

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

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION DIVISION FOR
THE PURPOSE OF CONSIDERING:

ORIGINAL

CASE NO.
15318

APPLICATION OF ANSCHUTZ OIL COMPANY, LLC,
FOR A NON-STANDARD OIL SPACING AND
PRORATION UNIT AND COMPULSORY
POOLING, RIO ARriba COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
EXAMINER HEARING

June 11, 2015

Santa Fe, New Mexico

BEFORE: PHILLIP GOETZE, CHIEF EXAMINER
GABRIEL WADE, LEGAL EXAMINER

This matter came on for hearing before the
New Mexico Oil Conservation Division, Phillip Goetze,
Chief Examiner, and Gabriel Wade, Legal Examiner, on
Thursday, June 11, 2015, at the New Mexico Energy,
Minerals, and Natural Resources Department, Wendell
Chino Building, 1220 South St. Francis Drive, Porter
Hall, Room 102, Santa Fe, New Mexico.

REPORTED BY: ELLEN H. ALLANIC
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16 I N D E X

17 CASE NUMBER 15318 CALLED

18 ANCHUTZ OIL COMPANY, LLC

19 CASE-IN-CHIEF

20 WITNESS DEIDRE O'CALLAGHAN

| | | | |
|-----------------|--------|----------|---------|
| | Direct | Redirect | Further |
| 21 By Mr. Bruce | 10 | | |

| | | | |
|---------------------|-------|--|--|
| 22 By Mr. Feldewert | Cross | | |
| | 22 | | |

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|-------------------------|--|--|--|
| 23 T.H. McELVAIN, LLLP, | | | |
| 24 CASE-IN-CHIEF | | | |

25 WITNESS RICK HARRIS

| | | | |
|---------------------|--------|----------|---------|
| | Direct | Redirect | Further |
| 26 By Mr. Feldewert | 50 | | |

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|-----------------|-------|--|--|
| 27 By Mr. Bruce | Cross | | |
| | 62 | | |

28 Reporter's Certificate

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| | | |
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| | | |
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25

1 (Time noted 8:57 a.m.)

2 EXAMINER GOETZE: We will move to the next
3 case. This is case number 15318, Application of
4 Anschutz Oil Company, LLC, For a Non-Standard Oil
5 Spacing and Proration Unit and Compulsory Pooling, Rio
6 Arriba County, New Mexico.

7 Call for appearances.

8 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa
9 Fe representing the applicant. I have one witness.

10 EXAMINER GOETZE: And Mr. Feldewert.

11 MR. FELDEWERT: Mr. Examiner, Michael
12 Feldewert with the Santa Fe Office of Holland and Hart
13 appearing on behalf of T.H. McElvain Oil and Gas, LLLP.
14 And I have one witness here today.

15 EXAMINER GOETZE: Will the witnesses in this
16 case please stand and give your name to the reporter and
17 be sworn in.

18 (Whereupon, the presenting witnesses were
19 administered the oath.)

20 EXAMINER GOETZE: Do you have an opening
21 statement or --

22 MR. BRUCE: No, I'd rather just move
23 forward.

24 MR. FELDEWERT: I do.

25 EXAMINER GOETZE: You may have your opening

1 statement.

2 MR. FELDEWERT: While I approach, I am going
3 to hand you our exhibit pack.

4 EXAMINER GOETZE: Very good.

5 MR. FELDEWERT: Mr. Examiner, you are going
6 to see that under this particular case, and as I
7 identified in our prehearing statement, they seek to
8 create a 640-acre spacing unit for a vertical oil well
9 to be drilled in Gavilan-Mancos oil pool.

10 They also seek in this case to create a
11 640-acre spacing unit in the deeper Gavilan-Greenhorn
12 Graneros-Dakota oil pool. So I am just go going to
13 refer to that as the Dakota pool.

14 EXAMINER GOETZE: Uh-huh.

15 MR. FELDEWERT: The cover letter for these
16 well proposals as well as the pooling application
17 express an intent to drill this vertical well into the
18 deeper Dakota formation and then to commingle the two
19 pools in this same well.

20 And I submit to you that this development
21 plan that has been proposed here cannot be accomplished
22 in this application for two reasons. First, the
23 640-acre spacing unit that they seek to create in the
24 deeper Dakota formation, the deeper Dakota pool, is not
25 allowed by the special rules for the pool.

1 If you take a look at what we have marked as
2 Exhibit 11 -- it will be the last exhibit in our
3 package -- that is the order of the Commission from
4 1984 which created this Dakota pool. It has special
5 pool rules.

6 If you go to rule 2, it provides that no
7 more than one well shall be completed in a 320-acre
8 spacing unit. And the reason for that is because when
9 you look at the order itself the Division took evidence
10 and there was a lot of question as to whether one well
11 could even drain 320 acres. They were looking at 160
12 and 320. They settled the temporary rules on the
13 320-acre spacing unit -- the temporary rules -- while
14 they obtained more evidence.

15 They're here today seeking to create a
16 640-acre spacing unit within the Dakota pool with no
17 evidence upon draining, no evidence that one well is
18 going to drain 640 acres.

19 No other Dakota spacing unit has been
20 proposed in their application. So there is no other
21 Dakota spacing unit before this Division.

22 They also presented a proposal to the
23 interest owners for the Mancos Oil Pool. And I am going
24 to show you here that their proposal did not comply with
25 either the timing or the information requirements the

1 Division has established in its order which we have
2 marked as Exhibit No. 10, Order No. 13165.

3 No. Two, on that particular Mancos
4 application, it rests solely; in other words, they
5 propose their Mancos well solely on the proposition that
6 they are going to commingle and that they are going to
7 create a 640-acre spacing unit in the Dakota, neither of
8 which is allowed by the Division's rules. We've already
9 talked about the Division rules with the Dakota
10 requiring 320 acres.

11 If you go to the order creating the Dakota
12 pool and you go to rule 9, it clearly states that the
13 production from any well in that Dakota pool cannot be
14 commingled with any other pool.

15 So we have a proposal here today that seeks
16 to do something that cannot be done under the pool
17 rules. It only gives you one option, one option, either
18 approve it or deny it.

19 And the only option they have presented to
20 you is what can't be done, and that is the creation of
21 the 640-acre spacing unit in the Dakota and then
22 commingling the production from the Dakota with the
23 Mancos water pool.

24 So at the end of this hearing, I am going to
25 ask that their application be dismissed for these

1 reasons.

2 MR. BRUCE: Well, I wasn't going to do an
3 opening, Mr. Examiner.

4 EXAMINER GOETZE: In light of that, would
5 you like that opportunity?

6 MR. BRUCE: (Handing.)

7 EXAMINER GOETZE: Thank you.

8 MR. BRUCE: I guess my initial response,
9 Mr. Examiner, is baloney. First, I direct you to the
10 Gavilan-Mancos pool rules. 640-acre spacing, this
11 was -- the third spacing for the Gavilan-Mancos Pool was
12 originally oil spaced on statewide 40 acres.

13 In, I believe, 1984, spacing was increased
14 to 320 acres. And then in 1988 after a, if I recall,
15 about a two-week long commission hearing, spacing was
16 increased to 640 acres.

17 Now, if you'll look at either the rules I
18 gave you or the order that Mr. Feldewert provided, it
19 states, particularly in rule 3, that wells in the Dakota
20 pool shall have the same spacing and proration units as
21 any well completed or re-completed in the Gavilan-Mancos
22 pool.

23 Obviously, what happened is in 1984, when
24 the Dakota was spaced on 320 so was the Gavilan-Mancos.
25 Now most of the development out here has been in the

1 Mancos, and not in the Dakota, and so that kind of got
2 pushed aside. Well, that is one of the reasons we are
3 seeking 640-acre spacing, simply to comply with rule 3.

4 Secondly, it's a matter of fairness. If you
5 are including everybody in the section in both zones, in
6 our opinion it would be eminently fair.

7 And the third thing I would like to point
8 out is, Mr. Feldewert says the requirements of order
9 R-13165 have not been met. But if you look at that
10 order, Mr. Feldewert's Exhibit 10, paragraph 5, it does
11 talk about time frame and a couple of other things.

12 But you'll notice in the second line, it
13 says, In the absence of extenuating circumstances this
14 should occur.

15 And there are extenuating circumstances,
16 which is that a well has to be commenced by McElvain
17 fairly soon, the next five weeks or so.

18 MR. FELDEWERT: You mean Anschutz.

19 MR. BRUCE: Anschutz. (Continuing) -- has
20 to be commenced within the next five weeks or Anschutz
21 will be in danger of losing certain term -- basically
22 term assignments.

23 And Anschutz has been diligent in moving
24 forward with the drilling of this well. Just recently
25 it completed another well that it had commenced in

1 December of last year. And it is moving forward as
2 quickly as it can.

3 And I think those are the extenuating
4 circumstances that justify this pooling. And even if
5 you did find that the spacing in the Dakota should be
6 320, that doesn't mean you can't force pool the Mancos,
7 because everybody has had proper notice of the pooling
8 application.

9 And with that, I would like to present my
10 witness.

11 EXAMINER GOETZE: Proceed.

12 DEIDRE O'CALLAGHAN
13 having first been duly sworn, was examined and testified
14 as follows:

15 DIRECT EXAMINATION

16 BY MR. BRUCE:

17 Q. Please state your name for the record.

18 A. Sure. My name is Deidre O'Callaghan.

19 Q. And who do you work for and in what capacity?

20 A. I work for Anschutz Exploration Corporation and
21 Anschutz Oil Company as a senior landman.

22 Q. Have you previously testified before the
23 Division?

24 A. I have.

25 Q. And were your credentials as an expert petroleum

1 landman accepted as a matter of record?

2 A. Yes, they were.

3 Q. And are you familiar with the land matters
4 involved in this application?

5 A. Yes, I am.

6 MR. BRUCE: Mr. Examiner, I tender
7 Ms. O'Callaghan as an expert petroleum landman.

8 EXAMINER GOETZE: So qualified. Any
9 questions --

10 MR. FELDEWERT: No objection.

11 EXAMINER GOETZE: Thank you. Proceed.

12 Q. Could you identify Exhibit 1 for the Examiner.

13 A. I will. Exhibit 1 is a well location plat, which
14 we actually received from our surveyor yesterday.

15 THE WITNESS: And, Jim, I notice just now,
16 now that I've seen it printed, that in the dedicated
17 acreage, it says 640 acres, all section 24. That's
18 incorrect.

19 He has cut and pasted that from another well
20 he is working on for us. It should be section 1. It is
21 properly identified in the plat itself, but up there it
22 is not properly done.

23 Q. (By Mr. Bruce) And what is the footage location
24 of the well?

25 A. The footage location is 1,708 feet from the south

1 line and 949 feet from the east line.

2 Q. And is this a standard location either in the
3 Mancos or the Dakota?

4 A. It is.

5 Q. Is this a vertical well?

6 A. It is.

7 Q. Who are the parties who you seek to force pool?

8 MR. BRUCE: And, Mr. Examiner,
9 Ms. O'Callaghan had e-mailed me this morning the list of
10 the parties and their interests, and before I received
11 that, my computer crashed and I don't have the written
12 list. I would be glad to supply it later, but I do not
13 have it handy.

14 Q. So could you identify the parties, please?

15 A. Sure. The parties who we seek to force pool
16 include Arriba Company, LLC; J&M Raymond, LTD.; McElvain
17 Oil Company; T.H. McElvain Oil and Gas, LLLP; JAS Oil
18 and Gas Company, LLC; Darlene Schmitz, trustee of the
19 Tony and Darlene Schmitz Living Trust -- although we
20 have a verbal agreement with that entity -- also Roger
21 Julius Palmer Abbot; and the Estate of H.J. Guthman,
22 Daniel Elwin Cody Britt, personal representative.

23 Q. Okay.

24 A. And I apologize. My eyes are going and I don't
25 have my reading glasses, but I think I have got all the

1 parties there.

2 Q. Let's move on to Exhibit 3. What is contained in
3 Exhibit 3?

4 A. Exhibit 3 is a copy of all of the proposal
5 letters that we sent on May 5th to those parties that I
6 just listed and a couple of others who we have since
7 reached agreements with.

8 Q. Were these well proposals mailed or were they
9 sent by some other means?

10 A. They were either sent by Federal Express or by
11 overnight U.S. Post Office.

12 Q. And were the addresses that you sent these to
13 either their correct addresses or addresses that the
14 people gave you?

15 A. They were the addresses that people gave us. We
16 did get one of the letters back. And that was from
17 Roger Julius Palmer Abbot. But we have been in contact
18 with them by e-mail and by phone. For whatever reason,
19 they gave us an address that bounced back on us.

20 Q. But have you been in touch with all of these
21 parties, either by phone or e-mail, or have you
22 attempted to contact them?

23 A. Yes. Our lease broker has been in contact with
24 the unleased owners for the most part, although I am in
25 direct contact with Curt Summer of JAS Oil and the

1 Schmitz family. And I have left messages or spoken to
2 all the other parties who are on that list.

3 Q. In your opinion, have you made a good faith
4 effort to obtain the voluntary joinder of the interest
5 owners in this proposed well?

6 A. Yes.

7 Q. Do you request that Anschutz Exploration Company
8 be named operator of the well?

9 A. Yes. Anschutz Exploration Corporation, operator
10 on behalf of Anschutz Oil Company, LLC.

11 Q. What is Exhibit 4?

12 A. Exhibit 4 is the AFE, which was included in the
13 drilling proposals, the well proposals.

14 Q. And what is the total cost of the proposed well?

15 A. \$3.35 million.

16 Q. And is this cost fair and reasonable and in line
17 with the costs of wells of this type drilled in this
18 area of New Mexico?

19 A. These costs were developed by our drilling and
20 operations group based upon our experience, although we
21 have not drilled a vertical well in this particular
22 area.

23 Q. You have recently completed a horizontal well,
24 have you not?

25 A. Yes.

1 Q. And that well was commenced in December, I
2 believe of 2014?

3 A. Correct.

4 Q. And has it been completed at this point?

5 A. It was completed and we flowed the first oil on
6 June 2nd, I believe.

7 Q. Okay. And in this area you are -- you have taken
8 over an acreage position from Hunt Oil Company, I
9 believe, correct?

10 A. That's correct.

11 Q. And under that agreement with them, do you have
12 to timely drill -- have a continuous drilling obligation
13 to preserve your acreage?

14 A. We do.

15 Q. And if you do not commence the well in a timely
16 fashion, will you lose the acreage?

17 A. We will lose a significant portion of the
18 acreage, yes.

19 Q. Do you have a recommendation for overhead rates
20 in this well?

21 A. I actually was thinking about that when we were
22 just talking through it just now. I would propose the
23 same overhead rates that we used for the Regina
24 25.2.14.15 1H, and I would have to go double-check them,
25 but I believe it's \$1,500 a month for production and

1 \$10,000 for drilling.

2 Q. Okay.

3 MR. BRUCE: Mr. Examiner, you know there are
4 several orders on that Regina well, which was a
5 horizontal well, and I can't remember right now, but I
6 can tell you after the hearing what the rates were that
7 were granted by the Division in that order.

8 EXAMINER GOETZE: We'll confirm it with the
9 order. We will reference that order as your basis of
10 your overheads.

11 Q. And was notice given to all of the subject
12 parties of this hearing?

13 A. Yes.

14 Q. And is that reflected in my affidavit marked
15 Exhibit 5?

16 A. Yes.

17 MR. BRUCE: And, again, Mr. Examiner, on the
18 last page of Exhibit 5...

19 Q. Ms. O'Callaghan, if you would look at the Roger
20 Abbot, Jr., address. That is the address that they gave
21 to you?

22 A. It is.

23 Q. Verbally or by e-mail?

24 A. Verbally to our oil and gas broker.

25 Q. And McElvain Oil Company, is that the address

1 that they gave you?

2 A. That is the address actually that I got from T.H.
3 McElvain Oil and Gas as a confirming address that was
4 not of record.

5 Q. Do you know if the well proposal that you sent
6 was received by McElvain Oil Company?

7 A. Yes.

8 Q. Do you have written --

9 A. I have confirmation from the U.S. Post Office.

10 Q. Were Exhibits 1 through 5 either prepared by you
11 or under your supervision or compiled from company
12 business records?

13 A. Yes, they were.

14 Q. And in your opinion -- take a step back.

15 The 320-acre Dakota that you had proposed to have
16 as a 640-acre unit, in my opening I mentioned fairness,
17 what is your thought in forming a 640-acre Dakota well
18 unit?

19 A. The ownership in the Mancos or the Dakota are
20 different in various tracts in this particular spacing
21 unit. It is a little bit complicated because of the
22 existing term assignment from McElvain -- T.H. McElvain
23 Oil and Gas to Hunt. And there were some issues with
24 respect to ownership that we finally actually just got
25 clarified here this week.

1 So what I wanted to do was propose a well that
2 would divide cost and revenues as equitably as I could
3 design. We again have different interests, the parties
4 own different interests in the Dakota versus the Mancos.

5 Our well that we have completed recently as a
6 horizontal well is not exactly a barn burner. One of
7 the things that we are looking at is trying to make a
8 more economic vertical well here. And that is why we
9 proposed from the very beginning that we would propose
10 that the production be commingled to improve the
11 economics of the well.

12 We proposed that we share the well costs 50/50,
13 depending on what the party's ownership was in the
14 Dakota, the Mancos, and that we allocate production
15 between the two horizons, if both are productive, on an
16 allocated basis based on tests at the time of
17 completion.

18 So without having the information for the
19 completion, my understanding is that we would not
20 propose that as part of this hearing, but we would
21 propose the commingling of the well at the time that we
22 complete the well.

23 But we have to have a way to share costs, and
24 that is what I was trying to do, is to propose
25 something -- to either share costs among the parties or

1 if they didn't want to participate in the well, our well
2 proposal offered for them to contact us with regard to
3 either a term assignment or a farm-out or other
4 arrangement other than participation in the well.

5 Q. And the spacing in the Mancos is 640 acres?

6 A. Correct.

7 Q. If you had to form a 320-acre Dakota unit, I
8 suppose it could be formed either as an east half or a
9 south half well unit?

10 A. (Nodding.)

11 Q. Is that correct?

12 A. Yes.

13 Q. And if that was done would ownership in the
14 Dakota be different -- either way would ownership in the
15 Dakota be different than in the Mancos?

16 A. Yes, it would.

17 MR. BRUCE: One final thing, Mr. Examiner,
18 the actual acreage in this section, because there are
19 four lots, is 650.32 acres. And the application does
20 ask for a non-standard unit in the Mancos simply because
21 the maximum acreage is 648 under the pool rules -- 648
22 acres under the pool rules.

23 Q. And in your opinion is the granting of this
24 application in the interest of conservation and the
25 prevention of waste?

1 A. Yes.

2 MR. BRUCE: Mr. Examiner, if I could have
3 one second.

4 (Pause.)

5 MR. BRUCE: Mr. Examiner, just two things.
6 I move the admission of Exhibits 1 through 5.

7 And I do have an affidavit from a geologist
8 for Anschutz. It's pretty basic. It is just to show
9 basic Dakota and Mancos or Gallup geology in this area.

10 I just asked Mr. Feldewert and he does not
11 object to me presenting this affidavit.

12 Since this is a vertical well -- and as I
13 understand from Mr. Feldewert, they are not challenging,
14 if the order was granted, a risk charge -- under -- I
15 know this is odd anymore for drilling vertical wells,
16 but we do not need to present geologic testimony.

17 After they said in the rules for a well --
18 the application requests a 200 percent or whatever
19 non-consent risk charge, the party has to specifically
20 object to a risk charge to require a geologist to be
21 present to testify as to risk.

22 But I want to move Exhibits 1 through 6 into
23 evidence.

24 EXAMINER GOETZE: First of all, we will go
25 ahead and accept Exhibits 1 and then 3 through 6 -- are

1 so entered into the case. You have a submittal without
2 exhibit number, do you wish to make this an entry into
3 the case?

4 MR. BRUCE: Either that or if I could just
5 incorporate in the record -- if you want me to mark them
6 as exhibits, mark them 7 and 8.

7 EXAMINER GOETZE: Very good. Then we will
8 include the submittal of hearing as Exhibits 7 and 8,
9 which are the pool rules --

10 EXAMINER WADE: See if there's any
11 objection.

12 MR. FELDEWERT: 7 and 8 are the pool rules?

13 EXAMINER GOETZE: Yes.

14 MR. FELDEWERT: No objection.

15 EXAMINER GOETZE: Thank you, Counselor.

16 -- 7 is the pool rules for the
17 Gavilan-Mancos Pool and No. 8 is the Gavilan-Greenhorn
18 Graneros-Dakota Pool.

19 (ANSCHUTZ OIL COMPANY, LLC, Exhibits 1, 3,
20 4, 5 and 6 were offered and admitted.)

21 (ANSCHUTZ OIL COMPANY, LLC, Exhibits 7 and 8
22 were offered.)

23 MR. BRUCE: And I have nothing further in
24 this.

25 EXAMINER GOETZE: Very good. Mr. Feldewert.

1 CROSS-EXAMINATION

2 BY MR. FELDEWERT:

3 Q. Ms. O'Callaghan, good morning.

4 A. Good morning.

5 Q. I apologize, I don't think I gave you a set of
6 our exhibits.

7 MR. FELDEWERT: If I may approach the
8 witness.

9 EXAMINER GOETZE: Please.

10 THE WITNESS: I was feeling left out.

11 Q. (BY MR. FELDEWERT) I am looking at your -- your
12 company's Exhibit 5 -- and I apologize, and I am looking
13 at Exhibit A.

14 Can you please identify for me the parties that
15 you seek to pool here today -- let me step back.

16 Let's go to Exhibit 5, let's go to Exhibit A.
17 That would be the --

18 A. I got it.

19 Q. Go to Exhibit A.

20 A. Yes.

21 Q. And this contains the complete list of the
22 parties that have been notified of this hearing,
23 correct?

24 A. Yes.

25 Q. And these are all working interest owners within

1 the area that you seek to pool?

2 A. Either working interest owners or unleased
3 mineral owners within the area we seek to pool, yes.

4 Q. And on this exhibit, who do you seek to pool here
5 today? Can you tell me again?

6 A. Sure. I have not heard from Arriba Company. I
7 haven't had a response from T.H. McElvain.

8 Q. With NM&O, what's the status?

9 A. NM&O has elected to farm out to us.

10 Q. Farm out?

11 A. Yes.

12 Q. Okay. And then you've got T.H. McElvain?

13 A. Yes.

14 J&M Raymond, when I spoke to the landman for
15 them, they said they would do whatever T.H. McElvain
16 does, so I don't have a response there.

17 I haven't been able to reach David McElvain at
18 McElvain Oil Company, so no response there.

19 McKenna, we received a lease in the mail
20 yesterday, so we don't seek to force pool them, because
21 they are leased.

22 JAS Oil, we are in conversation with JAS Oil, but
23 if we are not able to reach an agreement, we seek to
24 pool them.

25 And Darlene Schmitz and Tony Schmitz Living

1 Trust -- it's actually Schmitz Land Company has agreed
2 verbally to lease. But if we do not reach an agreement
3 with them, we would seek to pool them as well.

4 Roger Julius Palmer Abbot, Jr., we seek to pool
5 although we are in negotiations with them.

6 The same thing with the Estate of H.J. Guthman.

7 And Classical Oil and Gas we seek to pool as to
8 the Dakota only. We are in negotiations with them also,
9 but we have their rights under lease in the Mancos.

10 Q. So none of these parties have agreed to
11 participate in the well; the Wajanaugh pooling is either
12 a farm-out or a lease?

13 A. Correct.

14 Q. Okay. When you contacted these companies listed
15 on Exhibit A, was your habit to make notes on the well
16 proposal letters that you sent to these parties?

17 A. Not on the well proposal letters.

18 Q. Was it your habit to make any notes?

19 A. I do occasionally make notes on a sticky.

20 Q. On a sticky?

21 A. Yes -- which I do not have with me today.

22 Q. In this particular case, you seek to create
23 non-standard spacing units; is that correct?

24 A. As to the Dakota, yes.

25 Q. And do you have ownership records with respect to

1 the acreage that surrounds the area that you seek to --
2 where you seek to create a non-standard spacing unit?

3 A. I do have part of that information, but not with
4 me.

5 Q. So then you did not provide notice to the
6 operators, lessees, or the other affected parties in the
7 acreage surrounding your proposed non-standard spacing
8 unit in the Dakota?

9 A. We did not because our location is a legal
10 location.

11 Q. It might be a legal location but you seek a
12 non-standard spacing unit, correct?

13 A. Correct.

14 Q. You did not give notice to the affected parties
15 offsetting this non-standard spacing unit?

16 A. Correct, we did not.

17 Q. When you filed your pooling applications -- when
18 you proposed your well, did you have a title for this
19 section of the well?

20 A. We did not.

21 Q. When you filed your pooling application, did you
22 have a title opinion for this section?

23 A. We did not.

24 Q. Would you agree with me that there was a lot of
25 confusion within your shop as to the ownership in

1 section 1 at the time the applications were filed?

2 A. I would say there was uncertainty as to the
3 ownership in lots 3 and 4 and the north half of the
4 southwest quarter and the south half of the northwest
5 quarter with respect to an assignment that is of record
6 that was, I believe, misinterpreted by our oil and gas
7 landman.

8 Q. Was there also confusion over who owned what, in
9 other words, who had ownership in the Dakota versus who
10 had ownership in the Mancos?

11 A. No, other than that tract.

12 Q. So you did have some questions there about who
13 owned those tracts and then what their ownership was,
14 whether it was Dakota or Mancos?

15 A. In lots 3 and 4, the south half of the northwest
16 quarter and the north half of the southwest quarter, we
17 were uncertain as to both horizons as to the ownership,
18 which -- Mr. Bruce has completed the ownership review in
19 preparation for rendering a title opinion. He has told
20 us that the information that I had when I put out the
21 well proposals was incorrect.

22 Q. So the ownership information that you relied upon
23 to issue your well proposals and then file your pooling
24 application was incorrect?

25 A. Correct.

1 Q. And do you have a title opinion yet?

2 A. No.

3 Q. If I take a look at what has been marked as
4 Anschutz Exhibit No. 1.

5 A. Yes.

6 Q. Your well location down there is shown in the
7 southwest, southeast quarter?

8 A. It's in the northeast of the southeast quarter,
9 yes.

10 Q. Does Anschutz own an interest in that acreage?

11 A. We do.

12 Q. And they own an interest in both the Mancos and
13 the Dakota formations?

14 A. We do.

15 Q. And you are confident of that even though you
16 don't have a title opinion?

17 A. I am confident of that.

18 The ownership that we were not certain about was
19 in lots 3 and 4, the north half of the southwest quarter
20 and the south half of the northwest quarter.

21 Q. Now we -- I previewed in my opening statement the
22 Division's requirements that exist for properly
23 proposing a well, do you recall that?

24 A. I do.

25 Q. And had you previously reviewed those Division

1 requirements prior to sending out your well proposal?

2 A. Yes, I did.

3 Q. So you are aware of both the timing requirements
4 that the Division has required as well as the
5 information that is required to be included in the well
6 proposal letters?

7 A. Yes.

8 Q. If I then look -- so just to close that up, you
9 are aware that -- let's go to -- would you turn to what
10 has been marked as Exhibit 10.

11 A. Ten of yours?

12 Q. I'm sorry. McElvain's Exhibit 10. And go to the
13 second page.

14 A. Yes.

15 Q. Paragraph 5.

16 A. Okay.

17 Q. Are you aware that it says -- or you were aware
18 at the time you sent these out that at least 30 days
19 prior to filing the proposal for a pooling application,
20 in the absence of extenuating circumstances, a applicant
21 shall send to locatable parties the well proposal
22 letters?

23 A. Yes.

24 Q. And then it goes on to identify the requirements
25 that are supposed to be in this well proposal letter; is

1 that correct?

2 A. Correct.

3 Q. And that includes -- and I am about halfway
4 through paragraph A -- the proposals should specify the
5 footages from the section lines of the intended location
6 of the well, do you --

7 A. Correct.

8 Q. Were you aware of that requirement?

9 A. Yes, I was. We didn't have a survey completed at
10 that time. And I should have put in the quarter,
11 quarter section, but I did not put that in.

12 Q. So then if I go to your well proposal letter --
13 we will stay on the McElvain exhibits -- on McElvain
14 Exhibit No. 1, this was sent out May 5th?

15 A. Yes, sir.

16 Q. And you agree with me that it seeks to create a
17 640-acre spacing unit in the Mancos formation?

18 A. Yes.

19 Q. And 640-acre spacing unit in the Dakota
20 formation?

21 A. Correct.

22 Q. And then, as you say in the second paragraph,
23 about halfway through -- you say, to accommodate
24 proposed commingling, you seek this 640-acre spacing
25 unit in the Dakota?

1 A. Correct.

2 Q. And if I look through this letter and your AFE,
3 nowhere does it identify in this entire 640-area where
4 the well is going to be located?

5 A. It does not. That was an oversight on my part.

6 Q. And does this letter -- anywhere in this letter
7 do you identify to these parties to which you propose
8 this development plan that you intended to expedite the
9 pooling process?

10 A. No.

11 Q. And you didn't identify for these interest owners
12 any extenuating circumstances under which you were
13 relying upon to expedite the pooling process?

14 A. Well, I did. I said that we are working under a
15 tight deadline to drill the well and we asked for their
16 response by June 1st, if possible.

17 And I did call each of the parties that we
18 notified to let them know that the letter was coming and
19 I asked them to call me, as it says in the letter, if
20 they had any questions about the proposal.

21 Q. In terms of these extenuating circumstances that
22 you are talking about, is that the result of your term
23 assignment?

24 A. It is as a result of the term assignment from
25 T.H. McElvain to Hunt, which we acquired rights to under

1 an exploration agreement with Hunt Oil Company.

2 Q. So you acquired your interest and term assignment
3 from Hunt Oil?

4 A. Correct -- no. We have an exploration agreement
5 from Hunt Oil which provides that we are to comply with
6 the terms of the -- the term assignment from T.H.
7 McElvain Oil and Gas.

8 Q. How long has Hunt Oil held a term assignment, do
9 you remember?

10 A. I think it would be three-and-a-half years.

11 Q. When did you enter into your exploration
12 agreement with Hunt Oil?

13 A. I think it was October of 2014 when they finally
14 actually executed the documents.

15 Q. So October -- last fall?

16 A. Yes.

17 Q. And you waited until May 5th to initiate these
18 accelerated pooling proceedings?

19 A. No. Actually, we worked very diligently to get
20 the first well drilled. Hunt had a deadline under the
21 T.H. McElvain agreement of -- I believe it was
22 February 14th.

23 And instead of waiting until February 14th to
24 drill that well, we spudded that well in December and
25 completed it -- well, actually we reached TD and set

1 production casing in late January.

2 And while we were waiting to get that well
3 completed, we began work on three potential locations
4 which would satisfy the drilling commitment under the
5 T.H. McElvain term assignment to Hunt.

6 Q. And that included these --

7 A. That included this one and the one in section 24
8 and one other one.

9 Q. But you waited until when to start that?

10 A. We actually started the process as soon as we
11 finished drilling the first well.

12 Q. And you finished drilling the first well when?

13 A. Late January.

14 Q. Is there a reason why you didn't commence the
15 staking and the other efforts with the additional
16 properties prior to the completion of the first well in
17 January?

18 A. We needed information from that well in order to
19 determine where we were going to go next.

20 Q. Is there a reason why you didn't commence the
21 pooling proceedings in January?

22 A. We didn't know who the parties were.

23 Q. So throughout the period of time you held it --
24 when did you undertake efforts to ascertain who the
25 interest owners were?

1 A. Probably in February.

2 Q. So you waited until February to do that?

3 A. Correct.

4 Q. And then you waited till May to send out your
5 well proposal letters?

6 A. That's correct. It's a pretty complicated title.
7 There are a number of unleased parties in there that we
8 were trying to lease before we started making the
9 pooling applications.

10 Q. When I look at your well proposal letter, it is
11 premised on, as I read it, two things, your ability to
12 commingle between the Dakota and Mancos -- that's what
13 you proposed here?

14 A. Correct.

15 Q. And it is premised on your ability to create a
16 640-acre spacing unit in the Dakota formation?

17 A. Correct.

18 Q. When I look at your well proposal letter in May
19 that you sent out -- and I am in the second paragraph --
20 you say in the second sentence, This proposed spacing
21 unit is in the area of -- and then you identify the
22 Gavilan-Mancos Pool and then you identify two Dakota
23 pools, do you see that?

24 A. Correct.

25 Q. Does this mean that at the time you filed this

1 letter you weren't even aware of what pool you were
2 going to be in for Dakota?

3 A. The acreage is actually adjacent to both of those
4 pools, but not in it, so they could overlap.

5 Q. Did you contact the district office to ascertain
6 which pool you were going to be in before you sent out
7 your well proposal letter?

8 A. I did not.

9 Q. And as a result, since you weren't sure what pool
10 you were in, did you even look at the pool rules for
11 those Dakota pools before you sent out your well
12 proposal letter?

13 A. I did.

14 Q. And were you aware that the Dakota prohibited
15 commingling between the Mancos --

16 A. I was.

17 Q. And yet --

18 A. And what we would intend to do would be to
19 request an exception to that at the time that we test
20 the wells.

21 Q. Okay. But with respect to this particular
22 letter, you are asking the parties to make an election
23 and get back to you by June 1st, before you have the
24 commingling authority and before you have the approval
25 to create a 640-acre Dakota non-standard spacing unit,

1 right?

2 A. Correct.

3 Q. What happens to the elections, Ms. O'Callaghan,
4 if neither of those circumstances occur?

5 A. When I wrote the proposal letters, we have a
6 relationship T.H. McElvain, we have a relationship with
7 NM&O, I do not have a relationship with McElvain Oil or
8 J&M Raymond -- I don't know the people over there.

9 We had hoped that we would complete the leasing
10 of the unleased owners and reach an agreement with the
11 working interest parties in the spacing unit, and that
12 if we were unable to reach an agreement that we would
13 force pool those parties, that we would pay 100 percent
14 of the costs of the parties who were not participating
15 and that there would be a risk penalty that would be
16 based upon if the well was drilled.

17 Q. Is any of that in your well proposal letter?

18 A. Yes. It says that we seek to force pool. It
19 says that we propose that we would drill it a certain
20 way, and asked them to contact me for any questions or
21 suggested -- I didn't say suggested changes, but I
22 believe that's implied.

23 Q. If I look at the middle paragraph, though, it
24 says that you are proposing that -- under your proposal,
25 under this proposal letter, make your election, you have

1 to agree that you're going to share drilling costs on a
2 50/50 basis on the assumption that there's going to be
3 commingling and that there's going to be a 640-acre
4 spacing unit in the Dakota, correct?

5 A. Correct.

6 Q. And that's the only election opportunity they
7 have?

8 A. There was certainly the opportunity to negotiate
9 something different. I did indicate that we would
10 consider an option to farm out or enter a term
11 assignment or join an operating agreement. So I
12 intended to provide a lot of flexibility for the
13 structure of the agreement.

14 Q. Now your application doesn't seek an exception to
15 the Dakota pool; is that correct? In other words, it
16 doesn't seek authority to commingle?

17 A. It doesn't seek authority to commingle. It does
18 seek a non-standard unit in the Dakota.

19 Q. 640?

20 A. Correct.

21 Q. Are you here to present any drainage evidence to
22 support 640-acre spacing in the Dakota?

23 A. I am not.

24 Q. Are you aware of when the Division entered the
25 rules for the Dakota formation that it was premised upon

1 drainage evidence that indicated that it was
2 inconclusive if one well can economically and
3 efficiently drain 160 or 320 acres?

4 A. I was not involved in that pooling.

5 Q. And when I looked at Exhibit 1, your exhibit
6 here, for your well down there in the northeast of the
7 southeast quarter, you are not suggesting that that
8 particular well is going to drain that entire section in
9 the Dakota, are you?

10 A. We don't know until we drill the well and get
11 some engineering information from it.

12 Q. So you have no evidence that you are going to be
13 draining 640 acres with that well at that location?

14 A. Correct.

15 Q. Did you submit any proposal to any working
16 interest owner or discuss with them -- and I am talking
17 about anybody -- a proposal about how cost sharing was
18 going to work if we follow the pool rules and you had a
19 640-acre Mancos spacing unit and a 320 Dakota spacing
20 unit?

21 A. I did not.

22 Q. And you'll agree with me that those pools, those
23 formations have divergent ownership that's not common
24 across the section --

25 A. Correct.

1 Q. And have you submitted to the working interest
2 owners anything in writing as to how this 50/50 sharing
3 of drilling costs is going to work, and then I think you
4 go on to say in your letter that the commingle
5 production shall be shared proportionately based upon
6 production tests in the two formations after
7 completion --

8 A. Yes.

9 Q. Have you submitted any joint operating agreement
10 or any other governing document laying out how that
11 allocation is actually going to be accomplished?

12 A. No. Because I said that we would provide them
13 with a proposed JOA if they were interested in
14 participating.

15 Q. Actually what you said, and I go to the second
16 page at the top, it says, In the event that you would
17 like to participate in the drilling of the well and in
18 the event that you sign the AFE as laid out in your
19 proposal, then you would send them a JOA?

20 A. Yes.

21 Q. So they got to elect to participate and they got
22 to sign a JOA under these terms before you're even going
23 to send them a JOA?

24 A. Or they could have called and asked to discuss
25 it.

1 Q. But your letter said what it said, right?

2 A. Right.

3 Q. Can you understand the concerns that would arise
4 from working interest owners in submitting a proposal
5 like this where you're seeking -- let's talk just about
6 the Dakota --

7 A. Sure.

8 Q. If Dakota owners out there, you're under these
9 special pool rules, 320-acre spacing, the pool rules say
10 no commingling. And then you send the well proposal
11 letter, which could be viewed as seeking to dilute their
12 interest by first creating a 640-acre spacing unit in
13 Dakota -- correct? -- and then commingling their
14 production under some vague terms with the Mancos; can
15 you see the concerns there?

16 A. I can. And if I were in the same position, I
17 would have picked up the phone and called and asked
18 about it.

19 Q. As the party proposing this under your
20 accelerated schedule, May 5th, did you take
21 extraordinary efforts to call a working-interest owner
22 meeting or to send out a JOA or to undertake extensive
23 efforts to try to sit down and talk to the working
24 interest owners about your development?

25 A. Other than sending the letter and making

1 telephone calls asking that they call me with any
2 questions, no.

3 Q. And are you aware that a couple of interest
4 owners that you seek to pool have, in addition to T.H.
5 McElvain, have expressed serious concern about this
6 proposal?

7 A. No, I haven't heard from any of these parties.

8 Q. Let's turn to what has been marked as McElvain
9 Exhibit 8. /

10 A. Okay.

11 Q. How many phone conversations have you had with
12 James R. Raymond?

13 A. James R. Raymond?

14 Q. I'm sorry. J&M Raymond or someone representing
15 that company?

16 A. I left a couple of messages for Tanya and I spoke
17 to Tanya -- I have to look at my notes -- on either
18 Friday of last week or Monday.

19 Q. June 3rd?

20 A. I need a calendar.

21 Q. Let's go to Exhibit 3. It says, Spoke to Tanya,
22 6/3/15 -- if I'm reading that correctly.

23 A. Right. That's when I spoke to her.

24 Q. So the first time you had discussions with them
25 was last week, seven days ago or eight days ago?

1 A. Correct. After having left a message before I
2 sent the letter, and after I sent the letter.

3 Q. Okay.

4 A. I believe they were having some major weather
5 issues in Kerrville.

6 Q. It says, We were not contacted by anyone at
7 Anschutz about these wells or the proposed spacing units
8 prior to or after the filing of these building
9 applications.

10 Do you see that?

11 A. Yup. I disagree with that.

12 Q. And then if I go to what has been marked as
13 McElvain Exhibit 9 --

14 A. Yes.

15 Q. Did you have any conversations with McElvain Oil?

16 A. I did not. I left him at least three messages
17 and I do have documentation of that.

18 Q. Do you have it here today?

19 A. Maybe.

20 Q. He says in his letter -- and let me ask you what
21 your thoughts are on this -- he said, We did not receive
22 the well proposal letters until May 20th.

23 A. May 20th?

24 Q. That's what he says. You sent this letter to the
25 Division; do you have any understanding of how that

1 happened?

2 A. No. One moment please.

3 Q. He said he subsequently received copies of the
4 pooling applications on June 8th.

5 And that's a different entity from T.H. McElvain,
6 correct?

7 A. Correct.

8 Q. In fact, they have a Dallas address versus a
9 Denver address?

10 A. That's correct.

11 Q. Do you think that perhaps --

12 A. One moment. Let me find my notes here.

13 That was sent by overnight U.S.P.S. Express Mail
14 on 5/6/15. And I got to find the number.

15 Q. This was your well proposal?

16 A. Correct. And my tracking information does not
17 indicate when it would have been delivered, but we did
18 send it by overnight, because we only had a P.O. box for
19 that.

20 Q. Okay.

21 A. And the notice of the pooling you sent
22 (indicating Mr. Bruce) -- I mean of the pooling
23 application.

24 THE WITNESS: Do you have that information
25 with you, Jim?

1 MR. BRUCE: Mr. Examiner, that would be in
2 my notice affidavit and the letter was sent May 21st,
3 which complies with Division rules.

4 And I don't know why it would take that long
5 but...

6 Q. Do you think, Ms. O'Callaghan, that everyone
7 would benefit if there were actually meetings and
8 extensive discussions about what I would consider a
9 rather unique development plan given the circumstances
10 associated with these pool rules?

11 A. Well, I would be more than happy to have a
12 meeting.

13 Q. And then accelerate the pooling process here?

14 A. We do want to know what our situation is before
15 we actually start to build location and spend money on
16 this well. That is one of the reasons that we ask to
17 accelerate it under these circumstances.

18 Q. Do you have an approved APD?

19 A. We do not.

20 Q. When did you file your APD?

21 A. It will be filed on Monday.

22 Q. So it hasn't even been filed?

23 A. It has not been filed because I'm waiting to
24 complete my negotiations in agreement with the surface
25 use owner -- the surface owner.

1 MR. FELDEWERT: That is all the questions I
2 have.

3 EXAMINER GOETZE: Would you like the
4 opportunity to redirect?

5 MR. BRUCE: Sure.

6 REDIRECT EXAMINATION

7 BY MR. BRUCE:

8 Q. First, Ms. O'Callaghan, in looking at their
9 exhibit book in your discussions, you are seeking to
10 force pool T.H. McElvain Oil and Gas?

11 A. Yes.

12 Q. When you talked about the title issues, the
13 difference is that you -- the first impression was that
14 T.H. McElvain owned a working interest in essentially
15 the northwest quarter and the north half southwest
16 quarter of section 1?

17 A. Correct.

18 Q. But they don't?

19 A. They do not.

20 Q. Other than that, everything is pretty much the
21 same?

22 A. Correct.

23 Q. In both the Dakota and the Gavilan?

24 A. Correct.

25 Q. And that would be the only difference. Now the

1 pooling application did contain the footage location of
2 the well, did it not?

3 A. I would have to look at it, but I assume so.

4 Q. It is in that Exhibit 4.

5 This is -- where the well is located, is it fee
6 surface?

7 A. It is.

8 Q. And so have you been -- let's take a step back.

9 You said you started the process for this well in
10 February getting -- starting title work?

11 A. Correct.

12 Q. And did you soon thereafter begin negotiating
13 with the surface owner for a surface use agreement under
14 the Surface Owner Protection Act?

15 A. Yes.

16 Q. And that has not been finalized yet?

17 A. No.

18 Q. So that's four months on, and it takes a while?

19 A. Yes.

20 Q. Did you have -- did either you or your contract
21 landman have contacts with interest owners before the
22 May 5th proposal letter, May 6th proposal letter?

23 A. The unleased owners, yes.

24 Q. Did you also have early contact with Larry Sweet
25 at NM&O Operating Company?

1 A. Yes.

2 Q. Before the proposal letter?

3 A. Yes.

4 Q. Because of the time deadline -- do you believe
5 you made a good faith effort to contact everybody
6 considering that many of them just wouldn't return your
7 calls or e-mails?

8 A. Yes.

9 Q. I want to clear up one thing. If two
10 section-wide units were formed, one for the Dakota and
11 one for the Mancos, everybody's interest in those two
12 formations would be equal?

13 A. So as -- as to their ownership in the various
14 lands, yes.

15 Q. And so really insofar as down hole mingling, you
16 wouldn't have to allocate production between zones,
17 really the allocation is simply for Division rules to
18 allocate what production is coming from what formation,
19 correct?

20 A. No. We would have to allocate production,
21 because the ownership between the Mancos and the Dakota
22 is different.

23 Q. But, certainly, you could do a retroactive
24 readjustment of that?

25 A. Yes.

1 Q. Did anybody request a JOA?

2 A. No.

3 Q. And do you believe -- considering you took over
4 this prospect from Hunt Oil in October or November of
5 last year, have you proceeded diligently to drill wells
6 under your various term assignments, et cetera?

7 A. Yes.

8 Q. And do you believe because of the need to
9 commence a well in July, I believe, of this year, that
10 there are extenuating circumstances which justify going
11 to hearing sooner than you would normally want to in
12 this case?

13 A. Yes.

14 MR. BRUCE: Okay. That's all I have,
15 Mr. Examiner.

16 EXAMINER GOETZE: Very good. Counsel.

17 EXAMINER WADE: I have no questions.

18 EXAMINER GOETZE: You don't have any
19 questions?

20 EXAMINER WADE: No.

21 EXAMINER GOETZE: First of all, I looked
22 through Exhibit 4 and I didn't see any evidence of
23 footages so...

24 MR. BRUCE: In the application,
25 Mr. Examiner, the pooling application itself.

1 EXAMINER GOETZE: In your application of
2 hearing, okay.

3 MR. BRUCE: Paragraph 2 of the application.

4 EXAMINER GOETZE: So that was done after --

5 MR. BRUCE: It would have been five or six
6 days after the proposal letter was sent.

7 EXAMINER GOETZE: Okay. And we have no
8 return receipts for any of these letters that were sent
9 out.

10 MR. BRUCE: Mr. Examiner, we did. McElvain
11 Oil Company, I did not have a green card, but in
12 Mr. Feldewert's exhibits --

13 EXAMINER GOETZE: You want to use
14 Mr. Feldewert's exhibits?

15 MR. BRUCE: The letter marked as Exhibit 9
16 in McElvain's Exhibit Booklet, they did say that they
17 received the pooling application on June 8th.

18 EXAMINER GOETZE: Okay. And there is no
19 offset notification?

20 MR. BRUCE: Mr. Examiner, I know they
21 require it for horizontal wells --

22 EXAMINER GOETZE: I know, but still. I'm
23 asking --

24 MR. BRUCE: But under -- Mr. Examiner, what
25 I looked at was 19.15.4, subparagraph 3, if you are

1 asking for a non-standard proration unit, it says the
2 applicant shall notify owners of an interest to be
3 excluded from a proration unit.

4 And I don't think anybody is being excluded
5 from the proration unit. And it does not talk about
6 notifying offsets.

7 EXAMINER GOETZE: Very good. Then my next
8 question would be there was the word of down hole
9 commingling brought up. We are not talking about down
10 hole commingling with these two formations, are we?

11 MR. BRUCE: Not at this hearing. I think
12 production needs to be established before -- before an
13 exception would be sought to the Dakota Pool rules.

14 EXAMINER GOETZE: So we have no evidence to
15 be presented here as far as drainage with regard to the
16 Dakota?

17 MR. BRUCE: No, sir.

18 EXAMINER GOETZE: I have no further
19 questions of this witness at this time.

20 I would ask that you folks bear with us. We
21 are going to take a break for a few minutes before we
22 proceed with your witness.

23 (Brief recess.)

24 EXAMINER GOETZE: We are back on the record.
25 And we are proceeding with case 15318.

1 At this time, Mr. Bruce, I believe you are
2 done with your presentation?

3 MR. BRUCE: Yes, I am.

4 EXAMINER GOETZE: And, Mr. Feldewert,
5 please.

6 MR. FELDEWERT: I call my first witness. I
7 see that we are still missing an exhibit package. Can I
8 approach the witness?

9 EXAMINER GOETZE: Sure.

10 RICK HARRIS
11 having first been duly sworn, was examined and testified
12 as follows:

13 DIRECT EXAMINATION

14 BY MR. FELDEWERT:

15 Q. Please state your name and identify by whom
16 you're employed and in what capacity.

17 A. Yeah. My name is Rick Harris and I'm a land
18 manager at McElvain Energy.

19 Q. And how long have you been a land manager with
20 McElvain Energy, Inc.?

21 A. I have been with McElvain for about nine years.
22 And I have been their land manager for the last three or
23 four years.

24 Q. And have your responsibilities included the San
25 Juan Basin of New Mexico?

1 A. Yes.

2 Q. And what is the relationship between the party
3 that entered an appearance here, T.H. McElvain Oil and
4 Gas, LLLP, and McElvain Energy?

5 A. T.H. McElvain Oil and Gas, LLLP, is our entity
6 that holds the title of your leasehold, and McElvain
7 Energy is the operating arm. So we work for McElvain
8 Energy, Inc., but our leasehold is all in the LLLP
9 name.

10 Q. Have you had the opportunity to testify
11 previously before this Division and had your credentials
12 as an expert in petroleum land matters accepted and made
13 a matter of public record, Mr. Harris?

14 A. Yes.

15 Q. I turn to what has been marked as McElvain
16 Exhibit No. 1.

17 A. All right.

18 Q. Are you the same Rick Harris to which this letter
19 was directed?

20 A. I am.

21 Q. And are you familiar Anschutz has proposed in
22 their application?

23 A. Yes.

24 MR. FELDEWERT: Once again, I would tender
25 Mr. Harris as an expert witness in petroleum land

1 matters.

2 EXAMINER GOETZE: Mr. Bruce.

3 MR. BRUCE: No objection.

4 EXAMINER GOETZE: Very good. He is so
5 qualified.

6 Q. Now, Mr. Harris, there's a number of exhibits in
7 here that relate to additional property, on the
8 assumption that the second case here was going to go
9 forward --

10 MR. FELDEWERT: -- and when we put this
11 exhibit package together, Mr. Examiner, I wasn't sure
12 there was going to be the second case, was going to be
13 continued, because I hadn't received anything, so that's
14 why you are seeing additional exhibits.

15 Q. But the primary point, Mr. Harris, is I want to
16 deal with Exhibits 1 and 2, are those the letters that
17 the company received proposing the development plans by
18 Anschutz and, in particular, is Exhibit No. 1 -- does it
19 deal with the section that is before the Division?
20 today?

21 A. Yes.

22 Q. And this well proposal letter was received on
23 May 6th by the company?

24 A. Yes.

25 Q. And it proposed a well in section 1?

1 A. Yes.

2 Q. Prior to receiving these well proposal letters,
3 have there been any discussions with Anschutz about its
4 desire to develop the Mancos in the Dakota under this
5 section?

6 A. Yes. When Ms. O'Callaghan and I had talked, she
7 wanted me to verify some of the addresses from some of
8 the other parties that we've done business with in the
9 past, so I did that.

10 And then I also received an e-mail and we had a
11 phone call about the ownership in section 1,
12 specifically the west half, the tracts that she noted
13 earlier.

14 Q. Let's turn to what has been marked as McElvain
15 Exhibit 3.

16 A. Okay.

17 Q. Is this the e-mail that you were talking about?

18 A. Yes.

19 Q. On the morning of May 6th?

20 A. Yes.

21 Q. At the time that this exchange took place, had
22 the company received the well proposal letter?

23 A. No. This was before.

24 Q. Okay. And did this deal specifically with
25 ownership in the area?

1 A. It does, the tracts that they notified us about
2 before in the west half.

3 Q. And it then contained -- accompanied with it was
4 an ownership report that was sent to you by Anschutz?

5 A. Yes.

6 Q. And what was the concern with ownership? What
7 was going on, what was the confusion?

8 A. So they showed us with the ownership in both the
9 Mancos and the Dakota in the west half. Our records
10 didn't show us with the lease out and that covering
11 these tracts. So I said, Have you ordered the title
12 opinion yet?

13 And so Ms. O'Callaghan said, Yes, they had.

14 And I said, Why don't we just wait until we get a
15 copy of the title opinion and see what it says and we
16 can work it out.

17 But their ownership report shows us with an
18 interest in the lease, McElvain being a third-generation
19 family-owned company with lots of interest in the San
20 Juan. That wouldn't have been the first time that
21 someone found a lease that we had an ownership of that
22 we might not have had in our system.

23 Q. And at the time the well proposal letter was sent
24 out on May 5th, according to this e-mail, Exhibit No. 3,
25 the last sentence, it looks like they had a title

1 opinion and as they put it, "cooking"?

2 A. Yes.

3 Q. And expected it in a couple of weeks?

4 A. Yes.

5 Q. And you requested that in order to address the
6 ownership in the area?

7 A. For sure.

8 Q. And was that ever received?

9 A. No, we have not received it.

10 Q. Prior to receiving these well proposal letters, I
11 know you said you talked about ownership. Was there any
12 discussion about the location of a proposed well in
13 section 1?

14 A. No.

15 Q. Was there any discussion about the target zone
16 for that proposed well in section 1?

17 A. I believe they said they were going to commingle
18 two zones, but in an e-mail.

19 Q. Any discussion about the spacing unit?

20 A. I believe she -- they said they were going to do
21 something weird, something a little out of the ordinary
22 or something, something like that.

23 Q. Didn't they describe what it was, though?

24 A. No.

25 Q. And then you received their well proposal letters

1 after this particular e-mail, correct?

2 A. Yes.

3 Q. And if I turn to what has been marked as -- what
4 is marked -- those are marked as Anschutz Exhibits 1 and
5 2, and I believe we have already gone through this. But
6 it didn't provide any footage location for the well?

7 A. No.

8 Q. Were you here for the discussions with
9 Ms. O'Callaghan about the qualifications under which
10 they would send the JOA?

11 A. Yes.

12 Q. Did you understand that to mean that you had to
13 actually elect and sign the AFE before they would even
14 send the governing agreement?

15 A. That is correct. That is what the letter stated.

16 Q. Is that -- and then they had some allocation
17 provisions in this letter; did you see that?

18 A. Yes.

19 Q. Is that the proposal here? Let's put aside the
20 non-standard spacing unit in the Dakota and let's put
21 aside the fact that they were seeking to commingle
22 pools, this allocation percentage that she laid out
23 here, is it rather unusual?

24 A. It seemed a little weird because they were saying
25 -- both the -- the ownership is different in both zones,

1 and they said that the owners in each zone would share
2 the cost 50/50.

3 And then after they produced the well, they were
4 to allocate the production based on tests. So you
5 potentially get into a situation where you're paying 50
6 percent of the costs, and, as a Dakota owner, we might
7 only get allocated 10 percent of the production. So
8 that just seemed a little quirky and really not fair in
9 my opinion.

10 Q. But at this point in time you are still waiting
11 for a title opinion because there's confusion over who
12 owns what, especially with your company?

13 A. Correct. So that was the other thing on the
14 proposal, because there was this discrepancy in the west
15 half of section 1, we didn't know what to elect on and
16 what percentage we would have had in the well to make an
17 educated decision on if we want to participate or not.

18 Q. And if I look at McElvain Exhibits 4 and 5, do
19 these reflect when the pooling application was actually
20 filed with the Division?

21 A. Yes.

22 Q. And it reflects that these pooling applications
23 were actually filed just a little over a week after the
24 well proposal letters were sent out, correct?

25 A. Yes.

1 Q. On May 12th?

2 A. That is what it says.

3 Q. Okay. When were these -- and then when were
4 these pooling applications actually provided to
5 McElvain?

6 A. We got them, I believe it was the 27th or 28th of
7 May. They indicated in the letter that they were mailed
8 out the Friday before Memorial Day weekend, so there was
9 the holiday. And I think they came in Wednesday or
10 Thursday of the week after.

11 Q. But you didn't receive the pooling applications
12 the day they filed it? They weren't even sent out until
13 even a week later after they were filed?

14 A. That's correct.

15 Q. Okay. And receiving it that week, the 26th, the
16 27th or the 28th, whenever it was, did that happen to be
17 one week before the prehearing statements would have
18 been due for this hearing?

19 A. That is correct.

20 Q. Did anyone from Anschutz contact McElvain about
21 the development plans in section 1 -- and you'll see
22 there are some letters in here on section 24 -- before
23 you received a copy of the pooling application?

24 A. No.

25 Q. And both the proposal letters and the letters

1 under which these pooling applications were served upon
2 you discuss commingling of production; is that correct?

3 A. That's correct.

4 Q. But the -- but this application didn't seek
5 authority to commingle?

6 A. No. But the cover letter that was attached to
7 the application mentioned it.

8 Q. And did you -- in any of these proposals or in
9 any of your discussions was there anything relating to a
10 development plan with 320-acre spacing units in the
11 Dakota?

12 A. Not that was proposed to us.

13 Q. Okay. Is McElvain in favor of
14 creating six-hundred and -- and I keep saying -40. It's
15 actually a 650-acre spacing unit in the Dakota
16 formation?

17 A. No.

18 Q. And as we pointed out, that's contrary to the
19 pool rules?

20 A. Yes.

21 Q. And you found that out -- first off, when were
22 you first apprised of the actual pool that was involved?

23 A. Not until we received the application on the 27th
24 or the 28th, the compulsory pooling application.

25 Q. And at that time, once you knew what pool was

1 involved, someone on behalf of the company looked at the
2 pool rules?

3 A. Yes.

4 Q. And ascertained they indeed required 320-acre
5 spacing?

6 A. That's correct.

7 Q. And then actually prohibit the commingling that
8 they seek to do under this application?

9 A. Yes.

10 Q. Did you ever receive any formal agreement outline
11 how this rather unique allocation proposal was going to
12 take place?

13 A. No.

14 Q. In your opinion, Mr. Harris -- well, first of
15 all, have you proposed wells before?

16 A. Yes, I have.

17 Q. And in your opinion, have there been sufficient
18 discussions amongst the working interest owners about
19 this unique development plan prior to initiating these
20 pooling proceedings?

21 A. No.

22 Q. And is that -- particularly given the rather
23 unique nature of these development plans, in your
24 opinion were extensive or at least extra steps required
25 to contact working interest owners in order to lay

1 something out or discuss something this complicated?

2 A. That would be correct. This is complicated.

3 Q. Especially in dealings when you have pool rules
4 involved that seem to be or are directly contrary to
5 what they're proposing?

6 A. Yes.

7 Q. Are you familiar with the term assignment that
8 they have referenced here today that they have brought
9 forward as a reason for not complying with the
10 Division's pooling requirements?

11 A. Yes, I am.

12 Q. Is that particular term assignment covered with
13 the Dakota?

14 A. No.

15 Q. It only deals with the Mancos?

16 A. Yes, sir. And on one of the 80-acre tracts --

17 Q. I'm sorry. Run that by me again.

18 A. It only covers the 80 acres in section 1 limited
19 to the Mancos Formation, is the term assignment.

20 Q. Mr. Harris, were McElvain Exhibits 1 through 9
21 prepared by you or compiled under your direction and
22 supervision?

23 A. Yes.

24 MR. FELDEWERT: Mr. Examiner, I move
25 admission into evidence McElvain Exhibits 1 through 11,

1 which includes as Exhibits 10 and 11 the orders of the
2 Division.

3 EXAMINER GOETZE: Mr. Bruce.

4 MR. BRUCE: No objection.

5 EXAMINER GOETZE: Exhibits 1 through 11 are
6 so entered.

7 (T.H. McElvain, LLLP, Exhibits 1 through 11
8 were offered and admitted.)

9 MR. FELDEWERT: And that completes my
10 examination of this witness.

11 EXAMINER GOETZE: Mr. Bruce.

12 MR. BRUCE: Yes, just a few questions.

13 CROSS-EXAMINATION

14 BY MR. BRUCE:

15 Q. Just to confirm, Mr. Harris, you are aware that
16 in this section there's a federal lease that covers
17 about a half this section roughly?

18 A. No, I am not aware. I haven't ran the title.

19 Q. Do McElvain's records show any interest in fee
20 leases in this section?

21 A. If that's the west half of the northeast quarter.
22 I don't know if that is a fee or a federal lease to be
23 honest.

24 Q. I will represent to you it is a federal lease.

25 A. There you go.

1 Q. But in looking at this, at least as to the
2 Dakota, in looking at your Exhibit 3 --

3 A. Okay.

4 Q. -- the ownership report --

5 A. Okay.

6 Q. -- you have -- "you" meaning T.H. McElvain --

7 A. Yes.

8 Q. -- has no working interest in the Mancos
9 formation, zero percent?

10 A. That is correct.

11 Q. Okay. And as to tract 2, your records also show
12 that T.H. McElvain owns zero percent working interest in
13 tract 2?

14 A. Our records, yeah, did not show us with an
15 ownership in the lease covering tract 2.

16 Q. And that would be either in the Mancos or the
17 Dakota?

18 A. Correct.

19 Q. So if a 640-acre Mancos well unit is formed, you
20 will have zero interest in the Mancos --

21 A. According --

22 Q. -- as a working interest owner?

23 A. I haven't seen the title opinion. So I would
24 like to see that. But according to this ownership
25 report, yes, we would, because tract 2 shows us with a

1 94 percent interest in both the Mancos and the Dakota --
2 on the ownership report that was provided by Anschutz.

3 Q. But you stated that T.H. McElvain's records show
4 you will own no interest in that tract?

5 A. That is correct, but, again --

6 Q. But assuming that is true, because that is what
7 your records show, if Anschutz wasn't granted the right
8 to form a 640-acre unit in the Dakota and formed a
9 lay-down unit in the Dakota and a section-wide unit in
10 the Mancos, you would have zero working interest
11 percentage?

12 A. If we are taking the assumption that our records
13 are correct, that is correct.

14 Q. So you would be unaffected by the drilling of the
15 well, totally unaffected?

16 A. Well, they are commingling a zone that they are
17 not allowed to, offsetting us, so...

18 Q. And you can always ask for an exception to the
19 OCD rules and regulations, can't you?

20 MR. FELDEWERT: Calls for a legal
21 conclusion.

22 EXAMINER GOETZE: Nice try, but let's move
23 on.

24 Q. And you did receive the notice of forced pooling
25 sent by me to your office?

1 A. Yes.

2 Q. And does the application contain the footages for
3 the proposed well?

4 A. It does.

5 Q. And you did know that prior to this hearing?

6 A. On the twenty- -- once we received the compulsory
7 pool application, we got the footages.

8 Q. And did you ever call Anschutz to ask for more
9 information?

10 A. We had conversations with their COO Joseph
11 Dadominick and we brought up the wells, but we didn't
12 really go into much detail about the wells.

13 Q. And did you ever ask for a JOA?

14 A. No. Because, again, we were waiting for the
15 title opinions, the conversation that -- with Deidre and
16 I when we spoke.

17 MR. BRUCE: That's all I have.

18 EXAMINER GOETZE: Thank you.

19 MR. FELDEWERT: No re-direct.

20 EXAMINER GOETZE: And you have no questions?

21 EXAMINER WADE: No questions.

22 EXAMINER GOETZE: Based on the information
23 presented in testimony, I have no further questions for
24 this witness. Closing statements.

25 MR. FELDEWERT: Now that you have the

1 evidence and, as you know, we are focusing now on the
2 Dakota pool -- and it was created in 1984 out of this
3 order that has been marked as Exhibit 11.

4 And if you look at that order, what you are
5 going to find is the reason they allowed only 320-acre
6 spacing units in the Dakota is because Finding 14
7 indicates that they did not have sufficient evidence if
8 one well could even drain 160 acres or 320 acres. So
9 certainly the idea of a 650-acre spacing unit was not
10 even contemplated by the Division, and based on the
11 evidence presented to them would not be warranted.

12 And then if you look at rule 9, it doesn't
13 allow commingling. And they said why they didn't allow
14 commingling. And that was in paragraph 18 of the order
15 at page 3. It says, If the production from the proposed
16 pool -- that's the Dakota Pool -- is down-hole
17 commingled with production from the Gavilan-Mancos Oil
18 Pool, the high quality engineering data necessary to
19 establish the proper permanent spacing unit size for
20 each pool cannot be obtained. And that is why they
21 didn't allow commingling.

22 Now Mr. Bruce is right. If you look at the
23 rule when this was enacted in 1984, Rule 3 says's that
24 the Dakota Pool and the Mancos Pool are supposed to have
25 the same spacing units.

1 Well, at the time in 1984, when this was
2 enacted, they did have the same spacing units. It was
3 both 320. But then in 1988, the Division increased the
4 spacing in the Gavilan-Mancos Pool, made no change to
5 the Dakota Pool. So I would submit to you that rule 3
6 really has no longer any application given what has
7 occurred with the Gavilan-Mancos Pool.

8 But what does have application here is the
9 320-acre spacing units they had, which is still
10 temporary and the prohibition means commingling so that
11 the Division can eventually get enough data to determine
12 what the proper spacing should be.

13 So the Division, in my opinion, is not at
14 liberty to accept the proposal here, because they're
15 asking for a spacing unit that is larger than allowed by
16 the rules, they have not presented and they are not
17 prepared to present any evidence to support the 650-acre
18 spacing unit in this Dakota Pool.

19 And they said, Well, we want to do it for
20 fairness reasons. Well, fairness is not the standard
21 for creating spacing units. Spacing is based on
22 drainage, not what one party thinks is fair. It is not
23 a subjective determination. So there is no evidence to
24 support what they requested here, a 650-acre spacing
25 unit.

1 Third, they are trying to -- their whole
2 proposal is based on the ability to commingle in this
3 well between the Mancos and the Dakota, something that
4 is prohibited by the pool rules. And they haven't
5 advertised and they haven't applied for an exception to
6 this commingling prohibition in the rules.

7 So they want to essentially try to change
8 these pool rules in a pooling proceeding, no contact to
9 the pool operators in the pool who were involved in
10 setting these rules.

11 There is also a problem with their notice.
12 And Mr. Bruce said that they gave notice to all the
13 interest owners within the 640-acre -- the 650-acre
14 spacing unit. And I assume that is true based on
15 whatever title information they may now have.

16 But if you look at the Division's rules --
17 and I looked at this this morning again before I came,
18 and that is when you're creating a non-standard spacing
19 unit under section 19.15.15.11-B, you are required to
20 give notice to affected persons as defined in the
21 Division rules.

22 So then I go to the definition of "affected
23 persons" in the Division's rules. And "affected
24 persons" -- and I am reading it directly now from
25 19.15.4.12-A-2. It says, Affected persons are the

1 following persons owning interest in the adjoining
2 spacing units.

3 And Mr. Bruce says in his opinion you only
4 have to give notice to the parties you are excluding
5 from the spacing units. But we don't have that here.
6 They are actually expanding the spacing unit to
7 something that is not allowed by the Division rules.

8 So it seems to me if you're going to take
9 this extraordinary step, the Division rules require you
10 to give notice to the surrounding spacing units. That
11 is what the affected parties means.

12 And I would submit to you that if you are
13 going to do something like this, you should be bringing
14 it up by changing the pool rules where all the operators
15 have the opportunity to participate.

16 The other problem with their Dakota
17 application here -- and I tried to allude to this during
18 my testimony -- they have not proposed a 320-acre
19 spacing unit. There is nothing before the Division that
20 complies with the Division rules or the pool rules for
21 spacing in the Dakota. They haven't proposed either
22 stand-up or lay-down. It is not sought under this
23 application. Nothing has been advertised.

24 So in my opinion, this portion of the
25 application dealing with the Dakota Pool has to be

1 dismissed. It cannot be granted.

2 Then we turn to the Mancos Pool. It is on
3 640-acre spacing. Okay. But their well proposal is not
4 only set on a very accelerated schedule but it didn't
5 identify the well location. It just said we are going
6 to put a well someplace on the 640-acre spacing, but we
7 are not going to tell you till we file a pooling
8 application.

9 So that's what occurred here. There has
10 been no real time for discussion amongst the interest
11 owners. This was on an accelerated schedule that I'd
12 submit to you was one that was created by their own
13 inaction.

14 They have this -- the opportunity to proceed
15 with this since they acquired this opportunity back in
16 October, and they chose to wait until May before sending
17 anything out about development of the Mancos, which is
18 the only thing that is affected by their term
19 assignment.

20 The other problem with their proposal for
21 even the Mancos Pool is they have not proposed a
22 standalone well in the Mancos. There is nothing
23 advertised for a standalone well in the Mancos. It is
24 not proposed.

25 Their only proposal that they have sent to

1 the working interest owners is you must elect to
2 participate in a well that is going to be 640 acres in
3 the Mancos, 640 acres in the Dakota and commingled.
4 That's their only proposal in their application, that's
5 their only proposal that they sent out to the working
6 interest owners.

7 So I would submit to you that they have not
8 and do not have before you a proper application for a
9 pooling in the Mancos, because there is no standalone
10 well that has been proposed in the Mancos Formation.

11 So my opinion, that portion of their
12 application likewise has to be dismissed.

13 EXAMINER GOETZE: Mr. Bruce.

14 MR. BRUCE: Well, start off with maybe the
15 last point. Mr. Feldewert rails about inaction. Taking
16 over a prospect last October, drilling one well and then
17 starting immediately thereafter to drill another well is
18 not inaction.

19 And the only beneficiary of inaction -- in
20 other words, not drilling the well -- would be T.H.
21 McElvain, because if the term assignment from McElvain
22 to Hunt Oil, et al. does not maintain an affect by the
23 drilling of the well, it reverts to McElvain Oil and
24 Gas.

25 As we said, there are extenuating

1 circumstances. They had been working on it for four to
2 five months at this point. But they need to get the
3 well drilled. And we believe that satisfies the terms
4 of the various OCD orders.

5 They have been trying to get the surface
6 owner for four months to do a surface use agreement.
7 Again, there are a lot of things at play. There's other
8 acreage involved in the various wells proposed by
9 McElvain, but federal leases getting a proposed APD --
10 or getting an APD issued on solely federal land, let's
11 just say that is time consuming and very problematic to
12 meet the time deadlines.

13 As to the footages, as Ms. O'Callaghan
14 testified, they didn't have the precise well plat until
15 after the well proposal was made, and that is why it
16 wasn't in the AFE. But they did have the AFE. Anschutz
17 called all of the interest owners, talked to them, but,
18 amazingly, they have no questions. They don't ask for a
19 JOA, they don't ask for well footages, they don't ask
20 for this, they don't ask for that.

21 Negotiations are a two-way street. And I
22 think Anschutz took all the actions that they needed to.

23 And we believe the well proposal was proper,
24 it's to the Mancos. If the Division decides that there
25 can't be a 600 or a one-section unit, I should say, in

1 the Dakota, so be it.

2 But, again, if that's the case, then the
3 opponent, in this case T.H. McElvain, will own zero
4 percent working interest in the well units. And we fail
5 to see why they're objecting to this.

6 It seems to me that Anschutz is trying to be
7 fair and reasonable and get all the parties joined in a
8 well that they absolutely need to drill or to lose
9 significant acreage. Again these are extenuating
10 circumstances.

11 The final matter I'd note is rule 9 that
12 Mr. Feldewert harps on. That was based on data at its
13 most recent over 30 years old.

14 And the reason we did not include a
15 down-hole commingling application portion of this
16 application is how can you down-hole commingle even if
17 it was allowed when you don't know what the producing
18 rates are. So that is something that will have to be
19 done down the road.

20 But we think that the application is proper
21 and forced pooling should be granted. Thank you.

22 EXAMINER GOETZE: Very well, gentlemen. At
23 this point, we will proceed with taking case 15318 under
24 advisement. Thank you.

25

(Time noted

I hereby certify that the foregoing is
a true and correct record of the proceedings in
the Examiner hearing of Case No. 15318.
June 11, 2015.
Examiner

1 STATE OF NEW MEXICO)
2) ss.
3 COUNTY OF BERNALILLO)
4
5
6

7 REPORTER'S CERTIFICATE

8
9 I, ELLEN H. ALLANIC, New Mexico Reporter CCR
10 No. 100, DO HEREBY CERTIFY that on Thursday, June 11,
11 2015, the proceedings in the above-captioned matter were
12 taken before me, that I did report in stenographic
13 shorthand the proceedings set forth herein, and the
14 foregoing pages are a true and correct transcription to
15 the best of my ability and control.

16
17 I I FURTHER CERTIFY that I am neither employed by
18 nor related to nor contracted with (unless excepted by
19 the rules) any of the parties or attorneys in this case,
20 and that I have no interest whatsoever in the final
21 disposition of this case in any court.

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