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

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

CASE NO. 14115

APPLICATION OF T.H. MCELVAIN OIL & GAS
LIMITED PARTNERSHIP FOR COMPULSORY
POOLING, SAN JUAN COUNTY, NEW MEXICO

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS
EXAMINER HEARING

BEFORE: DAVID K. BROOKS, Jr., Legal Examiner
WILLIAM V. JONES, Technical Examiner
TERRY WARNELL, Technical Examiner

May 1, 2008

Santa Fe, New Mexico

This matter came for hearing before the New Mexico Oil
Conservation Division, DAVID K. BROOKS, Jr., Legal Examiner,
and WILLIAM V. JONES, Technical Examiner, and TERRY WARNELL,
Technical Examiner, on May 1, 2008, at the New Mexico Energy,
Minerals and Natural Resources Department, 1220 South
St. Francis Drive, Room 102, Santa Fe, New Mexico.

REPORTED BY: JOYCE D. CALVERT, P-03
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500 Fourth Street, NW, Suite 105
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A P P E A R A N C E S

FOR THE APPLICANT,

James G. Bruce, Esq.
ATTORNEY AT LAW
P.O. Box 1056
Santa Fe, New Mexico 87504

WITNESS: Rick Harris, Landman
McElvain Oil & Gas Properties, Inc.

FOR THE RESPONDENT,

W. Thomas Kellahin, Esq.
KELLAHIN AND KELLAHIN
706 Gonzales Road
Santa Fe, New Mexico 87501

WITNESS: Richard Corcoran, Staff Landman
ConocoPhillips Company

1 MR. JONES: We'll call the first and only case of the
2 day, Case 14115, Application of T.H. McElvain Oil & Gas Limited
3 Partnership for compulsory pooling, San Juan County,
4 New Mexico.

5 Call for appearances.

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

8 MR. JONES: Other appearances?

9 MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin of the
10 Santa Fe law firm of Kellahin and Kellahin, appearing this
11 morning on behalf of ConocoPhillips Company. I have two
12 witnesses to be sworn, and they're appearing as we speak.

13 MR. JONES: No other appearances?

14 Okay. Will all witnesses in this case please stand
15 to be sworn?

16 And would you like them to state their names?

17 MR. BROOKS: Yes, please. Witnesses will please
18 state their names.

19 MR. JONES: Please state your name.

20 MR. CORCORAN: Rich Corcoran with ConocoPhillips.

21 MR. HELTON: Rob Helton with ConocoPhillips.

22 MR. HARRIS: Richard Harris with McElvain Oil & Gas.

23 [Witnesses sworn.]
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RICK HARRIS

after having been first duly sworn under oath,
was questioned and testified as follows:

DIRECT EXAMINATION

BY MR. BRUCE:

Q. Would you please state your full name for the
record.

A. Richard Harris.

Q. And where do you reside?

A. Denver, Colorado.

Q. Who do you work for and in what capacity?

A. McElvain Oil & Gas Properties. Inc., and I'm a
landman.

MR. KELLAHIN: Mr. Examiner? Point of information,
I'd like to make a short opening statement so you understand
that this is not a typical compulsory pooling case with all the
various components to it. And I'd like to try to identify for
you the issues that are concerning our inability to reach a
voluntary agreement between ConocoPhillips and McElvain.

MR. JONES: Okay. Let's have opportunity for opening
statements from both parties if you want to.

MR. BRUCE: I will be very short on this.
Mr. Examiner, I think it is for the most part a typical pooling
case. Mr. Kellahin, on behalf of his client, has raised the
issue of whether or not title opinion costs are recoupable in a

1 forced-pooling proceeding, whether or not they are, in essence,
2 well costs that should be included in an AFE. It is our
3 position, and I would withhold most of my comments to closing,
4 that under the statutory scheme in effect for operating in
5 New Mexico, these are necessary well costs, and they are
6 reasonable well costs, and they should be allowed to be
7 recovered by the applicant if ConocoPhillips goes nonconsent in
8 the well.

9 MR. KELLAHIN: To the best of my knowledge, this is
10 an issue of first impression for the Division. And I've done
11 this for some 35 years, and I'm surprised that we don't have an
12 order that has addressed the issue of title opinions and
13 abstracts associated with a spacing unit. It simply has not
14 occurred, to the best of my knowledge. And so we're asking you
15 to give us guidance on what to do.

16 In this case, ConocoPhillips wants to make sure that
17 McElvain's abstract and title cost, some \$65,000 associated
18 with the north half of this section, which were the approximate
19 costs of that title work, are excluded from the compulsory
20 pooling order so that Conoco, if it chooses to be a consenting
21 party on that order, does not thereby have to accept or concede
22 those costs.

23 The problem I'm concerned about is if you wait
24 post-order and make your election to participate as a
25 consenting party, you may, in fact, have waived your right to

1 complain as to those costs. While the order does allow us to
2 have a chance to talk about whether they're reasonable or not,
3 it assumes in the process that those costs are somehow
4 associated and necessary for the drilling of the well.

5 So that's the issue that we see. Should a compulsory
6 pooling order require a pooling party to pay the applicant's
7 title costs? We contend that we should not.

8 ConocoPhillips, now with Burlington, has a huge staff
9 that does title work, and the evidence will demonstrate that
10 had we been asked, ConocoPhillips would have had the capacity
11 not only to ensure its own title but to have effectively
12 participated to the satisfaction of McElvain.

13 The dilemma about the \$65,000 is not only the amount
14 unprecedented, ConocoPhillips has some 70 percent interest in
15 the spacing unit and therefore would absorb the predominate
16 share of these costs. We think they're an item that should not
17 be included in an AFE, and when you're talking about components
18 to an AFE, I can find no instances where this has been done by
19 other operators, and certainly within the context of a pooling
20 order, there is none.

21 We have been willing to -- we have been willing to
22 reach a voluntary agreement and thought we could, despite the
23 fact we are the majority owner and that McElvain will continue
24 to operate and we do that voluntarily under a joint operating
25 agreement.

1 And maybe I've misspoke. The number was \$85,000 in
2 abstract and title fees that is in dispute.

3 And so it's a question of the process. And the
4 threshold question is: Are those costs appropriately charged
5 to a nonconsenting working interest owner? And we believe the
6 evidence will demonstrate that our position is right.

7 MR. JONES: Thank you.

8 Q. (By Mr. Bruce): Mr. Harris, have you previously
9 testified before the Division?

10 A. No, I have not.

11 Q. Would you summarize your educational and
12 employment background for the Examiner, please?

13 A. Sure. I attended Baylor University for my
14 undergraduate degree, and I majored in political science with a
15 minor in business administration. I then went to law school at
16 the George Washington University School of Law in
17 Washington, D.C. I'm a licensed attorney in the state of
18 Colorado, and I've been employed as a landman in the oil and
19 gas industry for around just over four years. And I've been
20 employed with McElvain since January of 2006.

21 Q. Are you familiar with the landman matters
22 regarding this application?

23 A. Yes.

24 MR. BRUCE: Mr. Examiner, I tender Mr. Harris as an
25 expert petroleum landman.

1 MR. BROOKS: Any objection?

2 MR. KELLAHIN: No objection.

3 MR. JONES: Mr. Harris is so qualified.

4 Q. (By Mr. Bruce): Mr. Harris, could you
5 identify -- why don't we do Exhibits 1 and 2 together for the
6 Examiner, and describe briefly what McElvain seeks in this
7 case.

8 A. Exhibit 1 is just a land map showing our well
9 location in Township 29 north, Range 13 west, Section 1. And
10 Exhibit 2 is an aerial photo of the same spacing unit. And as
11 you can see in this photo, it is located in the city of
12 Farmington. There's quite a lot of buildup around there, and
13 actually, Conoco's office is right across the street from this
14 location.

15 Q. And you seek to force-pool the north half of
16 Section 1 from the surface to the base of the Fruitland Coal
17 Formation?

18 A. Yes.

19 Q. What is the name of the proposed well?

20 A. The proposed well is called the Hutchinson #2
21 Well, and it's located in an orthodox location southeast,
22 northwest.

23 Q. What is the working interest ownership in the
24 well unit? And I refer you to Exhibit 3.

25 A. Exhibit 3 shows all the tracks in the title

1 opinion that we obtained showing the interest of Conoco to be
2 70.2 percent, McElvain's is 28.5 and the Joan T. Henderson
3 Trust as 1.27.

4 Q. Now, before we go a little further, you have
5 Conoco's interest as 70.2 percent. Did you review the
6 prehearing statements submitted by ConocoPhillips in this
7 matter?

8 A. Yes.

9 Q. And what did ConocoPhillips say this was?

10 A. 73 percent.

11 Q. And so there is a difference of opinion regarding
12 working-interest ownership in this well unit?

13 A. Yes.

14 Q. Okay. And we'll get to the reasons for that a
15 little bit later.

16 A. Okay.

17 Q. So there are three working-interest owners in
18 this well unit. Who do you seek to force-pool?

19 A. We seek to force-pool ConocoPhillips.

20 Q. What is Exhibit 4?

21 A. Exhibit 4 is a list of correspondence going back
22 telling the history of proposing the well. My company has been
23 trying to drill this well for well over two and a half years.
24 And there have been discussions with Conoco over that period of
25 time.

1 The first letter on the bottom -- it goes from
2 chronological from the bottom all the way to the top -- is our
3 letter ordering the drilling and title opinion back in July of
4 2006. And it has a list of all the things that were submitted
5 to the attorney that completed the opinion.

6 Our first proposal letter went out July of 2007.
7 Conoco promptly responded in August of 2007 and said they would
8 like to participate in this well. They also asked, at that
9 time, if they've already paid for their share of the title
10 work, could we please give them copies of the title opinion due
11 to the very complex title issues in the area.

12 Then they also said if they haven't paid for it yet,
13 could we please bill them immediately just so they could set up
14 the data and start going through it, just because it is, as you
15 can see from the aerial, pretty -- there's a lot of title going
16 on in this spacing unit. So they did that back in August of
17 2007. And then I didn't hear from them for awhile.

18 We were talking back and forth on a JOA. We
19 submitted a 1989 form, AAPL JOA. They said they don't do the
20 1989 form. They would like to do a 1982 form. I said that was
21 okay. But then they started researching the title, and I think
22 that's when a landman shift changed on who was taking over
23 doing the well.

24 And he would call. We'd talk -- I don't know, a
25 couple -- once every two weeks to go over title issues, and I

1 would fax them copies of our title opinion to help him
2 calculate those interests.

3 So then time went by again. We followed up recently,
4 and I sent them a 1982 form. They had some changes. I said
5 that was fine. And then that's when we got to the title
6 opinion costs, and they said they just didn't want to pay for
7 the title costs. And I said, "Well, we didn't want to pay this
8 much for the title costs either, but it was a difficult area,
9 and that's just what it was charged."

10 And I said, "Well, how about we do a 50/50 share of
11 costs," since they do have a large working-interest share in
12 the spacing unit. And they said that wasn't acceptable. They
13 would maybe pay \$7,000 -- they would limit their costs to
14 \$7500, I believe it was.

15 Q. Now, so what you're telling me is that the form
16 of the JOA itself has been agreed upon by ConocoPhillips and
17 McElvain.

18 A. As to everything but the title stuff, yes.
19 We've -- all the changes that they've wanted besides that part
20 we are completely okay with.

21 Q. So you agreed with the proposed in the year of
22 the form and any other provisions of the form?

23 A. Yes.

24 Q. Except for the title opinion provision?

25 A. Yes.

1 Q. Now, maybe if you refer to Exhibit 3, and discuss
2 a little bit why the title opinion costs so much. And
3 Mr. Harris, I'm holding a copy of the title opinion here, am I
4 not?

5 A. Yes.

6 Q. How many pages does it run?

7 A. I think it's 151 pages.

8 Q. How many tracts of land are involved in this
9 opinion?

10 A. They broke it out in 48 tracts.

11 Q. And this land is inside the Farmington city
12 limits, correct?

13 A. Yes.

14 Q. So there are, as you can well imagine, quite a
15 few minor tracts and small tracts involved in this opinion?

16 A. Tracts in the opinion range from anywhere from 40
17 acres to .79. There's .456. So yes, there's a lot of small
18 tracts in there.

19 Q. Okay. Now, one thing that Mr. Kellahin had said
20 in his opening was regarding Conoco's title, ConocoPhillips'
21 title material. At one point before McElvain ordered its title
22 opinion, did McElvain request title materials from
23 ConocoPhillips?

24 A. Yes.

25 Q. Were they provided?

1 A. No.

2 Q. So in order to get the well drilled, you had to
3 go forward and prepare a title opinion?

4 A. Yes.

5 Q. Because you have to identify -- at least for
6 force-pooling -- you have to identify all the working-interest
7 owners?

8 A. Oh, for sure.

9 Q. And presuming the well is capable of producing
10 hydrocarbons, you will need that for Division order purposes?

11 A. Yes.

12 Q. One other thing. Regarding the differences
13 between ConocoPhillips title files and your title opinion on
14 the ConocoPhillips interest, there's a difference of 3 percent
15 or so in the working interest.

16 A. Uh-huh.

17 Q. Can you explain why you think ConocoPhillips has
18 a smaller working interest?

19 A. We took a lease in 2002, I believe, from the city
20 of Farmington, and at that point in time, they didn't know
21 exactly what they owned, so we came up with the acreage. And
22 they sent us a plat map back that said they also owned all the
23 minerals under the streets and alleys.

24 And that hasn't been discussed or litigated in the
25 State of New Mexico. And that would have added some 40-some

1 acres to the lease, which would have decreased Conoco's
2 interest quite a bit more than it did on the 3 percent.

3 But what we did, we looked back to see prior
4 reservations of minerals underneath streets and alleys. And
5 that's when we came up with an additional percentage and agreed
6 with the city of Farmington to amend our lease to include those
7 acreage numbers. So I think that might have been where part of
8 where that 3 percent came from.

9 Q. Now, let's go back a little bit. This north half
10 has an existing well on it; is that correct?

11 A. Yes. The north half has two existing wells; one
12 is the ConocoPhillips' Dakota well that's spaced on the same
13 320, and then we have a Pictured Cliffs well in the other 160
14 on the northeast corner.

15 Q. Okay. And ConocoPhillips Dakota Well, has that
16 been producing for quite some time?

17 A. It was drilled in, I believe, in 1966.

18 Q. Okay. But you took a lease four or five years
19 ago from the City?

20 A. Yes. And we've got a couple of leases since
21 then.

22 Q. So what you're saying is that you believe there
23 was some unleased interest that ConocoPhillips wasn't aware of
24 in its title materials?

25 A. Yes.

1 Q. And that would have the effect of reducing
2 ConocoPhillips' interest?

3 A. Yes.

4 Q. And that's another reason why companies prepared
5 title opinions, is it not? To make sure that everybody is
6 leased up?

7 A. Oh, for sure, and especially when you work in the
8 San Juan Basin. Most of the stuff has depth variances, and
9 this is the first well drilled in this formation in this
10 spacing unit. So we felt that getting a title opinion was
11 necessary as well.

12 Q. And based on the materials you have reviewed, was
13 the cost -- was incurring the cost of this opinion necessary
14 and reasonable for drilling of this well?

15 A. Yes.

16 Q. Now, under a joint operating agreement, are title
17 costs routinely included in an AFE sent to the working-interest
18 owner when a well is proposed?

19 A. Yes.

20 Q. Is that the standard industry practice to include
21 such costs?

22 A. Yes.

23 Q. Now, you mentioned something about going back and
24 forth on the JOA form and the title opinion costs. You
25 originally proposed the 1989 model form JOA. Does that

1 automatically provide for a sharing of title costs?

2 A. Yes.

3 Q. What does the '82 opinion provide?

4 A. The '82 has an election where it can go -- fall
5 under the Exhibit C Copus overhead provisions, or it can be
6 shared in the joint account on the drilling side.

7 Q. Okay. So under a joint operating agreement under
8 the '89 form -- or how the boxes are checked in the '82 form --
9 are title costs recoverable from the non-operating owners as
10 part of the well costs?

11 A. Yes.

12 Q. Now, does McElvain disperse proceeds, production
13 proceeds to its interest owners?

14 A. Of course. Yes.

15 Q. And so upon completing a well as a commercial
16 producer, McElvain has to have a Division order title opinion
17 prepared so it knows who to pay the money to?

18 A. Yes.

19 Q. Under New Mexico statute, if that isn't done
20 within a certain time period, then the operator or the person
21 who disperses proceeds is subject to penalty and interest; is
22 it not?

23 A. Yes.

24 Q. In your opinion, has McElvain made a good faith
25 effort to obtain the voluntary joinders of ConocoPhillips in

1 the well?

2 A. Yes. We've been trying for almost a year now.

3 Q. Would you identify Exhibit 5 for the Examiner,
4 and discuss the costs of the proposed well?

5 A. Exhibit 5 is our AFE for the well.

6 Q. And what are the dry hole, the completed well
7 costs?

8 A. Dry hole costs are \$543,750, and completed well
9 costs is \$1,016,570.

10 Q. And the second item from the top is the title
11 costs that ConocoPhillips -- the \$85,000 figure is the item
12 that ConocoPhillips is disputing in this matter?

13 A. Yes. And that has a little bit of a buffer,
14 because the title opinion was \$81,000. But we didn't know if
15 we were going to have additional work done and that kind of
16 stuff, so we didn't want to short it at all.

17 Q. Okay. Is this cost of the well in line with the
18 cost of other wells drilled to this depth in this area of
19 New Mexico?

20 A. Yes. Especially because it falls within the city
21 of Farmington.

22 Q. Okay. Who do you request be appointed operator
23 of the well?

24 A. McElvain Oil & Gas Properties, Inc.

25 Q. And that's the operating arm of McElvain Oil &

1 Gas?

2 A. Yes.

3 Q. Do you have a recommendation for the amounts
4 which the operator should be paid for supervision and
5 administrative expenses?

6 A. \$5,500 a month for drilling charges and then \$550
7 a month for a producing well.

8 Q. And are these amounts equivalent to those
9 normally charged by McElvain and other operators in this area
10 for wells of this depth?

11 A. Yes.

12 Q. Do you request that these rates be adjusted
13 periodically as provided by the Copus accounting procedure?

14 A. Yes.

15 Q. Do you request the maximum cost plus 200 percent
16 risk charge against ConocoPhillips if it nonconsents the well?

17 A. Yes.

18 Q. Was ConocoPhillips notified of this hearing?

19 A. Yes.

20 Q. And is Exhibit 6 the Affidavit of Notice?

21 A. Yes.

22 Q. Were Exhibits 1 through 6 prepared by you or
23 under your supervision or compiled from company business
24 records?

25 A. Yes.

1 Q. And in your opinion, is the granting of this
2 application in the interests of conservation and the prevention
3 of waste?

4 A. Yes.

5 Q. One final matter: Are there some time
6 constraints in the drilling of this well?

7 A. Yes. We do have a city of Farmington permit that
8 will expire, I believe, in the middle of June.

9 Q. Okay.

10 MR. BRUCE: Mr. Examiner, I move the admission of
11 Exhibits 1 through 6.

12 MR. JONES: Any objections?

13 MR. KELLAHIN: No, sir.

14 MR. JONES: Exhibit 1 through 6 of the Applicant will
15 be admitted.

16 Mr. Kellahin.

17 MR. KELLAHIN: Thank you, Mr. Examiner.

18 CROSS-EXAMINATION

19 BY MR. KELLAHIN:

20 Q. Mr. Harris, let me try to frame the issue that I
21 think is before the Examiner this morning and see if you and I
22 have any disagreement about that.

23 It is my understanding that McElvain is attempting to
24 have the Division include McElvain's abstract and title costs
25 in the compulsory pooling order issued in this case; is that

1 not correct?

2 A. Yes.

3 Q. And you do understand that ConocoPhillips
4 disputes that amount?

5 A. Yes.

6 Q. And as of today, what is the approximate amount
7 for those costs?

8 A. Title opinion costs are at \$81,090, and landman
9 costs for curative and stuff -- which I guess would be
10 included -- is \$1,851.

11 Q. You commented during your direct testimony that
12 there was a small difference between ConocoPhillips' records as
13 to their interest and what you ultimately determined what you
14 thought was their interest. It was a couple of percentage
15 points?

16 A. Three.

17 Q. Three. Am I correct in understanding that
18 ConocoPhillips offered to simply give McElvain that difference?

19 A. They didn't offer to give it, no. We recomputed
20 everything, and they understood what the city of Farmington,
21 the lease and their objections and what they thought --

22 Q. Well, there was going to be no objection by the
23 small difference in the 3 percent by the two parties; that was
24 going to get resolved?

25 A. But they weren't going to give it to us. It was

1 just that's what the ownership stated.

2 Q. Well, regardless of how you characterize it, you
3 wouldn't have ended up with the percentage you thought was the
4 right number, and ConocoPhillips would have had the percentage
5 that you thought was correct for their interest.

6 A. Based on the title opinion ownership, we agreed
7 that that was the ownership of the well.

8 Q. Therein, whether you call it a gift or not, they
9 are conceding about 3 percent?

10 A. They never tried to argue with me about the
11 percentage. Once they recomputed, based on the title stuff and
12 faxed pages of the title opinion that I sent to them, they
13 agreed with me there was never -- that was never in discussion
14 on -- that never was slowing down the development of this well.

15 Q. You said you ordered the title opinion in July
16 of '06; is that right?

17 A. July of '06, yes.

18 Q. Is there a document in Exhibit 4 that represents
19 the paperwork by which you ordered the --

20 A. Yes.

21 Q. -- opinion?

22 A. The first letter, the last two pages.

23 Q. At the very back end?

24 A. Yes. This is a letter written by a former
25 landman in our company to the law firm of Bjork, Lindley &

1 Little ordering the title opinion.

2 Q. And you're ordering a title opinion for the
3 entire spacing unit within the north half of the section?

4 A. Yes.

5 Q. At that point in time, did you have a title
6 opinion for just the drill site?

7 A. No.

8 Q. When we're talking about a drill site title
9 opinion, we are looking at the 40-acre tract where the well
10 would be located?

11 A. Yes. Not in our files, not that I'm aware of.

12 Q. You referred to the joint operating agreements,
13 and the one you refer to last was the '82 agreement?

14 A. Yes.

15 Q. The '82 agreement. And that's the one that
16 ConocoPhillips proposed to use?

17 A. Yes.

18 Q. And when you go through paragraph four concerning
19 titles and in that agreement, it sets forth some options and
20 alternative language for how those costs are paid for and
21 approved?

22 A. Yes, sir.

23 Q. And so whether or not costs appear in an AFE,
24 they -- unless otherwise pooled, those numbers are going to be
25 controlled by the parties in the signature of the JOA?

1 A. Yes.

2 Q. The AFE does not stand alone as a contract?

3 A. No.

4 Q. In order to make the AFE work, you're going to
5 have to reach a voluntary agreement under some form of joint
6 operating agreement?

7 A. Or compulsory pooled.

8 Q. Right. When we look at the '82 Joint Operating
9 Agreement, the form of that language has various options in it,
10 right?

11 A. Yes.

12 Q. One of the first sentences in that first
13 paragraph talks about title examinations to be made of the
14 drill site. Did you do that?

15 A. This was -- I didn't work on this well. I can't
16 say if my company did or not, to be honest.

17 Q. Have you attempted to --

18 A. We purchased the service location. So as the
19 exact drill site location there, yes, that is assured that the
20 title has been done on that.

21 Q. And under the '82 form, if you're going to expand
22 the title work beyond the drill site, it requires you to get
23 the cooperation and approval of all the working-interest
24 owners, doesn't it?

25 A. But we don't have a JOA on this area.

1 Q. Well, that's a problem, isn't it?

2 A. Well, when you normally propose a well, that's
3 when you submit your JOA proposal up front. And how can you
4 propose a well if you don't know the interests of each party to
5 begin with?

6 Q. Your first submittal to ConocoPhillips was July
7 of '07 with a well proposal including a JOA and an AFE?

8 A. Yes, sir.

9 Q. That was a year after you requested the title
10 opinion for the spacing unit?

11 A. Yes.

12 Q. How long did it take you after your request to
13 get this title opinion that Mr. Bruce has in front of him?

14 A. I believe it's dated February, 2007.

15 Q. So from February 2007 to July of 2007 when you
16 first proposed the well, what were you doing with the title
17 opinion?

18 A. Well, we had some other stuff -- wells that we
19 would like to drill first on our drilling schedule, and that
20 came, and then I created Exhibit No. 3, which took some time.

21 Q. So you were using the title opinion for your own
22 purposes in your own account.

23 A. In order to propose the well, yes.

24 Q. But there was no benefit to ConocoPhillips in
25 that process, right?

1 A. Well, not there.

2 Q. You said the well proposal in July to
3 ConocoPhillips -- that was July '07?

4 A. Yes.

5 Q. And then by August --

6 A. Wait, wait, wait. What did you say? I'm sorry.

7 Q. I'm sorry. July of '07, when you sent the well
8 proposal, the first one --

9 A. Yes.

10 Q. -- and that had an AFE in it and a JOA?

11 A. Yes.

12 Q. In response to that, you received an e-mail back
13 from someone at ConocoPhillips?

14 A. Yes.

15 Q. Do you remember who that was?

16 A. Rob Helton.

17 Q. Was he the first individual who responded to you
18 directly from ConocoPhillips about that well proposal?

19 A. Yes.

20 Q. Summarize for us your recollection and
21 understanding of that conversation and e-mails with Mr. Helton.

22 A. We didn't talk. It's all under e-mail
23 correspondence, which is attached on our Exhibit No. 4.

24 Q. Let me find the e-mail.

25 A. Okay. It's page -- if you go up four pages, it

1 starts the e-mail chain. His e-mail talking about
2 participating is at the bottom of page -- well, I guess it
3 would be page four from the back, and it goes down on page
4 three on the back.

5 Q. Okay. I think I'm on the right page. At the
6 very top it says page one of two?

7 A. Yes. Yes, sir.

8 Q. These sequential e-mails always drive me crazy.
9 So I have to take a moment and get situated.

10 A. Yeah, I know.

11 Q. So we're looking at that bottom of that page, and
12 it has a reference -- it's Mr. Helton -- back to you, Mr.
13 Harris.

14 A. Yeah.

15 Q. And it says August 9th?

16 A. Yes.

17 Q. He's giving you an indication that Conoco would
18 like to participate in the well. And then he follows it up
19 with two statements. He's saying, "If we paid for this in the
20 past, provide us with documentation."

21 Did you ever do that?

22 A. Well, that's when a couple of days later he
23 asked -- that's when they started asking about the JOA. So I
24 thought, first, before we give away a title opinion, why don't
25 we enter into a joint operating agreement?

1 Q. What makes you use the words "give it away"?

2 A. Well, if we just mailed it to them without them
3 paying for it, we took substantial cost in obtaining the title
4 opinion.

5 Q. Can't you get those costs back through the
6 compulsory pooling? Is that not what you're seeking to do?

7 A. Well, I was hoping -- you never want to go to
8 compulsory pooling. I was hoping we could enter into a joint
9 operating agreement that day.

10 Q. So at this point you have never sent
11 ConocoPhillips the title opinion that's sitting in front of
12 Mr. Bruce?

13 A. They've never seen it, no. They've seen parts of
14 it. And that's what I told them back before that, when they
15 had title questions, I would fax them any pages they needed out
16 of it to help calculate their interest.

17 Q. But they've never been given the total report?

18 A. No.

19 Q. Is this a drill site title opinion?

20 A. It's a spacing unit.

21 Q. It's not a Division order title opinion?

22 A. It does have the interests of all net revenue
23 interests and does calculate and the current owners. He titled
24 it "Drilling Title Opinion," but the Division order people have
25 looked at it, and they'll be able to work off of it, yes.

1 Q. Is it -- do you have an invoice for the title
2 work?

3 A. I do not.

4 Q. Is there one?

5 A. There was multiple invoices.

6 MR. KELLAHIN: We request, Mr. Examiner, that Counsel
7 be asked to provide the invoices for the title work. We don't
8 care about the title opinion, but we want to see the invoices.

9 MR. BRUCE: That's no problem, Mr. Examiner.

10 Q. (By Mr. Kellahin): So when we look at
11 Mr. Helton's e-mails back to you in conversations --

12 A. Yes.

13 Q. -- it was clear to you that ConocoPhillips wanted
14 to participate, but it was subject to their ability to
15 negotiate with you a satisfactory Joint Operating Agreement and
16 the AFE?

17 A. Yes.

18 Q. Some time went on from July '04 to January
19 of '05. And on January 22nd -- I'm sorry, '08 -- January '08,
20 some six months later, you're sending a new well proposal and
21 AFE to ConocoPhillips?

22 A. Yes.

23 Q. What happened in that six months from July of '07
24 to January of '08?

25 A. There's quite a few correspondence between those

1 two dates and Exhibit 4, but what happened between that period
2 of time, I told him first off that we'd be okay with the '82
3 form. Then Mr. Corcoran would call me, and he was trying to
4 calculate the title as well. And it took him a couple of
5 months. I doubt that's the only thing he worked on per se, but
6 he would call me.

7 We talked once every couple of weeks, and he'd have
8 questions about the title. And that's when I would send him
9 pages of the title opinion, and we were going over it and
10 trying to work it out together, because it was a difficult -- I
11 mean, it was difficult to compute.

12 Q. How long have you worked for McElvain?

13 A. I started there January 2nd of 2006 as a
14 consultant, and then I got hired on full-time in May of '06.

15 Q. So by the time McElvain -- Denise Greer sent this
16 letter to Bjork for the title opinion in July, you had been
17 there about six months?

18 A. Yes. But I didn't -- this wasn't my --

19 Q. This wasn't your project?

20 A. No.

21 Q. When did this become your project area?

22 A. When I sent the well proposal in July of '07.
23 That's when it became my project. I worked on it a little bit,
24 because I did help prepare the spreadsheet, and I did prepare
25 that, but it wasn't my well per se.

1 Q. At any time during this process, did you check
2 McElvain's records to see the status of title work associated
3 with the north half of this section?

4 A. I did not personally, no, because we had a title
5 opinion by the time I started working on it -- a new title
6 opinion.

7 Q. Are you aware that you had title opinion and
8 title work that pre-dates this title opinion?

9 A. I believe that there was some stuff that's dated
10 1960s and 1970s that does cover the area.

11 Q. How is the north half of Section 1 developed at
12 this point? Excuse me -- spacing unit. As of today, what is
13 the north half of Section 1 look like?

14 A. Well, on Exhibit 2 is the areal, but yes, there
15 are three wells in the north half. There's not a Fruitland
16 Coal well in Exhibit 1. This shows the Fruitland Coal wells in
17 the area. Conoco has a Dakota well called the Federal 15.

18 Q. Let me use Exhibit 1 as a reference.

19 A. Okay.

20 Q. If you look at the north half of Section 1,
21 there's the Dakota well in the north half in which McElvain has
22 25 percent interest, correct?

23 A. It would be our same interest as this one, 28.

24 Q. 28 percent?

25 A. Then we're getting paid wrong on that right now

1 from Conoco.

2 Q. And that's the ConocoPhillips-operated Dakota
3 well?

4 A. Yes, sir.

5 Q. Has there been any vertical separation of the
6 minerals?

7 A. No.

8 Q. So the title --

9 A. Which is rare in the San Juan.

10 Q. That's why I asked the question.

11 A. Yeah.

12 Q. So the Fruitland Coal and the Dakota are going to
13 have a same title when you're looking at the minerals?

14 A. Yes.

15 Q. Did it occur to you or anyone at McElvain to use
16 that Dakota work as a launching point from which you could
17 update your title work and not have to spend \$85,000?

18 A. Yes.

19 Q. And so why didn't you do that?

20 A. My company did ask Conoco for title work back --
21 way before we ordered this title opinion, and they turned us
22 down.

23 Q. Do you have an e-mail that says that?

24 A. I don't have any documentation.

25 Q. Who did you talk to that turned you down?

1 A. Denise Greer, who formally was a senior landman
2 that covered this area.

3 Q. She's the one that told you that ConocoPhillips
4 refused to give you that stuff?

5 A. Yes.

6 Q. Did you confirm that yourself with
7 ConocoPhillips?

8 A. This happened last week when I talked to her
9 about the decision that was made to order the title opinion.
10 And she works for another company now.

11 Q. Back to my question: Why did you wait until July
12 of '07 to propose the well when you had the title opinion in
13 February of that year?

14 A. We're a family-owned company with a limited drill
15 schedule that doesn't look anything like ConocoPhillips. So we
16 have priorities, and we go through -- and that's when this well
17 hit our drill schedule, and it took some time to go through the
18 title opinion and compute the interest, then submit the
19 proposal.

20 Q. Did you pick up any additional leases from the
21 spacing unit based upon the title opinion?

22 A. Not based on the title opinion, no.

23 Q. Were you able to use that title opinion to
24 confirm the leases that you've already acquired in that spacing
25 unit?

1 A. It confirmed it, yes. Yes.

2 Q. So to get leases in this spacing unit, you had
3 done it by standup title work or something else?

4 A. We had field landmen look at the title. And in
5 the city of Farmington, they had an auction for their oil and
6 gas lease, and we were a successful bidder on that acreage.

7 Q. We talked about the title opinion that Mr. Bruce
8 has before him and the fact that you've not given it to
9 ConocoPhillips. Does McElvain consider that title opinion to
10 be proprietary?

11 A. Right now. We'd be happy to give it to them once
12 we share the costs. And that's what I said to them to begin
13 with. They were upset about it. I said, "Well, why don't we
14 share it 50/50 then instead of 70/28."

15 Q. If it's proprietary to you, why should
16 ConocoPhillips pay for any of it?

17 A. Well, it won't be once they pay for it.

18 Q. And why should they?

19 A. Because they want to be a partner in a new well,
20 and they -- their Dakota well, for example, is not even paying
21 us correctly right now. Our interest is higher than what we're
22 getting paid.

23 Q. I suggest the question is the other way around.
24 You want them in your spacing unit.

25 A. That's not true. If they want to go

1 nonconsent -- and I told them that. I said, "Well, why don't
2 you" -- at one point in time, I said, "Go ahead and sign the
3 JOA that we negotiated, the JOA that you wanted, and go
4 nonconsent if you don't like the proposal I submitted."

5 Q. But can we exclude the cost of the title opinion
6 work and go nonconsent under the JOA?

7 A. No.

8 Q. You won't let us do that?

9 Did you or did Denise Greer, to the best of your
10 knowledge, ever seek out a collaborative effort with
11 ConocoPhillips where you would both jointly use your title
12 resources and come up with the title work for the north half of
13 this section?

14 A. I shouldn't speak to that because I don't know.
15 There were -- I have offers in my file that we tried to work on
16 this for a couple of years with various things, such as
17 purchasing it from Conoco, all their interests in all these
18 wells, including the Dakota well, that they turned down. There
19 were multiple offers made. So I know there was ongoing
20 discussions for many years prior to us ordering this opinion
21 trying to develop this acreage.

22 Q. Did you and Mr. Corcoran discuss the issue of
23 whether title for the tract would be individual or whether it
24 was going to be collectively insured?

25 A. Say that again. Can you repeat the question?

1 Q. Yeah. Did ConocoPhillips offer that once you
2 agreed on their percentage, they would insure and be
3 responsible for the accuracy of their own title?

4 A. Yes. They requested that we just do joint loss
5 on title, that we be, you know, liable for our leases, and they
6 would be liable for theirs.

7 Q. That would be separate liability, right?

8 A. Yes. That's what they proposed.

9 Q. Joint liability would be where all of you are
10 liable for all the interest?

11 A. Yes. And that's opposite of that.

12 Q. And you guys don't do that?

13 A. No. That's not true. It's a well-by-well basis
14 if we do that or not. I mean, I'm sure that we have wells
15 where we will take all the liability. I'm sure we have wells
16 where both options on the JOA have been acknowledged.

17 Q. When we look at the AFE -- it's a copy of your
18 Exhibit No. 5 -- on the far left margin, there's category
19 numbers.

20 A. Yes.

21 Q. When I look down through drilling intangibles, I
22 read past the first two numbers, and the third entry is 4004.
23 It says, "Staking, permitting, title work and survey."

24 And there's \$15,000 associated with that. What is
25 your understanding of that entry?

1 A. I believe that entry is for the surface location.
2 I shouldn't speak -- I didn't put the AFE together. Our
3 engineers did. But that title work is not included -- is not
4 part of our drilling title opinion.

5 Q. And so the title work in dispute or the entries
6 above that use a different code?

7 A. Yes.

8 Q. The coded numbers are 3010, 3012.

9 A. Yes.

10 Q. Who developed those numbers?

11 A. Our accounting department. It's probably through
12 our Inertia Lands and company-wide database. I don't know what
13 those numbers mean.

14 Q. These numbers are not associated in any way with
15 the JOA issued by the industry?

16 A. No.

17 Q. And there's no Copus Accounting numbers that
18 track any of these numbers, right?

19 A. The numbers on the left are an accounting
20 procedure for our --

21 Q. They're internal to McElvain?

22 A. Yes, I believe so. I don't know what they mean.

23 Q. So the entries in dispute are the first two
24 entries with regard to 3010 and 3012?

25 A. Yes.

1 Q. And to the best of your knowledge, Mr. Harris,
2 has McElvain ever before obtained a compulsory pooling order
3 from this Division that asked for these types of abstract title
4 costs?

5 A. Yes. Recently.

6 Q. You've done this? Cite me the case.

7 A. It was Ruby No. 1 well located in Section 3, 29
8 north, 13 west. We had an AFE that was a lot of higher than
9 this, and it was also a city of Farmington well, and that title
10 opinion cost quite a bit more than this one.

11 Q. Is that the only one that you have that's got
12 that in it --

13 A. Title costs?

14 Q. -- like we're talking about? I'm not talking
15 about the volume. I'm talking about using title costs like
16 this as coded.

17 A. I believe all of our AFEs will have codes --
18 that have codes -- that have those same codes for title
19 opinion. If we have a title opinion, that's the code for it.
20 I believe so. I don't know what those codes mean, but if we
21 get a title opinion, that will show up on all of our AFEs, yes,
22 if that's your question.

23 MR. KELLAHIN: Mr. Examiner, I propose to mark this
24 summary sheet as ConocoPhillips Exhibit 1, and I have passed it
25 out and provided the witness with a copy of this.

1 Q. (By Mr. Kellahin): Mr. Harris, I obtained this
2 from the OCD website. It is a printout using the Division's
3 website to find all compulsory pooling cases posted on that
4 site that dealt with your company starting with 1999 and coming
5 forward. And this printout shows the ones that I could find.

6 The well that you're describing, is that on this
7 list?

8 A. No, because that was last year.

9 Q. Well, last year would have been within the frame
10 of this printout.

11 A. Yes. But then if you look at the filing dates of
12 all these, it's 2000 and 2001.

13 Q. It doesn't show up?

14 A. I doesn't show up.

15 Q. Was that case opposed by any of the parties to be
16 pooled?

17 A. No.

18 Q. Did you appear as a witness in that case?

19 A. No, I did not. I was here, but I wasn't the
20 witness.

21 Q. When we look at the request for obtaining the
22 title opinion in the July 24th '06 letter, do your records at
23 McElvain reflect any attempt to contact ConocoPhillips about
24 participating in that effort prior to this letter?

25 A. Prior to our original proposal?

1 Q. No. Prior to you ordering the title work.

2 A. It's all off of comments that I've made -- that
3 I've talked with the previous landman that handled this area.

4 Q. And that all was subsequent to you making the
5 well proposal itself?

6 A. Yes.

7 Q. And that occurred in July of '07 --

8 A. Yes.

9 Q. -- a year later?

10 A. From when we ordered the title and proposed the
11 well? Yes.

12 MR. KELLAHIN: That concludes my examination. Thank
13 you.

14 We would move our introduction of Exhibit No. 1.

15 MR. JONES: Any objections?

16 MR. BRUCE: No objections.

17 MR. JONES: Exhibit No. 1 of ConocoPhillips for
18 Case 14115 will be admitted.

19 EXAMINATION

20 BY MR. JONES:

21 Q. Mr. Harris, I'll probably dance around the key
22 issues here quite a bit to educate myself a little bit.

23 A. That's fine.

24 Q. I've worked with landmen a lot, but the acreage
25 here, has that been settled on how many acres are here?

1 A. Well, that's another confusing thing about these
2 acres is the State of New Mexico has it for the north half at
3 318.4 net acres, but the BLM has it 319.4. I've talked to the
4 city of -- and that's in Exhibit 4, too, some of that language.
5 I've talked to the State, and they changed our permit to show
6 319.4, but the gross acres in this north half have been
7 speculated on. You see different numbers all the time. So
8 we're using 319.4. We agreed with ConocoPhillips to use 319.4
9 for the gross acres in the north half.

10 Q. Okay. 319.4. And it's all fee?

11 A. There's federal leases in there.

12 Q. Okay. Lot No. 1, Tract No. 1, it says Government
13 Lot No. 1?

14 A. Yes. And then I'd have to get the title opinion
15 out, but I know there is -- I think there's one or two federal
16 leases.

17 Q. That's --

18 A. No. Tract 24 is the federal tract --

19 Q. Okay.

20 A. -- and Tract 1. So I think there's two
21 federal -- I do --

22 Q. Okay. These three owners you show here, they're
23 working-interest owners; is that correct?

24 A. Yes, sir.

25 Q. And there's no dispute that they own 100 percent

1 of the working interest between those three?

2 A. No, sir. No dispute.

3 Q. No dispute of that. But there is still a dispute
4 about whether -- is there a dispute about the percentage
5 McElvain owns?

6 A. Not that I'm aware of with Conoco.

7 Q. So there's a dispute about the difference between
8 ConocoPhillips versus Joan Henderson's percentage? Is that
9 correct?

10 A. No. I don't know if there's a dispute. I'm not
11 aware of any dispute. I feel good about this title.

12 Q. Okay. In all the tracts across the top, that is
13 the different tracts with different mineral ownership; is that
14 correct?

15 A. Yes, sir.

16 Q. Okay. Everything adds up to 100 percent here
17 anyway, right?

18 A. Yes. If you go on the last -- I know it's a
19 confusing spreadsheet, but if you go to the last, I do -- I add
20 up the acreage totals.

21 Q. Okay.

22 A. And then I do a tract percent divided by 319.4,
23 and everything adds up to 319.4 percent.

24 Q. Okay. What about any unlocatable owners here at
25 all?

1 A. No.

2 Q. So everything has been leased anyway?

3 A. There is an unleased tract, but my company owns
4 those minerals, so --

5 Q. Okay. So unleased or no unlocatable -- and why
6 is McElvain operating here versus Conoco? It is in their back
7 yard, so to speak.

8 A. We got the permits. We tried to purchase this
9 interest from them for many years. I don't know why that
10 didn't happen. Getting a city of Farmington permit is pretty
11 difficult. We have just put a lot of time in. We really want
12 to drill this well. And they know we've been interested in the
13 area just because of all of our offers, and so if they wanted
14 to drill one, they could have proposed it to us. But --

15 Q. Speaking about who owns the pipelines here or the
16 gathering system, they have a Dakota well; you have a PC well;
17 is that correct?

18 A. Yes.

19 Q. So both of you have gathering system --

20 A. I can't answer that. That's on our engineers.
21 We're coming up on our engineering side. I don't know how
22 they --

23 Q. It's that George Washington School of Law coming
24 out here.

25 A. Well --

1 Q. But this is going to be a Fruitland well, so do
2 you know if they're dry Fruitland wells here, or are you going
3 to have to pump them and add -- let's see what you've got in
4 the AFE.

5 A. That's where we should look.

6 Q. You've got a separator, and you've got two
7 400-barrel tanks. So I guess where I'm coming to here is the
8 range of cost that you say should be included in a compulsory
9 pooling situation should be all the way from seismic and lease
10 costs all the way through the pipeline to sell the gas. Is
11 that what you think?

12 A. I've never seen seismic costs included on an
13 AFE --

14 Q. Well, this is San Juan Basin.

15 A. -- so, no. But we have other areas where we
16 have -- but no.

17 I think in order to drill a well on a new formation
18 in the San Juan Basin, you should get a title opinion first if
19 there's not one out there or if it's not an -- well, then you
20 propose off of the interest on the title opinion.

21 So yes, in order to drill a well, we need to get a
22 title opinion or we wouldn't know who to propose. And you, you
23 know -- you can't just go out there and stick a hole in the
24 ground and drill.

25 Q. Well, these two -- the first line -- the first

1 category numbers, landman costs, this abstract title, does that
2 include your contract title work that you called somebody in
3 the State or the county, the county offices, and they actually
4 do the research? And then what is the landman costs?

5 A. Landman costs are title curative and more of that
6 kind of stuff, and then the title costs -- well, then
7 abstract -- see that's the problem when you work in the
8 companies. You have your separate codes, and you don't know
9 exactly how to allocate it. I could tell you exactly that the
10 title opinion costs \$81,000, and our landman costs were \$1800.

11 Q. Okay.

12 A. So we put a little buffer on there just so
13 people, you know -- it's better -- we always think it's better
14 to go in high and then come in under, and you're the good guy
15 rather than go lower and then say, "What the heck? Why did it
16 cost so much?"

17 Q. Did they ask a land person in your company --
18 when the engineer prepared this AFE, did they ask you what the
19 land -- you or someone else in the company what the land costs
20 were likely to be?

21 A. Oh, yes.

22 Q. So they talked?

23 A. Engineers talked to us. But they see it, and
24 they ask the same questions, "Why can't we just go drill?"

25 Q. I see.

1 A. You make fun of my law school. That's what
2 engineers do. I think that's a common occurrence.

3 Q. Yeah. And they're big on getting it -- the
4 drilling engineers are big on getting it drilled at the
5 cheapest cost possible.

6 Was your AFE -- do you consider that to be a normally
7 less expensive AFE than what ConocoPhillips would have come up
8 with?

9 A. I went through some ConocoPhillips stuff -- the
10 reason this AFE is so hard is mainly where it's at. If we were
11 out in the middle of the pasture somewhere, we wouldn't have
12 these problems. The well would have probably already been
13 drilled because we have already agreed. But that's the cost.

14 Q. Okay. Who would be the drilling contractor out
15 there? Is it --

16 A. You see --

17 Q. -- one of the normal ones out there?

18 A. Yes. We're not bringing in somebody new. It's
19 who we always use in the area.

20 Q. Do you have a bunch more wells you're drilling
21 this year?

22 A. This is the one we hope to drill next, just due
23 to the permit.

24 Q. Okay. Because the City has a deadline or
25 something?

1 A. Their permit expires in June, the middle of June.

2 Q. So you have a permit from the City to drill?

3 A. Yes.

4 Q. And they looked at what to give you the permit?

5 Do you know what they looked at?

6 A. We had to send them ownership stuff, title stuff
7 on that, and then they wanted a bunch of engineering stuff,
8 too. I mean, they want to make sure the City is not getting
9 any harm.

10 Q. Do you have any bonds for surface damages or
11 anything?

12 A. We had to buy the surface location because we
13 weren't able to enter into a surface agreement --

14 Q. There you go.

15 A. -- with anybody.

16 Q. That's probably a key issue right there, is to
17 own the surface.

18 A. So that helped out a lot. But surely we have a
19 bond with the City, I'm sure. I don't know for a fact, but
20 they're going to get one.

21 Q. Yeah. Okay. This 1982 form versus a 1989 form;
22 is that controversy between the two?

23 A. No. We were trying to shift to the 1989 form.

24 Q. Okay. You do want the '89 form?

25 A. Well, we agreed to the '82 form. It wasn't like

1 a problem. One, they said -- we're trying to shift all of our
2 new drills to the '89 form. We feel that it's a better form.

3 Q. But you said -- I think you said that the 1982
4 form you had had an option of including abstract title costs in
5 the Copus versus in the drilling --

6 A. That's on the 82 form.

7 Q. An '82 form.

8 A. But I've never seen where that Option 1 -- it's
9 Option 1 on the '82 form under title stuff. I've never seen
10 that checked. It's always Option 2 where everybody shares in
11 the costs.

12 Q. Option 2 would be in the share of cost based on
13 their percentage?

14 A. Yes, sir.

15 Q. Okay. So this is not the highest you've ever
16 seen? There's a Ruby No. 1 --

17 A. -- well --

18 Q. -- well.

19 A. -- in Section 3, the same Township, 29 north,
20 Range 13 west. I think that title opinion, I don't want to
21 misspeak, but it was close to 100,000.

22 Q. Okay. This issue -- there's no vertical
23 separation; is that correct? In the -- are you --

24 A. No.

25 Q. You're positive of that?

1 A. No.

2 Q. So there's -- why, if you've already got a PC
3 well, probably in this quarter, which is -- actually, it's in
4 the northwest quarter.

5 A. It's in the northeast quarter, so it doesn't
6 cover the whole 320.

7 Q. So you didn't have a title -- you didn't have a
8 previous title record?

9 A. Huh-uh. And we didn't get a title.
10 Apparently -- and she says in her letter when she ordered the
11 title opinion that we didn't get a title opinion for that 160,
12 so --

13 Q. For the northwest 160?

14 A. Yes, sir.

15 Q. Or for the northeast ones?

16 A. Oh, yeah. The northeast.

17 Q. Okay. So how did you drill a well without a
18 title opinion?

19 A. Well, we did -- I think we did a field landman
20 title report. We did have one in 2003 done.

21 Q. Okay.

22 A. And it was a done by Steve Jordon. And Peter
23 Bjork, who did the title opinion, did have a copy of that field
24 landman report and used it in the list of materials examined.
25 That was one of them. But Steve Jordan used to be the land

1 manager of our company, but he is also an attorney, but he's
2 not practicing, but he went down and did the standup on the
3 160.

4 Q. Do you guys keep your previous land work in some
5 kind of a database that's in the company so that when a new
6 landman taking over can access it from the previous people?

7 A. Yes.

8 Q. It's kind of a formal process the company,
9 McElvain, has created?

10 A. Yes.

11 Q. Or is there commercial land database that is
12 getting sold to companies that --

13 A. Yeah. It's called Inertia is our system that we
14 use to set stuff up.

15 Q. Okay. I wondered if you had something like that.
16 So this -- I better not ask something totally wild here. But
17 this business about Copus -- while we're talking here about
18 legalities of cost, why are you asking the Division to set the
19 Copus rate, set the charges?

20 A. I think that's industry standard. Part of these
21 hearings is that you ask that. I think that would be more of a
22 question for Mr. Bruce.

23 MR. BRUCE: Mr. Examiner, I mean, there are some old
24 pooling orders out there. Actually, I have a dispute
25 ongoing -- not in the Division -- over some of these old

1 pooling orders that set rates of \$50 a month for a producing
2 well.

3 I don't care whether it's McElvain or ConocoPhillips
4 or anybody else, if there's no escalation or -- of course, it
5 can de-escalate, too, under that Copus. Conceivably, you're
6 stuck with a \$50, \$75 a month overhead rate when the ongoing
7 rate or the current rate is \$500 or \$750, and you would have to
8 keep coming back to update that rate under the pooling order if
9 there wasn't any adjustment, and I don't -- maybe Mr. Kellahin
10 can answer -- I can't remember when the Division started
11 putting in that language in the pooling order regarding Copus
12 about -- within the last decade.

13 MR. JONES: Okay. Because it seems that's something
14 that should be between the parties involved. And to have the
15 Division get into it -- I guess it's probably because of the
16 compulsory pooling issues. We wouldn't do that with a normal
17 well.

18 Q. (By Mr. Jones): Okay. So there was no previous
19 proposal back and forth between the companies about farming the
20 acreage out. You're 25 percent out to them, or they're
21 75 percent --

22 A. Oh, there were negotiations for years, prior. I
23 don't know. I found a couple of offer letters. I think the
24 last one was almost \$1.2 million, I think. We offered to buy
25 them out of the whole stuff. So there was ongoing negotiations

1 before we initially proposed the well.

2 Q. Okay. But this \$85,000 or \$81,000 or whatever
3 the cost is going to be, it would have been to McElvain's
4 advantage to have a cheaper cost, wouldn't it?

5 A. Oh, for sure. Our goal wasn't to go out and get
6 the most expensive thing ever. We didn't hire the most
7 expensive attorney, or we didn't sit in the back room and say,
8 "Let's spend some money here and have some fun."

9 I mean, you always want to have the lowest title
10 opinion cost possible.

11 Q. But you can't use resources from another company
12 that would be a working-interest owner, as far as land
13 resources?

14 A. Usually you can. And from -- like I said before,
15 I think that we asked for some of that title stuff. But the
16 problem is their title stuff is wrong and they're paying wrong,
17 on the well right now, too. That's one of the issues.

18 Back to Exhibit 2, the aerial. I mean, it's in the
19 city, and cities change, and ownership changes. And on our
20 Ruby No. 1 that I was telling you about, before we had to talk
21 to individual homeowners about leasing the minerals underneath
22 their house.

23 I mean, it gets expensive, and it gets hairy to do
24 this, but we still feel it's worth it.

25 Q. Okay. I see. The Dakota spacing unit was the

1 north half, though?

2 A. Yes, sir.

3 MR. JONES: Okay. I don't have any more questions.

4 Mr. Brooks?

5 MR. BROOKS: I have a few.

6 EXAMINATION

7 BY MR. BROOKS:

8 Q. In the 1982 form of JOA, you testified that there
9 are two options given on the printed forms for dealing with
10 title work, and you said one of them you had never seen
11 checked.

12 A. Yes, sir.

13 Q. Without the form before me, I don't know which is
14 the first and which is the second. Which is the one that's
15 never checked?

16 A. The one that says that it goes under the overhead
17 rates in the Copus.

18 Q. Okay. So the ones you've seen, they've all said
19 that it's a joint interest expense?

20 A. Yes, sir. And in the 1989 form, that's the only
21 option that they have.

22 MR. BROOKS: Now, Mr. Bruce and Mr. Kellahin, I think
23 we should -- I think somebody should put those forms in
24 evidence. I have copies of them in my --

25 MR. KELLAHIN: The witness will address that issue.

1 MR. BROOKS: Okay. I have copies of them in my file
2 drawer, but I don't think they're something of which we can
3 take administrative notice.

4 MR. KELLAHIN: I don't have any reason to object to
5 Mr. Harris being recalled after Mr. Corcoran testifies about
6 these forms.

7 Q. (By Mr. Brooks): Okay. Now, the title opinion
8 that you've got on this land, how was that title opinion
9 constructed? Did they examine the title all the way back, or
10 did they build on something?

11 A. Both. They had a list of what we gave them, and
12 there was a field title, a field landman title report that he
13 did look at, and then he also examined the record.

14 Q. He examined the records from sovereignty, then?
15 He didn't take it off from that field landman report?

16 A. I don't know if he used it. I don't know how
17 much he used it, but he did examine the records.

18 Q. Okay. That would make a big difference, would it
19 not, in terms of how much a title opinion would cost?

20 A. Well, our field title, if you relied on it -- I
21 mean, I didn't do the title opinion. I didn't sign my name on
22 it. So it would probably change the cost a little bit, but we
23 did submit it to him, and he felt it was a necessity, and we
24 trust him with other title matters and stuff, so I bet he used
25 it. I don't know how often he used it or how much he relied on

1 it. We'd have to get him here.

2 Q. Well, normally, an attorney doing a title search
3 will rely on what you tell him to rely on, right?

4 A. Yes.

5 Q. If you give an attorney a field landman's report
6 and tell him to build a title opinion forward from that field
7 land manager report, he'll do it? He'll give a limited
8 opinion, right?

9 A. Yes.

10 Q. But that's going to cost a whole lot less than if
11 you tell him to examine the records from sovereignty?

12 A. Yes, sir. And he examined the records.

13 Q. He examined the record --

14 A. He didn't limit it.

15 Q. -- from sovereignty to date?

16 Now, let's go back. We've talked about going back.
17 Let's talk a little bit about going forward. You said you did
18 a Division order title opinion in effect, right?

19 A. Yes. It has everybody, the revenue owners and --

20 Q. Okay. Now, did he examine the records forward
21 from the dates of the leases to the date of the title opinion
22 so that he picked up all the transfers of the royalty interests
23 from the day of the leases forward?

24 A. Can I look at the title opinion? I believe he
25 did, but I don't want to misspeak.

1 Yes. He went all the way forward to
2 November 28th, 2006.

3 Q. Okay. And that title work is going to be
4 important to have if you complete this well and get a producing
5 well and have to distribute the interests, right?

6 A. Yes.

7 Q. But it doesn't have anything to do with the
8 security for the money that's put up front in terms of drilling
9 the well because your cost recovery provisions are the same
10 regardless of who owns the royalty, correct?

11 A. You mean if we got a dry hole?

12 Q. Well, no. If you get -- you're putting up X
13 amount to drill this well -- what is it? About a million
14 dollars, something like that -- to drill this well. How you're
15 going to get that million dollars back depends on who owns the
16 leases. It doesn't matter who owns the royalties, right?

17 A. Oh, yes.

18 Q. So from the point of view of being sure you've
19 got good title for the purpose of making the commitment to
20 drill the well, all you need is a drilling title opinion. You
21 don't need a Division order title opinion for that purpose,
22 correct?

23 A. Yes, sir.

24 Q. Okay. Now, you testified about not delivering
25 the title opinion to ConocoPhillips. In your experience, is it

1 customary to deliver title opinion -- to share title opinions
2 with people who haven't paid for them?

3 A. No. You know, that's not the case.

4 Q. Especially one this expensive, I suppose?

5 A. Oh, for sure.

6 Q. And if the title -- if the Division
7 orders ConocoPhillips -- or orders that these title costs are
8 recoverable and ConocoPhillips either elects to pay their share
9 or goes nonconsent so that you will recover their share out of
10 production, in that event, after the time for objection to cost
11 is expired, will you furnish ConocoPhillips with a copy of this
12 title opinion?

13 A. If they participate?

14 Q. Well, I should have asked two questions, because
15 that's a multi-question.

16 If they participate, will you? If they elect to
17 participate in the well and put up their share of the costs,
18 will you?

19 A. Yes.

20 Q. Now, if they don't elect to participate so that
21 you're going to recover that share out of your -- with a
22 penalty out of production, in that event did you believe they
23 are entitled to the title opinion?

24 A. If we went past the cost?

25 Q. After the cost, after the time for objection

1 costs?

2 A. I'd like to work with them. That's not a
3 problem. I'd have to check that with my boss. I can't make
4 that kind of decision without getting in trouble.

5 Q. Okay.

6 A. But at that point, if this is all settled --
7 because they might want it for the Dakota well that we have an
8 interest in, too. And I know there's in-fill potential for the
9 Dakota well as well. So we'd like to work with them. That's
10 the thing.

11 Q. Okay. Just one more question, then, and this is
12 a bit -- it really is not relevant, but just to see what's
13 going on here.

14 Is McElvain an independent operator within the
15 meaning of the Internal Revenue Code so that you get to take a
16 percentage of depletion?

17 A. I believe so. But I don't want that to be --
18 we're an independent, yes. We're family owned.

19 Q. But there's a technical definition of an
20 independent for purposes of percentage depletion. It has to do
21 with the qualities of oil and gas you produce, and I can't
22 remember the qualities. But --

23 A. That, I don't know.

24 Q. You don't know the answer to that?

25 A. Let's not put me on the record saying yes or no

1 on that.

2 Q. Well, I would just say -- just make the
3 observation these high title costs would be rather nasty for a
4 percentage depletion filer.

5 MR. BROOKS: Pass the witness.

6 MR. JONES: Terry, do you have any questions?

7 MR. WARNELL: No questions.

8 MR. BRUCE: I had some follow-ups.

9 REDIRECT EXAMINATION

10 BY MR. BRUCE:

11 Q. Talking about the title opinion, Mr. Harris, you
12 know, a drill site -- say a 40-acre tract versus the well
13 unit -- you really need to know who owns the working interests
14 in the entire unit in order to drill the well?

15 A. Yeah, it wouldn't help to just get the drill
16 site. The State of New Mexico has its spacing rules, and we're
17 going to follow them.

18 Q. You have no choice?

19 A. Yes, exactly, unless I want to go to jail.

20 Q. And McElvain surely hopes and believes that this
21 well will produce hydrocarbons.

22 A. Oh, yes. We wouldn't go to any of this expense
23 if we didn't think there was a good well out there.

24 Q. So if McElvain, the operator, which is --

25 A. McElvain Oil & Gas Properties, Inc.

1 Q. -- Properties, Inc., once it drills the well,
2 whether or not ConocoPhillips joins in the well or whether or
3 not if they go nonconsent and consent to the well, you will be
4 paying -- under a pooling order -- you will be paying their
5 royalty owner, correct?

6 A. Yes.

7 Q. And if you did not do that, then both you and
8 ConocoPhillips would be subject to penalties and interest under
9 the proceeds payment tax?

10 A. Yes.

11 Q. The other thing, I think Mr. Jones was asking you
12 about the county clerk. Actually, the documents are with the
13 county clerk -- or most of them are District Court, but the
14 county clerk himself or herself -- they're usually she's --
15 they don't do anything for you in examining title?

16 A. No. No, not at all.

17 Q. The records are there, but you have to either
18 hire a title company or a landman or attorney to --

19 A. To go in there and --

20 Q. And usually all three?

21 A. Yes. She has a stamp. I don't want to be --
22 that was probably bad, but --

23 Q. And then one final thing in the San Juan Basin,
24 there was a lot of development in the '50s and the '60s in the
25 San Juan Basin.

1 A. Yes.

2 Q. Title was a lot simpler then, was it not?

3 A. Yes.

4 Q. Conoco -- I'm sure it was Conoco or Continental
5 at the time when it drilled the existing well. 40 years have
6 passed since the drilling of that well.

7 A. Yes.

8 Q. Farmington has grown quite a bit.

9 A. I'm sure, yeah.

10 Q. A lot of subdivision of properties.

11 A. Yes.

12 Q. Lots of different owners?

13 A. Yes.

14 Q. And that's why these opinions cost so much?

15 A. Yes.

16 MR. BRUCE: That's all I have, Mr. Examiner.

17 MR. JONES: Do you have any more questions?

18 MR. KELLAHIN: No questions.

19 MR. JONES: Before -- let's break, but before we do,
20 let's summarize what we got here.

21 As far as who's going to do what, Mr. Bruce agreed to
22 supply invoices for the title work too, I guess. On the record
23 here or directly --

24 MR. BRUCE: Well, I don't mind supplying them to the
25 Division.

1 MR. KELLAHIN: I think that's the easiest way.
2 Supply them for the record, and let's supplement them.

3 MR. BRUCE: I'll mark them as Exhibit 7 when I submit
4 them, if that's okay, and I'll provide copies separately to
5 Mr. Kellahin.

6 MR. JONES: And then the business about the two
7 forms, the 1982 and 1989 forms?

8 MR. BRUCE: I think Mr. Kellahin said Mr. Corcoran
9 has parts of the form.

10 MR. CORCORAN: I have the 1982 -- if I may speak --
11 to offer as an exhibit.

12 MR. HARRIS: I got an '89.

13 MR. BRUCE: Yeah. We can make copies of that.

14 MR. BROOKS: I would like to have both forms in the
15 record so we can --

16 MR. BRUCE: The complete forms?

17 MR. BROOKS: Well, all the provisions relevant to
18 title. I have the complete forms, like I told you, but I don't
19 believe I can properly take administrative notice of them.

20 MR. KELLAHIN: I think it's in Article 4 in the
21 title. That's where you'll find it.

22 MR. BRUCE: During the break we can make a copy of
23 the 1989 form.

24 MR. JONES: Okay. Let's take a break.

25

1 [Recess taken from 9:36 a.m. to 9:50 a.m., and
2 testimony continued as follows:]

3 MR. JONES: Let's go back on the record this morning.
4 And does that conclude the Applicant's case?

5 MR. BRUCE: That concludes our direct presentation.
6 We did make copies of the 1989 form, and Mr. Kellahin is going
7 to introduce that form through his witness -- one of his
8 witnesses.

9 MR. KELLAHIN: Part of the information, Mr. Bruce and
10 I thought it might be more expeditious to have Mr. Corcoran
11 identify both the '84 form --

12 MR. BROOKS: '82.

13 MR. KELLAHIN: -- '82 form and the '89 form. And
14 we'll talk about that, and then Mr. Brooks -- or Mr. Bruce can
15 recall Mr. Harris and talk about them again if he chooses to do
16 so.

17 MR. BROOKS: Okay.

18 MR. KELLAHIN: With that comment, we call at this
19 time Mr. Rich Corcoran.

20 RICHARD CORCORAN

21 after having been first duly sworn under oath,
22 was questioned and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. KELLAHIN:

25 Q. Mr. Corcoran, for the record, sir, would you

1 please state your name and occupation.

2 A. It's Richard Corcoran, and I'm employed as a
3 landman for ConocoPhillips.

4 Q. And where do you reside, sir?

5 A. I reside in Farmington, New Mexico.

6 Q. On prior occasions, have you testified before the
7 Oil Conservation Division and had your qualifications as an
8 expert petroleum landman accepted and made a matter of record?

9 A. They have been.

10 Q. With regard to this application by McElvain,
11 summarize generally what has been your involvement.

12 A. Okay. Let's see. I walked into this proposal in
13 process after it had been initiated. I picked it up to handle
14 the matter on behalf of ConocoPhillips.

15 Q. When you started that process, was this in
16 January of last year?

17 A. It was in late November of last year.

18 Q. And then, from then to now, have you been the
19 primary landman for ConocoPhillips responsible for the various
20 details associated with this proposal?

21 A. I have been the central point of contact for this
22 particular proposal.

23 Q. As part of your experience, how long have you
24 been a professional landman?

25 A. I've been in the industry as a landman in excess

1 of 30 years, and 20 years in this basin.

2 Q. As part of that process, you have negotiated and
3 understand Joint Operating Agreements?

4 A. Yes, sir.

5 Q. And you've responded to JOAs and negotiated --

6 A. That is correct. And we have routinely worked
7 within the bounds and changed various parts of those agreements
8 to effectuate whatever the companies involved are trying to get
9 done.

10 Q. As part of your preparation for doing your work
11 in this period, did you make yourself knowledgeable about the
12 existing status of title information at ConocoPhillips?

13 A. I did. After being handed the project, I began
14 by looking in our files and studying the material in those
15 files that were available to us. And that included, among
16 other things, reviewing the existing '66 title opinion and the
17 '73 title opinion and the 2003 title report, three opinions --
18 two opinions and one report that all were within our files.

19 And it has been indicated, our partner, our major
20 partner in the initial well is McElvain. They are the largest
21 additional partner there.

22 Q. During this period of time, if there was a
23 ConocoPhillips employee dealing with the corresponding person
24 at McElvain, would that person have been you?

25 A. Yes, that's correct.

1 MR. KELLAHIN: We tender Mr. Corcoran as an expert
2 landman.

3 MR. JONES: Any objections?

4 MR. BRUCE: No objection.

5 MR. JONES: Mr. Corcoran, what other basins did you
6 work in? You said 10 years in another basin?

7 THE WITNESS: Yes. Ten years with Mobile Oil
8 Corporation -- well, a number of corporations, predecessors
9 to -- one of the predecessors to Conoco and Mobile Oil
10 Corporation at which time I worked the -- I started out in the
11 Mid-Continent area, then moved to Alaska, and offshore
12 California, and then, you know, throughout the Rockies. I've
13 worked most of the basins throughout the Rockies.

14 Now, there's one or two I didn't spend a lot of time
15 in, but the majority of my emphasis since coming to work in the
16 San Juan Basin over 20 years ago has been focused on this
17 basin.

18 MR. JONES: Mr. Corcoran is qualified as an expert in
19 petroleum land matters.

20 Q. (By Mr. Kellahin): Mr. Corcoran, let's go to the
21 central issue before the Examiners this morning. Why is
22 ConocoPhillips here?

23 A. We're here because we can't reach an agreement
24 concerning costs associated with title surrounding this matter.
25 As a matter of fact, we have been able to bridge every other

1 issue, whatever they were, outside of that. That's the one
2 issue that makes us show up here today.

3 Q. Was there -- is there any remaining issue between
4 you as to which form of the Joint Operating Agreement to
5 utilize?

6 A. No. We've reached agreement with McElvain to use
7 the 1982 form. We've asked for certain typical commonly
8 changed changes to the '82 form. And they -- they have granted
9 all of those, the few of those that there are, with one
10 exception being the issue concerning the cost of the title.

11 Q. Mr. Harris mentioned that their work and your
12 work show a difference of about 3 percent. Is that a remaining
13 issue between the companies?

14 A. No. We still think that there is -- there is
15 room for question. However, we will not -- we have chosen not
16 to make that an issue, as we have chosen not to make other
17 items issues, in order to work this matter through.

18 Q. If McElvain is successful with its compulsory
19 pooling application and is allowed to charge these disputed
20 title costs, am I correct in understanding that about
21 70 percent of that total cost is going to be borne by
22 ConocoPhillips?

23 A. Well, at some point during our discussions, they
24 did agree to make that 50/50 of those costs. So 50 percent, I
25 assume that they would continue to do that. Now, they could

1 change that now that we've agreed -- now that we've --

2 Q. There is no settlement on that number?

3 A. Not in stone.

4 Q. Outside of a settlement, if the Division orders
5 that that cost be included in your elections for a pooling
6 order, then 70 percent of it is yours?

7 A. That is correct.

8 Q. Give me -- let's start, then, in November of last
9 year when you started working on this. Was it '06 or '07?

10 A. It was '07, and at that time it was apparent from
11 the work that had been done that there were two major issues.
12 Those issues were the vintage of operating agreement to be used
13 and the question of interest, the three percent interest.

14 After reviewing the proposal and the correspondence
15 in our files, I had occasion to talk with Mr. Harris of
16 McElvain and discuss the issues. As I said, we were able to
17 agree to everything other than what do we do about this cost.

18 Q. Let's focus on the operating agreement --

19 A. Yes, sir.

20 Q. -- so that we have those before Mr. Brooks, and
21 he can begin thinking about the actual forms themselves.

22 I've given you what is marked as ConocoPhillips
23 Exhibit No. 2. Do you see that?

24 A. I do.

25 Q. This is the copy of what, sir?

1 A. Of the 1982 operating agreement form.

2 Q. And it would be -- you prepared this?

3 A. Yes, that's correct.

4 Q. Have you selected the appropriate pages out of
5 the '82 operating agreement that deal with how voluntary
6 agreements are executed under this form?

7 A. As to the issue in question in this situation,
8 yes, I have. And that is Pages 2 and 3 of the Standard 1982
9 Model Form Operating Agreement.

10 Q. We'll come back to what it says in a minute.

11 The other thing I've given you is marked as
12 ConocoPhillips Exhibit No. 3 --

13 A. Okay.

14 Q. -- which is the copy of the '89 agreement that
15 Mr. Brooks provided me. Does it appear to you that what you're
16 looking at as part of the '89 agreement is the corresponding
17 title pages with that agreement that deal with this issue?

18 A. It is. It is the same.

19 Q. Let's go back to the issue of the '89 agreement.
20 Is it your testimony that the parties have agreed not to use
21 the '89 agreement?

22 A. It is my testimony that we decided not -- between
23 the parties -- that we will not use the '89 form, but rather
24 the '82 form.

25 Q. Now, let's look at the title options under the

1 '82 agreement to see what those possible choices are and to
2 have you conclude from your experience what ConocoPhillips
3 does.

4 A. Okay.

5 Q. My point, Mr. Corcoran, is going to be a final
6 question about whether you think it's appropriate for
7 Mr. Brooks and Mr. Jones to use the JOA form from '82 as an
8 example by which they can make a solution in the pooling order
9 on this issue.

10 A. Okay.

11 Q. So let's go back and talk about what the '82 form
12 provides in the way of options and what ConocoPhillips does
13 with those options.

14 A. As to titles, which is the title of this
15 particular article of the standard operating agreement used
16 industry-wide, it states in the very first sentence of this
17 agreement -- and this is an agreement that is generally
18 accepted throughout the industry as the vehicle under which you
19 operate wells and how you conduct that operation.

20 And it tells you that the, "Title examination shall
21 be made on the drillsite" -- and it says, "drillsite," and it's
22 very specific, and that is a defined word in this operating
23 agreement -- "of any proposed well prior to commencement of
24 drilling operations," or -- and it says, "If the Drilling
25 Parties so request, title examination shall be made on" --

1 various other leases. Okay? Number one.

2 And so to me, it's very specific that that's a
3 choice. Then it goes into Option No. 1 and Option No. 2.
4 Those two options are simply the manner under which you pay.
5 Do you pay it as a direct charge? Or do you pay it as an
6 overhead charge, period? That's what those options allow.

7 Then the last sentence of this A -- Article A --
8 Article IV-A is, "No well shall be drilled on the Contract area
9 until" -- as it reads there. And this particular operating
10 agreement has been altered from, "Until after an examining
11 attorney or title has been accepted by all of the parties," to
12 instead that, "Until it's been accepted by the operator" --
13 where we chose to alter this operating agreement, which is
14 traditionally done and commonly done. Our alteration was going
15 to be as to an amount that we would be willing to pay towards
16 title, a maximum amount, period. And, therein, we reached an
17 impasse.

18 Q. When I'm looking at this particular form, this
19 Exhibit No. 2, did this come out of the Joint Operating
20 Agreement provided to you by McElvain?

21 A. It did, as they have it altered here.

22 Q. So when I look at Page 2 and see these lined-out
23 portions --

24 A. Yes.

25 Q. -- those are their line-outs?

1 A. Yes, but I did not go onto item B of that
2 particular article --

3 Q. That's the "Loss of Title"?

4 A. Which is whether joint loss or individual loss.

5 Q. As to this form, then, ConocoPhillips would have
6 made a further modification as to Option No. 2?

7 A. They would, and it would have made this joint
8 loss situation, which we had discussed with them, that, no, we
9 wanted that to be individual, and that is normally done. It's
10 nothing out of the ordinary. And they had agreed that
11 individual loss would be acceptable in this case to them, so
12 that, you know -- we had a verbal agreement to that effect.

13 Q. Integrate for me the past title opinions that
14 were available in the north half of this section, regardless of
15 what formations are associated with this, and how you would
16 have gone about consolidating this for a drill tract for a
17 Fruitland Coal well.

18 A. Okay. There was a 1966 title opinion expressed.
19 This particular opinion covered all zones from the surface to
20 the base of Dakota. It covered the north half in the same
21 spacing unit as we're speaking of here for the Fruitland Coal.
22 It covered from the surface to the base of the Dakota. That
23 was done in 1996.

24 A well was drilled based on that title opinion, which
25 has been in continuous paid since that date, wherein both

1 parties, both McElvain as a 25 percent interest owner -- or
2 whatever, 20-something percent interest owner -- and ourselves
3 as 70-percent interest owner, both parties have marketed their
4 own gas and have been paid all this time.

5 Now, subsequent to that, there was a 1973 title
6 opinion expressed on the same properties covering the same
7 area. It confirmed what was stated in the '66 operating
8 agreement. McElvain, as a working-interest owner, is entitled
9 in my mind, to that operating agreement without question. When
10 they have paid their proportionate share of that title opinion,
11 of course they are entitled to it.

12 MR. BROOKS: You said, "Is entitled to the operating
13 agreement." Did you mean the title opinion?

14 THE WITNESS: I'm sorry. I meant the title opinion.
15 My bad.

16 A. And so I'm somewhat baffled sitting here why they
17 don't have it. They should have it. Anyway, the 1973 came
18 along. That title opinion confirmed what was done in 1966.

19 And then in 2003, McElvain went ahead and did a title
20 report, which, as you may be aware of, is a little different
21 than a title opinion. And it was on the basis of that title
22 report covering half of the spacing unit, being the northeast
23 quarter. They chose to drill a well on the strength of that
24 title report. What that tells me is they had enough faith in
25 it that it was in good standing. And my company agreed.

1 So, what I would have done is I would have updated --
2 simply in the records, I would have confirmed that there were
3 no splits in ownership, which was what's been done here. But
4 that can be done by simply, in the county records, looking at
5 it without the need for a title opinion, without the need for a
6 lot of work.

7 And I would have done it from 1973 forward as to the
8 northwest quarter, and I would have done it from 2003 forward
9 as to the northeast quarter. That's how I would have handled
10 this. And if I had run into any issues, well, then, I would
11 have had an opinion expressed on those issues only.

12 Q. Do you have an understanding of what you believe
13 to be a general range of drill site title opinions within the
14 community of Farmington for drilling wells?

15 A. I do. My company is very active in what we call
16 the Tri-Cities area, which encompasses Farmington, Aztec and
17 Bloomfield. In the last year we've updated in excess of 29
18 opinions. And now we have done -- and I'm not telling you
19 there is an exact duplicate of this particular situation, but
20 they are updates of title opinions. Some of them are title
21 opinions. And our average cost of those 29 has been \$7,200.

22 Q. Mr. Corcoran, do you think ConocoPhillips should
23 pay this approximately 70 percent interest in the
24 \$81-\$82,000 --

25 A. No, sir, I don't. And the reason I don't is as I

1 so stated, that I would have simply updated. I would not have
2 done a new title opinion all the way back to conception, and I
3 certainly wouldn't have done a Division order title opinion at
4 this point. I might have done it later, but not at this
5 moment.

6 Q. To your knowledge, do your files reflect any
7 attempt by McElvain to obtain from you title information to the
8 north half of the section?

9 A. None whatsoever. I have no knowledge of them
10 having asked for this. As a matter of fact, we routinely share
11 title, particularly with a partner, in an effort to keep cost
12 down. Especially if a partner paid for that title opinion, I
13 couldn't deny it.

14 Q. Assuming you thought it was reasonable?

15 A. Sure. Correct.

16 Q. When we -- to the best of your knowledge, was
17 there any collaborative attempt made by McElvain to have
18 ConocoPhillips participate in the title opinion?

19 A. No, sir. And again, I don't have the title
20 opinion in my hands.

21 Q. You've never had it, right?

22 A. No, at no point. I've had a couple of tract
23 descriptions or three or four tract descriptions -- maybe more
24 than that -- where I would ask Rick for them. He would provide
25 me the tract descriptions, the page that showed that tract

1 description. On that, what I noticed is that this thing was
2 dated February 2nd of 2007. And what caught my attention was
3 that it wasn't until five months later that they contacted us
4 at all, period.

5 And so I'm sitting here, and it was not a
6 collaborative effort. It was very definitely an individual
7 effort on their part to have this title opinion. And then -- I
8 don't know why they did what they did, but then after that,
9 only after that, was I sent a bill for it.

10 Q. Do you have an opinion as to whether or not the
11 title provisions in the Copus -- I'm sorry -- in the JOA
12 agreement of '82 provide guidance for what the Examiners ought
13 to do in this pooling case?

14 A. Yes, sir. In -- my reading of it is that, you
15 know, it gives us an election. And when you routinely change
16 that to a -- when it's set up as an individual loss, it's set
17 up so that people will individually stand behind their title,
18 that they will do whatever they need to do to perfect their
19 title if it's necessary.

20 Q. Is Conoco willing to do that?

21 A. Absolutely. Have been all along and have
22 requested that we treat this this way, that we will stand
23 behind ours, you stand behind yours. Don't bill us for yours.
24 We'll take care of our own.

25 Q. With those option provisions and further edits in

1 the '82 JOA, how would you suggest the Examiners translate that
2 into the requirements under the compulsory pooling order?

3 A. Well, I struggled over that. I was trying to, in
4 my understanding of what the Commission does -- and, you know,
5 I don't pretend to be an expert on how you contemplate matters,
6 but as I see compulsory pooling, when you set it up, you don't
7 require the applicant to perfect another party's interest
8 within that pooled area. If their title should fail, for
9 whatever reason, I don't understand that -- it's not my
10 understanding that they are liable for that, the applicant.
11 Consequently, I would want them to treat this similarly; that
12 is, each party be treated on an individual loss basis.

13 Q. Are you aware of any case where the Division has
14 attempted to decide title disputes?

15 A. I am not. Not at all.

16 Q. What is your concern about the pooling order in
17 this case, Mr. Corcoran?

18 A. My concern is that we're going to be saddled with
19 a charge that I don't think is fair and just.

20 Q. But for that charge, you would then have to elect
21 to participate, thereby waiving your objection, or in the
22 alternative, exclude that and be nonconsent?

23 A. That's correct. Exactly. And I almost regret
24 that we have to be here for that issue. I regret having to
25 take your time and ours and McElvain's.

1 Q. Conoco, in fact, does want to participate?

2 A. Absolutely. We've been clear on that from the
3 start. We think this is a good project. We want to be part of
4 it. We've managed to bridge any issues here, other than an
5 issue of title. And I don't know why they did what they did,
6 but I don't think I should be saddled for charges that are
7 unnecessary.

8 Q. You don't have any dispute over the fact that
9 they have a minority interest and you have 70 percent as to who
10 operates it?

11 A. Well, you know, we would prefer to operate, but
12 no, we'll go ahead and allow them. And there are issues here
13 that we could argue, but we chose to forego those. Some of
14 those issues are far in excess of this dollar amount, so -- but
15 those are side issues.

16 MR. KELLAHIN: We have nothing further. That
17 concludes my examination of Mr. Corcoran.

18 We move the introduction of the exhibits he
19 sponsored, which are 2 and 3.

20 MR. JONES: Any objection?

21 MR. BRUCE: No objection.

22 MR. JONES: Exhibits 2 and 3 will be admitted.

23 Mr. Bruce?
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CROSS-EXAMINATION

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BY MR. BRUCE:

Q. Mr. Corcoran, how long have you worked for
ConocoPhillips?

A. Six months.

Q. You were at Energen before that, weren't you?

A. I was. And I was at Dugan Production for 10
years and Energen for seven or eight.

Q. Okay. You haven't -- in your career, you have
not worked for either Conoco Inc., or Phillips Petroleum?

A. No, sir, I haven't.

Q. Now, you mentioned the 2003 title report. That
was for a Pictured Cliffs well?

A. That is correct.

Q. And the spacing on that is --

A. 160, half of the spacing unit in question.

Q. Now, you mentioned your title opinion costs.
Does ConocoPhillips drill wells without title opinions?

A. No, sir. Now, wait a minute. Let me say that,
no, we always have a basis for drilling a title opinion. Now,
it may be--

Q. If you were dealing with a new Federal lease, you
wouldn't need a title opinion, for example --

A. That is correct. That is correct.

Q. -- for something like that? But if you were

1 dealing in an area where there were -- it was an older lease
2 vintage, you would -- and I'm not trying to pin you down here.
3 I'm just saying, it's your standard practice to have a title
4 opinion before you commence a well?

5 A. Yes, a clear understanding of the ownership.

6 Q. Now, you mentioned your average title opinion
7 costs. Can you tell me, did those -- for drilling a well, did
8 those opinions cover the entire well unit?

9 A. No. They were tracts of the well unit, and I'll
10 make the statement that they're not exactly the same as this
11 issue, this situation. I know they're different. But that's
12 what we have experienced, for whatever that's worth.

13 Q. Okay.

14 A. I know it's not a direct apples-to-apples
15 comparison, if that's what you mean.

16 Q. Yeah. I can't tell from what you told me whether
17 it was fee lands, federal lands.

18 A. It may not have been exactly 41 tracts or how
19 many tracts are in this thing. I don't know, according to
20 their opinion -- or to your opinion, I should say.

21 Q. Okay. Now, once a well is drilled and a -- it's
22 a commercial well, it's not plugged and abandoned, would Conoco
23 get a Division order title opinion?

24 A. If we needed to, yes. If there were any changes,
25 yes, we would.

1 Q. Okay. And is that a proper cost to be charged to
2 the working-interest owners of the well?

3 A. At that time.

4 Q. And I forgot the name of it, your -- the Dakota
5 well you operate?

6 A. Yes, the Federal 1550.

7 Q. 15 No. 1?

8 A. Yes.

9 Q. What quarter, quarter section is that located in?

10 A. It's in the northeast quarter. I'm not sure if
11 it's northeast -- north. I think it's northeast, northeast.

12 Q. Okay. And just one more question: I'm not
13 really -- I don't want to put words in your mouth, but you're
14 saying that title opinion costs are -- just ignoring the
15 cost -- but title opinions are a valid component of drilling a
16 well and should be charged to the working-interest owners?

17 A. Sure. Well, yeah. Yes.

18 Q. But what you're charging here -- what you're
19 challenging here is really the reasonableness of the costs of
20 McElvain's opinion?

21 A. I am challenging that. I'm also challenging
22 whether or not it needed to be done at all at this point, if
23 that makes sense. I'm splitting hairs on you, but we certainly
24 would not drill a well without doing it.

25 Q. Okay. That's fine.

1 MR. BRUCE: That's all I have for Mr. Corcoran.

2 EXAMINATION

3 BY MR. JONES:

4 Q. Mr. Corcoran, would you totally trust another
5 company's title?

6 A. No.

7 Q. So -- okay.

8 A. I'm going to review it, and if I have questions,
9 I'm going to question those issues.

10 Q. Okay. You would take it and review it. But it
11 seems like we got a case of some sunk costs that maybe should
12 or should not have been sunk, but it seems like it's -- each
13 individual -- basically, each owner -- is it your opinion they
14 are responsible for their own title work?

15 A. Yes, it's their election. It's my opinion that
16 each party needs to be liable and stand behind what they
17 purport to own.

18 Q. Okay. So is it -- let me get this straight here.
19 So McElvain proposed a well, and you would expect them to do
20 their own background work to determine whether the economics of
21 the well is good, the title is good, and all of that, and then
22 come propose the well; is that correct?

23 A. Yes. I mean, now, the title I would not do
24 detailed prior to proposing the well. I would do enough work
25 to satisfy myself who I needed to speak to and the state of

1 their title at that point.

2 Q. In your experience, do operators that are
3 proposing wells just come to preliminarily do some title work
4 and then talk to the working-interest owners that are going to
5 be involved before they proceed with additional title expense?

6 A. Yes, sir. And it's usually a collaborative
7 effort. And it was not in this case.

8 Q. Okay. Can you point to the dates when it should
9 have been done or the dates that it was not done in this case?

10 A. I don't feel like I can do that, because we're
11 talking about matters that are beyond my privilege. I mean,
12 we're talking about statements being made that they had
13 requested this material and it was denied them. I know nothing
14 about that.

15 They then -- then there are dates when they ordered
16 the opinion, and there are dates when they notified us that it
17 existed, and so I don't know. I would have done it up front.
18 I would have done it early on in the matter.

19 Q. This 29 opinions in the last year or so, an
20 average of \$7200 for ConocoPhillips, would that \$7200 have been
21 included in any AFE for a voluntary and for a compulsory
22 pooling case?

23 A. Honestly, I don't know. I'm not sure how we
24 handle that.

25 Q. But you do use the model 1982 agreement?

1 A. Yes, we do.

2 Q. And you usually check Option No. 2?

3 A. Yes, that's correct.

4 Q. Okay. The modification of Option No. 2 and the
5 operator, the very last clause is struck out, and the operator
6 was inserted. You state that the crux of the matter here is
7 that you would rather have a number put in there; is that
8 correct?

9 A. Well, what we did in this case is we wrote and
10 asked them if they would willingly agree to a maximum amount we
11 could spend for that title opinion. And if they would insert
12 that in the opinion at this point -- or in the JOA at this
13 point, then we would proceed. Let's go.

14 Q. Okay.

15 A. Because we looked at what had transpired and made
16 a judgment as to what that should have been.

17 Q. Okay. Okay. I remember you talking about a
18 possible verbal agreement to share the title costs 50/50, but
19 if this gets compulsory pooled, do you agree that it would
20 be --

21 A. 70/30.

22 Q. -- or your percentage of the working interest?

23 A. I suspect that's what would happen.

24 Q. Unless you go to a voluntary agreement, and you
25 would choose not to be compulsory pooled?

1 A. Yes.

2 Q. Then you could agree on what you guys -- whatever
3 you can work out?

4 A. That's what may happen.

5 Q. Okay. It looks like the Division's being asked
6 to determine reasonableness of some title abstract costs here,
7 and like, for instance, the Division is being, in most cases,
8 to determine reasonableness of Copus costs. Copus costs, we
9 have some statistics that are gathered by an agency that we can
10 kind of look at. But we don't -- how do you propose the
11 Division look at the reasonableness of title costs here?

12 A. What I would propose, as I have tried to
13 articulate -- and I admit, I'm not quite making it as easy as I
14 would like it to be -- what I would like to say is, if you'll
15 examine what was -- two things: One thing is the
16 reasonableness of the cost. And if you'll examine what was
17 done in this case, that is, from my perspective, denying from
18 inception to 1966, inception to 1977, and inception to 2003,
19 you're -- I'm being saddled with those costs when I don't think
20 they were necessary; and then secondly, whether it should be
21 considered in the first place at all, whether this is a matter
22 that should be a part of what it is that's to be charged.

23 When in the standard agreement used throughout the
24 industry, it's optional as to joint loss or individual loss.
25 And it's set up to be individual loss in the first place unless

1 you change it. So I don't know if it's even a matter that
2 should be discussed in the first place. But if it is, then the
3 discussion should turn to how reasonable was that cost.

4 And I don't know why they did what they did. Was
5 there other benefits to be gained? I don't know. Was it for
6 compulsory pooling reasons? Was it for -- I don't know why. I
7 could speculate a dozen things, but that doesn't matter, I
8 guess.

9 Q. But no matter whether ConocoPhillips ends up
10 paying for some work that McElvain has done on the title, would
11 ConocoPhillips themselves go back and update --

12 A. Yes, sir.

13 Q. -- the Dakota title, so that you would spend some
14 money yourself anyway?

15 A. But not necessarily a title opinion and not
16 necessarily -- and I certainly wouldn't go back prior to '66,
17 without question. That's not even an issue. Because I've had
18 this well under pay from the date of conception. I mean, I've
19 been paying it continuously, as has McElvain as to their
20 particular share of this well.

21 We're both marketing our respective interest, whether
22 it's 75, 25, whatever. And it has been continuous since that
23 well started producing. Consequently, since there's no changes
24 in the interest up the hole, there's very little I need to do
25 there -- I mean, very little -- because it's all in your

1 Division order files now.

2 Q. If you drill another Dakota well in the, I guess,
3 in the northwest quarter, would you have to update your title?
4 Would you just pay on the JOA for that one?

5 A. We pretty much -- yes. We would do a cursory
6 review, but it would be cursory.

7 Q. What if the other owner in that Dakota well
8 disputed your --

9 A. Then --

10 Q. -- that would be a case for the district courts.

11 A. I would negotiate with them, and I would tell
12 them, "That's your costs. I would be happy to order whatever
13 title opinion you want, but my title is clear. And I feel
14 secure that it's so secure that I -- you know, if anything
15 should happen here, I will be the liable party," and thereby,
16 individual loss.

17 Q. Okay. Do you agree with the 319.4 acres?

18 A. Yes, sir.

19 Q. And BLM owns some acreage there, but not the
20 State Land Office at all?

21 A. I'm sorry?

22 Q. The State of New Mexico doesn't own anything in
23 this?

24 A. No. The Federal Government has one lease.

25 Q. Okay. Let's -- the Copus amount is okay? \$550

1 and \$550?

2 A. I have no objection to that amount.

3 MR. JONES: Mr. Brooks?

4 MR. BROOKS: Okay. Thank you.

5 EXAMINATION

6 BY MR. BROOKS:

7 Q. On Exhibit 2, the copy of a portion of the 1982
8 AAPL form --

9 A. Yes.

10 Q. -- the JOA, looking at page -- the second page,
11 which is numbered Page 3 here, it looks like this one is marked
12 up to be a joint loss, for the joint loss option; is that
13 correct?

14 A. Yeah. It's marked up to be a joint loss, yes.

15 Q. Right?

16 A. That's correct. And we discussed this -- myself
17 and Rick discussed this, I'm referring to Mr. Harris of
18 McElvain --

19 Q. Right.

20 A. -- discussed this, and I told him we needed for
21 that to be changed back to an individual loss basis, and he was
22 in agreement with that. We were waiting for -- we were
23 waiting -- my company was waiting for the pages that -- to be
24 changed in the fashion we discussed before signing the
25 operating agreement --

1 Q. Right.

2 A. -- that was agreed.

3 Q. It's actually pretty common in the oil industry
4 to elect joint losses; is it not -- in operating agreements; is
5 it not?

6 A. Only in the case of undivided interest, sure. If
7 you have undivided interest, great, then we're joint loss all
8 the way. But we don't. Now, that's not totally correct.
9 There are a couple of leases that we have undivided interest,
10 but by and large, if I have a lease and somebody else has a
11 lease, you stand behind yours and I stand behind mine.

12 However, if we each have 50 percent of the same
13 lease, sure. Then in that case, joint loss is just fine. If
14 we hold separate and distinct interests, then, no. I don't
15 want to stand behind your interest.

16 Q. Yeah. I asked you that question, and it was kind
17 of a pointed question in a way, because I've never understood
18 why people elect joint loss as much as they do. It just seems
19 to me that the prudent way to do it is individual loss. That's
20 my professional opinion.

21 A. Absolutely. And I feel the same, but I feel as
22 though myself and the attorneys we use are going to do a job
23 that I can emphatically say, "This is correct, and if it's not
24 correct, I'm willing to pay."

25 Q. Now, Mr. Harris probably went over this, but I

1 want to be sure I'm clear on this. The wells that are on this
2 property, there are two wells on this unit?

3 A. Yes, sir.

4 Q. Existing?

5 A. Correct.

6 Q. And one of them is a ConocoPhillips well; is that
7 correct?

8 A. That is correct.

9 Q. With what formation is that?

10 A. That's the Dakota with the spacing unit of the
11 same size.

12 Q. And that's an old well?

13 A. That's correct.

14 Q. When was it drilled?

15 A. 1966.

16 Q. And that has a 320-acre unit?

17 A. Yes, it does. And that title opinion was done
18 for all depths through the base of the Dakota.

19 Q. And that's the same unit, a lay-down unit?

20 A. Yes, it is.

21 Q. Okay. And the other well is McElvain's well?

22 A. It is, correct.

23 Q. It's in the northeast quarter?

24 A. That's correct.

25 Q. A 160-acre unit?

1 A. Hutchinson No. 1R, that's correct.

2 Q. And that was drilled when?

3 A. 2003, I believe.

4 Q. Okay. Now, you mentioned title opinions that
5 ConocoPhillips has.

6 A. Yes, sir.

7 Q. Would you go over those again for me?

8 A. There are two. The original title opinion was
9 done in 1966 in preparation to drill our Dakota well. It
10 covered all depths. There was another opinion later done in
11 1973, same area, same depths, confirming everything. I don't
12 know whether there was a Division order title opinion much
13 later or exactly why it was done, but anyway in '73 it was
14 there. I think it was in conjunction with the acquisition of
15 some properties. I'm not quite sure.

16 And then in 2003, in preparation for McElvain to
17 drill their Hutchinson 1R well -- is a PC well in the northeast
18 quarter -- they did a title report. And I emphasize,
19 obviously, "report," you know, because there's a difference
20 of --

21 Q. I have a general understanding of that.

22 A. I know you do, but anyway -- so they did a title
23 report. That title report received a lot of scrutiny, and that
24 report was adequate for them to drill that well on. So I would
25 have built title from then forward.

1 Q. Now, McElvain had the title report done?

2 A. Yes, sir.

3 Q. Okay. Now, the previous title opinion
4 ConocoPhillips had done, right?

5 A. Yes, sir. Our predecessor, correct.

6 Q. And Mr. Evans testifies that McElvain never had
7 those. You don't have any information to the contrary?

8 A. They were a 25 percent interest owner back then,
9 McElvain was, in the well.

10 Q. But you don't know whether they got those title
11 opinions or not?

12 A. I don't know that, sir. But I can't -- you know,
13 it's baffling.

14 Q. Yeah. Let's see if there's anything else I need.
15 Oh, yeah, One other thing. As a landman, I assume you're very
16 familiar with types of provisions you customarily find in oil
17 and gas leases.

18 A. Some, yeah. There are lots of squirrely things
19 out there.

20 Q. Lots of things in oil and gas leases, but very
21 often there is a provision to the effect that if the lessor
22 assigns his interest or a portion thereof, that he will give
23 notice thereof to the lessee --

24 A. Yes, sir. Exactly. And that's very standard
25 language.

1 Q. -- unless he can continue to pay the assignor
2 until he receives that?

3 A. That's exactly what's going on here in
4 conjunction with what was talked about earlier.

5 Q. I don't know about you, but I haven't seen that
6 many leases that didn't have that kind of provision.

7 A. I haven't either. And -- yeah.

8 Q. And if you have that kind of provision in it
9 that -- that kind of provision in the leases that produces --
10 well, I don't know what ConocoPhillips does.

11 A lot of companies will pay on an old Division order
12 title opinion, and they have that kind of provision in the
13 leases, and they know they've been dealing -- have been paying
14 these people without getting a full Division order title
15 opinion on new wells.

16 Does ConocoPhillips follow that policy, or do they
17 also get a new Division order title opinion on a new well?

18 A. I'm going to claim ignorance. I'm somewhat new
19 with the organization, but I've got to believe that their
20 policies -- if there are any questions whatsoever, they would
21 update it.

22 MR. BROOKS: Okay. That's all the questions I have.

23 MR. JONES: I have a few more questions. I think
24 Mr. Brooks covered them.

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FURTHER EXAMINATION

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BY MR. JONES:

Q. Mr. Corcoran, can you say whether McElvain asked for a copy of that 1973 confirmation of the title opinion from ConocoPhillips or not or whether ConocoPhillips refused it?

A. No, sir, I cannot. I wasn't privileged to that discussion. I find nothing in our files alluding to that. I'm really amazed that whatever happened there --

Q. That it wasn't used?

A. Not only that it wasn't used, but if they had requested it, particularly in the case where they're 25 percent interest owner and thereby would have paid 25 interest of that --

Q. Original --

A. -- title opinion. Why we would deny them that, I don't understand. But, you know, if it happened, it happened. I don't understand why.

Q. Okay. The other question is: The Dakota payments and distribution of cost so far on that 1966 Dakota well, from your looking at the title -- first of all, have you guys already done a title on this?

A. We're doing the updating stuff as we are talking.

Q. So you're working on it right now?

A. Yes, sir.

Q. So you don't know for sure if you dispute this

1 title?

2 A. I do know, because he's provided me -- I do know,
3 because he's provided me with a Joint Operating Agreement that
4 cites the same leases that are in the original one. And he's
5 sat here and testified that there's been no Division -- there's
6 been no severance of interest up hole. Consequently, I know
7 the answer to this. It's just, you know, we'll document what
8 we need to.

9 Q. Okay. That being the case, the distribution of
10 cost for the Dakota and the revenue from the Dakota gas, do you
11 think it was done correctly all these years?

12 A. I do think so. And if there's been changes and
13 I see -- a little bit more background, if you want it.

14 That original title, when we drilled that original
15 well in 1966, they came before the Commission because there
16 were two or three unknown parties at that time, which they
17 force-pooled. Those interests they have picked up. They
18 have -- to my knowledge, they've notified us of that until, you
19 know -- so the minute upon we're notified, we will put that
20 money in suspense, and upon seeing appropriate documentation
21 that is provided in the lease, we will then pay them in lieu of
22 whoever the party may be that we're paying to presently. And
23 for all I know, it's the City or the State. I don't know for
24 sure.

25 Secondly, there was an interest which is now in the

1 City's hands, which stemmed from an individual going bankrupt
2 and their interest going to tax sale, and from the tax sale,
3 the City acquired it, and we've been paying the City. Now,
4 they have taken a lease on that, and they've just -- I was
5 just -- as a matter of fact, I haven't been provided with a
6 copy of that lease from them yet.

7 We've had this discussion, and I told them upon
8 receipt of that lease we'll suspend that money. Until such
9 time as we have that, we don't have notice of it, actual
10 notice --

11 Q. So --

12 A. -- or -- I don't know which. Whatever it is.

13 Q. So you think that Dakota agreement, were there
14 interests that were --

15 A. Paid wrong?

16 Q. Well, not paid wrong, but actually non-locatable
17 or non-determinable so that ConocoPhillips had money in
18 suspense all these years waiting on --

19 A. It may be. And as soon as we're provided with
20 the appropriate documentation, we will definitely jump on that.

21 Q. Okay. Thank you.

22 MR. JONES: Terry, do you have any questions?

23 MR. WARNELL: I don't think I have any questions,
24 maybe just a little clarification.

25 We've talked quite a bit about the loss basis,

1 whether joint or individual, are the two companies in agreement
2 now that you can live with joint loss basis?

3 THE WITNESS: Individual loss. Yes, we have verbal
4 agreements that this will be changed back to an individual loss
5 basis.

6 Now, you know, that's assuming we sign this operating
7 agreement, but we're not going to sign this operating agreement
8 unless, in addition to that, this other change is made whereby
9 we can limit our exposure to the cost of the title that was
10 done here.

11 And so to respond to you, it would be -- it would be
12 individual loss. We have agreed to that verbally, but this may
13 all go away if we can't get over this last hurdle.

14 MR. WARNELL: Okay. Thank you.

15 RECROSS-EXAMINATION

16 BY MR. BRUCE:

17 Q. One question. You asked about the 1966 opinion,
18 and that covered the north half, right?

19 A. Yes, sir.

20 Q. How many pages was it?

21 A. Here -- I got it here. As a matter of fact, I'll
22 give you a copy.

23 Q. I got enough on my own.

24 A. Yeah, 17 pages.

25 Q. That's all I have.

1 A. That was the drilling opinion. The Division
2 order title opinion after that was another 18 pages.

3 Q. 18 plus?

4 A. Yeah.

5 MR. BRUCE: Okay. Thank you.

6 MR. JONES: Mr. Kellahin?

7 MR. KELLAHIN: Mr. Examiner, at this time, we've
8 chosen not to call Mr. Helton as a witness, and we're prepared
9 to conclude our case and make a short closing statement.

10 MR. BROOKS: I have one more question I'd like to ask
11 Mr. Harris.

12 FURTHER EXAMINATION

13 BY MR. BROOKS:

14 Q. Mr. Harris, I'm assuming that any agreement you
15 have with ConocoPhillips with regard to the amount of their
16 interest if there's a dispute about it that that would be
17 contingent with their resolving all issues; is that correct?

18 A. A dispute regarding their interest?

19 Q. Well, you indicated that there's some uncertainty
20 as to the exact amount of ConocoPhillips' interest, as I
21 understood your testimony.

22 A. Well, what they said on their response --

23 Q. Yeah. So they're not -- and my understanding
24 from Mr. Corcoran's testimony was that if you made an
25 agreement, then they are willing to accept the interest that

1 you had attributed to them.

2 I guess that's a question for Mr. Corcoran.

3 MR. CORCORAN: And that is correct. We're not
4 disputing that 3 percent, although there's a question. We
5 won't dispute that 3 percent if we make this agreement.

6 Q. (By Mr. Brooks): But if it's force-pooled -- and
7 this is my question to Mr. Harris -- if it's force-pooled and
8 they don't agree to your figure, I'm assuming you would
9 probably suspend the balancing of that?

10 A. Oh, we would probably have to, yeah.

11 Q. Okay. That's something we need on the record for
12 purposes of our order.

13 MR. BROOKS: That's all I have.

14 MR. JONES: Okay. Thank you, Mr. Corcoran.

15 Okay. Who goes first here?

16 MR. BRUCE: Robert's Rules of Order, Tom goes first.

17 MR. JONES: Okay.

18 MR. KELLAHIN: This really is a quagmire that I'm
19 surprised we haven't fallen into before. When you look at all
20 the pooling cases we've done, including the one that Mr. Harris
21 talks about for the Ruby well, that was uncontested. If the
22 AFE included some pretty high title opinion costs, it certainly
23 wasn't disputed. No one even paid attention to it.

24 So the best I know and from my conversations with
25 Mr. Bruce, this is a matter of first impression for you in

1 terms of at what point in time do title opinion and abstract
2 costs become chargeable to the pooling parties.

3 And so there two things going on: One is whether
4 these costs are reasonable. And the reasonableness of the
5 costs triggered Mr. Corcoran's attention as to what I think is
6 the underlying issue. The underlying issue is at what point in
7 time does a pooling party be subject to the applicant's
8 abstract title costs?

9 The applicant has an obligation under the pooling
10 statutes to determine who has an ownership in a spacing unit,
11 so he attempts to reach a voluntary agreement with all the
12 right parties. Having assumed the obligation to drill a well
13 and form a spacing unit, are those not his costs? At what
14 point in time does the expenditure of that money start being
15 accrued to the common account for those costs we commonly
16 associate with the drilling and the completion and the
17 production of the well? My guess is it hasn't come up before.
18 Because historically, those costs are pretty small.

19 We've all looked at hundreds, if not thousands, of
20 AFEs around here, and it's hardly an item to pay attention to.
21 It's only recently, particularly in this case, that it's so
22 high and triggers lots of questions. And while you could focus
23 a lot of your attention on whether or not this was reasonable
24 and whether McElvain could, under these circumstances, utilize
25 existing work which they helped pay for and should have in

1 their own files is maybe not all the right questions.

2 I think the threshold question is: At what point in
3 time does an applicant in discharging his responsibilities to
4 have the Division use its police powers to compel a participant
5 to participate involuntarily? When are those charges
6 commencing?

7 In this case, we think these costs are well in
8 advance of that period of time. Just look at the time frame.
9 This was the -- the work was ordered in July of '06. A year
10 later, for the first time, McElvain gets around to putting
11 these costs in an AFE and sending a well proposal to
12 ConocoPhillips. They had a whole year's period of time to
13 think about it. By February of '07, Mr. Harris said they had
14 the title opinion and had obtained most of their leases.

15 They were going through during this delay, I think,
16 in an aggressive fashion, rechecking all their interests for
17 their own account to make sure that they had consolidated as
18 much as they could as a minority player. And they were
19 concerned that ConocoPhillips, as a 70-plus percent interest
20 owner, was going to take the well away from them.

21 So I don't think this was done for a common purpose
22 that helped ConocoPhillips. In fact, Mr. Harris told me. I
23 asked him, what was the benefit for ConocoPhillips? He
24 couldn't think of one. That leaves you with the point that the
25 only benefit is to McElvain.

1 And the facts demonstrate that they had a long period
2 of time in which to utilize their title opinion. In fact, to
3 charge us with a title opinion that we did not want, did not
4 need, and have no reason to use seems to be an inappropriate
5 use of your police powers to compel us to share in those costs
6 which are in advance of the point in time when they become
7 necessary.

8 It's interesting that they chose to subdivide their
9 costs the way they did. If you look at the AFE, for the first
10 time they're coded differently. There's a couple of 4000
11 numbers that are associated with disputed costs. If you look
12 below that, and you see in the costs the 3000 numbers. And
13 those are the ones I'm familiar with, those ones where you say
14 permitting, staking, surveying, and title work. What they're
15 doing, to the best of my knowledge, is they're checking on
16 their right of ways and their access to the surface as to the
17 surface at stake to make sure they can get on the drill site
18 and not evaluating the mineral ownership for the entire spacing
19 unit.

20 Mr. Corcoran and I have struggled with this question
21 about what kind of guidance the Joint Operating Agreement can
22 provide you. Because there's a lot of comfort, I think, in
23 making Division decisions based upon what the industry expects
24 from them itself. And that would be the first place I would
25 look at if I were deciding this case. Can I draw some comfort

1 out of what the industry does?

2 In this case, it seems to be an exception. If you go
3 to the '82 form, look at this title section, you have multiple
4 options, and in this case, ConocoPhillips says they take the
5 second option and modify it further. So it became sort of a
6 specialized solution for that company. And Mr. Corcoran says
7 he thinks that's widely utilized in the industry. Mr. Harris
8 may think otherwise.

9 But to say that that's the definitive decision on
10 what the industry does for itself and we'll just do it again
11 doesn't make me very comfortable, to use the police powers of
12 the State to force a decision on an applicant that believes it
13 should not be paying for these costs. And I've searched
14 high and low trying to find a case like this that would give
15 you some guidance to say that we've already done this in the
16 past. I cannot find any, and I represent to you there is none.

17 Our position is we want you to deny this portion of
18 the application so we're not playing Alice in Wonderland and
19 getting a post order AFE that includes these costs that we must
20 make an election on. And if we've elected, we've waived or had
21 a chance to object. And if we dispute it, there's some
22 questions about whether you can make a qualified election under
23 a pooling order.

24 So the fact a pooling order has subsequent reasonable
25 well cost provisions in it for a different hearing gives me no

1 comfort at all. So I'm separating out what is reasonable cost
2 from what I think is the threshold question of, what point in
3 time does an applicant who's trying to consolidate a spacing
4 unit on its own account can charge its title costs back to the
5 pooling party.

6 Thank you for your time.

7 MR. BROOKS: Mr. Bruce? I'm sorry. You are
8 presiding. When you've done this job as long as I have, you
9 get in bad habits.

10 MR. BRUCE: Mr. Jones, the pre-hearing statements
11 filed by ConocoPhillips did not say anything about cost
12 reasonableness, so other than Mr. Harris' testimony that they
13 believe that the cost of the opinion itself was reasonable, we
14 did not come here prepared to address the other issues.

15 We think that if they are challenging -- they don't
16 seem to be challenging in the abstract the validity of title
17 opinion costs with respect to a valid well cost. It seems like
18 the thrust of their testimony is their challenging the amount;
19 in other words, the reasonableness. And if that's the case,
20 that should be relegated to a post-drilling reasonable well
21 cost hearing.

22 Now, responding to a couple of things Mr. Kellahin
23 said, insofar as the timing of this goes about ordering title
24 opinion and getting it and then making a subsequent proposal,
25 usually when a party comes to one of these proceedings and

1 objects, they're objecting that the pooling party is moving too
2 fast. Slow down. We need to talk.

3 Well, here, we've been going on and on for quite some
4 time. Mr. Harris testified that they've tried to buy
5 ConocoPhillips out of this well unit. It's been going on for
6 years. And Mr. Kellahin speculates that, in essence, that
7 McElvain was taking its time to conspire with itself to be the
8 operator of the well unit. Well, if ConocoPhillips was worried
9 about that, why didn't they propose a well years ago? Or why
10 didn't they -- in this correspondence in Exhibit 4 -- why
11 didn't they say, "We want to operate," and go forward from
12 there? I think that's a red herring.

13 In addressing one item that Mr. Corcoran brings up
14 when he says, "Well, title opinions -- title data for a well
15 should be a collaborative effort" -- but if you look at the
16 e-mail from Mr. Helton to Mr. Harris, where he says, you
17 know -- questions -- "If we have previously paid for our share
18 of the title work. If not, we would appreciate getting billed
19 and getting complete copies."

20 To me, it sounds like ConocoPhillips itself expected
21 the operator to do all of the title work.

22 Now, I think both witnesses would agree -- who
23 testified today -- would agree that title costs are usual and
24 reasonable expenses chargeable to the working-interest owners,
25 the operators and the non-operators, under a JOA.

1 There's also my contention that those expenses are
2 reasonable and necessary under the statutory scheme in
3 New Mexico. Mr. Kellahin alluded to this, but I've handed you
4 the pooling Statute 70-2-17, and under Item C, the statute
5 provides, "Where the interest owners have not agreed to pool
6 their interests then the operator must force-pool the well
7 unit."

8 It is my contention -- and this title in this tract
9 is a little different than what I'm used to seeing either in
10 the San Juan Basin or Southeast, for so many tracts to have so
11 few working-interest owners. I'll state that right off the
12 bat. But on the other hand, how do you know that until you get
13 a title opinion?

14 This is -- there is a dispute over the city of
15 Farmington lease. Who knows if there had been other interests
16 out there, whether they are working interests, royalty
17 interests, or mineral interests. If you look at the old leases
18 themselves, some of the old leases themselves don't have
19 pooling provisions in them. And you'd have to go force-pool
20 the royalty interest owner. They wouldn't be charged with any
21 costs, but you'd still have to do that in order to join them in
22 the well and properly pay them.

23 It's my contention that under the pooling statute,
24 although it doesn't specifically say title costs -- I think
25 there's no other way to read it -- you have to have title

1 before you can force-pool. I'd also point out that under the
2 pooling statute, in the event of any dispute relative to such
3 costs, the Division shall determine proper costs after due
4 notice to interested parties and a hearing thereon.

5 So first of all, I believe that in the abstract title
6 opinion costs are reasonable costs chargeable to the
7 working-interest owners. If there's a dispute over the costs,
8 that should await the final drilling of the well and report of
9 the final well costs.

10 MR. JONES: Are you through, Mr. Bruce?

11 MR. BRUCE: No, I'm not, sir.

12 MR. BROOKS: I thought you just were hesitating.

13 MR. BRUCE: I've also handed you the Oil and Gas
14 Proceeds Payment Act. And the parties agree that Division
15 order title expenses are reasonable charges to the
16 working-interest owners. This statute, of course, requires the
17 operator or lessee to make payment to each person. The only
18 way you can do that is with a title opinion. If you don't pay
19 these people under Section V of this act, you are subject to
20 penalty interests. If you would get into a dispute, the
21 royalty owner or whomever can sue and would be entitled to
22 attorney's fees. The only exception is if the payor fails to
23 make payment and a good faith reliance upon a title opinion
24 prepared by a licensed New Mexico attorney.

25 Once again, title opinion costs are necessary costs

1 for an operator to drill a well. And just because -- and I
2 suppose it could have been in this case, you could have just
3 had a drilling opinion. That might have been simpler. The
4 fact of the matter is, we're dealing with the Fruitland Coal
5 here. We know -- well, I suppose I can't say I know. It's
6 highly, highly likely this well will produce hydrocarbons, and
7 a Division order opinion will be necessary. And those charges
8 are also reasonable.

9 And I've also handed you the Surface Owner Protection
10 Act simply for the fact that under today's scheme, certainly
11 since mid last year, you have to know who the surface owner is,
12 and so any land work relating to identifying the surface owner,
13 as you heard Mr. Harris say -- of course, that's not directly
14 applicable in this case because they bought the land because
15 they couldn't get an agreement with the surface owner. But,
16 again, land work, title work is needed to comply with all three
17 of these statutes for the proper drilling of a well in the
18 State of New Mexico.

19 Under a JOA, these are normal and necessary costs and
20 are includable as part of the costs that working-interest
21 owners should pay. When the parties cannot agree, they come to
22 the Division and seek a forced-pooling order. The
23 forced-pooling order, although it's bare bones, is, in essence,
24 the JOA governing the operating of the well. And then, again,
25 we contend, if that's the case, the title opinion costs, land

1 work is proper. It's custom and practice to include title
2 costs under JOAs, and we believe it's proper for the OCD to
3 allow these costs.

4 Finally, I want to point out, Mr. Examiner, that
5 these are AFEs from a couple of recent pooling cases; one by
6 Samson for a well in 20 south, 26 east, another one by Cimarex
7 for a well in -- this well was in 15 south, 37 east. You'll
8 see on these AFEs they also charge legal and regulatory
9 expenses.

10 Now, I will represent to you that I've spoken with
11 someone from Samson, and he confirmed to me that, "Yeah.
12 That's title opinion costs."

13 The reason I highlighted the surface damages,
14 et cetera, is to show that those costs are separate from the
15 land costs that are in a normal title opinion. And you can see
16 under Samson's AFE \$25,000 for title expense. These costs have
17 always been included in AFEs presented to the Division. Title
18 costs are necessary drilling costs. They should be allowed.
19 If there's a question as to reasonableness, we think these
20 costs are reasonable. We believe, however, that ConocoPhillips
21 can subsequently challenge these costs.

22 Thank you.

23 MR. KELLAHIN: Now my turn?

24 MR. JONES: Yes.

25 MR. KELLAHIN: Mr. Brooks, I'd like you to see the

1 copy of my Pre-hearing Statement, because Mr. Bruce has
2 mischaracterized it.

3 MR. BROOKS: I have not seen the Pre-hearing
4 Statement since I wasn't the presiding examiner.

5 MR. KELLAHIN: Mr. Bruce claims surprise that we
6 should be contesting the reasonableness. As I said in my
7 closing statement, that is not our position here.

8 I clearly set forth in my Pre-hearing Statement
9 exactly the issues as I framed them to you in my closing
10 statement. While the reasonableness of the costs triggered our
11 attention, the threshold issues are whether parties in the
12 position of McElvain can do what they are proposing to do.

13 As a footnote, Mr. Bruce has found some examples of
14 AFEs in pooling cases that include title opinion costs. I'm
15 not aware that any of those costs were ever disputed or that
16 the Examiner was asked to make a decision such as the one you
17 are being asked to make this morning.

18 And I take exception with Mr. Bruce's contention
19 about these obligations of the operator for consolidating --
20 for identifying the interest owner in order to take advantage
21 of the pooling statute. Those are his problems and his costs,
22 and if they chose to assume those responsibilities and
23 obligations, he needs to comply with the process. Shame on him
24 for trying to make a pooled party bare his cost of compliance.
25 They're not our problems.

1 And then, finally, what I'm trying to get you to
2 attend to is, at what point in time do these costs become
3 chargeable to a pooled party? And that's what I've clearly
4 stated in the Pre-hearing Statement, and that's what I'm again
5 asking you to decide. And I think that's the focus.

6 It's not so much that they are reasonable to make me
7 wait until post-drilling, post-order, post-election when it's
8 too late to do anything about it. It's whether at what point
9 in time do these kinds of costs start being accrued in a
10 reasonable AFE situation so they can be charged against a
11 pooled party. I don't know how to say it any clearer. So
12 that's my difference with Mr. Bruce.

13 MR. JONES: Mr. Bruce, do you want to go one more
14 time?

15 MR. BRUCE: Sure. I would simply say that
16 Mr. Kellahin's Pre-hearing Statement, the issue for the
17 Examiner, "Can McElvain properly include abstract title opinion
18 costs in a compulsory pooling order?" Period.

19 MR. BROOKS: Question for Counselor: Are you all in
20 agreement that the reasonableness of these costs is not before
21 the Division at this state of the proceedings?

22 MR. BRUCE: That's my contention, Mr. Examiner,
23 because reading the Pre-hearing Statement, we just brought down
24 the landman to discuss the issues under the Pre-hearing
25 Statement.

1 MR. KELLAHIN: Mr. Bruce has made that an issue this
2 morning, when he asked Mr. Harris at the conclusion if the
3 costs were fair and reasonable. And he testified that they
4 were. So if you need to deal with that in deciding this case,
5 then so be it.

6 MR. BROOKS: Well, our customary form of pooling
7 order gives the parties an opportunity to challenge the
8 reasonableness of expenses post-order. But, of course, I can
9 see that -- I'm not sure, you know -- there would be some
10 efficiency in dealing with both issues if everybody had made
11 all the record they wanted to make on it. But I'm not sure of
12 that since there's going to be another bite at the apple on the
13 reasonableness if we enter the customary form of order.

14 MR. KELLAHIN: Well, you put your finger on the pulse
15 point of the problem. If we wait until after it's drilled and
16 contest the cost, we need to make a post-order election to
17 prepare our share of the estimated cost.

18 MR. BROOKS: Of the reasonable costs.

19 MR. KELLAHIN: I'm not sure we can make a qualified
20 election that's less than what they've asked for in their AFE.

21 MR. BROOKS: Well, you have to advance that cost, and
22 then you get it back if it's determined some of it's not
23 reasonable.

24 MR. KELLAHIN: I've had cases where people have
25 signed an AFE and we were later precluded from contesting the

1 reasonableness because they said we waited. It was the Hanley
2 case in which that was done, and they said, "Hanley, you've
3 waived your chance to complain."

4 MR. BRUCE: I don't think that --

5 MR. KELLAHIN: So what I'm looking for is, I think if
6 we have to make a post-order election and have not had you make
7 a decision as to the point in time when these costs start
8 accruing, then I have a dilemma about being nonconsent or a
9 consenting party for costs I dispute.

10 MR. BROOKS: Mr. Bruce, did you want to add anything
11 to that?

12 MR. BRUCE: Well, I mean, of course, the finally dead
13 Pride-Yates matter, there was a well cost dispute, and nobody
14 ever raised the waiver issue, that signing an AFE.

15 As the Division has often said, an AFE is an
16 estimate. And the orders do provide that if after a subsequent
17 hearing there's an alteration of the costs and charges, and
18 there's either up or down -- you know, one party may have to
19 pay out, and one party might receive.

20 MR. BROOKS: Right. That's all I have.

21 MR. JONES: Okay. Well, if that's it, we'll take
22 Case 14115 under advisement.

23 And that being the last case of the day, this docket
24 is adjourned.

25 [Hearing concluded.]


I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. _____
heard by me on _____

_____, Examiner
Oil Conservation Division

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I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest in the final disposition of this proceeding.



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2 COUNTY OF BERNALILLO)

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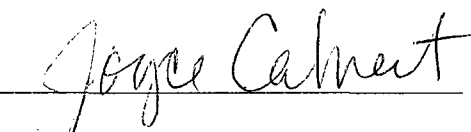
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