, so the answer is no?

19 A. (Nods)

20 Q. You need to indicate verbally for the court
21 reporter.

22 A. The answer is no.

23 Q. All right. In your opinion, did McElvain make a
24 serious and diligent effort to obtain Simmons' voluntary
25 agreement in their well?

1 A. No, I don't think so.

2 Q. If I may approach the witness, madame Chairman.
3 Mr. Dunn, if you would, please, would you refer
4 to Exhibit D-1 and identify that for the Commissioners?

5 A. D-1, yes. It's a letter from Conoco with an
6 attached AFE. This happens to be a unit that we're
7 involved in, the 28-7 unit. Conoco is the operator, and we
8 drilled quite a few wells down there with them, or
9 participate in quite a few wells down there. It's an AFE,
10 a well completion, drilling and completion, AFE, and a log.

11 Q. All right, let's go through these. Specifically,
12 it consists of two well proposals, does it not?

13 A. That's right.

14 Q. And the first well is the San Juan 28-7 Number
15 183?

16 A. That's correct.

17 Q. And is this typical of the well proposals that
18 Conoco sends to its --

19 A. Yes, it is.

20 Q. What does it consist of? Let's go through it
21 briefly.

22 A. It consists of the Mesaverde recompletion
23 procedure.

24 Q. All right, so we have an AFE, we have a
25 recompletion procedure. What comes after that?

1 A. Well, the AFE is the last thing on the list.

2 Q. All right, so you have a cost estimate as well?

3 A. Right.

4 Q. Just so we're clear on this, the second page of
5 the exhibit is Conoco's form AFE, correct?

6 A. That's correct.

7 Q. And the next to the last page for the 28-7 183
8 well is a cost estimate?

9 A. Cost estimate, yeah, uh-huh.

10 Q. And again, behind that the last page for that
11 well is, again, another form AFE?

12 A. That's right.

13 Q. Now, let's look at what else is combined with
14 Exhibit D-1. Is that a well proposal for the San Juan 28-7
15 Unit Well Number 261?

16 A. It's a Mesaverde recompletion procedure.

17 Q. And does this have a work summary attached to it?

18 A. Yes, it does.

19 Q. And it has a recompletion procedure attached to
20 it?

21 A. That's correct.

22 Q. And it has a cost estimate attached to it?

23 A. At the end, right, or an extra log.

24 Q. And finally there is a set of logs included with
25 it?

1 A. That's right.

2 Q. In your opinion, Mr. Dunn, is the Conoco well
3 proposal more reflective of the standard of well proposals
4 that operators in the San Juan Basin send out, soliciting
5 third-party participation?

6 A. This is usually what I see.

7 Q. Yeah.

8 A. Yes.

9 Q. Is this, the Conoco well proposal, closer to the
10 standard than McElvain's well proposal?

11 A. I would say that it's -- It's a little closer,
12 yes.

13 Q. Well, in fact, it's significantly closer to the
14 prevailing standard, is it not?

15 MR. FELDEWERT: Object, counsel's leading the
16 witness. The witness has answered the question.

17 CHAIRMAN WROTENBERY: Sustained.

18 Q. (By Mr. Hall) Finish up with you, Mr. Dunn.
19 Does D.J. Simmons seek the imposition of a 200-percent risk
20 penalty for the Bishop 25-1 well?

21 A. Yes, sir.

22 Q. And does Simmons also seek to be designated
23 operator of the well?

24 A. Yes, they do.

25 Q. Now, were Exhibits 1 through 18 and D-1 compiled

1 by you or at your direction?

2 A. Yes.

3 MR. HALL: We'd move the admission of Exhibits 1
4 through 18 and D-1.

5 CHAIRMAN WROTENBERY: Any objection, Mr.
6 Feldewert?

7 MR. FELDEWERT: I don't know if we necessarily
8 went through each one of these. Give me one minute here.

9 MR. HALL: What I was suggesting, madame
10 Chairman, is, when we discussed Exhibits 3, 4 and 5, the
11 chronologies, each of those entries are supported by the
12 exhibits I'm seeking the introduction of now. We discussed
13 most of them this morning anyway.

14 CHAIRMAN WROTENBERY: I think the ones that we
15 didn't walk through specifically were 7 through 10.

16 MR. FELDEWERT: Yeah, I may not have an
17 objection, just give me -- page through these.

18 CHAIRMAN WROTENBERY: Sure.

19 MR. FELDEWERT: 1 through 18?

20 MR. HALL: Yes.

21 MR. FELDEWERT: I have no objection.

22 CHAIRMAN WROTENBERY: And D-1.

23 MR. FELDEWERT: D-1 would be one of those hearsay
24 letters, I'm afraid.

25 Let me ask Mr. Dunn.

1 VOIR-DIRE EXAMINATION

2 BY MR. FELDEWERT:

3 Q. Did this come out of your files?

4 A. Yes, it did.

5 Q. Are these files that you normally keep in the
6 ordinary course of business?

7 A. Yes.

8 Q. These are your business records?

9 A. They're in the engineering records, yes.

10 MR. FELDEWERT: Okay, I don't have any objection.

11 CHAIRMAN WROTENBERY: Then Exhibits 1 through 18
12 and D-1 are admitted into evidence.13 MR. HALL: At this time, madame Chairman, we
14 would call --

15 MR. FELDEWERT: I do have some questions.

16 MR. HALL: I'm sorry. I'm trying.

17 CHAIRMAN WROTENBERY: Mr. Feldewert?

18 CROSS-EXAMINATION

19 BY MR. FELDEWERT:

20 Q. Mr. Dunn, you testified here that in your opinion
21 there was a good-faith effort made by D.J. Simmons to reach
22 a voluntary agreement for their east-half proposal?

23 A. Yes.

24 Q. Okay. As I understand it, in connection with
25 those efforts in which you base your good-faith testimony

1 on is that you sent out a letter proposing the well?

2 A. Right.

3 Q. Sent out an AFE?

4 A. That's correct.

5 Q. And you sent out a well-completion report?

6 A. A well --

7 Q. The working report?

8 A. Drilling and completion, yeah.

9 Q. Did you send out anything else?

10 A. That was -- we set out in the letter -- I set out
11 in the letter what the JOA would contain, if we got that
12 far.

13 Q. But you didn't send out a JOA?

14 A. No, I didn't.

15 Q. Okay. So in your opinion, good-faith efforts are
16 met when you send out a letter, an AFE and a well
17 completion?

18 A. Yes.

19 Q. Okay. And in this particular case, when you
20 received McElvain's Application for a south half, you had
21 their proposal letter, their AFE, the well-completion or
22 project report and, in addition, you also had well logs by
23 the end of November, 2000, did you not?

24 A. That's right.

25 Q. Okay. So would you agree with me that McElvain

1 had undertaken good-faith efforts to reach a voluntary
2 agreement with D.J. Simmons in this case?

3 A. I would agree with you as far as having to get
4 that stuff from McElvain, yes. We had to ask for all that.

5 Q. Did you have to ask --

6 A. It wasn't sent out --

7 Q. I understand.

8 A. -- we had to ask for it.

9 Q. I don't want to be caught -- bogged down in
10 semantics, but you received what you asked for; is that
11 correct?

12 A. Yes, yes.

13 Q. And correct me if I'm wrong, but I thought you
14 testified at the first hearing that you thought McElvain
15 had engaged in good-faith efforts to reach an agreement?

16 A. Well, yeah, I did.

17 Q. Okay, all right. Just want to make sure that's
18 clear.

19 All right, now -- And if you look at the Conoco
20 letter, what did -- they sent out an AFE, they sent out a
21 well-completion report and they sent out a well log?

22 A. Right.

23 Q. Did they not?

24 A. Yes.

25 Q. Okay, all that information you had by the end of

1 November of 2000, D.J. Simmons did. Strike that, you've
2 already answered that question.

3 Did you ever send out to McElvain any geologic
4 information?

5 A. No.

6 Q. Did you ever send out any engineering economics?

7 A. It wasn't requested.

8 Q. Did you ever send out any estimate of the
9 reserves?

10 A. It wasn't requested, no.

11 Q. Okay, did you send out any well logs?

12 A. No.

13 Q. Okay. You sent out your proposal for an east-
14 half unit on June 7th; is that right? Let's look at your
15 Exhibit Number 6, we don't want to guess here. Exhibit
16 Number 6 indicates you sent out your well proposal on June
17 7th; is that right?

18 A. That's correct.

19 Q. Okay. And then you received a week later from
20 McElvain an alternative development proposal, did you not?
21 That's entry number 4?

22 A. Right.

23 Q. Okay, all right.

24 A. That's for the -- yeah, Naomi Number 2.

25 Q. Now, when did you file your pooling application

1 for your east half? I didn't see that on here.

2 A. I don't know, I can't recall --

3 Q. Okay.

4 A. I'd have to --

5 Q. All right. And did -- You know, entry 8 down
6 there, you indicate that you have offered to McElvain to
7 sell your Mesaverde interest in the north half of the
8 southeast quarter of Section 25, right?

9 A. That's correct.

10 Q. Okay, is that because D.J. Simmons has no
11 interest in pursuing that Mesaverde reserve?

12 A. No, I think we just wanted to -- you know, to
13 come to some kind of settlement.

14 Q. Okay. And then you also again made an offer to
15 farm out your Mesaverde reserves in the southeast quarter;
16 is that correct?

17 A. That is correct.

18 Q. And I believe you testified -- now let me make
19 sure I didn't hear this wrong -- that you didn't receive
20 any response to that proposal from McElvain?

21 A. To the --

22 Q. To your last entry, Number 11, in your Exhibit
23 Number 6. You received a response, didn't you?

24 A. Okay, let's see. That would have been --

25 Q. I don't want to guess.

1 A. Well, hang on just a second.

2 Q. Let me show you what has been marked as --

3 A. The only response, I think, that I got was --
4 nothing in writing. What had happened was --

5 Q. I want --

6 A. -- there was no response by October 31st.

7 Q. Okay.

8 A. We got a response afterwards.

9 Q. November 1st, wasn't it?

10 A. Yes.

11 Q. Okay, all right. And that's marked here as
12 McElvain Exhibit B-1; is that right?

13 A. Yes.

14 Q. Okay. If I may approach. Okay, now did you
15 review this response?

16 A. I did.

17 Q. Okay. Do you see in there -- Did you understand
18 that McElvain said -- indicated to you that they would be
19 willing to farm out -- have you farm out your southeast
20 quarter interest to them under the terms that were set out
21 in your October 25th letter?

22 A. Uh-huh, I see that.

23 Q. Okay. The one thing they would not agree to
24 would be to support your request for 160-acre spacing --
25 abnormal 160-acre spacing units for the Mesaverde formation

1 in the north half?

2 A. Right.

3 Q. Okay. As you understand it, the Division has
4 determined that the Mesaverde formation is to be spaced on
5 320 acres?

6 A. That's right.

7 Q. All right. And if I understand, what you seem to
8 be saying here is, you want to try to go before the
9 Commission and ask them to approve special spacing units
10 for the north half of this section?

11 A. I think McElvain and Simmons would have -- Yes,
12 we would have to go before the Commission.

13 Q. You want -- and what you want in order to close
14 this deal is, you want McElvain to go along with you and
15 support that request?

16 A. Yes.

17 Q. Okay. Do you recall raising that issue with the
18 Examiner at the hearing in May?

19 A. Not exactly.

20 Q. Okay, you don't remember Examiner Stogner's
21 reaction when you suggested to him that what we ought to do
22 here is create two nonstandard 160-acre spacing units in
23 the north half of Section 25?

24 MR. HALL: I'm going to object if, in fact, that
25 was he that did that. Can refer us to --

1 Q. (By Mr. Feldewert) You don't remember that?

2 A. At 63 I'm getting to the point where I can't
3 remember what happened last week.

4 Q. That's all right, the transcript -- You don't
5 remember that?

6 A. No, I don't --

7 Q. Okay, that's --

8 A. -- I'm sorry.

9 Q. Okay. Do you know what rate of return D.J.
10 Simmons usually shoots for with respect to their drilling
11 projects?

12 A. I can't say I do.

13 Q. You don't know at all? Okay.

14 A. I'd have to refer to, you know, either an
15 engineer or a geologist.

16 Q. Is D.J. Simmons going to pursue a drilling
17 project for the Dakota formation in the east half of
18 Section 25? Have you made a decision to go ahead and drill
19 those wells?

20 A. Oh, yes.

21 Q. Okay.

22 A. Yeah.

23 Q. Have you gotten the approval from the BLM that
24 you need?

25 A. Right now we have the APDs at Albuquerque --

1 Q. You haven't received --

2 A. -- for approval -- No, they haven't been approved
3 yet.

4 Q. They haven't. Do you know why?

5 A. Mainly because of some surface-owner problems
6 that we have out there.

7 Q. You don't have a landowner agreement yet?

8 A. No, we don't.

9 Q. So --

10 A. We're in the nego- -- Well, what had happened, if
11 I may, is, on the Bishop lease, Section 25, we had a
12 surface owner and we had an agreement with him. We had two
13 wells staked. In the meantime, he sold his surface to a
14 party from California, so what has happened is, we have
15 started all over again, as far as --

16 Q. Now, I thought you told me at the last hearing
17 that you had acquired your federal lease in April of --
18 July of 2000. Was that not correct?

19 A. No, that federal lease was approved September
20 1st.

21 Q. Okay.

22 A. We bid on it sometime the middle of July.

23 Q. And so you --

24 A. At that point we were awarded --

25 Q. I see, all right, okay. So as of July of 2000,

1 you knew you were awarded a federal lease for this acreage?

2 A. Yes.

3 Q. And then you finally got the paperwork from

4 the --

5 A. It hadn't been issued.

6 Q. I understand. And you got that on September the

7 1st of 2000?

8 A. September the -- Well, it was approved on the 1st

9 of September so, you know, I don't know exactly when we got

10 it --

11 Q. I understand.

12 A. -- three or four days later or --

13 Q. And at this point in time, after that passage of

14 time, you still don't have your BLM APDs and you still

15 don't have an agreement?

16 A. No.

17 Q. Do you remember when at the last hearing we had a

18 discussion about this idea of whether an operator should

19 take into account the sharing of risk with those who were

20 going to benefit from the project?

21 A. Uh-huh.

22 Q. Okay. And do you recall testifying at that time

23 that you thought it was a reasonable consideration for an

24 operator to take into account when proposing an initial

25 test well in a property like Section 25?

1 MR. HALL: Let me object. First of all, that's
2 beyond the scope of direct here. It's improper use of the
3 transcript as well. So I would object.

4 MR. FELDEWERT: I've asked a question and I'm
5 waiting for the answer. I may not have to use the
6 transcript.

7 CHAIRMAN WROTENBERY: I'll allow it.

8 MR. HALL: Still beyond the scope.

9 CHAIRMAN WROTENBERY: I'll allow it.

10 THE WITNESS: You allow it? It's always been my
11 contention that if you can share the risk, yes, it's a --
12 it's rather obvious.

13 Q. (By Mr. Feldewert) It's a reasonable
14 consideration?

15 A. Well, sure.

16 Q. And it's customary for operators to take that
17 into account when they're trying to propose a spacing unit
18 and develop property, correct?

19 A. Yes, yeah, I think -- Yes.

20 Q. Okay, that's all I have. Thank you.

21 Hold on one minute.

22 When you applied for your APDs with the BLM, Mr.
23 Dunn, have you included in that plan a proposal to complete
24 in the Mesaverde, or is it just the Dakota?

25 A. You know, I couldn't answer, I'd have to -- I

1 didn't fill them out myself. We have somebody that does
2 that, so I couldn't tell you.

3 Q. Okay, at this point in time, to your knowledge,
4 D.J. Simmons only plans to drill a well and complete the
5 well in the Dakota; is that right? In the northeast
6 quarter?

7 A. That is correct.

8 Q. Okay.

9 A. We're going to take a good look at whatever, you
10 know, options we have, yeah.

11 MR. FELDEWERT: Okay, that's all I have. Thank
12 you.

13 CHAIRMAN WROTENBERY: Commissioner Bailey?

14 COMMISSIONER BAILEY: No.

15 CHAIRMAN WROTENBERY: Commissioner Lee?

16 COMMISSIONER LEE: (Shakes head)

17 EXAMINATION

18 BY CHAIRMAN WROTENBERY:

19 Q. I have a couple of questions because I'm a little
20 bit unclear on the scope of D.J. Simmons' Application for
21 compulsory pooling in this case, and I'm not sure I
22 understood you correctly when you responded to the very
23 first question, I believe, asked by Mr. Hall about the
24 scope of the Application.

25 First of all, what pools are you seeking to force

1 pool, what zones and what vertical interval?

2 A. Just the Mesaverde.

3 Q. Okay. And the notice of hearing had indicated
4 any zone from the surface --

5 A. Oh, I see what you're saying.

6 Q. -- to the -- I'm trying to remember. Let me look
7 at it, just to get it right. From the surface to the base
8 of the Mesaverde, that was spaced on 320 acres.

9 A. Right.

10 Q. Now, I think I heard you say something
11 different --

12 A. Less --

13 Q. -- in your testimony.

14 A. Less the Fruitland Coal, less the Fruitland Coal
15 formation.

16 Q. Okay.

17 A. From the surface to the base of the Mesaverde,
18 less the Fruitland Coal.

19 Q. Okay.

20 A. Now, the Fruitland Coal --

21 Q. It is spaced on 320 acres, but you're not
22 requesting to pool that zone.

23 What pools in that interval are currently spaced
24 on 320 acres?

25 A. As far as I know, just the Mesaverde and the

1 Fruitland Coal.

2 Q. That's as far as I know too. Okay, I just wanted
3 to double-check on that.

4 You also testified that you're not at this point
5 really planning to complete in the Mesaverde. And I may
6 not have accurately summarized your testimony, but I got
7 the impression that your target is really the Dakota and
8 that you do not have immediate plans to complete in the
9 Blanco-Mesaverde?

10 A. Right. Right, the Gallup-Dakota is our main --
11 That's our objective, our main objective.

12 Q. So why are you asking to compulsory pool the
13 Blanco-Mesaverde?

14 A. Well, we would like to have the Blanco -- or the
15 Mesaverde, we would like to have that in our pocket just in
16 case the Gallup-Dakota does not turn out too good and the
17 Mesaverde is good.

18 CHAIRMAN WROTENBERY: Thank you.

19 Any redirect?

20 MR. HALL: Brief redirect to a question asked by
21 Mr. Feldewert.

22 REDIRECT EXAMINATION

23 BY MR. HALL:

24 Q. Mr. Dunn, Mr. Feldewert asked you about
25 mitigation of risk, and you indicated that you thought

1 sharing of risk was certainly a reasonable thing to take
2 into consideration when parties are negotiating; is that
3 right?

4 A. Absolutely.

5 Q. When they're unable to negotiate and when they
6 invoke the compulsory pooling statute, have you ever seen
7 the Division's compulsory pooling process invoked for
8 purposes of mitigating risk?

9 A. I haven't. But there again, my experience hasn't
10 been all that --

11 Q. Right, so you have not seen the pooling
12 statute --

13 A. No.

14 Q. -- used for that purpose?

15 A. No, I haven't.

16 Q. Is Simmons seeking to prevent McElvain from
17 completing its well in the Mesaverde and dedicating a west-
18 half unit?

19 A. Absolutely not.

20 Q. Are they still free to do that?

21 A. Absolutely.

22 MR. HALL: Nothing further.

23 CHAIRMAN WROTENBERY: Thank you very much, Mr.
24 Dunn.

25 MR. HALL: At this point, madame Chairman, we'd

1 call Lisa Gusek to the stand.

2 LISA GUSEK,

3 the witness herein, after having been first duly sworn upon
4 her oath, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. HALL:

7 Q. For the record, please state your name.

8 A. Lisa Gusek.

9 Q. And how do you spell that, please?

10 A. It's G like in George, u, s like in Sam, e, k.

11 Q. All right. By whom are you employed and in what
12 capacity?

13 A. By D.J. Simmons, Inc., as a geologist.

14 Q. And you testified at the Division Examiner
15 Hearing in these matters and had your credentials accepted
16 as a matter of record, did you not?

17 A. Yes.

18 Q. And you're familiar with the Applications that
19 have been filed in these cases?

20 A. Yes.

21 Q. And you're familiar with the lands that are the
22 subject of these Applications?

23 A. Yes.

24 MR. HALL: Once again, Madame Chairman, we would
25 offer Ms. Gusek as a qualified petroleum geologist.

1 MR. FELDEWERT: I've read through that
2 transcript, I do have a couple questions.

3 VOIR-DIRE EXAMINATION

4 BY MR. FELDEWERT:

5 Q. Ms. Gusek, how long have you been employed as a
6 geologist?

7 A. Since 197- -- or actually 1981. I first went to
8 work in 1979 as a physical science technician with Minerals
9 Management Service in Los Angeles, and then I was promoted
10 to a geologist shortly thereafter, and I've worked as a
11 geologist ever since.

12 Q. When did you begin your employment with D.J.
13 Simmons?

14 A. In June of 1998.

15 Q. Was that your first time that you were employed
16 with a company that operates in the San Juan Basin of New
17 Mexico?

18 A. No, I had been employed with Martin Exploration
19 for 10 years in Boulder, Colorado, and we had some
20 operations, some wells that we operated in the San Juan
21 Basin in Colorado.

22 Q. San Juan Basin, Colorado?

23 A. Yeah, in La Plata County.

24 Q. Did you have any property that you operated in
25 the San Juan Basin of New Mexico?

1 A. Not at that time, no.

2 Q. Have you had any experience with the Lindrith
3 area of the San Basin of New Mexico?

4 A. Well, from all of my mapping experience in the
5 area, yes, in looking at production.

6 Q. I'm sorry, outside of your work that you've done
7 in this case, have you had any experience with the Lindrith
8 area of the San Juan Basin?

9 A. I haven't actually -- we haven't -- actually with
10 operators who have operated wells there, no.

11 Q. Okay, so you -- All right. Have you had any
12 experience with drilling of Mesaverde wells or the
13 recompletion of Mesaverde wells?

14 A. Yes.

15 Q. Okay, with what company?

16 A. D.J. Simmons.

17 Q. Okay, and that would have been beginning in 1998?

18 A. Yes.

19 Q. Okay, and how many wells have you had -- How many
20 Mesaverde wells have you --

21 A. We --

22 Q. Well, let me finish.

23 A. Okay.

24 Q. How many Mesaverde wells have you been involved
25 in that were completed in the Mesaverde formation in the

1 San Juan Basin of New Mexico?

2 A. I think at this point since my employment, we've
3 drilled and completed six wells in the 29 North, 9 West,
4 area, and we operate 12 wells in that area. I've also been
5 involved in Lewis completions in that area, part of which
6 is incorporated into the Blanco-Mesaverde Pool, and we've
7 recompleted approximately, I think, six wells in the
8 Chacra-Lewis. We've also recently completed the Mesaverde
9 over in 24 North, 4 West, which is actually in the Lindrith
10 West Pool. We did some tests with the Mesaverde there.

11 Q. How far is this -- You say you've drilled --
12 you've been involved with six Mesaverde wells in the 29
13 North, 9 West area?

14 A. Yes.

15 Q. How far away is that from the Lindrith area of
16 the San Juan Basin?

17 A. Oh, I guess that would be approximately 30 miles
18 or --

19 Q. Okay.

20 A. -- 30 to 40 miles.

21 Q. And you said that you've completed six Chacra-
22 Lewis wells?

23 A. Yes.

24 Q. Okay, in that same area?

25 A. Yes, but we've also completed one in 24 North, 4

1 West.

2 Q. All right, I was going to ask you about that.
3 One in 24 North, 4 West, and that was in the Mesaverde?

4 A. We tested the Mesaverde, and we also tested the
5 Chacra-Lewis there.

6 Q. Did you --

7 A. We're currently producing it from the Chacra-
8 Lewis to get an IP on that, or to establish a production
9 curve, and then our plans are to also produce the Mesaverde
10 for a while, because our plans are to commingle those
11 formations.

12 Q. Okay, but you haven't completed or produced a
13 well in the Mesaverde formation in 24 North, 4 West?

14 A. We have completed and then we've done initial
15 tests on it, we just haven't produced it for some period of
16 time.

17 Q. In the Mesaverde?

18 A. Yes.

19 Q. And it has produced from the Mesaverde?

20 A. We have test data on that well.

21 Q. Test data, okay. All right, any other experience
22 with the Mesaverde formation in the San Juan Basin of New
23 Mexico?

24 A. Up in -- Well, not in New Mexico but up in La
25 Plata County.

1 MR. FELDEWERT: Okay. How are you tendering Ms.
2 Gusek, Mr. Hall?

3 MR. HALL: As an expert petroleum geologist.

4 Madame Chairman, would you like me to go through
5 a more extensive direct examination of her qualifications,
6 or are they acceptable to you, Mr. Feldewert?

7 MR. FELDEWERT: I would object to an expert
8 petroleum geologist in the San Juan Basin of New Mexico.
9 If she -- I think Ms. Gusek is qualified to testify about
10 geology in other parts of the country, but I'm not so sure
11 she's qualified to testify about the geology in this area.
12 I'll leave it up to the Commission.

13 CHAIRMAN WROTENBERY: We accept her
14 qualifications.

15 DIRECT EXAMINATION (Resumed)

16 BY MR. HALL

17 Q. All right. Ms. Gusek, you've prepared certain
18 exhibits in conjunction with your testimony here today.
19 Let's refer to Exhibit 19. Would you identify that,
20 please?

21 A. Exhibit 19 is a cumulative production map for
22 both the Chacra or Lewis production in the area and
23 Mesaverde production. It covers the west half of 25 North,
24 2 West, as well as all of 25 North, 3 West.

25 The symbols that you see that are colored in kind

1 of a purplish-brown color up to the northwest of the
2 acreage, those wells are Mesaverde-producing wells. Then
3 you'll note that there are two wells approximately one to
4 one and a half miles southwest of the subject acreage in 25
5 that have produced from the Lewis.

6 I have a mistake on here that I recently
7 identified, as they stated about *Dwight's, Dwight's* and
8 *P.I.* joined, and through the consolidation of the data some
9 of the things have been -- some of the data has been put in
10 there with the wrong producing formation.

11 So yesterday I did print out the production on
12 the Myers well in the northeast quarter of Section 35, and
13 through the OCD or the state records, all of that
14 production is actually Chacra-Lewis production, not
15 Mesaverde production.

16 The well in the northeast quarter of Section 34
17 was perforated and frac'd in the Mesaverde. Notes from the
18 completion report on that Schalk 43-2 well show that they
19 had recovered small amounts of gas and excessive water.

20 I would also like to point to a Mesaverde test in
21 the northeast northwest of Section 13, approximately two
22 miles north of the acreage. That well was also perforated
23 and frac'd in the Mesaverde and tested water only.

24 And as I stated, the Myers well in the northwest
25 quarter of 35 tested only small amounts of gas, and they

1 ended up plugging back and completing an interval in the
2 Lewis.

3 Those two wells in 34 and 35 actually have 160-
4 acre units designated to the Chacra-Lewis.

5 You'll notice also, over to the northeast of the
6 acreage is what they refer to as their Lindrith area
7 production. The largest well symbol in that area is a
8 Mallon well. It's been producing for a long time. And as
9 you can see, it's produced in excess of 650,000 MCF. It's
10 over in Section 3 of 25-2.

11 Q. Of all these, what is the closest commercial
12 Mesaverde production to the --

13 A. Okay --

14 Q. -- Bishop 25-1?

15 A. -- John Steuble had said that the well in the
16 northwest quarter of 15 was the nearest economic
17 production. But as you'll see from my map, that well has
18 only produced a cum of 93,000 MCF gas.

19 I also pulled the production on that well
20 yesterday from the State records. It appears that the
21 Gallup-Dakota production must have been added in McElvain's
22 Exhibit -- I think it was 19.

23 So really, the nearest economic production would
24 be in the north half of Section 16 there. So approximately
25 three, three and a half miles northwest of the subject

1 acreage.

2 Q. So this shows that the Mesaverde is quite a large
3 stepout for the lands that are the subject of this
4 Application, does it not?

5 A. Yes, it is.

6 Q. I want to talk to you about the vertical extent
7 of the formations McElvain seeks to pool -- I'm sorry --
8 yes, that McElvain seeks to pool. And if I could have you
9 refer to Exhibit Number 20, please, identify that.

10 A. Okay. Well, first off, McElvain -- It's my
11 understanding that McElvain seeks to pool from the base of
12 the Pictured Cliffs formation to the base of the Mesaverde.

13 Exhibit 20 is an excerpt from Order Number
14 R-10,987, the special pool rules for the Blanco-Mesaverde
15 Gas Pool showing the vertical limits of the pool north and
16 south of the Chacra line.

17 And if you turn to the second page in this, note
18 at the bottom where it states "Blanco-Mesaverde Gas Pool",
19 and it talks about the vertical limits for the Blanco-
20 Mesaverde Gas Pool, that it shall be as follows. And first
21 it's going to define what this Chacra line is:

22

23 North and east of a line generally running from
24 the northwest corner of Township 31 North, Range 13
25 West, San Juan County, New Mexico, to the southwest

1 corner of Township 24 North, Range 1 East, NMPM, Rio
2 Arriba County, New Mexico, (as fully described on
3 Exhibit "A" of Order R-5459, August 1, 1977, as
4 amended, and in Rule 25 of this order), the vertical
5 limits shall be from the Huerfanito Bentonite marker
6 to a point 500 feet below the top of the Point Look
7 Sandstone.

8
9 But...

10
11 South and west of the line described in (A)
12 above, the vertical limits shall be from a point 750
13 feet below said Huerfanito Bentonite marker to a point
14 500 feet below the top of the Point Lookout Sandstone.

15
16 If I could direct your attention to Exhibit 21, I
17 have a copy of a map here that was put together by Hopkins
18 Map Service, and the Chacra line is designated on this map.
19 It's that dark line that you see running from the southeast
20 corner of 24 North, 1 West, in sort of a northwest trend,
21 up to the southern boundary of 27 North, 3 West. Okay?
22 And there's a box down there that once again identifies
23 these special rules for the Blanco-Mesaverde Gas Pool
24 regarding what vertical limits will be included in the
25 pool.

1 And if you'll notice, D.J. Simmons' acreage is
2 colored in yellow on here. McElvain's proposed south-half
3 unit is the red unit that's outlined here on Section 25,
4 and the green is Simmons' proposed unit. And this acreage
5 is located south and west of the Chacra line. Therefore
6 the top of the pool is a point 750 feet below the
7 Huerfanito marker, and northeast of the line the top of the
8 pool is a point contiguous with the Huerfanito bentonite
9 marker.

10 This marker happens to lie, in general, a couple
11 hundred feet or -- you know, it's below the base of the
12 Pictured Cliffs sandstone, base of the Pictured Cliffs.

13 Q. As I understand it, McElvain seeks to pool and
14 call a 320 formation that vertical section lying above that
15 750 point -- reference point from the Huerfanito bentonite;
16 is that correct?

17 A. Right, so somewhere on the order of 750 feet-plus
18 section of Lewis is being included in their Application
19 that is not included in the special rules for the Blanco-
20 Mesaverde Gas Pool.

21 Q. So what are they picking up in addition to the
22 Mesaverde?

23 A. They're picking up some of the sands that have
24 been proven to be productive in other portions of the
25 Basin, specifically what's known as the Chacra unit. You

1 have the Chacra sands, and you have the underlying Otero
2 sands that overlies the Mesaverde, so it would be picking up
3 some of that section.

4 Q. All right. Let's refer to Exhibit 22 now. This
5 is your Gallup-Dakota production map. Could you identify
6 that for the record and explain what that reflects to the
7 Commission?

8 A. Okay, this production map covers the same area as
9 the Chacra-Mesaverde cumulative production map. What's
10 shown on here is Gallup-Mancos production. And you'll
11 notice over in the Gavilan field, the Gallup production is
12 referred to as Mancos, because there are some additional
13 zones than what's just strictly identified as Gallup.

14 Then there is some production from the Greenhorn
15 that is shown with the brown numbers. There's also wells
16 that have been completed in both the Gallup-Dakota, which
17 is designated with blue symbols, and the green-only symbols
18 are wells that are only completed in the Dakota production.

19 One thing you'll -- And the size of the symbol
20 corresponds to the amount of production. So the larger the
21 symbol, the greater the production will be.

22 One thing you'll notice, if you look east of the
23 subject acreage, is there's some very high variability in
24 the cumulative production that you see from these wells.
25 These wells were all pretty much drilled in and around the

1 same time, back in the 1980s, and so they're pretty good
2 indicators too of reserves.

3 Specifically, if you'll look at the well in
4 Section 34 you'll notice a cumulative oil number of 304
5 barrels. But you can go less than three-quarters of a mile
6 to the east and you see a well that's produced 157,000
7 barrels of oil from the Mancos.

8 This high variability that you see throughout
9 this township, I believe, based on my experience throughout
10 the Rocky Mountains and fractured reservoirs, that it is a
11 consequence of fracturing in the area. And therefore
12 production, at least in that area, appears to be enhanced
13 by production.

14 In addition, if you look just southwest of the
15 acreage you'll see some very large wells that are denoted
16 as Gallup-Dakota producers. Those producers actually were
17 originally completed in the Dakota. The majority of the
18 production is from the Dakota. They were later recompleted
19 in the Gallup. But that production is predominantly from
20 the Dakota "D" sand, and then there is some production from
21 the Gallup interval as well.

22 Q. Is that all you have with respect to Exhibit 22?

23 A. Yes.

24 Q. All right, let's refer to Exhibit 23, the foldout
25 exhibit there. Please identify this for the record and

1 explain what it shows.

2 A. Okay, this exhibit is what I refer to as a
3 fracture orientation data montage. Basically there is a
4 land grid covering an area from 24 North, 1 West, up to
5 about 26 North, 3 West. Superimposed on there is a
6 structure map and the fracture orientation data that was
7 compiled by Alan Emmendorfer for an article that he
8 published in *The Mountain Geologist* in April, 1989.

9 Alan Emmendorfer used a dipmeter-type fracture
10 log to try to understand the structural relationship of the
11 fracture patterns within the Mancos-Gallup Reservoir, which
12 directly underlies -- the Mancos directly underlies the
13 Mesaverde formation. In fact, the base of the Point Look
14 is the top of the Mancos.

15 Then he plotted all of the fracture orientation
16 measurements on the rose diagram plots that you see
17 superimposed on here.

18 In addition, I have two rose diagrams from FMI
19 that were done from sampling, and two Meridian oil wells,
20 and these wells are located probably about four miles and
21 ten miles, respectively, southwest of the subject acreage.

22 In the Cullins Federal Number 6 well there were
23 104 samples taken from breakouts and fractures, and if you
24 look at that you see pretty much a north-south orientation.
25 These samples were taken from depths -- if you notice over

1 on the right, starting at a depth of about 64-something. I
2 think up in Section 25 the Point Lookout formation is
3 probably at a depth of about 5800 to 6000 feet, so we're
4 talking about maybe 400 feet below the Mesaverde, but
5 they're all Cretaceous reservoirs.

6 The Meridian Oil Medio Canyon Number 7 well,
7 located in the southwest northwest of 35, 24 North, 4 West,
8 had 12 samples taken, and it shows some of the best
9 fractures were oriented in a north-south direction. You do
10 see some fracturing in other directions, but most of it is
11 a north-south direction.

12 If you look at the rose plots that are plotted on
13 Alan Emmendorfer's data, there is variance in the
14 predominant direction of fracturing. However, the majority
15 of it is in a north-south to about a north-40-degrees-east
16 orientation.

17 The papers that I referenced on here are not the
18 only studies that have been conducted throughout the San
19 Juan Basin on the Mesaverde, Gallup and Dakota. They were
20 just four that I selected to include in here. Burlington
21 Resources did extensive research in the Blanco-Mesaverde
22 Pool and had several different drilling pilot programs to
23 try to understand the fracture orientation, not only from
24 natural fractures, but also that fracture orientation that
25 is induced when you artificially frac a well.

1 The Mesaverde is a tight sand reservoir, and
2 that's shown by the fact that they have now downspaced from
3 320 acres to include one infill well at 160, and now we've
4 gone to 80 acres. And Burlington did extensive studies in
5 conjunction with other people and found that the
6 predominant fracture orientation for the elliptical
7 drainage pattern was in a -- like -- I think they were
8 saying a north-10-degrees-east orientation most of the
9 time.

10 From that the new rules came down for 80-acre
11 infill drilling, and in addition I've been to several talks
12 over the last few -- several industry symposiums that have
13 been put on by the PTTC, as well as Rocky Mountain
14 Association of Geologists, Four Corners, et cetera, where
15 John Lorenz and other have presented papers regarding the
16 predominant fracture orientation of natural fractures in
17 the Mesaverde, the Gallup, the Dakota. All of them
18 indicate a north-south to about a north-40-degrees-east
19 orientation for those natural fractures.

20 It's also believed that due to this, when you
21 artificially frac the well, that elliptical orientation is
22 going to align itself with the local trends of fracturing.

23 So when we have gone to infill our wells in 29
24 North, 9 West, we've been utilizing all of this data to
25 help us better develop a plan for infill drilling.

1 We also up in that area did see some
2 communication between wells that were offset in somewhat of
3 a northwest-southeast direction, slightly off of north-
4 south. We saw that when drilling one of our -- we actually
5 ended up sidetracking one of our wells in the Mesaverde
6 that wasn't performing very well, and it turned out that it
7 was aligned with another Mesaverde producer and we saw
8 communication between the two wells.

9 So we feel that the Gallup, Dakota, Mesaverde,
10 they all tend to, throughout the San Juan Basin, tend to
11 show primary directions of fracturing. And that's not to
12 say that there aren't other orientations for fractures, but
13 the predominant direction is in a north-south to north-40-
14 degrees-east direction.

15 Q. Now, for the record, Exhibit 24 is the
16 compilation of articles that are referenced on the face of
17 Exhibit 23?

18 A. That's right.

19 Q. Do you agree with Ms. Jackson and Mr. Steuble
20 when they say that you can't extrapolate from the data
21 shown in Exhibits 23 and 24 and apply it meaningfully to
22 Section 25 lands?

23 A. No, I don't, primarily because with the work that
24 Burlington Resources did -- they did it in lots of
25 different areas throughout the Basin, they've also run a

1 lot of FMIs, they've done a lot of coring, they have a lot
2 of data regarding the fracture orientation for the
3 Mesaverde.

4 If you notice on Exhibit 21, it shows the extent
5 of the Blanco-Mesaverde Pool, and this extends down to the
6 very top of Section 25, those sections that have been
7 included in the spacing, and the downspacing for that 80
8 acres was, in part, done based on their studies of fracture
9 orientation and the orientation of -- the elliptical
10 orientation of the drainage ellipse for the Mesaverde. And
11 therefore I feel it's totally applicable to Section 25.

12 Q. Now, has industry relied on the data and the type
13 of data typified by Exhibits 23 and 24 for purposes of
14 committing capital to their drilling and development
15 programs?

16 A. Yes. In fact, our proposed Bishop Federal 1-25,
17 we've proposed as a Gallup-Dakota test. What we want to do
18 is drill a test to sufficiently test all of those
19 reservoirs from the surface down the base of the Dakota.

20 And one thing we're doing, because we do believe
21 that the Gallup's production is greatly enhanced by
22 fractures, we're drilling that well at a 45-degree angle
23 through the Gallup. We won't be kicking out until below
24 Mesaverde. At the top of the Gallup we'll be drilling at
25 45 degrees to the base, and then we will drop down to the

1 Dakota. And in both cases we'll be in a standard location
2 for those reservoirs.

3 Our engineer, our drilling engineer at Simmons,
4 we've done this on some of our Mesaverdes in 29-9 as well,
5 to see whether or not we can get enhanced production from
6 the Mesaverde by increasing the probability of penetrating
7 more vertical fractures with a deviated wellbore.

8 Q. So do you agree with Ms. Jackson's conclusions
9 that it will be the matrix porosity that determines the
10 direction of drainage for these wells?

11 A. No, I don't. The Mesaverde is a tight, tight
12 reservoir and is going to have to be artificially
13 stimulated in order to produce.

14 Q. All right. If you would, please, give the
15 Commission a very brief geologic overview of the Blanco-
16 Mesaverde-Gallup-Dakota in this area.

17 A. Okay. The Dakota occurs as northwest-southeast-
18 trending stacked, coarsening-upward shallow marine sands.
19 The majority, except for the lowest member -- which is the
20 Burro Canyon and is a fluvial type of deposit -- the
21 majority of the production from the Dakota in this area is
22 from the Dakota "D" or Cubero member.

23 The Mesaverde also trends northwest-southeast
24 across the Basin. It is composed of three members: the
25 uppermost Cliff House, the Menefee and the Point Lookout.

1 They occur as a regressive-transgressive wedge that
2 interfingers with the shallow marine Mancos and Lewis
3 shales.

4 The majority of the production, really throughout
5 the Basin, is from the Point Lookout member. In fact, even
6 if you look at the wells in this area, specifically those
7 wells that are in like Sections 3, 15, 10, 21 of 25 North,
8 3 West, those wells are only perforated in the Point
9 Lookout. Also up in like Sections 6 and 7, I believe most
10 of those wells are only Point Lookout completions.

11 The Cliff House has been shown to be water-wet in
12 this area. Both the Dakota and Mesaverde are tight
13 reservoirs where production is highly dependent and greatly
14 enhanced by natural fractures, and that's been shown in
15 different areas throughout the Basin.

16 Q. Now, Ms. Gusek, in your expert opinion, are these
17 Mesaverde reservoirs more appropriately developed on a
18 standup spacing unit basis in this particular area?

19 A. Yes, I believe so.

20 Q. And why is that?

21 A. Based on the fact that I believe that the
22 fractures that will be induced in the Mesaverde will follow
23 or align themselves with the primary fracture orientation
24 in the Basin, which I believe is in a north-south to north-
25 40-degrees-east direction, therefore I don't believe

1 there's any way that it's going to drain the southeast
2 quarter, that well that's pushed up against -- it's in the
3 west half, west half of the southwest.

4 Also, based on the fact that it is tight -- and
5 McElvain has also said that, I think John Steuble said it
6 -- the drainage area, it isn't believed, would be more than
7 160 acres, you know, somewhere between that 80 to 160 that
8 Burlington has come up with. And therefore it would not
9 drain the southeast quarter either.

10 Q. Now, based on the available geologic data you
11 have, what are Simmons' primary development targets here in
12 Section 25?

13 A. When Simmons decided to bid on the acreage that's
14 colored in yellow on these maps, our lease not only covers
15 the northeast quarter of 25 and the north half of the
16 southeast of 25, but it also covers the west half of 24.
17 We decided to bid on this acreage because it's in an area
18 with multi-pay potential. There is offsetting, or it's on
19 trend with production from multiple reservoirs.

20 If you'll notice on the production maps, there
21 are several wells that have no data, either on the Gallup-
22 Dakota or the Mesaverde, and that's because those are
23 Pictured Cliffs production.

24 We feel that it's prudent to drill a well to the
25 base of the Dakota in order to test and thoroughly evaluate

1 -- from mudlogging, well logs, et cetera -- all of those
2 formations that could be productive on our acreage so that
3 we can better develop those reserves.

4 Yes, it is true the Gallup-Dakota is our primary
5 target. I believe there's a Dakota "D" sand that runs down
6 through that area.

7 But we would like the option and the opportunity
8 to be able to recomplete, and not only the Mesaverde but
9 the Lewis Chacra within our wells. We've had some very
10 good success with that in other parts of the Basin.

11 Q. Now, Ms. Gusek, if McElvain's Application for a
12 south-half Mesaverde unit is granted, what in your opinion
13 will be the likely future development of the remainder of
14 Section 25?

15 A. Simmons will drill the Bishop Federal 1-25.
16 Based on the success of that well, that will determine
17 whether or not we drill the southeast quarter.

18 As far as the Gallup-Dakota goes in that
19 township, I believe that Simmons is the only one that's
20 looking at the potential of that reservoir, and so I don't
21 know that any other -- you know, that the Gallup-Dakota
22 will be developed in the northwest quarter.

23 If both the Chacra-Lewis and Mesaverde were
24 unavailable for us to recomplete, it would even be more
25 unlikely that we would drill that southeast quarter if we

1 weren't extremely -- if we weren't successful in one of
2 those potential zones in the northeast quarter.

3 Q. Now, if the remaining 360-acre proration units
4 for the Gallup-Dakota are not evaluated, will the
5 abandonment of those reserves result in waste?

6 A. Yes.

7 Q. Let's refer to Exhibit 25, if you would, please.

8 A. This book doesn't have one.

9 Q. Would you identify that for the record?

10 A. Yes, this is a Point Lookout net pay map that I
11 have prepared for the Point Lookout member in the 25 North,
12 2 West and 3 West area.

13 I opted to only map the Point Lookout because I
14 feel it's the most productive reservoir in the Mesaverde,
15 based on work that I've done in various areas, as well as
16 looking at the logs in 25 North, 3 West and comparing it
17 with production.

18 In addition, I used a resistivity cutoff of 25
19 ohms.

20 I also looked at using a porosity cutoff such as
21 Ms. Estes-Jackson did. In fact, I mapped both of them.

22 I felt that there was a higher correlation
23 between the productivity or cumulative production and
24 reserves from the Mesaverde using the resistivity cutoff
25 than I did from the porosity. In fact, if you look at the

1 well in the southwest-northwest of Section 3, you'll notice
2 that I have 102 feet of sand with greater than 25 ohms'
3 resistivity.

4 That well also corresponds, if you'll look on
5 Exhibit 19, to one of the best Mesaverde producers in the
6 township. It has cum'd in excess of a BCF of gas to date.

7 One thing you'll notice too is, predominantly the
8 trend of the Point Lookout in this area is in a northwest-
9 southeast direction. There are some areas just north of
10 the Section 25 acreage where it appears to take more of an
11 east-west trend. However, once again I do think that it is
12 the induced fractures, and that elliptical orientation that
13 will result from that, that will determine the direction of
14 drainage.

15 In addition, you know, I really feel that the
16 acreage is more prospective to the north.

17 Q. Now, why did you just map the Point Lookout?

18 A. I mapped only the Point Lookout because -- Well,
19 number one, I don't think that the Cliff House, the Menefee
20 and the Point Lookout should all be lumped together.
21 You're looking at a 700- or 800-foot gross thickness within
22 the Mesaverde.

23 In addition, I don't believe that you should lump
24 the Menefee and the Point Lookout together because the
25 Menefee is a fluvial or a continental deposit, whereas the

1 Point Lookout are marine deposits. Therefore, if you're
2 truly looking for a depositional trend, I would think you
3 would want to map those independent depositions -- or those
4 independent units.

5 Q. Earlier today we discussed the fact that Ms.
6 Jackson had used an 8-percent porosity cutoff for her map.
7 Do you believe that that's appropriate?

8 A. No, and basically I'll explain why. When I look
9 at whether or not I think a reservoir is going to be
10 productive in the area, I try to come up with reservoir
11 parameters, be it a water-saturation cutoff, a resistivity
12 cutoff, a porosity cutoff, whatever, that ties in with
13 those producing wells, especially if I'm stepping out such
14 as in this case where the nearest economic Mesaverde
15 production is approximately three and a half to four miles
16 northwest of the subject well.

17 By using an 8-percent porosity cutoff, I think
18 that it's likely that you will include sands that are water
19 wet or nonproductive. And I will explain this by going
20 over McElvain's Exhibit Number 17 and D.J. Simmons' Exhibit
21 19, which is the Mesaverde production map.

22 Ms. Jackson said there was not a direct
23 correlation. Well in my mind, if I'm going to determine
24 how much pay I have, there's different parameters I want to
25 look at, because it's not just porosity that will determine

1 whether or not the well is productive, it's what fluids are
2 in that porosity.

3 Scott -- Mr. Hall already drew your attention to
4 the well in the northwest northwest of 29 which shows the
5 thickest net sand with greater than 8-percent porosity.
6 However, it's one of the poorest producers in the township.
7 It has 244 feet of net sand with greater than 8 percent
8 indicated, and its cumulative production through April of
9 2001 is under 48,000 MCF gas.

10 On the other hand, if you go up to the west half
11 of Section 18, those two Mesaverde producers there show net
12 sand thicknesses of 127 feet and 132 feet. This is on the
13 order of 110-feet-plus less net sand greater than 8
14 percent. However, these wells have produced in excess of
15 three-quarters of a BCF. And most of the Mesaverde
16 development in this area occurred during the 1980s. So
17 most of the wells are all pretty much the same vintage, you
18 know, plus or minus a few months, a year, whatever.

19 Then I'd like to draw your attention to the very
20 nearest test to the subject acreage, those wells in the
21 northwest quarter of Section 35 and the northeast quarter
22 of Section 34.

23 The northeast northeast of 34 shows a net sand
24 thickness with greater than 8-percent porosity of 165 feet.
25 This is comparable to what is mapped at the Naomi Com or

1 Wynona Number 1 well, 172 feet. However, that well tested
2 only small amounts of gas and excessive water.

3 Schalk then elected to plug the Mesaverde off and
4 move uphole and complete in an interval within the Lewis.

5 There are no data points on the northeast of 35.
6 However, based on the mapping trend, it looks like it has
7 comparable thickness. And that well also tested
8 predominantly water and shows, you know, basically about
9 the same feet of greater than 8-percent porosity.

10 It's my contention that I cannot use this isopach
11 map to try and estimate what kind of reserves I could
12 expect from the completion in the Wynona Number 1.

13 Q. For the record, you're referring to McElvain
14 Exhibit 17?

15 A. Yes.

16 Q. All right.

17 A. And like I say, it appears that the best
18 producers actually have -- if this is pertaining to
19 reservoir rock, they actually have thinner reservoir. And
20 so my question would be, why is that?

21 Q. In your opinion, is your map here, Exhibit 25, a
22 more accurate depiction of reservoir potential and trend
23 for Section 25?

24 A. Yes, I believe it is, because it ties in more
25 directly to Mesaverde production in the area.

1 Q. All right. Ms. Gusek, in your opinion is there a
2 geologic risk that the Bishop 25-1 well won't be completed
3 as a commercial success?

4 A. Yes.

5 Q. Is D.J. Simmons seeking a 200-percent risk
6 penalty in connection with its pooling Application?

7 A. Yes.

8 Q. And what's the basis of that recommendation?

9 A. Well, there are no Mesaverde economic producing
10 wells within the three miles of the proposed unit.

11 Q. And that's shown on your Exhibit 19?

12 A. Yes.

13 Q. In your opinion, will granting Simmons'
14 Application be in the interest of conservation, the
15 prevention of waste and protection of correlative rights?

16 A. Yes.

17 Q. How will waste be prevented?

18 A. We will be developing the reserves from the
19 Gallup-Dakota, as well as any other potential reservoirs
20 that we see when we drill that well. That would include
21 the Mesaverde, the Lewis potentially, the Pictured Cliffs,
22 Nacimiento is productive down to the south, there's some
23 Ojo Alamo to the north, there could be a lot of things.
24 Also in drilling the one well, we conserve on the surface
25 as well.

1 Q. All right. Now, were Exhibits 19 through 25
2 compiled or prepared by you?

3 A. Yes.

4 MR. HALL: At this time, Madame Chairman, we'd
5 move admission of Exhibits 19 through 25.

6 That concludes our direct of this witness.

7 CHAIRMAN WROTENBERY: We've already admitted
8 Exhibit Number 25. Any objection to admission of Exhibits
9 19 through 24?

10 MR. FELDEWERT: Mr. Ross is going to love me
11 because I will object to Exhibits 23 and 24 on the grounds
12 of hearsay. Exhibit 23 is apparently a document that Ms.
13 Gusek put together based upon hearsay studies, some of
14 which she's included, some of which is not. It apparently
15 references a work that Burlington did in connection with
16 this, which is not produced anywhere.

17 Exhibits 24 are nothing but hearsay studies that
18 were put out. As Mr. Lee points out, it's not refereed, et
19 cetera. So I think we do have a hearsay problem with
20 Exhibits 23 and 24. There's been no foundation to overcome
21 that exception or that evidentiary problem.

22 MR. HALL: Shall I respond?

23 CHAIRMAN WROTENBERY: Mr. Hall, please.

24 MR. HALL: Of course we should bear in mind that
25 the witness has been qualified as an expert. Her expertise

1 has, in fact, been stipulated to by McElvain. There is an
2 exception under the hearsay rule for experts who may
3 expressly rely on what otherwise would be hearsay evidence.
4 It's literature that we've established in this record is
5 relied on by other experts, including this expert, as well
6 as industry.

7 CHAIRMAN WROTENBERY: I will overrule the
8 objection to the admission of Exhibits 23 and 24. We will
9 have, I'm sure, a lot more discussion on the weight that
10 should be given to those exhibits, but we will admit them
11 into evidence, along with Exhibits 19, 20, 21 and 22. See
12 if we've got them all there. Yes, we've got them all.

13 CROSS-EXAMINATION

14 BY MR. FELDEWERT:

15 Q. Ms. Gusek, in looking at Exhibit 21 involving the
16 Chacra line --

17 A. Uh-huh.

18 Q. -- do you -- you don't need to turn to that -- is
19 that -- do you know whether that's developed on 320-acre
20 spacing or 160-acre spacing?

21 A. This Chacra line pertains to the special rules of
22 Blanco-Mesaverde.

23 Q. Okay.

24 A. Okay, Blanco-Mesaverde Gas Pool, which is my
25 understanding that the Blanco-Mesaverde Gas Pool is spaced

1 on 320 with the option to infill up to as many as three
2 additional wells.

3 Q. Did you mention -- You mentioned something about
4 this including the -- did you say the Chacra Pool --

5 A. No, what it --

6 Q. -- or, I'm sorry, McElvain's pooling

7 Application --

8 A. What it includes is, if you notice, this acreage
9 lies south and west of the Chacra line --

10 Q. Uh-huh.

11 A. -- and the special rules designate that the
12 Blanco-Mesaverde Gas Pool, from a vertical extent in the
13 wellbore, will include those rocks or reservoirs from a
14 point 750 feet below --

15 Q. Okay.

16 A. -- the Huerfanito marker.

17 Q. Let me clarify.

18 A. Okay.

19 Q. You seem to have a problem with McElvain's
20 pooling Application; I'm trying to figure out what it is.
21 Did you think it included something it should not?

22 A. Yes, it --

23 Q. And what is that?

24 A. -- includes that section from the point that's
25 750 feet below the Huerfanito marker, okay, so that goes to

1 some depth here --

2 Q. Huh-huh.

3 A. -- so it includes that 75 feet, plus it includes
4 any section above the Huerfanito bentonite marker to the
5 base of the Pictured Cliff.

6 Q. Okay, and that's where I want to stop you.

7 A. Yes.

8 Q. Did you read -- If you read that pooling
9 Application you saw that they only are pooling for
10 formations or pools developed on 320-acre spacing. Were
11 you aware of that?

12 A. Yes. However, I thought it was including this.

13 Q. Are you aware of any pool from the base of the
14 Pictured Cliffs that goes to the top of this Chacra line
15 that is spaced on 320-acre spacing?

16 A. No, not in this area.

17 Q. Okay, all right. Now, are you -- Is D.J. Simmons
18 in this case seeking to pool Dakota interests for its
19 northeast quarter well?

20 A. No.

21 Q. All right. So is there some reason why Exhibit
22 has any bearing on this case, on the pooling
23 Application?

24 A. No, it's not pooled, the Dakota.

25 Q. Okay, does the economic risk of a Dakota well

1 have any bearing on your pooling Application in this case?

2 A. No, and so I guess I shouldn't include McElvain's
3 Application on that exhibit as well.

4 Q. And are you -- I think you testified you're going
5 to drill this northeast-quarter well; is that correct?

6 A. Yes.

7 Q. All right. Can you explain to me how waste is
8 going to occur if the Division grants McElvain's
9 Application for a south-half spacing unit for a Mesaverde
10 well?

11 A. Yes, it is D.J. Simmons' intent to drill not only
12 a northeast-quarter well but a southeast-quarter well. And
13 when we look at the economics of drilling these wells, we
14 also take into consideration whether or not we believe that
15 there is any additional potential from other reservoirs to
16 help offset the risk. And it may be that we don't have
17 exact numbers or, you know, like right now I'm not
18 convinced that the Mesaverde will be a commercial success
19 in Section 25.

20 However, we would like the option, the
21 opportunity, to be able to recomplete not only the
22 Mesaverde but all of that Lewis section that has been shown
23 to have potential in many areas throughout the Basin, in
24 either the Bishop Federal 1-25 or the Bishop Federal 2-25
25 when we drill this.

1 If the south-half unit is granted, Simmons will
2 not only not have the opportunity itself to recomplete in
3 its borehole that it took the risk to drill through all of
4 those formations, logged and looked at them, et cetera, it
5 will not only not have the opportunity to recomplete in the
6 Mesaverde, but also a good portion of those Lewis sands.

7 Q. Let me ask you, the southeast-quarter well,
8 there's four interest owners down there, right? D.J.
9 Simmons, McElvain, Dugan and Forcenergy?

10 A. Uh-huh.

11 Q. Okay, and if you drill that southeast-quarter
12 well you're going to need to pool for the Dakota reserves,
13 correct?

14 A. Yes.

15 Q. And the parties will have the opportunity to
16 participate or not participate --

17 A. Yes.

18 Q. -- correct?

19 A. Uh-huh.

20 Q. The parties are going to share in the risk of
21 that Dakota well?

22 A. Yes, and the parties will also share in the
23 information of data from the well that we drill in the
24 northeast quarter for the Gallup-Dakota which is spaced --

25 Q. Okay.

1 A. -- on 160.

2 Q. And your concern is -- as I understand your
3 concern about waste is that it's your testimony that D.J.
4 Simmons may not drill its southeast-quarter well if they
5 don't have the Mesaverde and these other reserves in their
6 back pocket?

7 A. Yes, and this is based on when we drilled the
8 northeast quarter of Section 25. We believe we're going to
9 get a good well, we believe that by drilling at 45 degrees
10 through the Gallup we will enhance -- we will potentially
11 enhance our production by penetrating more vertical
12 fractures.

13 But let's say that well is not an economic
14 success in the Gallup-Dakota, and let's say we couldn't
15 complete the Mesaverde in that well, or we complete the
16 Mesaverde in that well and it's not very economic. If we
17 did not have all of those zones to put together in the
18 southeast quarter, we might not drill those Gallup-Dakota
19 reserves.

20 Q. Now, you testified at the last hearing, though,
21 that you were going to drill your southeast-quarter well,
22 did you not?

23 A. It's our intent to drill both wells, but the
24 second well will definitely be based on the success of the
25 Bishop 1-25.

1 Q. Okay, but you didn't testify at the last hearing
2 that you were not going to drill your southeast-quarter
3 well if you didn't have the Mesaverde reserves in your back
4 pocket, did you?

5 A. I thought that there was a point made to that
6 effect.

7 Q. Do you have that transcript?

8 A. No, I -- Oh, here.

9 Q. Well, just let me ask you, is it your testimony
10 that D.J. Simmons is not going to drill their southeast-
11 quarter well if they do not have the Mesaverde reserves
12 available to them?

13 A. I cannot say today that we will not drill it
14 until I have seen the success of our well in the northeast
15 quarter.

16 Q. All right. Now, didn't you also testify that
17 even if McElvain's Application is granted, that the
18 interest owners in that southeast quarter, if they drill a
19 Dakota well, have the opportunity to recomplete that well
20 in the Mesaverde as an infill well, under the pool rules?

21 A. Under the pool rules, it's my understanding that
22 we would give up our operatorship in order for that
23 Mesaverde --

24 Q. So the only thing lost is your ability to operate
25 the well if you recomplete in the Mesaverde?

1 A. Yes, and we will pay additional cost to someone
2 else to operate.

3 Q. Okay. And in your opinion, that constitutes
4 waste?

5 A. Well, if we don't drill the southeast quarter of
6 Section 25, I think it will constitute waste.

7 Q. You reference some work that Burlington did in
8 connection with your compilation of studies. Is that work
9 that Burlington did included anywhere in your exhibits?

10 A. No, that work was included with their Application
11 for doing 80-acre infill drilling for the Mesaverde and the
12 Blanco Mesaverde Gas Pool across the Basin.

13 Q. But you didn't provide that work to the
14 Commissioners or McElvain or myself in connection with this
15 hearing?

16 A. No, it's information of public record that was
17 filed with their Application and presented at several
18 industry meetings.

19 Q. Do you reference that work anywhere in these
20 exhibits?

21 A. No, I don't. I referenced it in my testimony.

22 Q. Oh, I -- Okay. And you also indicated that that
23 work, that Burlington work that you talked about, that that
24 was part of the reason that the Commission downspaced the
25 Blanco-Mesaverde Pool?

1 A. That they allowed for additional infill wells to
2 be drilled on the 320-acre units.

3 Q. Is it your testimony that the Commission, as part
4 of that downspacing, recognized that there was fracturing
5 in the Blanco-Mesaverde Gas Pool in the San Juan Basin?

6 A. Yes, I believe so.

7 Q. You believe the Commission recognized that there
8 was fracturing in the Mesaverde --

9 A. Yes, because some areas, some areas, okay, have
10 special rules regarding the option to drill the additional
11 wells, and I believe that they seek approval from
12 offsetting operators. And these are areas where there
13 appears to be higher permeability that's potentially either
14 from higher permeability within the reservoir or fracture
15 permeability, and they've seen larger drainage areas in
16 those areas --

17 Q. Well, I'm trying --

18 A. -- and they've denoted on a map that they did,
19 they denoted areas where they felt that the Mesaverde was
20 draining less than 80, 80 to 160 and potentially greater
21 than 160 acres.

22 Q. Okay, I understand the drainage radius issue.
23 I'm talking about fracturing. Is it your testimony that
24 you believe the Commission recognized that there was
25 fracturing in the Blanco-Mesaverde Gas Pool when they

1 downspaced the spacing units?

2 A. Yes.

3 Q. You do?

4 A. Uh-huh.

5 Q. Okay. And do you believe that the Commission
6 recognized when they accepted this --

7 CHAIRMAN WROTENBERY: May I interrupt for just a
8 moment? You should be referring to the Division. That
9 particular case --

10 MR. FELDEWERT: Thank you, I'm sorry.

11 CHAIRMAN WROTENBERY: -- was addressed at the
12 Division level.

13 Q. (By Mr. Feldewert) And do you believe that the
14 Division, when they agreed to accept infill drilling in the
15 Blanco-Mesaverde Gas Pool, that they recognized that there
16 was fracturing which occurred in a north-and-south
17 direction in the Blanco-Mesaverde Gas Pool?

18 A. I believe so, and I believe that's part of the
19 reasons why specific windows were set up --

20 Q. Do you --

21 A. -- for that --

22 Q. Do you --

23 A. -- infill drilling.

24 Q. Do you know, then, why as part of the pool rules
25 for the Blanco-Mesaverde Gas Pool they would not have

1 required that all Mesaverde spacing units be standup
2 spacing units rather than laydown units?

3 A. No, a lot of units had already been designated
4 throughout the Basin.

5 Q. But there's nothing in the Blanco-Mesaverde Gas
6 Pool Rules that says you as an operator have to space the
7 units -- spacing units, the 320s, on standups rather than
8 laydowns?

9 A. No, there isn't.

10 Q. Okay. And is it your testimony that the Division
11 should require all spacing units from this point forward in
12 the Blanco-Mesaverde Gas Pool to be developed on standup
13 spacing units?

14 A. No, I feel in this case it would be a more
15 appropriate way, especially considering that McElvain had a
16 west-half unit available to them that they own 100 percent
17 of.

18 Q. Okay, is there any other situation? Or is that
19 the only reason, is that you think it's appropriate here
20 because McElvain owns the entire west half?

21 A. It's not only appropriate here for that reason.
22 I feel that those fractures are playing a part in that.
23 And I do not believe that a well that is situated 400-and-
24 some feet east of the west section line is going to drain
25 the southeast quarter.

1 Q. How much -- What's going to be the drainage
2 radius for that well in the southwest quarter?

3 A. I have not calculated that.

4 Q. You testified you think it's not going to drain
5 from the southeast quarter. Do you think it's going to
6 drain from the southwest quarter?

7 A. Basically, based on the work that Burlington has
8 done throughout the Basin, and also from John Steuble's
9 testimony today when he believed that the drainage area
10 would be small, there's nothing to indicate that it will
11 drain in excess of the 160-acre southwest quarter.

12 Q. Okay, so you believe that that well is only going
13 to drill that 160 acres in the southwest --

14 A. Some- --

15 Q. -- is only going to drain that 160 acres in the
16 southwest quarter?

17 A. Somewhere between probably 80 and 160 acres, yes.

18 Q. Okay, so it's not going to be draining anything
19 from the northwest quarter?

20 A. I'd have to see where that location is and see a
21 drainage ellipse drawn around it. I do think it's probably
22 draining some of the acreage in Section 26 to the west, or
23 it could potentially, if it's productive.

24 Q. Do you agree with McElvain's testimony that this
25 Mesaverde completion -- recompletion effort is really kind

1 of a wildcat in this area?

2 A. Yeah.

3 Q. And that the nearest production is 3 miles away?

4 A. Probably more.

5 Q. And that this is a very risky project?

6 A. Yes.

7 Q. Okay. Were you aware that McElvain informed D.J.
8 Simmons as early as January of 2001 that its mapping of the
9 sands in this area supported a south-half spacing unit?

10 A. Yes, but we were not provided that data, and our
11 landman did ask Steve Shefte to call me and discuss the
12 geology of the area, but I never received that call.

13 Q. Did you submit to McElvain at any time your maps
14 and your studies under which you thought that the drainage
15 in this area would be north-to-south?

16 A. No, but it was presented at the May 17th hearing.

17 Q. Have you conducted any study of the area that is
18 the subject of this Application using the log data
19 available from wells in the area other than your section --
20 your Exhibit -- 19? Is that right? Which Exhibit? That
21 Exhibit 25?

22 A. Could you repeat the question?

23 Q. Have you conducted any study of the area that is
24 the subject of this Application with any log data --

25 A. Yeah.

1 Q. -- other than map that's been marked as Section
2 25 --

3 A. I --

4 Q. -- as Exhibit 25?

5 A. I also have a porosity isopach. I also have maps
6 that go further west in the area, over into the Mesaverde
7 production up in the northwest quarter. I also have some
8 maps down in 24 North.

9 Q. Do you have any direct evidence based on your
10 study of fractures in the Mesaverde formation in the
11 Lindrith area?

12 A. Not specifically in those specific wells.
13 However, I do know that it's industry belief that the
14 Mesaverde and -- well, first off, throughout the Rocky
15 Mountains --

16 Q. You're talking about --

17 A. -- the Cretaceous sandstones, the majority of
18 them are designated tight.

19 Q. You're talking about --

20 A. The Mesaverde is designated tight.

21 Q. Okay.

22 A. And therefore it is going to be more -- It will
23 fracture more easily than a more permeable, more friable
24 sand.

25 Q. Do you have any direct evidence of north-to-south

1 drainage pattern in the Lindrith area of the San Juan
2 Basin?

3 A. From the studies that I've looked at and the
4 talks that I've been to, everything indicates that across
5 the Basin, fractures in the Dakota-Gallup-Mesaverde, most
6 of the Cretaceous reservoirs of the Basin, is in a north-
7 south to north-40-degrees-east orientation.

8 Q. What rate of return does D.J. Simmons use to
9 evaluate its drilling project?

10 A. It depends on the risk of the projects.

11 Q. What of return did you use to evaluate your
12 northeast-quarter well?

13 MR. HALL: Take a shot at an objection, time-
14 saving objection. This is beyond the scope of direct.

15 CHAIRMAN WROTENBERY: I'll allow it.

16 THE WITNESS: Okay. We, in general, if it's a
17 development well, will be looking for a return in excess of
18 20 percent.

19 Q. (By Mr. Feldewert) Okay.

20 A. Other factors that we will take into
21 consideration is whether or not we believe there are
22 additional zones that we will penetrate when drilling for
23 that reservoir that potentially we can recomplete and
24 improve the economics of the well.

25 Q. D.J. Simmons acquired its -- You're aware that

1 D.J. Simmons acquired its lease -- was awarded in July and
2 then it was, I guess, issued in September of 2000?

3 A. Right, we got it in September.

4 Q. Okay. Do you recall being asked by the Division
5 Examiner why you didn't propose a Mesaverde well after
6 receiving McElvain's proposal in November of last year?

7 A. Yes.

8 Q. Do you recall what you told him?

9 A. No.

10 Q. You don't?

11 A. Not exactly.

12 Q. You don't recall telling him that you were too
13 busy with other projects to propose a Mesaverde completion?

14 A. We were at that time recompleting numerous wells
15 in our sort of core area of production that we operate in
16 the San Juan Basin, and that's 29 North, 9 West. At that
17 time we were not only drilling Mesaverde wells over there
18 but we were recompleting in the Lewis interval in those
19 wells.

20 We had also recently made an acquisition from
21 Greystone for those properties that I discussed in 24
22 North, 4 West, and we were looking at additional
23 opportunities that we might have on that acreage.

24 We also were trying to get some additional
25 partners for that acreage in the 25 North, 3 West area.

1 Q. This acreage 24 North, 4 West where you just
2 completed a Mesaverde well, did you do it on a standup
3 spacing unit or a laydown?

4 A. I can't tell you what it was.

5 Q. You don't know?

6 A. No, I don't know. The engineer filed that.

7 Q. How about your other wells in the 29 --

8 A. They're standups, all of them are standups in
9 29-9.

10 Q. They're all standup?

11 A. Uh-huh.

12 Q. Okay.

13 A. Every one.

14 Q. Are you going to drill directionally through the
15 Mesaverde formation?

16 A. No, as I stated, we will kick off below the
17 Mesaverde and drill at a 45-degree angle through the
18 productive interval of the Gallup.

19 Q. If you really believe it's fractured, why
20 wouldn't you directionally drill through that formation?

21 A. I think we'll determine that at the time we drill
22 it based on mudlogging evidence that we get and whether or
23 not we believe that we see any fractures at that time.

24 Q. Well, now, you're going to have your northeast-
25 quarter well drilled already, right?

1 A. Well, what I'm saying is, at the time we drill
2 that northeast quarter well --

3 Q. Uh-huh.

4 A. -- we will mudlog, look at samples, you know, try
5 to gather as much data as we can on all of the reservoirs
6 from the surface down through our TD.

7 Q. But based on your --

8 A. And so if we see indications of fractures in our
9 samples, if we see and we can identify fractures in that
10 Gallup section, we may opt to drill additional wells, and
11 we may opt at that point, if we believe it's necessary, to
12 drill directionally through the Mesaverde, and we have done
13 that in other areas.

14 Q. Okay, now I'm just talking about the Mesaverde
15 formation in a northeast-quarter well. You're not
16 comfortable enough with your opinion that there's
17 fracturing to directionally drill through that Mesaverde
18 formation?

19 A. There may be fractures, but they could be water-
20 wet. Based on the nearest wells that have tested the
21 Mesaverde surrounding the Section 25 acreage, they tested
22 wet. Structure maps of that area do indicate that we're at
23 a structural elevation essentially equal or maybe slightly
24 lower than the two wells that are in Sections 34 and 35.

25 But we would want to look at what kind of oil and

1 gas shows we see through the Mesaverde before we spend that
2 kind of money on a directional well through the Mesaverde.
3 It's also why we've proposed the northeast quarter as a
4 directional through the Gallup, is to look at whether or
5 not we do actually penetrate vertical fractures and enhance
6 our production, and is that a good way for us to develop
7 the Gallup reserves in that 25 North, 3 West acreage area.
8 As I stated, Section 25 isn't our only acreage in the area.

9 MR. FELDEWERT: That's all the questions I have.

10 CHAIRMAN WROTENBERY: Commissioner Bailey?

11 COMMISSIONER BAILEY: I don't have any questions.

12 EXAMINATION

13 BY COMMISSIONER LEE:

14 Q. I just want to warn to you, the theory you're
15 talking about, yes, this is well accepted here in New
16 Mexico. However, it's not universally accepted. The
17 fracture may not help your production. It also depends on
18 the initial fluids inside of that fracture.

19 So for example, the people that you referenced,
20 that student here, I asked him what is drainage area? He
21 cannot answer that. Do you have an answer, what's the
22 definition of a drainage area you have?

23 A. In this specific area I don't --

24 Q. What's your general -- You know, the Burlington,
25 everybody's talking about it but they never talk about what

1 drainage area they are talking about. What is the drainage
2 area that you think?

3 A. I think the drainage area is when you -- Well,
4 when you frac the well, your frac is going to go out into
5 the formation. In many areas they've seen like a -- I
6 think it's about a three to one on the ellipse --

7 Q. Three to one to the ellipse, only if you don't
8 have a well nearby.

9 A. Right, right. But then there's areas up around
10 the Mudge wells, which I forget if that's 31 North, 10
11 West, where they've actually seen drainage ellipses that
12 were much greater than that, and I saw papers presented by
13 Schlumberger that showed, you know, in excess of a 10-to-1.
14 and they felt that some of those wells were draining
15 several miles in the preferred orientation of the ellipse.

16 Q. I believe they're trying to do this study just to
17 get 80-acre spacing.

18 Well, the drainage area is -- I don't think --
19 you know, the people writing this paper doesn't know the
20 drainage area, so that really worries me. Think about it.
21 The drainage area, you have a well nearby, you don't have a
22 well nearby. It's totally different definition so -- Okay.

23 EXAMINATION

24 BY CHAIRMAN WROTENBERY:

25 Q. I just had one point I wanted to clarify again,

1 Ms. Gusek.

2 You, I believe, stated that D.J. Simmons does
3 want to preserve the opportunity to recomplete in the
4 Mesaverde, in the east half of this section.

5 When you say you want to preserve the opportunity
6 to recomplete, does that indicate that you don't have any
7 immediate plans to recomplete or to complete in the
8 Mesaverde in the well in the northeast quarter of Section
9 25?

10 What is your proposed time frame there?

11 A. Our standard practice would be to complete the
12 deeper zones first.

13 In general, the practice would be to establish
14 production in those zones before you moved uphole and
15 completed additional zones.

16 So based on the information that we gather at the
17 time that we drill the Bishop 25 -- or 1-25, I keep putting
18 the 25 first -- 1-25, I could see us recompleting the
19 Mesaverde if we felt it warranted it, you know, as early as
20 within a couple of months.

21 But we would need to establish that curve before
22 we could do it, and that would be something that the
23 Division would also require us to do before commingling
24 those reservoirs, I believe.

25 COMMISSIONER LEE: Are you going to take a core

1 sample?

2 THE WITNESS: We don't have plans right now of
3 coring, but it's not to say we might not consider doing
4 that or testing the interval if we felt it warranted it.

5 Q. (By Chairman Wrottenbery) Are you aware that if
6 the Commission were to approve D.J. Simmons' Application to
7 pool the east half for the Blanco-Mesaverde Gas Pool there
8 would be a time limit in the pooling order for completion
9 in the Blanco-Mesaverde Pool?

10 A. Yes, and we would have to abide by that, if that
11 were the case.

12 CHAIRMAN WROTENBERY: Thank you.

13 MR. HALL: I have nothing further of the witness.

14 MR. FELDEWERT: I don't have anything further.

15 CHAIRMAN WROTENBERY: Thank you very much Ms.
16 Gusek.

17 THE WITNESS: Thank you.

18 CHAIRMAN WROTENBERY: We'll take a five-minute
19 break here.

20 (Thereupon, a recess was taken at 4:10 p.m.)

21 (The following proceedings had at 4:15 p.m.)

22 CHAIRMAN WROTENBERY: Okay, I think we're ready
23 to go now.

24 MR. HALL: At this time, Madame Chairman, we call
25 Tom Mullins to the stand.

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THOMAS E. MULLINS,

the witness herein, after having been first duly sworn upon his oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HALL:

Q. For the record, sir, please state your name and place of residence.

A. It's Thomas E. Mullins, and I reside at 22 Road 3777 in Farmington, New Mexico, zip code 87401.

Q. By whom are you employed and in what capacity?

A. I am self-employed with Mullins Energy, Incorporated. I'm a consulting petroleum engineer that's registered as a petroleum engineer in the State of New Mexico.

Q. Would you give the Commissioners a brief summary of your background experience in the San Juan Basin?

A. I started -- I've been working in the San Juan Basin specifically for 12 years. I started my employment with Meridian Oil Company in 1991, and I've served in reservoir, production and acquisition engineering positions for Burlington specifically down here in this Lindrith area, as well as throughout the San Juan Basin. In fact, I was the starting reservoir engineer for the 80-acre infill pilot development programs in both 30-and-6 and 29-7, and I've spent an enormous amount of time working in formations

1 across the Basin.

2 For the past five years I've been practicing
3 consulting work for Conoco, Phillips Petroleum, Benson-
4 Montin-Greer, D.J. Simmons and numerous other operators
5 here in the Basin, and I feel I'm well versed on all of the
6 formations here in the Basin.

7 Q. All right, and you testified at the Division
8 Examiner hearing in these matters and you had your
9 credentials as an expert petroleum engineer accepted and
10 made a matter of record then; is that correct?

11 A. That's correct.

12 Q. And you're familiar with the Applications that
13 have been filed in this case?

14 A. Yes, I am.

15 Q. And the lands that are the subject of the
16 Applications?

17 A. Yes, I am.

18 MR. HALL: At this point, Madame Chairman, we'd
19 tender Mr. Mullins as an expert petroleum engineer.

20 MR. FELDEWERT: No objection.

21 CHAIRMAN WROTENBERY: He's qualified.

22 Q. (By Mr. Hall) If you would, please, Mr. Mullins,
23 give the Commission a brief overview of D.J. Simmons'
24 operation in the area. And you might refer to Exhibit 22
25 to do that.

1 A. That's correct, I'm going to refer to D.J.
2 Simmons Exhibit Number 22. This Exhibit 22 has been
3 referred to previously. It is the Gallup-Dakota-Mancos
4 production map. And on this particular map you'll see the
5 yellow acreage that's associated with D.J. Simmons'
6 specific lease, and you'll see the two proposed spacing
7 units, the south half in red and the east half in green,
8 for D.J. Simmons.

9 On that, the well in the southwest quarter is the
10 Naomi Com Number 1, also referred to as the Wynona Number
11 1. And that production number that's listed there is from
12 the Gallup-Dakota production.

13 The additional wells that you see listed within
14 Section 25, you'll see a directional-type well that's in
15 the northeast quarter, and that is the Bishop 25 Number 1
16 well. And you'll also see a vertical proposed drill
17 location in the southeast quarter, and that is the Bishop
18 25 Number 2 well.

19 So basically the plan for D.J. Simmons'
20 development in the area is to drill the directional hole in
21 the northeast quarter first in their development program.
22 that well will be drilled vertically through the Mesaverde,
23 through the Point Lookout formation and then deviated at a
24 45-degree angle through the Gallup and Mancos interval.
25 And as you can see, it's drilled from the east-to-west

1 pattern so that it should intercept the predominant natural
2 fracture direction in the area.

3 And then once we're through the Gallup-Mancos
4 interval we'll return to a vertical position and the well
5 will TD in the fluvial section of the Dakota.

6 So that's the plan for the development.

7 Q. All right. Since you've mentioned fracture
8 orientation, again, do you wish to refer to Exhibit 23 for
9 purposes of your testimony at all?

10 A. I think I do. I don't seem to have 23. Thank
11 you. Exhibit Number 23 has been referred to previously.
12 It is the fracture montage that Lisa has referenced. I was
13 the reservoir engineer and production engineer for both of
14 the Meridian oil wells, the Medio Canyon Number 7 and the
15 Cullins Federal Number 6.

16 In addition, there was some question regarding
17 one of the specific papers that says, you know, in Cuba,
18 the Mobil Oil Company, you know, in the neighborhood of
19 Cuba. That specific area is 24 North, 2 West, which is
20 directly south and southwest of the specific lease, Section
21 25, that we're talking about here today. Those are the
22 only wells that Mobil Oil Company had operating in the San
23 Juan Basin. They operated the Dakota-Gallup-Mancos
24 production in the Lindrith B Unit.

25 I'm very familiar with that particular unit,

1 because when I left Burlington in 1996, Conoco had recently
2 purchased the Lindrith B Unit, and I did a project
3 evaluating all of the Dakota, Gallup and uphole horizons
4 for Conoco, which did include the Mesaverde at that time,
5 and still does in that particular area.

6 So the reference to the Mobil Oil Company paper
7 with regard to the hydraulically induced fracture direction
8 is specifically located close to the project area here.

9 Q. Well, what was learned about the drainage pattern
10 in the area from the development of the Lindrith B Unit?

11 A. The Lindrith B Unit is predominantly developed on
12 the Dakota "D" sand production. I believe McElvain had an
13 exhibit that they filed that shows the Gallup-Dakota
14 section. I'm not going to reference it in the interests of
15 time, but you'll see the perforations that are placed on
16 that log in the Dakota "D" interval. So the predominant
17 production development was in the Dakota "D" sand in the
18 Lindrith B area. And after that there was additional
19 recompletions in the Gallup and Mancos interval to cover
20 additional reserves.

21 The fracture-orientation work -- and I was
22 specifically allowed to see some of the proprietary
23 information. I have well numbers and a sheet of paper here
24 that references some specific wells within the Lindrith B
25 Unit directly to the south, and that's the Miller Com

1 Number 1, the Lindrith B Unit Number 84, the Lindrith B
2 Unit Number 78 and the Lindrith B Unit Number 79.

3 We ran an FMI, FMS and Newmar equivalent logs at
4 that particular time, magnetic-resonance-imaging logs,
5 specifically to try to determine depositional trend and
6 also fracture orientation, both natural, induced during
7 drilling operations and then hydraulically fractured.
8 There was some work done by running a Schlumberger cement
9 evaluation tool specifically to try to see some things on
10 cement logs, but that was indeterminate at that time.

11 The predominance of the information agrees with
12 what's presented here on this exhibit, but there is a
13 north-south orientation to the principal permeability
14 direction in the area, and that is believed to be natural
15 fractures, and that is what this exhibit represents.

16 Q. In your opinion, is it prudent to apply the data
17 that was derived from the development of the Lindrith B
18 Unit and then what's referenced in Exhibits 23 and 24 to
19 Section 25 here?

20 A. Yes, it is, absolutely. You know, there's some
21 discussion about the appropriateness of, you know,
22 information in the Gallup and Dakota zones relative to the
23 Mesaverde. The fracturing and the theories behind the
24 fracturing present in the San Juan Basin are consistent for
25 those Cretaceous sediments from Dakota, Gallup, Mancos and

1 the Mesaverde intervals.

2 Q. So in your opinion, what will that fracture
3 orientation be in Section 25?

4 A. In my opinion, the fracture orientation in
5 Section 25 is going to be on a north-south basis, and that
6 the highest deviation would be on a north-40-degrees-east
7 basis from the Naomi Com Number 1 well.

8 Q. All right, let's turn to Exhibit 29, if you
9 would, please, sir. Can you identify that exhibit for the
10 record?

11 A. Yes, Exhibit Number 29 was prepared by me. It is
12 a -- It's actually an Autocad-based lease map of the
13 subject acreage. It's a -- I guess a mapping system that
14 Burlington Resources also used and is using within the San
15 Juan Basin.

16 On the map you'll specifically see that the
17 Wynona Number 1 well, or also referred to as the Naomi Com
18 Number 1, is located in the southwest quarter of Section
19 25.

20 What I've drawn on the Exhibit Number 29 are two
21 elliptical drainage patterns that result in a 160-acre
22 drainage area specifically. The radiuses, the long radius
23 and the short radius, in particular, are based upon
24 Burlington's work where they had presented a three-to-one
25 permeability anisotropy or change or basically the higher

1 preferred permeability direction would be three times the
2 shorter distance.

3 There's two ellipses on there. The first ellipse
4 is a north-south orientation, and the second ellipse is a
5 north-40-degrees-east orientation. This is an Autocad
6 plot, so the distances of the ellipse are drawn with the
7 actual footages from Autocad to try to represent my
8 predicted drainage area for the Naomi Com Number 1 well.

9 Q. And so the radii referenced on Exhibit 29 show
10 the maximum range for the deviation from north and south;
11 is that correct?

12 A. That's correct.

13 Q. Is it your opinion that actual orientation of the
14 drainage radius for the Naomi will lie somewhere in between
15 the two range extremes you show?

16 A. That's correct, that's why I've drawn both of
17 those ellipses.

18 Q. All right. In your opinion, what will be the
19 drainage area for the Naomi Com Number 1?

20 A. That's a very difficult number to determine.
21 What I utilized was the 160-acre maximum drainage area that
22 I believe the well would drain.

23 In Burlington Resources' work, they have this
24 particular Autocad map on every single Mesaverde well in
25 the Basin. What they have done is, they have tied their

1 ellipses that they have drawn back to the volumetric
2 production and the material-balance production that they
3 see on each individual zone. So they tied the well logs
4 into that specifically to try to determine what their
5 drainage-ellipse size is, and that drainage ellipse varies
6 in size. What I utilized is the 160-acre, which I believe
7 is the maximum size.

8 Based upon the proximity of producing wells to
9 this particular attempted completion, I don't have an
10 ability to tie back the ellipses in, you know, the adjacent
11 area within three miles of this to try to predict, you
12 know, the actual size of that ellipse. So what I did was
13 take the maximum case, in my opinion, for the development
14 of the well, which would be a 160-acre pattern.

15 Q. So in your opinion, drainage is not likely to
16 exceed 160 acres, then?

17 A. I do not think so, no.

18 Q. Let's refer to Exhibit 31, please, sir. Would
19 you identify that for the record and explain what that
20 shows?

21 A. Exhibit Number 31 basically explains the
22 mathematics behind the distances on the drainage area. A
23 circle is πr^2 , which we all remember from -- you know, from
24 elementary or junior high, I believe it is, and then an
25 elliptical drainage pattern has each of the radiuses

1 multiplied together times π . And with the longer drainage
2 radius being three times the shorter radius, it works out
3 that the long radius direction is 2580, and 859 feet
4 associated with the 160-acre ellipses that are drawn on
5 Exhibit Number 29, I believe it is.

6 Q. Let's talk about the Bishop 25-1 well. In your
7 opinion will that well drain along a north-south pattern or
8 an east-west pattern?

9 A. The Bishop 25 Number 1, as the other wells in
10 Section 25, I believe is going to drain along a north-south
11 orientation to a north-40-degrees orientation.
12 Specifically, you know, D.J. Simmons has looked at all the
13 horizons, Dakota, Gallup, Mesaverde, Chacra, Lewis, and the
14 propensity of natural fracturing in the Gallup production,
15 there's a preponderance of information for that, and that's
16 the reason why D.J. Simmons has elected to drill deviated
17 or directional through that Gallup-Mancos interval, to try
18 to increase the probability of encountering those natural
19 fractures in that specific interval.

20 There was a question raised earlier about, you
21 know, why doesn't D.J. Simmons want to do that
22 directionally in the Mesaverde? I've drilled three or four
23 Mesaverde horizontal wells and deviated wells in the Basin,
24 and it gets down to a permeability ratio of vertical
25 permeability versus horizontal permeability. And because

1 the Mesaverde interval, specifically Point Lookout-Menefee,
2 have multiple stacked pay zones, the vertical-to-horizontal
3 permeability ratio is really not conducive in that zone, as
4 well as, you know, being a tight rock to drill and deviate
5 it through there.

6 So I guess to answer a question that wasn't
7 asked, that's why the well specifically targeted is
8 deviated just through the Gallup-Mancos interval.

9 Q. All right. Other than the fracture patterns,
10 what are the other factors affecting the drainage patterns
11 in this area?

12 A. The drainage patterns in all reservoirs are based
13 upon the permeability of the rocks. The directional
14 permeability of the natural fractures in this area is on
15 the north-south, north-40-degrees-east orientation. That's
16 going to have the primary effect on the drainage pattern.

17 The second factor in the production will be the
18 hydraulic fracture direction. All of these wells are
19 hydraulically stimulated. The hydraulically stimulated
20 fracture direction is also inferred to be in that north-40-
21 degrees-east direction. Wells that are hydraulically
22 fractured produce initially from those fracture wings that
23 are directed in a specific orientation, and then after that
24 point you'll get matrix-type flow into the fracture system,
25 and hence that's some of the thinking behind the elliptical

1 patterns on the drainage areas.

2 Q. All right, let's talk about the Naomi Com Number
3 1 again. In your opinion, will that well at its unorthodox
4 location be capable of efficiently draining reserves from
5 the south half of Section 25?

6 A. Absolutely not.

7 Q. In your opinion, is Section 25 best developed by
8 way of standup or laydown units?

9 A. Section 25 would be best developed for the
10 reservoirs on 320-acre spacing, on a standup basis.

11 Q. And tell us why.

12 A. The predominant permeability direction is on the
13 north-south, north-40-degrees-east direction. My belief is
14 that the predominant drainage areas will also correspond to
15 that north-south, north-40-degrees-east orientation.

16 There has been some testimony relative to the
17 production from the Mesaverde intervals. The Point Lookout
18 formation, depositionally, as with the Pictured Cliffs and
19 Dakota sandstones and all of the sandbodies, actually,
20 Tocito, in the San Juan Basin, are deposited on a
21 northwest-to-southeast orientation for the marine
22 environments. The fluvial systems are inferred to be
23 perpendicular to that in their deposition.

24 The predominance of -- in this particular area,
25 Section 25, based upon the geology that I've reviewed along

1 with -- I believe Lisa Gusek has done with D.J. Simmons, in
2 my estimation, from reviewing geological work from several
3 companies, has done a very fine job in indicating that the
4 predominant depositional direction for the Point Lookout is
5 in a northwest-southeast orientation, and her mapping, I
6 think, more accurately describes the Mesaverde reservoir in
7 that section.

8 Q. All right, let's look at Exhibits 26, 27 and 28
9 together. Can you identify those three exhibits and
10 explain them to the Commission?

11 A. Exhibit Number 26 is a production plot of the
12 Wynona Number 1, also referred to as the Naomi Com Number
13 1, from its initial production until 1997, or excuse me,
14 1998, when it was plugged and abandoned.

15 The top curve that you see is the gas production
16 curve, the middle curve on this plot is the oil production,
17 and the lower curve is actually the water production
18 associated with the well.

19 Q. And we can locate these wells on Exhibit 22,
20 correct?

21 A. That's correct, all of the following wells I'll
22 be referencing to you on Exhibit Number 22.

23 Q. Okay.

24 A. And the Wynona Number 1 is located in the
25 southwest quarter of Section 25, 25 North, Range 3 West.

1 Q. All right, go ahead.

2 A. What's interesting to note on this exhibit is
3 that there is commercial Gallup-Dakota production within
4 the section, within this wellbore. In fact, this Wynona
5 Number 1 is my basis for the Gallup-Dakota production in
6 the southeast quarter, the directly adjacent well location
7 where D.J. Simmons would drill the Bishop 25 Number 2 well.

8 Exhibit Number 27 is a production plot of the Ora
9 Number 2. This particular well, the curves are slightly
10 different. The top curve is actually a gas-oil ratio
11 curve. The second curve coming from the top down is the
12 gas production, and the bottom curve is the oil production.

13 What this demonstrates, this well, the Ora Number
14 2, referencing Exhibit Number 19, is located in the
15 northeast quarter of Section 21, 25 North, Range 3 West.
16 This is the closest on-trend depositional well to the Naomi
17 Com Number 1 Mesaverde completion. It shows an uneconomic
18 completion with an initial production of approximately 10
19 MCF a day and about a barrel of oil a day and is currently
20 producing approximately two or three MCF a day, it looks
21 like, on the production curve.

22 Q. All right, let's refer to Exhibit 28. Identify
23 that well.

24 A. Exhibit Number 28 has been referred to several --
25 I guess the well that's indicated on Exhibit Number 28 has

1 been referred to several times. It is the Schalk Myers
2 Number 1 well. It is located in the northwest quarter of
3 Section 35, Township 25 North, Range 3 West. It is, you
4 know, very close to the subject acreage that we're
5 discussing here today.

6 This well is inaccurately reported in the public
7 information as a Mesaverde production. This is -- All this
8 production is actually Chacra production.

9 The well was initially tested from 5746 to 5838
10 feet in just the Point Lookout interval, so they did not
11 test the Menefee interval whatsoever in that well. And
12 they tested water on the completion in that well and
13 immediately went uphole and completed the Chacra interval,
14 which we've discussed, Lisa mentioned, and that
15 specifically, the depth that it was completed in was 4439
16 feet to 4465 foot.

17 The reason that's important is, the order that
18 McElvain had received previously could be interpreted to
19 say that their rights were established from the base of the
20 Pictured Cliffs down to the base of the Mesaverde.
21 Specifically, this Chacra interval does show production,
22 and you could read the order that McElvain's order could
23 include this particular horizon by going all the way up to
24 the base of the Pictured Cliffs.

25 So I guess the importance would be the specific

1 Mesaverde pool definition and its limitations being south
2 of the Chacra line for the Commission to consider in their
3 evaluation.

4 So to review that, the Wynona Number 1 I used for
5 the Gallup-Dakota production model, and the Myers Number 1
6 and the Ora Number 2 I used for the Mesaverde production
7 model, because I mean they're right -- they're on trend
8 depositionally. I have a cross-section to review here in a
9 minute, and they're the closest wells to the subject
10 acreage in the Mesaverde.

11 Q. All right. What's your estimate of recoverable
12 reserves from the Dakota in the east half of Section 25?

13 A. I'm going to refer to an exhibit, and that would
14 be Exhibit Number 30. Exhibit Number 30 demonstrates the
15 reserve number, I guess, that I'm anticipating for the
16 Gallup-Dakota production in the southeast quarter of 25.
17 That would be 326 million cubic feet of gas and 12,000
18 barrels of oil. That's listed at the most recent AFE of
19 \$658,000.

20 I'm anticipating I'm going to get the question
21 regarding, you know, the last hearing there was \$500,000
22 listed in that number and, you know, now it's \$658,000.
23 Well, what's the difference?

24 The difference between the two hearings and the
25 reason why the proposals had not been sent out, one of the

1 reasons, is that D.J. Simmons was going through their cost
2 estimate, verifying the cost increases that have recently
3 occurred, and putting together a valid AFE for a Gallup-
4 Dakota well. And when I received the information, the
5 \$658,000, which is the new number, I incorporated that.
6 That has affected the economics by reducing the economics
7 to a 15-1/2-percent rate of return rate.

8 I might add that I did leave the gas and oil
9 price, you know, at the same level. And of course those
10 fluctuate, and the economic decisions will fluctuate based
11 on that. I would be very interested to see McElvain's
12 numbers in regard to, you know, all of this. They utilized
13 my presentation from the last hearing with regard to both
14 the Dakota-Gallup and Mesaverde. And I did not hear
15 McElvain indicate that it was not economic to drill a
16 Gallup-Dakota zone, which D.J. Simmons is doing in the
17 area.

18 And so, you know, specifically regarding waste,
19 you know, they have not objected to it being economic, and
20 they're not even considering that zone, which D.J. Simmons
21 is very much interested in.

22 And I guess I'll leave that part of that right
23 now.

24 Q. Okay. What does your Exhibit 30 show for
25 recoveries out of the Mesaverde?

1 A. The Mesaverde recovery is uneconomic. I'm
2 estimating 66 million cubic feet of gas and about 10,000
3 barrels of oil recovery from a completion attempt.

4 Last hearing I was estimating a \$50,000 cost to
5 incrementally add the Mesaverde. At the last hearing, my
6 economics were considering that we would complete all three
7 zones, one right after the other on a new-drill well,
8 Dakota-Gallup, Mesaverde, you know put them all to the
9 sales line, as some operators do within the San Juan Basin.

10 The new numbers reflect putting the Gallup-Dakota
11 on line production for several months, several years,
12 whatever that appropriate time frame ends up being, and
13 then moving back a second rig operation, basically a second
14 event to complete the Mesaverde. So there's a lot of
15 additional expenses for moving the rig in and out and frac
16 tanks and things like that. And that's why there's
17 additional cost.

18 Q. All right. In your opinion, can McElvain's
19 refusal to further develop the Gallup-Dakota be justified?

20 A. No.

21 Q. Why not?

22 A. This area is initially developed based upon
23 Gallup-Dakota production, as exhibited on Exhibit 22, I
24 believe it is. There is -- Excuse me, 23, D.J. Simmons
25 Exhibit Number 23. The southeast quarter, and specific the

1 east half, shows very good potential in the Dakota-Gallup
2 production.

3 Q. Let me straighten something out. Are you
4 referring to Exhibit 22? Is that the Gallup-Dakota
5 production map?

6 A. Yes, I was right the first time, I think.
7 Exhibit 22, I'm sorry.

8 Q. Let's refer to Exhibit 30 again, and if you can
9 discuss in some detail the economics of development in new-
10 drill Gallup-Dakota.

11 A. The best -- I guess the best manner to discuss
12 Exhibit 30 is to go -- jump to Exhibit 32, so --

13 Q. All right.

14 A. Explaining Exhibit Number 32, this is a summary
15 sheet, basically, that shows the costs associated and the
16 proposals associated with Section 25. I appreciate the
17 Commission consolidating these cases to allow me to come
18 down and just testify at one.

19 The first proposal was for a re-entry on the
20 Naomi Com Number 1 for \$364,000.

21 The second proposal and the third proposal were
22 submitted simultaneously. That was for D.J. Simmons'
23 development of the east half. The well on the northeast
24 quarter shows \$785,000 cost to drill, complete and
25 facilitate as a Gallup-Dakota well. The well on the

1 southeast quarter is \$658,000.

2 McElvain has recently resubmitted a proposal to
3 drill the second well within a -- I guess on that same
4 lease, it's called the Naomi Number 2, but I believe
5 they're trying to dedicate that to a north-half spacing
6 unit, and that is the cost that McElvain estimates to drill
7 a stand-alone Mesaverde well at \$698,000.

8 Q. All right. Now, does Exhibit 32 also show how
9 the costs will be allocated among the two formations for
10 the Bishop 25-1?

11 A. Yes, it does.

12 Q. Given your economic testimony, in your opinion,
13 if McElvain's Application for a south-half unit is granted,
14 how will the remainder of the section likely be developed?

15 A. If the granting of the south-half unit is granted
16 by the Commission, it is my belief that D.J. Simmons will
17 drill the northeast quarter and complete that as a Gallup-
18 Dakota well. We'll be back before this Commission again,
19 debating the north half of that particular unit, based upon
20 the McElvain proposal to drill a well in the northwest
21 quarter.

22 My personal belief and engineering opinion is
23 that the Mesaverde completion is going to be unsuccessful
24 or uneconomic in McElvain's attempt, and the drilling of
25 D.J. Simmons' well is going to be marginally economic,

1 depending upon the deviated interval in that Gallup to see
2 if it gets that extra boost in production that's going to
3 improve the economics.

4 The southeast quarter, which I've referenced back
5 on Exhibit Number 30, from the last hearing the costs have
6 increased, the reserves have gone down economically. The
7 loss of the opportunity to come uphole and complete that
8 Mesaverde and Chacra interval, to me, would be a critical
9 factor in the full development of reserves in Section 25,
10 that that extra 66 million cubic feet hopefully will be
11 improved by information drilled on the northeast quarter.

12 Simmons is going to drill the northeast quarter.
13 They're not asking for McElvain's, you know -- drug in, in
14 the development of the unit. They have offered, if
15 McElvain had some interest, to buy into the development in
16 one of the proposals in the northeast quarter, to even earn
17 in on some of that information.

18 You know, I think D.J. Simmons is approaching the
19 development properly for the entire section. I see
20 McElvain is trying to obtain additional acreage that they
21 may never develop and that won't be drained by the Naomi
22 Com Number 1.

23 Q. All right. Let's talk about the well costs shown
24 on some of the earlier exhibits. If you could refer to
25 Exhibit 11 -- that was the Simmons well proposal -- there's

1 an AFE attached to that. Could you review those costs for
2 both the Gallup-Dakota and Mesaverde completions? You
3 might also want to look at Exhibit 14.

4 A. Those specific exhibits are the letters and the
5 well proposals and the AFEs associated with drilling the
6 Bishop 25 Number 1 and 25 Number 2 wells. The -- I think
7 Exhibit 14 is the Mesaverde breakout of the costs
8 associated with a 320-acre spacing unit on the east half
9 for the development.

10 I've tried to summarize that on Exhibit Number
11 32, because there may be -- McElvain has indicated that
12 there's been some confusion. To be honest, the first time
13 I looked at the numbers I was confused from a consulting
14 standpoint, and I went through them and clarified what the
15 dollar amounts were.

16 So relating to Exhibit Number 32, if a Mesaverde
17 completion is attempted by D.J. Simmons in either of the
18 new-drill wells, the cost is estimated to be the same. And
19 the reason it's the same is because that deviated section
20 or incremental cost to complete the Gallup-Dakota is not
21 going to factor into the Mesaverde, you know the Mesaverde
22 owner.

23 The estimated cost that D.J. Simmons has to
24 complete in a commingled well is a total of \$461,706. What
25 was not very clear in D.J. Simmons' proposal is, the

1 \$225,306 would be credited to the Dakota-Gallup owners for
2 the use of their wellbore, and the actual cost associated
3 with perforating and pumping the frac job and completing
4 the Mesaverde would be \$236,400.

5 That \$236,400 is a lower total economic
6 expenditure than the McElvain re-entry proposal of
7 \$364,000. It is higher, though, than the entire cost of
8 \$461,706.

9 Q. In your opinion, is the proposal of allocating
10 costs in this way reasonable?

11 A. Yes, it is.

12 Q. And are the costs that are shown on Exhibits 32
13 and 11 and 14 in line with what's being charged by other
14 operators in the area for similar wells?

15 A. Yes, it is.

16 Q. Now, have you or Simmons made an estimate of the
17 overhead and administrative costs while drilling and
18 producing the well?

19 A. Yes, I've summarized the -- I guess the
20 difference between the two competing operatorship proposals
21 regarding the Mesaverde ownership in this particular
22 southeast quarter. McElvain is proposing a monthly
23 overhead rate of \$545, D.J. Simmons is proposing a monthly
24 overhead rate of \$350 per month. That difference is \$245
25 per month.

1 From D.J. Simmons' standpoint, it is more cost-
2 effective for them to operate. And from any working
3 interest owners' standpoint, they would be charged less
4 overhead and monthly fees by having D.J. Simmons do the
5 work.

6 Q. And those overhead costs are reflected on page 2
7 of Exhibit 11, which is the Simmons well proposal; is that
8 correct?

9 A. That's correct.

10 Q. And are these costs in line or cheaper than
11 what's being charged by other operators in the area?

12 A. They're in line with other operators in the area.

13 Q. All right. Are you recommending that these
14 drilling and producing overhead rates be incorporated into
15 any order that results from this matter of Simmons'
16 Application?

17 A. Yes, I do.

18 Q. You understand Simmons is requesting the 200-
19 percent penalty here?

20 A. Yes.

21 Q. Is that request appropriate?

22 A. Yes, it is appropriate with regard to the
23 Mesaverde in the east half, as has been testified by
24 everyone here, and so -- I hate to use the word "wildcat"
25 because Mr. Stogner had me almost executed here in this

1 chair for using that term. It is an undesignated Mesaverde
2 completion. If you'll reference that map that had the
3 Chacra outline, this subject acreage is not currently
4 within the Blanco-Mesaverde Pool. Please keep that in mind
5 in relation to an ultimate solution in this.

6 I forgot what I was going to say.

7 Q. Well, is there a risk that the well may not be
8 commercially successful, and is that a justification for
9 the request?

10 A. Yes, the 200-percent risk penalty for an east-
11 half development would be appropriate.

12 Q. All right. If McElvain's Application is granted,
13 do you believe that their request for a 200-percent risk
14 penalty is appropriate?

15 A. No, I do not.

16 Q. And why not?

17 A. They are re-entering a well that they actually
18 went and plugged and abandoned that had that opportunity
19 behind pipe. They have the well logs on the particular
20 zone, unlike D.J. Simmons, and the -- I guess the
21 expenditure and risk is less by re-entering that old well
22 and hence the penalty should be less to participate, and I
23 think -- that number, I think, was 100 percent in the
24 original order that written was -- well, it was a
25 reasonable number for a re-entry.

1 Q. All right. Does Simmons seek an order that
2 provides for an adjustment of the drilling and producing
3 overhead rates in accordance with the current COPAS
4 bulletin for such?

5 A. Yes.

6 Q. Let's refer to Exhibit 33, your cross-section,
7 briefly. Let's identify that for the record and tell us
8 what that reflects.

9 A. I'll give a minute for everybody to pull this
10 out, or I'll do my best to hold it up.

11 This Exhibit Number 33 is a two-well cross-
12 section with the Ora Number 2 well that was located in
13 Section 21 of 25 North, 3 West, which is the closest
14 producing well that's on depositional trend with the Wynona
15 Number 1 well, this listing on the right-hand side.

16 The perforations that are present are listed in
17 the depth column on the Ora Number 2 well. And as you can
18 see, it's completed in the Point Lookout interval.

19 The Wynona Number 1 well has proposed
20 perforations in the Mesaverde listed, and the Point Lookout
21 and the Menefee interval on the that particular cross-
22 section.

23 The mapping, the -- McElvain's mapping regarding
24 the development trend, includes in some of their maps the
25 entire Cliff House interval, which is wet in that

1 particular area.

2 I was the production engineer for the McCroden
3 Lease for Union, Texas, which is in the northwest section
4 of 25 North, 3 West, and spent a great deal of time
5 squeezing cement into wells that had been completed in the
6 Menefee and the Cliff House and tested water, and then
7 coming back to re-squeeze the wells once the water had
8 actually corroded through the cement and then through the
9 production tubing.

10 We ended up getting exemptions from the State to
11 allow us to run production packers and put in packer fluid
12 that would help us eliminate the Menefee and Cliff House
13 water production.

14 The Point Lookout referenced on the logs has the
15 best potential in this particular area, and it's not very
16 good, as has been referenced. But this is the log to
17 review. And I haven't seen McElvain represent anything in
18 relation to the Mesaverde information, specifically on a
19 type log on their proposal. You know, they just sent a
20 letter and said, We're going to do these perforations and,
21 you know, participate.

22 Q. In fact, Simmons hasn't even presented a well log
23 for the Mesaverde to the Commission here today; isn't that
24 right?

25 A. Simmons has presented the Mesaverde log --

1 Q. I'm sorry --

2 A. -- on the Wynona Number 1 well. It has not
3 presented a log on the new drill wells because, of course,
4 they don't exist.

5 Q. Let me just say, McElvain has not presented a
6 well log on the Mesaverde?

7 A. That's correct.

8 Q. In your opinion, Mr. Mullins, would granting
9 Simmons' Application be in the best interest of
10 conservation, the prevention of waste, protection of
11 correlative rights?

12 A. Yes, granting Simmons' Application for Section 25
13 on an east-half/west-half standup basis for the formations
14 being asked for would be the appropriate development
15 mechanism in this area.

16 Q. Now, were Exhibits 26 through 33 prepared by you
17 or at your direction?

18 A. Yes.

19 MR. HALL: That concludes our direct of this
20 witness. We'd move the admission of Exhibits 26 through
21 33.

22 MR. FELDEWERT: No objection.

23 CHAIRMAN WROTENBERY: Simmons Exhibits 26 through
24 33 are admitted into evidence.

25 Mr. Feldewert?

CROSS-EXAMINATION

1
2 BY MR. FELDEWERT:

3 Q. Mr. Mullins, do you think McElvain's re-entry
4 project is risky or not risky?

5 A. Risky.

6 Q. Risky, okay. That's because there's not any
7 production within three miles; would you agree with that?

8 A. That's correct.

9 Q. Very risky re-entry project?

10 A. Yes.

11 Q. Okay. You testified to \$350 overhead rates?

12 A. Yes, per month, that's correct.

13 Q. Per month. Is that for the Dakota production, or
14 is that for the Mesaverde?

15 A. It's for the Dakota-Gallup production zone that
16 D.J. Simmons -- and that's their standard overhead rate
17 that they charge.

18 Q. And it's for the northeast-quarter well?

19 A. That's correct.

20 Q. They're going to charge \$350 for the Dakota?

21 A. For the Dakota-Gallup, that's correct.

22 Q. They're the only interest owner in the northeast
23 quarter; isn't that right?

24 A. That's correct, it would be the same for the
25 southeast quarter.

1 Q. Who are they going to charge the \$350 overhead
2 rate to?

3 A. Themselves in that instance.

4 Q. Okay. And do you know what the overhead rate
5 would be if they recompleted at the same time in the
6 Mesaverde?

7 A. I want to back up one second. I will be happy to
8 answer that question.

9 If you had a west-half unit, McElvain's overhead
10 rate would be \$545 to themselves also.

11 Q. My question to you is, if they recomplete that
12 northeast-quarter well in the Mesaverde formation, what is
13 the overhead rate that they are going to charge?

14 A. To charge the Mesaverde owner?

15 Q. Uh-huh.

16 A. It would be \$350.

17 Q. And it -- Period?

18 A. Per month.

19 Q. Okay. So D.J. Simmons is committing that if they
20 recomplete in the Mesaverde they're going to charge \$350
21 overhead a month?

22 A. That is my understanding.

23 Q. Okay. Do you know, Mr. Mullins, what McElvain
24 wanted to participate in an east-half spacing unit for this
25 northeast-quarter well that you intend to drill to the

1 Dakota? How much are they supposed to commit to? How much
2 are they supposed to pay?

3 A. How much are they supposed to pay?

4 Q. Yeah.

5 A. Absolutely nothing at this point in time.

6 Q. When are they supposed to elect to participate
7 or not participate in that well?

8 A. Based upon D.J. Simmons' evaluation of the well
9 in the northeast quarter, their determination would be, is
10 it appropriate to develop the Mesaverde at this time? At
11 which time they would send out an AFE again that details
12 the specific costs with a ballot election form. You'll
13 notice that the election form was not sent with regard to
14 the Mesaverde development.

15 Q. So they have not -- D.J. Simmons has not made a
16 proposal for a Mesaverde well yet to the working interest
17 owners, have they?

18 A. They have not. Excuse me, correct it. They have
19 made a proposal with regard to what the cost share and
20 breakout would be with regard to the Mesaverde. D.J.
21 Simmons is --

22 Q. My question to you is, they have --

23 MR. HALL: Well, let him answer, let him answer.

24 CHAIRMAN WROTENBERY: You may finish, Mr.
25 Mullins.

1 THE WITNESS: You know, we've discussed a number
2 of pooling applications that are here today, and the time
3 of the Commission -- and I appreciate the Commission's time
4 here today, running very late.

5 The development patterns that are available here
6 in the area, the west half is available for McElvain to
7 begin their work and do it at any point in time and avoid
8 all the time spent here.

9 It would be very interesting for the Commission
10 to -- and the Division, to investigate the prior pooling
11 orders to see if this is continued in regard to the time
12 frame on the other applications.

13 What D.J. Simmons is asking here today is for the
14 opportunity to prevent waste by having an appropriate
15 spacing mechanism in the subject area, and east-half/west-
16 half is the appropriate spacing mechanism for the
17 development of the Mesaverde reserves.

18 Something that I pointed out at the last hearing,
19 which wasn't very popular, is that the Dakota formation is
20 based upon 160-acre spacing in the subject area. That's
21 different than a lot of the other areas in the Basin.

22 What would simplify this matter would allow, and
23 as D.J. Simmons has offered, is to go to 160-acre
24 nonstandard proration units for the subject acreage, clear
25 all this up and --

1 CHAIRMAN WROTENBERY: Thank you, Mr. Mullins.

2 THE WITNESS: -- you know, you can go do that.

3 CHAIRMAN WROTENBERY: Mr. Feldewert?

4 Q. (By Mr. Feldewert) Thank you. D.J. Simmons has
5 not proposed a Mesaverde well to the working interest
6 owners, have they?

7 A. They've proposed what the cost would be in the
8 Bishop Federal 25 Number 1 well and the 25 Number 2 well,
9 for what the Mesaverde completion. They have not given
10 what time they are going to do that.

11 Q. And they haven't committed to doing that either,
12 have they?

13 A. They have not committed to doing that.

14 Q. Okay. Have you read the pooling statute?

15 A. I have read the pooling statute, but I would
16 probably need to be refreshed.

17 Q. Do you have a copy? I have a copy. Paragraph C,
18 about halfway down, do you see it says "where"?

19 A. I do.

20 Q. It says, Where, however, such owner or owners,
21 1), have not agreed to pool their interests and, 2), where
22 one such separate owner or owners who has the right to
23 drill, has drilled or proposes to drill a well on said unit
24 to a common source of supply...

25 Do you see that?

1 A. I do.

2 Q. That hasn't happened yet here for D.J. Simmons
3 with respect to a Mesaverde well; isn't that correct?

4 A. That's correct.

5 Q. All right. Now, are you telling the Commission
6 with your testimony here that all Mesaverde wells in the
7 Lindrith area of the San Juan Basin should be spaced on
8 standup spacing units and that operators and interest
9 owners should have no flexibility or direction as to the
10 orientation of the spacing units?

11 A. No, I'm not saying that.

12 Q. Okay, what is unique about this area that leads
13 you to the conclusion that in Section 25 we should mandate
14 the standup spacing units?

15 A. In regard to the information that I've discussed
16 and presented today relative to Section 25 and the spacing
17 units in question here today, standup units would be the
18 appropriate mechanism.

19 Q. Well, I'm trying to figure out what information
20 that is unique to Section 25 you are referring to?

21 A. Section 25 unique?

22 Q. Yes.

23 A. First of all, the well location of the Naomi Com
24 Number 1 being 450 feet, or 410, from the west line.
25 Second would be the information on the exhibits presented

1 for a north-south orientation in the subject area relative
2 to the preferred drainage pattern for the completion in the
3 Mesaverde. That information has not been, in my opinion,
4 proven otherwise in regard to the development.

5 That's why I believe the west-half/east half
6 would be the appropriate --

7 Q. And then you mentioned --

8 A. -- mechanism in this area.

9 Q. -- the location of the well, and then you also
10 mentioned your theory about drainage. Now, your theory
11 about drainage would apply across the San Juan Basin,
12 including the Lindrith area, are you not?

13 A. You are trying to get me to say that, and I'm not
14 going to say that, because my information that I'm
15 presenting and testifying to you today is specifically in
16 regard to this Section 25.

17 Q. Okay, my question to you -- I know you reference
18 confidential Burlington information, which you haven't
19 provided to us, have you?

20 A. I don't think I referenced confidential
21 Burlington information. I have confidential Conoco
22 information with regard to the Lindrith B Unit --

23 Q. Okay.

24 A. -- specifically.

25 The information that Burlington has, you know,

1 you can call them up and ask them for their map with regard
2 to their drainage-pattern ellipses, and, you know, they
3 gave me the information.

4 Q. What I'm trying to find out, Mr. Mullins, is,
5 what specific study are you relying upon that is unique to
6 Section 25 to support your testimony here today that you
7 should do standup spacing units in Section 25?

8 A. I do not have a specific study that has been
9 performed in Section 25 that gives evidence of that.

10 Q. Now, you also use a three-to-one ellipsis
11 pattern?

12 A. That's correct.

13 Q. And is that based on what?

14 A. The three-to-one elliptical pattern is based upon
15 the Burlington fracture information presented in the order
16 for infill drilling on the Blanco-Mesaverde Pool. That
17 extended that boundary to within one mile of the subject
18 acreage.

19 Q. Okay, so you're taking that study and applying it
20 here, and you're basing your three-to-one theory on that
21 information that was provided by Burlington?

22 A. Yes.

23 Q. Okay, and you don't have that information here
24 today?

25 A. I do not have first-hand information here today

1 to show that. It's in the Commission records and in their
2 Division order.

3 Q. And you haven't provided that to McElvain?

4 A. Am I under an obligation to provide that to
5 McElvain?

6 Q. No.

7 A. Who's proposing the well?

8 Q. And your theory that you used is, you use, as you
9 call, your 160-acre draining -- drainage area, that was the
10 maximum area you thought it would drain?

11 A. Based upon the information I have, that's
12 correct.

13 Q. Okay, if it's less than that 160-acre maximum
14 that you chose to use, would you agree with me that the
15 drainage from the well in the southeast quarter would be
16 limited to the southwest -- I'm sorry, the well in the
17 southeast quarter would be limited to the southwest
18 quarter?

19 A. You said a lot of numbers real fast, I'm going to
20 try to repeat your --

21 Q. Let me slow down.

22 A. -- you can either --

23 Q. Let me slow down.

24 A. -- repeat the question or I can paraphrase it.

25 Q. Would you agree with me that if you use less than

1 your 160-acre maximum drainage area for the well in the
2 southwest quarter --

3 A. Southwest quarter.

4 Q. Yes. -- would you agree with me that that well
5 would drill [sic] only reserves from the southwest quarter?

6 A. Possibly, yes.

7 Q. And it would not be draining reserves from either
8 the northwest quarter or the southeast quarter?

9 A. I believe that it would predominantly drain from
10 the northwest quarter on a three-to-one basis.

11 Q. Your 160-acre maximum?

12 A. Correct, you can see that that extends well into
13 the northwest --

14 Q. And it's your --

15 A. -- quarter.

16 Q. -- testimony that predominantly drain from the
17 northwest quarter?

18 A. That's correct.

19 Q. Okay. But correct me if I'm wrong. You don't
20 have any hard evidence of the drainage pattern in this
21 area? This is your theory?

22 A. It's not my theory, it's based upon the
23 information presented here today and prior cases that the
24 Division and Commission have approved.

25 Q. You've taken a look at those and extracted a

1 theory that this well is going to drill 160 acres, and it's
2 going to predominantly drain from the northwest quarter?

3 A. I have, unlike McElvain, made my best attempt to
4 determine what the maximum drainage area would be from
5 their well -- from McElvain's well proposal. I have yet to
6 see an economic summary.

7 The standard information supplied in the
8 thousands of non-operated working-interest proposals that
9 I've reviewed is, I pick up the phone and I call, and I
10 say, How much is the well going to make and how many
11 reserves do you think you're going to have?

12 Q. Did D.J. Simmons do that here?

13 A. Did D.J. Simmons do that here?

14 Q. Yeah.

15 A. Yes, they called.

16 Q. And did they get the information?

17 A. They did not get the information.

18 Q. They got the well logs, did they not?

19 A. They got the well logs supplied, that is correct.

20 Q. You're telling me that D.J. Simmons called
21 McElvain and asked for the reserve figures?

22 A. I'm telling you that standard industry practice,
23 in my experience, has been, I pick up the phone and make a
24 phone call and say, How much gas is this well going to make
25 and how many reserves is it going to make to participate?

1 Q. Did you do that?

2 A. I don't just send a file, a force-pooling
3 application, you know, to do the well.

4 Q. Did you do that in this case?

5 A. Did who do that?

6 Q. Did D.J. Simmons do that in this case?

7 A. D.J. Simmons has not supplied this information
8 other than here in the testimony at both of the hearings
9 with regard to the Dakota-Gallup and the Mesaverde.

10 Q. Okay, you mentioned waste and a refusal by
11 McElvain to develop reserves in the area. What is your
12 theory of waste? How is there going to be waste here if
13 McElvain's south-half spacing unit is granted?

14 A. McElvain has not indicated that they will drill
15 in the southeast quarter to develop Dakota-Gallup reserves,
16 number one, for waste.

17 Number two, waste will occur in the southeast
18 quarter by D.J. Simmons not having the opportunity to
19 complete, commingle and operate the well on their interest
20 position, where the opportunity is present for McElvain to
21 complete and dedicate a west-half unit and be done with
22 this.

23 Q. Is D.J. -- Are you saying D.J. Simmons is not
24 going to drill a Dakota well in the southeast quarter?

25 A. I'm saying, based upon both of the economic

1 summaries that I've provided at both of the hearings, that
2 as gas prices drop it will be less likely that the
3 southeast quarter will be drilled without having the
4 additional reserves from the Mesaverde available for D.J.
5 Simmons to complete, that's correct, that's the waste.

6 Q. How is Dugan supposed to develop its Mesaverde
7 reserves in the southeast quarter?

8 A. Boy, I'm going to speculate, and I know I'm
9 wasting everybody's time here.

10 Dugan is going to sit there, in my experience
11 with working with Dugan on several projects, they're going
12 to watch what happens --

13 Q. So --

14 A. -- and they're going to see, you know, see what's
15 occurred. I mean, I've read the letter and, you know, it
16 says, Hey, we decided to go with McElvain. That's what it
17 says.

18 Q. So in your opinion, the Division should deny a
19 south-half spacing unit in this case and deny Dugan and
20 Forcenergy the opportunity to participate in a Mesaverde
21 well so that D.J. Simmons has the ability to keep that
22 Mesaverde formation in their back pocket for a southeast-
23 quarter Gallup well?

24 A. I would counter that and say that the interest
25 owners, all of which in the southeast quarter would benefit

1 from the spacing on an east-half basis for the Mesaverde in
2 D.J. Simmons' request.

3 Q. And they're supposed to sit around and wait for
4 you to recomplete the well when you decide that its time to
5 recomplete the well?

6 A. Again, reading the fine details of some of this
7 material, McElvain is re-entering a plugged well. D.J.
8 Simmons is drilling a brand-new well. Distinct differences
9 on the timing.

10 D.J. Simmons -- and the evidence has been
11 presented here and is in the record -- has proceeded
12 diligently, and it has some additional hurdles to overcome
13 in order to get their well drilled in the northeast
14 quarter, the first well.

15 McElvain can very easily go right to their well,
16 petition for the Division and Commission for a west-half
17 320 and go do their work. They could have done that in
18 November when they had the rig waiting there.

19 Q. Are you employed by D.J. Simmons?

20 A. No, I am not.

21 Thank goodness, thank goodness, let me put that
22 on the --

23 Q. All right, do you advise your clients that when
24 they receive a well proposal for the development of
25 property that they should sit around and wait until after

1 the compulsory pooling hearing to propose a competing
2 development -- or -- proposal?

3 A. I don't usually advise my clients with regard to
4 when to file their applications.

5 Q. It wouldn't be diligent to do that, would it?

6 A. I believe --

7 MR. HALL: Object, calls for speculation.

8 MR. FELDEWERT: That's all I have.

9 CHAIRMAN WROTENBERY: Thank you.

10 Commissioner Bailey?

11 COMMISSIONER BAILEY: No questions.

12 COMMISSIONER LEE: No questions.

13 CHAIRMAN WROTENBERY: I have no further
14 questions.

15 Any redirect?

16 MR. HALL: One brief question, one.

17 COMMISSIONER LEE: That's going to cost you.

18 (Laughter)

19 REDIRECT EXAMINATION

20 BY MR. HALL:

21 Q. So the record is clear on this, D.J. Simmons has
22 tried to obtain the voluntary agreement of the other
23 working interest owners for the evaluation of the Mesaverde
24 reserves in the east half of Section 25 in conjunction with
25 its Gallup-Dakota drill in the northeast quarter, correct?

1 A. That's correct.

2 MR. HALL: That's all I have.

3 CHAIRMAN WROTENBERY: Thank you.

4 Anything else for Mr. Mullins? I don't believe
5 so, so thank you very much for your testimony.

6 Let me ask, I don't know whether you would like
7 to make a closing statement or not. It's getting late, and
8 the Commission still has several cases to deliberate today,
9 and so I would request that if you do wish to make a
10 closing statement that you submit that in writing. What's
11 the sense?

12 MR. HALL: I've already indicated I'm going to
13 waive closing.

14 I've given you a brief.

15 CHAIRMAN WROTENBERY: Mr. Feldewert?

16 MR. FELDEWERT: If you are requesting that we
17 submit any closing in writing, I would be happy to do that.

18 CHAIRMAN WROTENBERY: Okay.

19 MR. FELDEWERT: Otherwise, I had a short closing,
20 but I understand --

21 CHAIRMAN WROTENBERY: Yes, if you would, submit
22 it in writing and keep it brief --

23 MR. FELDEWERT: Certainly.

24 CHAIRMAN WROTENBERY: -- and then I think we've
25 -- I did want to ask about the exhibits that were prefiled

1 by McElvain --

2 MR. FELDEWERT: Yes.

3 CHAIRMAN WROTENBERY: -- 23 and 24. Those we
4 should set aside.

5 MR. FELDEWERT: We don't -- Correct.

6 CHAIRMAN WROTENBERY: Correct, okay.

7 MR. FELDEWERT: Okay.

8 CHAIRMAN WROTENBERY: Those are not part of the
9 record.

10 MR. MULLINS: My D.J. Simmons 23 and 24?

11 CHAIRMAN WROTENBERY: No, the --

12 MR. HALL: -- McElvain.

13 CHAIRMAN WROTENBERY: -- McElvain.

14 Did I say D.J. Simmons? I'm sorry. McElvain
15 Exhibits 23 and 24.

16 And I believe that will take care of us for
17 today.

18 Thank you all very much for your testimony, we
19 appreciate it.

20 We'll take this case under advisement, and we
21 anticipate that we will make a decision on this case at the
22 Commission's meeting in December, and we're not exactly
23 sure what the date of that meeting will be at this point.
24 It was scheduled for December 14th, I believe, but we've
25 determined that a conflict has arisen, so we will probably

1 be scheduling it a little bit earlier in December. We will
2 certainly give everybody notice.

3 Thank you very much.

4 MR. FELDEWERT: Thank you.

5 MR. HALL: Thank you.

6 (Thereupon, these proceedings were concluded at
7 6:00 p.m.)

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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 Commission 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 November 16th, 2001.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 14, 2002