

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

IN THE MATTER OF THE HEARING CALLED BY )  
THE OIL CONSERVATION DIVISION FOR THE )  
PURPOSE OF CONSIDERING: )  
APPLICATION OF McELVAIN OIL AND GAS )  
PROPERTIES, INC., FOR COMPULSORY POOLING )  
AND AN UNORTHODOX WELL LOCATION, )  
RIO ARRIBA COUNTY, NEW MEXICO )

CASE NO. 12,284

ORIGINAL

OIL CONSERVATION DIV.  
99 DEC 16 PM 4:44

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MARK ASHLEY, Hearing Examiner

December 2nd, 1999

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, MARK ASHLEY, Hearing Examiner, on Thursday, December 2nd, 1999, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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\* \* \*

1           WHEREUPON, the following proceedings were had at  
2 11:25 a.m.:

3           EXAMINER ASHLEY: The Division calls Case 12,284.

4           MR. CARROLL: Application of McElvain Oil and Gas  
5 Properties, Inc., for compulsory pooling and an unorthodox  
6 well location, Rio Arriba County, New Mexico.

7           EXAMINER ASHLEY: Call for appearances.

8           MR. CARR: May it please the Examiner, my name is  
9 William F. Carr with the Santa Fe law firm Campbell, Carr,  
10 Berge and Sheridan. We represent McElvain Oil and Gas  
11 Properties, Inc., in this matter, and I have two witnesses.

12           EXAMINER ASHLEY: Additional appearances?

13           MR. HALL: Mr. Examiner, Scott Hall from the  
14 Miller-Stratvert-Torgerson law firm, Santa Fe, appearing on  
15 behalf of Energen Resources Corporation this morning with  
16 one witness.

17           EXAMINER ASHLEY: Additional appearances?

18           MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe,  
19 representing NM&O Operating Company. I do not have a  
20 witness.

21           EXAMINER ASHLEY: Any additional appearances?

22           Will the witnesses please stand to be sworn in?

23           (Thereupon, the witnesses were sworn.)

24           EXAMINER ASHLEY: Mr. Carr?

25           MR. CARR: At this time we call Mr. Jordan.



1 Q. You're going to present the land testimony in  
2 support of this Application?

3 A. Yes.

4 Q. Are you familiar with the status of the lands in  
5 the subject area?

6 A. Yes.

7 MR. CARR: Are Mr. Jordan's qualifications  
8 acceptable?

9 EXAMINER ASHLEY: Yes, they are.

10 Q. (By Mr. Carr) Would you briefly summarize what  
11 it is that McElvain seeks with this Application?

12 A. McElvain seeks an order pooling all of the  
13 minerals from the base of the Pictured Cliffs formation to  
14 the base of the Dakota formation under the south half of  
15 Section 33, Township 26 North, Range 2 West, Rio Arriba  
16 County, New Mexico, as follows: The south half for all  
17 formations and pools that are spaced on 320 acres,  
18 including the Basin-Dakota Gas Pool and the Blanco-  
19 Mesaverde Gas Pool; the southeast quarter for all  
20 formations and pools developed on 160-acre spacing, which  
21 would include the Undesignated Northeast Ojito Gallup-  
22 Dakota Oil Pool; and the northwest quarter of the southeast  
23 quarter for any formations or pools which are developed on  
24 40-acre spacing. And these are to be dedicated to our  
25 Cougar Com 33 Number 1 well.

1 Q. That well is to be drilled 2125 from the east  
2 line, 1850 from the south; is that correct?

3 A. 1970 is -- I think, from the south.

4 Q. Okay. Have you prepared exhibits for  
5 presentation here today?

6 A. Yes, I have.

7 Q. Before we get to those exhibits, the Gavilan-  
8 Mancos Oil Pool is potentially productive in this area, is  
9 it not?

10 A. Correct.

11 Q. And that is spaced on -- developed on 640-acre  
12 spacing?

13 A. Yes, it is.

14 Q. McElvain is not seeking an order pooling that  
15 640-acre spacing unit?

16 A. We're not seeking an order at this time pooling  
17 640-acre spacing for Gavilan-Mancos production, however we  
18 do recognize that at any future time, if we desire to  
19 produce from the Gavilan-Mancos formation, we will need to  
20 obtain either voluntary joinder from all of the owners in  
21 the section or, in the alternative, compulsory pooling.

22 Q. Let's go to what has been marked for  
23 identification as McElvain Exhibit Number 1. This exhibit  
24 contains three plats. If you could just simply identify  
25 this and then generally review the information contained in

1 this exhibit.

2 A. Okay, McElvain Exhibit Number 1 contains three  
3 plats showing Section 33. The first plat is basically a  
4 survey plat showing the proposed location. The second plat  
5 is basically an ownership plat setting out the owners and  
6 the leases in the south half of Section 33. The third plat  
7 is a plat showing the south-half spacing unit, along with  
8 wells in the general area.

9 Q. What are the primary objectives in the proposed  
10 well?

11 A. Our primary objective is the Dakota formation.  
12 Secondary objective is the Mesaverde formation.

13 Q. Let's go to Exhibit Number 2. Would you identify  
14 and review this, please?

15 A. McElvain's Exhibit Number 2 is a list of all of  
16 the working interest owners in the south half of Section 33  
17 from the base of the Pictured Cliffs formation to the base  
18 of the Dakota formation.

19 Q. And what percentage of the working interest has  
20 been voluntarily committed to this well?

21 A. We have approximately 77 percent voluntarily  
22 committed at this time.

23 Q. Could you review for the Examiner the efforts  
24 you've made to obtain voluntary joinder in this well?

25 A. Yes, our initial proposal letter, dated September

1 1, 1999, was mailed along with an AFE and an operating -- a  
2 proposed operating agreement. Follow-up calls were made to  
3 all of the owners. We did receive our certified mailing  
4 green cards back from all of the owners, with the exception  
5 of Mesa Grande Resources.

6 We then followed up fairly early on -- I believe  
7 early November -- with another copy of the proposal and all  
8 the adjoining documentation, which we sent by regular mail.  
9 We've sent probably a half dozen certified mailings to Mesa  
10 Grande in the last couple of years, and all of them have  
11 been -- We have received all of the green cards back, so I  
12 suspect perhaps that the postman didn't catch on this  
13 particular occasion.

14 I can go down the list here, beginning with the  
15 Energen Resources Corporation.

16 Of course, the first on the list, T.H. McElvain  
17 Oil and Gas Limited Partnership, is a McElvain entity.

18 Energen Resources Corporation, we had phone  
19 conversation with them as early as late September, on into  
20 October and November. We received ultimately a farmout  
21 proposal from them, along with a letter dated November the  
22 4th. Both myself and George Broome of our company have had  
23 numerous conversations with Energen Resources Corporation.  
24 We have not reached a mutually acceptable agreement with  
25 them.

1           Noseco Corporation voluntarily joined the well,  
2 signed the operating agreement, and elected nonconsent  
3 status, as did Neumann Family Trust.

4           Gavilan Dome Properties, we received their green  
5 card back in September, and we have not been able to locate  
6 a telephone number for them. We have sent out a number of  
7 proposals in the last few years to them, and they have been  
8 unresponsive to all of them.

9           Mesa Grande Resources, I previously mentioned.

10           NM&O Operating Company also received our  
11 proposal. We've several conversations, or at least one  
12 telephone conversation and several written correspondence  
13 with NM&O Operating Company. They did offer to farm out  
14 their interest to us or, in the alternative, trade acreage  
15 with us. Unfortunately, we don't have any acreage in this  
16 area right now to trade. And as far as their farmout  
17 proposal, for a couple of reasons we did not accept their  
18 farmout proposal. Probably the most important reason is,  
19 their interest is subject to a number of title curative  
20 requirements, we believe some significant title clouds on  
21 their title, and in addition their offer did not meet our  
22 economic criterion for this well.

23           The Apache Corporation interest has been -- since  
24 our initial proposal, that interest has been acquired by  
25 McElvain.

1           Johansen Energy Partnership, we received their  
2 green card back and have had some telephone conversations  
3 with them, and it appears that they are going to allow  
4 their interest to be force pooled.

5           Williams Production Company and Dugan Production  
6 Company, pursuant to the little notation I have at the  
7 bottom, they have some -- either a reversionary working  
8 interest or a potential reassignment interest in this  
9 property, and therefore they were notified. We have talked  
10 to both parties by phone, and both are electing to allow  
11 their interest to be compulsorily pooled.

12           Q.   Mr. Jordan, how will McElvain handle any funds  
13 that are due to parties that own interest in tracts with  
14 title problems?

15           A.   For any revenue received for those interests, it  
16 will be escrowed in a bank in Rio Arriba County, until such  
17 time as the title problems are cured.

18           Q.   In your opinion, have you made a good faith  
19 effort to locate all the interest owners in the proposed  
20 spacing units and obtain their voluntary participation in  
21 the well?

22           A.   Yes.

23           Q.   Would you identify what has been marked what has  
24 been marked as McElvain Exhibit Number 3?

25           A.   Well, McElvain Exhibit Number 3 is our initial

1 proposal letter proposing the drilling of the Cougar Com 33  
2 Number 1 well, together with a list of the ownership  
3 parties in the spacing unit, being the south half of  
4 Section 33, together with an AFE and proposed operating  
5 agreement.

6 Q. Could you identify now what has been marked as  
7 Exhibit 4?

8 A. Let's see here...

9 Q. Is Exhibit 4 the affidavit confirming that notice  
10 of today's hearing has been provided in accordance with OCD  
11 rules?

12 A. There it is. Yes, it is.

13 Q. And were all owners who are subject to pooling  
14 notified of today's hearing?

15 A. Yes.

16 Q. Will McElvain call an additional witness to  
17 review the technical portions of this case?

18 A. Yes, we will.

19 Q. Were Exhibits 1 through 4 either compiled by you  
20 or prepared under your direction and supervision?

21 A. Yes, they were.

22 MR. CARR: May it please the Examiner, at this  
23 time we would move the admission into evidence of McElvain  
24 Exhibits 1 through 4.

25 EXAMINER ASHLEY: Exhibits 1 through 4 will be

1 admitted as evidence at this time.

2 MR. CARR: And that concludes my direct  
3 examination of Mr. Jordan.

4 EXAMINER ASHLEY: Mr. Hall?

5 CROSS-EXAMINATION

6 BY MR. HALL:

7 Q. Mr. Jordan, if you would, please, could you tell  
8 us whether in your correspondence or conversations with  
9 Energen, anyway, whether you discussed that this well might  
10 also target the Mesaverde formation?

11 A. I don't specifically recall mentioning that.  
12 However, our proposal does include all formations below the  
13 base of the Pictured Cliffs, and I'm sure they're very  
14 aware that that would include the Mesaverde formation.

15 Q. In any event, there's no allocation of costs in  
16 your AFE exhibits or any of your other exhibits for a  
17 completion in the Mesaverde and/or the Dakota; is that  
18 correct?

19 A. That's right.

20 Q. And you're not making a recommendation to the  
21 Hearing Examiner here this morning for an allocation of  
22 costs in the event there's a completion in the Mesaverde?

23 A. No, sir.

24 Q. Let's review, if you would, please, sir, your  
25 negotiations with Energen. Can you tell the Hearing

1 Examiner what basically held you apart from reaching a deal  
2 with Energen?

3 A. What held us apart was based strictly on economic  
4 criterion for this particular well. We believe it's a very  
5 high-risk well, and their offer did not meet our economic  
6 criterion.

7 Q. And what are those economic criteria?

8 A. Well, I would defer to engineering, who will  
9 testify later, that does the economic calculations for the  
10 well. However, they have advised me that the offer that  
11 was made by Energen was not sufficiently high in terms of  
12 net revenue interest. It would basically bring down our  
13 net revenue interest, and we did not feel economically that  
14 it made good sense for us to accept that proposal.

15 Q. Can you explain to the Hearing Examiner what net  
16 revenue interest was required by McElvain to undertake the  
17 well, and what was offered by Energen?

18 A. Okay, well, we -- as we explained to Energen,  
19 what we were willing to accept from them was a farmout for  
20 delivering an 80-percent net revenue interest with no back-  
21 in. They declined that counteroffer. So that -- I guess  
22 to answer your question, that was the baseline economic  
23 criterion for us vis-a-vis the Energen interest.

24 Q. All right. If you refer to your Exhibit 2,  
25 please, sir, it shows the gross working interest

1 attributable to Energen's interest before and after payout,  
2 does it not?

3 A. Yes, it does.

4 Q. And can you tell the Hearing Examiner what the  
5 size of that net revenue interest proportionately reduced  
6 is, before and after payout?

7 A. My understanding and belief is that it's 81-1/4-  
8 percent net revenue interest, which would be  
9 proportionately reduced to their working interest they're  
10 showing there.

11 Q. Right. My question is, can you tell, if you're  
12 able, here today, what is that interest when it is  
13 proportionately reduced? Do you have that figure?

14 A. No, I don't have that figure.

15 Q. It's very small, is it not?

16 A. Yes.

17 Q. And what did Energen offer you to participate in  
18 the well? What was the term of their farmout to you?

19 A. They offered us ultimately a farmout which would  
20 deliver a 78-3/4-percent net revenue interest, with a back-  
21 in at payout of 25 percent of their working interest.

22 Q. And when that's proportionately reduced, does it  
23 sound about right if we say we're looking at a 2.92 percent  
24 increase?

25 A. I haven't done the calculation.

1 Q. Does it sound about right, though?

2 A. I wouldn't know.

3 Q. Did your engineering staff do that calculation?

4 A. I don't know if they have or not. You'd have to  
5 ask them.

6 Q. Do you have any witness that may be able to  
7 testify to that today?

8 A. We may. I can't.

9 Q. Okay.

10 A. That's all I can testify to.

11 Q. Was it the back-in working interest that McElvain  
12 found objectionable?

13 A. Both the back-in and the amount of the override,  
14 yes, both aspects of the proposal.

15 Q. And you would agree with me, would you not, that  
16 the back-in after payout has absolutely no bearing with  
17 respect to the economics on the drilling and completion of  
18 the well?

19 A. Well, it definitely has a bearing on the  
20 economics of our valuing this well and the overall  
21 economics of drilling, completing and producing this well  
22 and retaining a return on our investment.

23 Q. How does the after-payout back-in affect the  
24 economics of the drilling and completion before payout, if  
25 you could explain?

1 A. Well, it doesn't affect it before payout.

2 Q. All right. Mr. Jordan, how long have you been  
3 working in the San Juan Basin as a landman, would you say?

4 A. Oh, about 18 years.

5 Q. And can you give us an estimate on how many wells  
6 you may have negotiated joinder for unjoined interests on?

7 A. Oh, maybe 50, 100. Fifty, probably, or less.

8 Q. Fifty or less?

9 A. Fifty or less, I'd say.

10 Q. In your opinion, is the request for Energen to  
11 accept a deal for participation of the well with a zero  
12 back-in in accordance with the prevailing custom and  
13 practice in the San Juan Basin?

14 A. Well, every specific well has its own criterion.  
15 In this particular instance, due to the risk of this well,  
16 we felt like for our purposes that it wasn't appropriate.  
17 And I might add that Energen itself felt like their own  
18 interest did not warrant their own participation in this  
19 well, yet they wanted us to accept something less than they  
20 were willing to even accept in participation in this well,  
21 which we were not willing to reduce it to the same number  
22 that Energen was offering.

23 Q. And is it your testimony that the difference  
24 between Energen's proposal and McElvain's proposal rendered  
25 the well uneconomic?

1           A.    From our standpoint, you know, we did not feel it  
2 appropriate to accept the kind of numbers that was being  
3 offered by Energen.

4           Q.    Yes.  My question is, did the difference between  
5 the two proposals render that prospect uneconomic?

6           A.    Well, I would defer that question to our  
7 engineering department, because I didn't really do the  
8 calculations.

9           Q.    Did you represent to Energen that it would render  
10 the prospect uneconomic?

11          A.    No, I did not.

12          Q.    Can you point to any precedent in the immediate  
13 vicinity of the Cougar Com 33 well where an interest owner  
14 has accepted participation with zero back-in, Dakota well,  
15 for instance?

16          A.    I wouldn't know.

17          Q.    You don't know of any?

18          A.    I don't know of any, but it certainly could  
19 occur.

20          Q.    I see by Exhibit 3 you are a lawyer?  You are a  
21 lawyer; is that correct?

22          A.    I have a -- Yes, I'm an attorney by education.

23          Q.    All right.  So you're familiar with the law in  
24 this state that --

25          A.    Actually, I'd like to go back to your previous

1 question, because I --

2 Q. Please do.

3 A. Your previous question was, am I aware of any  
4 case in this area where parties have accepted a farmout  
5 without a back-in? And yes, just recently we have. I  
6 recall McElvain accepting a farmout from NM&O, I believe it  
7 was, in this area without a back-in, just a reserved  
8 override.

9 And Dugan Production Company as well, I believe,  
10 if my memory is correct, also accepted -- delivered a  
11 farmout without demanding a back-in.

12 Q. Can you cite to the wells for us?

13 A. Yes, a well -- It's our Elk Com 10 Number 1 well,  
14 located in Section 10, Township 25 North, Range 2 West.

15 Q. Any others?

16 A. Those two. I mean, we haven't drilled very many  
17 wells in this area, so that's a pretty high percentage, I  
18 think. I'm not sure how many farmouts we have in this  
19 area, but it's under five. There's two out of -- two,  
20 right there.

21 Q. Get back to my question. You indicated you are  
22 an attorney by education, you've been in New Mexico for  
23 quite a long time, practicing in the San Juan Basin as a  
24 landman. You also testified that in your view McElvain has  
25 made a good faith effort to secure voluntary participation

1 of Energen and others.

2 My question to you is, as an attorney and a  
3 landman, you'd be familiar with the law in this state that  
4 holds that a covenant of good faith and fair dealing is  
5 implied in every contract, and even in negotiations leading  
6 up to the contract?

7 A. Sure.

8 Q. And is it also correct to say that the standards  
9 for good faith and fair dealing are established by the  
10 customs and practices of industry in the area? And I'm  
11 speaking of the San Juan Basin?

12 A. Yes, sure.

13 Q. Can you tell me what those standards are?

14 A. For this particular area?

15 Q. The customs and practices, industry and so on --

16 A. No, I couldn't tell you.

17 Q. You cannot tell me --

18 A. No, I can't.

19 Q. So you cannot tell me whether McElvain's efforts  
20 satisfy that standard for negotiating voluntary  
21 participation of the nonjoined interest in this  
22 circumstance?

23 A. Well, I don't think -- That's, to me, a legal  
24 question that I'm not really qualified to answer. I mean,  
25 I believe -- My opinion is that we certainly attempted to

1 negotiate in good faith with Energen. We've had many  
2 conversations with them, sent them many letters and have,  
3 in fact, given them a proposal of what would be acceptable  
4 to us. So...

5 Q. Let me ask you to assume a couple of numbers  
6 here, because it's difficult to do the calculation on the  
7 proportionate reduction for these interests shown on your  
8 Exhibit 2. But if you will assume that the interests that  
9 Energen proposed to deliver after payout would yield a  
10 .2929-percent net revenue interest, and then what McElvain  
11 required was a .1468-percent interest, basically half of  
12 what Energen proposed -- I ask you to assume that -- does  
13 the difference between those two cost burdens on the well  
14 establish the difference between an acceptable and  
15 unacceptable economic risk for McElvain?

16 A. I would defer to our engineering department,  
17 which did the calculations on this.

18 Q. Well, earlier you testified that Energen's  
19 counterproposal did not meet your economic criteria, but  
20 you're not capable -- You're not going to testify about  
21 economic criteria?

22 A. That's correct. Our engineering department made  
23 those calculations and advised me that it was not  
24 acceptable.

25 MR. HALL: Pass the witness.

## CROSS-EXAMINATION

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BY MR. BRUCE:

Q. Mr. Jordan, if you could get your Exhibits 1 and 2 together, and maybe the third page of Exhibit 1, which is just simply the land plat, the leasehold plat, I take it?

A. Okay.

Q. You are drilling on the lease that NM&O Operating Company and certainly these others, Noseco Corporation, et cetera, have an interest; is that not --

A. That's correct.

Q. And you are seeking to pool the southeast quarter for Pictured Cliffs, for instance?

A. No, we are not.

Q. You're not?

A. We are not.

Q. Okay.

A. Our proposal is below the base of the Pictured Cliffs formation.

Q. Okay. Are there any formations being pooled on a 160-acre basis?

A. Yes, potentially, there's the Undesignated Northeast Ojito-Gallup Dakota Oil Pool that would have a potential of 160-acre spacing. And that's all I'm aware of at this time, but that may not necessarily be all.

Q. Would it be accurate, then, looking at Exhibit 2,

1 that in your -- either column, that the interests of, oh,  
2 the persons from Noseco Corporation down to Johansen, let's  
3 say, their percentages would double in a 160-acre unit?

4 A. Yes.

5 Q. Also -- and we'll get into this in a minute, but  
6 NM&O received a letter from McElvain -- I don't know if it  
7 was from you or Mr. Broome -- stating that there's a  
8 problem with a portion of NM&O's interest because it  
9 derives from some cross-assignments by Dugan Corporation  
10 Corp. and Mesa Grande?

11 A. I don't think you went into that much specifics  
12 of it, but I am prepared to discuss that with you if you  
13 would like.

14 Q. Well, I'm looking at -- maybe this is your  
15 letter, November -- the final page of Exhibit 3, the very  
16 final page.

17 A. Okay, letter dated November the 19th.

18 Q. 29th.

19 A. Oh, okay, that was my letter.

20 Q. Yeah. The second full paragraph, third line  
21 down, it says, "As you know, part of your interest is  
22 derived through Mesa Grande's interest under this farmout."  
23 And I'm talking about the Dugan-Mesa Grande matter.

24 A. Uh-huh.

25 Q. If you'll look at Exhibit 2 where you have NM&O

1 listed as owning 1.75, plus or minus, percent interest, can  
2 you tell me what portion derives from the Dugan-Mesa Grande  
3 farmout, and what percentage it owns independent of that  
4 farmout?

5 A. Three-quarters of it was derived from Northwest  
6 Pipeline Corporation and one quarter from Dugan.

7 Q. So of that 1.75-percent interest, only one-fourth  
8 of that -- You talk about a reassignment obligation, so  
9 only one-fourth of that should be reassigned to Dugan?

10 A. That's correct, if they are, in fact, entitled to  
11 a reassignment, which I'm not -- I don't have that --

12 Q. Actually, for your information, Mr. Jordan, one  
13 is in the works.

14 Now, looking at your Exhibit 3, you sent out a  
15 letter to the working interest owners on September 1, with  
16 an AFE and a JOA. And then the next letter in your  
17 package, right after the JOA, is from my client, NM&O  
18 Operating Company, to you, making a proposal, or a  
19 counterproposal, if you will. Did you ever respond in  
20 writing or by phone call to that proposal before November  
21 18th, which was the hearing date set for this matter  
22 originally?

23 A. It is my recollection that we did respond by  
24 phone call. I believe I received a follow-up call from a  
25 woman that works at NM&O, is my recollection. She asked if

1 we received the letter and were willing to accept any of  
2 the terms offered, and I indicated that we did and that we  
3 were not interested.

4 Q. But you didn't make a counterproposal to this  
5 letter?

6 A. No, we didn't make a counterproposal because,  
7 number one, we didn't have any acreage to trade. And  
8 number two, the number of title defects and clouds on the  
9 title of NM&O rendered their interest of a type that we  
10 really weren't very amenable to inheriting through some  
11 sort of a farmout or other type of a deal.

12 Q. Well, what is the date of your title opinion?

13 A. I don't recall off the top of my head, but I do  
14 have a copy of it with me.

15 Q. Yeah, I don't need to look at it.

16 A. It's a recent title opinion, within the last  
17 couple of months, in fact. We got our title opinion after  
18 our proposal went out. We did get confirmation from the  
19 attorney before the date of the title opinion, however,  
20 that confirmed that he had agreed with my calculations as  
21 to the working interest.

22 Q. I would like to know the date of that. You said  
23 you responded to this proposal by saying the title opinion  
24 showed that there were too many title defects.

25 A. Yes, sir.

1 Q. But you didn't get the opinion until quite  
2 recently.

3 A. That's correct. But I also personally examined  
4 the title, so I was aware of the defects --

5 Q. Okay.

6 A. -- personally.

7 Q. Have you ever provided portions of that title  
8 opinion regarding these defects to NM&O Operating Company  
9 so they could --

10 A. No, we have not.

11 Q. Is it the normal practice to try to cure these  
12 title defects?

13 A. If we get a well that produces oil and/or gas, it  
14 certainly is the standard practice to immediately proceed  
15 to cure those defects, yes, sir. Before then, no, that's  
16 not our obligation.

17 Q. You don't want to cure working-interest defects  
18 before you drill the well?

19 A. The reason we sent the proposal to Dugan  
20 Production Company is because we could tell from the title  
21 that they had at least a potential interest in this tract.  
22 It could take years to cure that title, for all we know.  
23 And unless and until there is oil and/or gas produced,  
24 there's no point for us, at least, to deal with somebody  
25 else's title.

1 Q. Isn't it the practice to inform the other working  
2 interest owners of any defects and let them cure them?

3 A. I had talked to Mr. Sweet many, many months ago,  
4 because we've drilled other wells that had the same defect.  
5 So I had talked to him at least a year ago about this very  
6 problem.

7 Q. Well, you're talking about the Dugan problem, but  
8 that only affects one-fourth of NM&O's working interest.  
9 What about the other defects? I mean, from your letter,  
10 from your final letter, it says there's some filing  
11 problems, some unapproved assignments. Those are cured as  
12 a regular matter, are they not?

13 A. Sometimes they're not too easy to cure.

14 Q. And sometimes they are?

15 A. That's correct --

16 Q. And if the working interest owner --

17 A. -- but it's certainly not our responsibility to  
18 cure somebody else's title.

19 Q. Well, I'm not saying that.

20 A. Okay.

21 Q. Isn't it only fair to inform the other working  
22 interest owners what those defects are so they can cure  
23 them if necessary, take the burden off of you?

24 A. At some point in time, if there is production  
25 that, you know, requires a curative of those items.

1 Q. Okay.

2 A. He's owned those leases for a long, long time, or  
3 at least years, and --

4 Q. Which would indicate very few problems with them,  
5 would it not?

6 A. Not necessarily, not at all.

7 Q. So again, you don't want to cure working-interest  
8 defects before you drill the well?

9 A. We don't want to cure somebody else's problems  
10 until we know that there is production that warrants the  
11 curative of someone else's problem.

12 Q. And once again, isn't it common practice to  
13 inform your other working interest owners in your well of  
14 their defects so they can go ahead and cure them? They're  
15 going to be held accountable for a share of those well  
16 costs, including title opinions, are they not?

17 A. Yeah, we're certainly willing to allow them to  
18 know what the defects on their -- you know --

19 Q. And once again --

20 A. -- there's no secret there, we're not --

21 Q. Okay, and in a title opinion, that's a legitimate  
22 cost of drilling a well?

23 A. Yes.

24 Q. And the other working interest owners, one way or  
25 another, will bear a share of that cost of that title

1 opinion?

2 A. That's correct.

3 Q. Now, going back to Exhibit 3, the second-to-the-  
4 last page of Exhibit 3, in that letter, which is from NM&O  
5 Operating Company to McElvain Oil and Gas Properties, Mr.  
6 Sweet, on behalf of NM&O, asked for portions of the title  
7 opinion regarding his interest, did he not?

8 A. I believe he did.

9 Q. Have you provided those to him?

10 A. Not at this time --

11 Q. Are you going --

12 A. -- but we're happy to do so. We're providing  
13 those portions of the title opinion pertaining to his  
14 specific interest, that's not a problem.

15 And I might follow up with that, that there are a  
16 number of different title problems pertaining to his  
17 interest, including failure to obtain BLM approval on a  
18 number of assignments prior to his taking title, in the  
19 chain of title to his interest, among other problems.

20 But yes, we'd be happy to provide him with that  
21 information.

22 Q. So on the one hand you won't do a farmout with  
23 him because there's title problems, and on the other hand  
24 you haven't informed him of the defects --

25 A. Well, as I mentioned, we just recently acquired

1 our title opinion, so we are willing to provide him that  
2 information, Mr. Bruce.

3 Q. And even under your proposed JOA, the failure of  
4 title or any title problems falls on the working interest  
5 owner, not on the operator; is that correct?

6 A. If we produce the well, we will take care of the  
7 curative, as far as we will inform the parties of what is  
8 required. We won't necessarily do their work for them to  
9 cure the problems, but we will definitely move forward  
10 quickly to inform everybody of what curative is necessary  
11 in order to put their production into pay status.

12 Q. But once again, you don't want to cure working-  
13 interest defects before you drill a well?

14 A. Not necessarily, somebody else's defects, no.  
15 That's their responsibility. And until you have  
16 production, there's no reason for us to get involved with  
17 somebody else's working interest.

18 Q. You'd just rather force pool them?

19 A. No, is the answer to that question.

20 Q. What other prospects is McElvain looking at in 26  
21 North, 2 West. Are there any others besides this well?

22 A. We have leasehold in that township, and we  
23 certainly have a geologist looking at the township as far  
24 as potential development.

25 Q. Over the next, say, year to two years do you have

1 any other plans to drill wells in this township, or in 25  
2 North, 2 West, immediately south of this?

3 A. I don't know.

4 Q. Will your engineer know?

5 A. Perhaps. I mean, as I mentioned, we're looking  
6 at the area, so --

7 Q. You've drilled or plan to drill what? Just  
8 immediately to the south in Section 3 of 25 North, 2 West,  
9 or you maybe already have --

10 A. Section 4, we're currently drilling in Section 4.

11 Q. You're currently drilling in Section 4. A  
12 Mesaverde well?

13 A. Yes.

14 Q. And what about Section 3?

15 A. Section 3, we've previously drilled in Section 3.

16 Q. Just one well?

17 A. Yes.

18 Q. Section 10 also?

19 A. Yes, we recently drilled in Section 10 of the  
20 township to the south.

21 Q. Any other plans in the work in 25 North, 2 West?

22 A. I think our future plans are, you know, are  
23 discretionary, and we'll divulge that information in due  
24 course, but I don't believe we should be required to  
25 divulge any future plans that we have for this area.

1 Q. Well, I'd ask the question again. I think it  
2 bears on risk involved in this prospect. If you're  
3 planning on drilling a number of wells, then you don't  
4 consider it that risky.

5 A. Well, I would defer to our engineer as far as  
6 risk. Risk is outside my parameters and knowledge and  
7 expertise.

8 Q. Okay, but land matters aren't?

9 A. Right. So you might direct all of those  
10 questions to our engineer who's --

11 Q. Well, I mean from my knowledge of the oil and gas  
12 business, the first one who knows is the -- the geologist  
13 tells the landman --

14 MR. CARR: Objection. I believe Mr. Bruce is  
15 giving a closing statement at this point in time. He can  
16 ask land questions of this witness. He shouldn't be asking  
17 him to speculate about what their plans are or things that  
18 this witness says he's not qualified to testify to. He can  
19 direct it to the engineer.

20 We know -- We will stipulate he has experience in  
21 the business, but I think that should be announced in his  
22 closing statement, not as part of his cross-examination.

23 Q. (By Mr. Bruce) Well, Mr. Jordan, do you have  
24 title opinions in the work on any other lands in 26 North,  
25 2 West or 25 North, 2 West?

1           A.    I'd rather not divulge that information.

2           MR. BRUCE:  Well, Mr. Examiner, I'm going to ask  
3 him, because I want to know --

4           MR. CARR:  I will object to the question on  
5 relevance.  We're talking about a compulsory pooling  
6 application on a specific tract.  This doesn't mean that  
7 every plan they have in the area should be subject to  
8 just --

9           MR. BRUCE:  And I'm not asking for --

10          MR. CARR:  -- meander through the records of  
11 McElvain.

12          MR. BRUCE:  And I'm not asking for every well,  
13 I'm not asking for well locations, but I would like to  
14 know, do they have two, three, four, five, six wells  
15 planned in this area over the next year or two?  And if so,  
16 I think that bears on the risk involved.  If they're going  
17 to get up and say that this is just an extremely high-risk  
18 opportunity here, then I won't believe it.

19          MR. CARR:  I don't see how future plans, whether  
20 or not they materialize or not, should be then somehow  
21 retroactively applied to risk in this well.  If this well  
22 is a dry hole, future plans can --

23          MR. BRUCE:  Well, by Mr. --

24          MR. CARR:  They've admitted they've developed in  
25 the area, they're looking at the area.  Beyond that, none

1 of this is relevant as to whether or not there is risk  
2 associated with this particular well.

3 MR. BRUCE: Well, but Mr. Carr's own -- by that  
4 logic, then the only thing we should be looking at is a map  
5 of Section 33 with respect to geology, or the south half of  
6 Section 33, because nothing else matters.

7 MR. CARR: And I would suggest that as to the  
8 compulsory pooling of the south half of 33, that just might  
9 be correct, because that's the issue that you're being  
10 asked to decide.

11 (Off the record)

12 EXAMINER ASHLEY: Okay, I'm going to ask a  
13 question. Do you plan further development in the area  
14 generally?

15 THE WITNESS: We are -- Well, generally, we are  
16 looking at the area, Mr. Ashley, and as Mr. Carr referred,  
17 every well -- you know, by drilling a well, that could  
18 change everything, really. I mean, we're drilling one well  
19 at a time. We're not going out and drilling multiple  
20 wells. And based on what happens in each well we drill,  
21 has a direct relevance on our future plans. We certainly  
22 are looking at the area because we do have leasehold in  
23 this general area. What our future plans are, are  
24 definitely up in the air.

25 EXAMINER ASHLEY: Okay, we'll leave it at that,

1 then.

2 MR. BRUCE: I have nothing further, Mr. Examiner.

3 EXAMINER ASHLEY: Okay.

4 MR. CARR: Nothing further of this witness.

5 MR. HALL: Nothing further.

6 EXAMINER ASHLEY: I've got a few questions.

7 EXAMINATION

8 BY EXAMINER ASHLEY:

9 Q. I don't have a clear understanding from Exhibit 2  
10 of who actually has joined or agreed to be pooled --

11 A. Okay, all right.

12 Q. -- and who has -- and are there any of the  
13 working interests here that you have not had any contact  
14 with at all?

15 A. Okay, I'll go down the list. Beginning with  
16 Energen, we've discussed our contacts with them.

17 Noseco Corporation, we've had contact with them.  
18 They have, in fact, signed the operating agreement and are  
19 voluntarily joining in the well as a nonconsenting working  
20 interest owner.

21 Neumann Family Trust also has signed the  
22 operating agreement and has elected nonconsent status, so  
23 they have voluntarily joined in this well.

24 Gavilan Dome Properties, Mesa Grande Resources,  
25 NM&O Operating Company and Johansen Energy Partnership, all

1 of which own a working interest in that federal lease in  
2 the north half of the southeast quarter, have not  
3 voluntarily joined in the well.

4 And again, the Apache Corporation interest has  
5 been acquired by McElvain.

6 Q. Okay. And then what about Williams and Dugan?

7 A. Williams has a reversionary working interest, and  
8 I have spoken on several occasions with their landman. And  
9 in the past they have signed the operating agreement, but  
10 in this case they said we'll just allow our interest to be  
11 under the compulsory pooling hearing, basically.

12 Q. Okay.

13 A. Dugan Production Company, I've spoken with their  
14 landman numerous times as well, both in regards to this  
15 proposal and other of our proposals in the area, and wells  
16 that we have drilled, and have discussed the fact that  
17 there appears that they may have a rever- -- or a  
18 reassignment right in this acreage. And they -- I talked  
19 to them about a week ago, was the last conversation, and  
20 they said they're just going to go ahead and let their  
21 interest be force-pooled, that they didn't see any other  
22 advantage to them to do anything else in this particular  
23 case.

24 EXAMINER ASHLEY: Okay. I have nothing further.

25 Thank you, Mr. Jordan.

1 THE WITNESS: Thank you.

2 EXAMINER ASHLEY: Mr. Carr, could you -- and Mr.  
3 Bruce and Mr. Hall?

4 (Off the record)

5 MR. CARR: May it please the Examiner, at this  
6 time we would call John Steuble, S-t-e-u-b-l-e.

7 JOHN STEUBLE,

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

10 DIRECT EXAMINATION

11 BY MR. CARR:

12 Q. Would you state your name for the record, please?

13 A. John Steuble.

14 Q. Where do you reside?

15 A. Denver, Colorado.

16 Q. By whom are you employed?

17 A. McElvain Oil and Gas Properties.

18 Q. And what is your position with McElvain?

19 A. Engineering manager.

20 Q. Mr. Steuble, have you previously testified before  
21 this Division and had your credentials as an expert in  
22 petroleum engineering accepted and made a matter of record?

23 A. Yes, I have.

24 Q. Are you familiar with the Application filed in  
25 this case?

1 A. Yes, I am.

2 Q. Have you made an engineering study of the area  
3 which is the subject of this Application?

4 A. Yes, I have.

5 Q. And are you prepared to share the results of your  
6 work with the Examiner?

7 A. Yes, I am.

8 MR. CARR: Are the witness's qualifications  
9 acceptable?

10 EXAMINER ASHLEY: They are.

11 Q. (By Mr. Carr) Let's go to what has been marked  
12 for identification as McElvain Exhibit Number 5. I would  
13 ask you to identify that and review it for Mr. Ashley.

14 A. Yes, this is a map showing the wells that have  
15 produced or are producing out of the Mesaverde formation.  
16 It shows the initial potential of the individual wells and  
17 the cumulative production as of 5-31-99.

18 The other thing it shows is our proposed  
19 location, the Cougar Com 33-1, and the very sparse drilling  
20 for Mesaverde in this area. Therefore, because of the  
21 sparse drilling it also is kind of a visual assessment of  
22 the risk involved in the area.

23 Q. Let's go now to McElvain Exhibit Number 6.  
24 Identify and review this, please.

25 A. Exhibit Number 6 -- And I should explain that

1 this is included because the well is permitted to the  
2 Dakota formation, so I prepared Exhibit Number 6 to show  
3 the penetrations in the Dakota formation. What I did find  
4 was that there are three commingled pools in the area and  
5 not a single Dakota producer individually. All of the  
6 information here, again, is as of 5-31-99. It shows the  
7 initial potential rate and the cumulative production. But  
8 I must stress that the cumulative production is out of the  
9 various producing horizons, not just the Dakota.

10 Q. Are you prepared to make a recommendation to the  
11 Examiner concerning the risk that should be assessed  
12 against interest owners who do not voluntarily participate  
13 in the well?

14 A. Yes, I am.

15 Q. And what is that?

16 A. Two hundred percent.

17 Q. And summarize the basis for that recommendation.

18 A. Because we're going to the Dakota, and you can  
19 see that there are very few Dakota penetrations in the  
20 area, this is basically a wildcat play, and that amount of  
21 risk is not unreasonable for a wildcat.

22 Q. Do you believe there is a chance you could drill  
23 a well at the proposed location that would not be a  
24 commercial success?

25 A. Definitely.

1 Q. Has McElvain drilled other Mesaverde wells in the  
2 area?

3 A. Yes, we have.

4 Q. Could you identify and review what has been  
5 marked as McElvain Exhibit Number 7?

6 A. Number 7 is the AFE I prepared back in September  
7 for the Cougar Com 33-1. It assumes that it will be a  
8 Dakota completion.

9 Q. And did you get the totals on that? I'm having a  
10 hard time hearing you.

11 A. Oh, I'm sorry. The dryhole cost came up to  
12 \$325,750. The completed well cost is \$709,430.

13 Q. Are these in line with what's been charged for  
14 other similar wells in the area?

15 A. Yes. I might add one thing. Since I've done the  
16 AFE, drilling costs have gone up somewhat, and pipe prices  
17 have gone up at least three times, if not more.

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

21 A. Yes, I have.

22 Q. And what are those numbers?

23 A. \$5484 a month for the drilling and \$548 a month  
24 for the operating.

25 Q. Are these the figures that are set forth in the

1 JOA?

2 A. Yes, they are.

3 Q. Are these the same figures that were approved by  
4 the Division in Order Number R-11,247, entered on September  
5 the 9th of this year, pooling the north half of Section 10,  
6 for a well to the Mesaverde?

7 A. Yes, they are.

8 Q. Do you recommend that these figures be  
9 incorporated into the order that results from today's  
10 hearing?

11 A. Yes, I do.

12 Q. Does McElvain request that these rates be  
13 increased in accordance with escalation of provisions of  
14 COPAS accounting procedures?

15 A. Yes.

16 Q. Does McElvain Oil and Gas Properties, Inc., also  
17 seek to be designated operator of the proposed well?

18 A. Yes, we do.

19 Q. In your opinion, will the granting of this  
20 Application and the drilling of the well as proposed be in  
21 the best interest of conservation and the prevention of  
22 waste and the protection of correlative rights?

23 A. Yes, I believe so.

24 Q. Were Exhibits 5 through 7 prepared by you or  
25 compiled under your direction?

1 A. Yes, they were.

2 MR. CARR: May it please the Examiner, we would  
3 move the admission into evidence of McElvain Exhibits 5  
4 through 7.

5 EXAMINER ASHLEY: Exhibits 5 through 7 will be  
6 admitted as evidence at this time.

7 MR. CARR: And that concludes my direct  
8 examination of Mr. Steuble.

9 EXAMINER ASHLEY: Mr. Hall?

10 CROSS-EXAMINATION

11 BY MR. HALL:

12 Q. Mr. Steuble, you may or may not have been pleased  
13 to hear that your land manager is deferring questions of  
14 economic risk to you. Can you tell the Examiner why it is  
15 the farmout proposal offered by Energen did not satisfy  
16 McElvain's economic criterion for this?

17 A. I would like to make two comments on that, if I  
18 may. First, this is not the forum or the place to be  
19 discussing internal economics for the corporation. Second,  
20 if Energen would join us in drilling of the well, we would  
21 be more than happy. But what Energen was offering was less  
22 than they would have if they joined the well. There's no  
23 economic benefit for McElvain to accept that farmout  
24 agreement.

25 Q. All right. Can you answer my question, though,

1 please, sir? My question is, can you tell us why the  
2 interest brought to the table by Energen did not satisfy  
3 McElvain's economic criterion?

4 A. I just did.

5 Q. What is McElvain's economic criterion?

6 A. I don't think that's appropriate for this forum,  
7 I mean, any more than we would ask Amoco what their  
8 economic criteria is. The point is that Energen, not  
9 willing to join us in drilling the well, offered us a  
10 farmout that was of less interest to us than they would  
11 have if they did join in the well. What's our -- Why would  
12 we do that?

13 MR. HALL: Mr. Examiner, I would ask that you  
14 direct the witness to answer the question. We've had two  
15 witnesses now offer you opinion testimony with respect to  
16 the economic criterion for the well, and it has a direct  
17 bearing on whether or not their efforts to secure voluntary  
18 joinder were done in good in faith, whether they meet the  
19 requirements of the statute.

20 MR. CARR: Mr. Examiner, I do not believe that an  
21 operator is required, when they come in to pool someone, to  
22 go through the details of their in-house economic criteria,  
23 the standards by which they judge whether or not they can  
24 go forward, based on their own internal business decisions  
25 and business criteria, whether or not they can go forward

1 with a well. They have to come before you and show they've  
2 made a good-faith effort to reach a voluntary agreement.

3 Mr. Steuble has just testified that Energen came  
4 in and could have participated in the well, but what they  
5 have been willing to do is substantially less economically  
6 for McElvain than just simply participating.

7 McElvain has a right to say, We're going forward  
8 with the well, you won't join, you want to come in and get  
9 more or give us less, and we're not able to do that without  
10 having to come in here and going to the internal economic  
11 criteria that they are using in-house based on their own  
12 costs and all sorts of proprietary factors. If that's the  
13 standard you want to establish right now, the very first  
14 time Energen will be in here, I can assure you, we'll be  
15 asking for every bit of internal criteria they use and how  
16 they internally evaluate prospects, that that is an  
17 inappropriate standard.

18 The standard is whether or not they tried to  
19 reach an agreement, the answer is obviously no. And the  
20 explanation is, they want to come in on less than what it  
21 would be if they just participated, and they can't do that.

22 MR. HALL: Nevertheless, Mr. Examiner, they  
23 offered testimony on that issue in their direct case. They  
24 have opened the door to it. We're entitled to inquire.  
25 They have waived their objection.

1 MR. CARR: I do not think that's right. I think  
2 you can say it doesn't meet our economic criteria, without  
3 then having to go through it chapter and verse. The issue  
4 isn't economic criteria. The issue is, have they reached a  
5 voluntary agreement? Is somebody trying to get in for less  
6 than what it would be if they simply participated? We  
7 haven't reached an agreement for that reason. That's the  
8 issue.

9 EXAMINER ASHLEY: Mr. Steuble, is this internal  
10 criteria considered proprietary by McElvain?

11 THE WITNESS: I would say so, yes.

12 EXAMINER ASHLEY: Okay. Mr. Hall, you said that  
13 they have already brought forth that information at a  
14 previous time?

15 MR. HALL: Mr. Examiner, in fact, they have  
16 offered testimony with respect to economic criteria through  
17 their land manager in this case today. The land manager  
18 could not tell us what the economic criterion was, and he  
19 deferred questions of that nature to the engineering  
20 witness. That's why we're making inquiry of the  
21 engineering witness now. There was no objection made at  
22 the time, and we were promised that they would be bringing  
23 evidence forward on that issue. Now they're refusing.

24 MR. CARR: I would submit that Mr. Hall is  
25 reading a lot into the testimony that simply wasn't there.

1 He asked the land witness, he said he didn't know, maybe  
2 the engineering witness would know. That was the scope of  
3 the testimony. He didn't testify to it, he said he  
4 couldn't.

5 MR. HALL: Regardless, Mr. Examiner, it was  
6 brought up in the context of questioning with respect to  
7 good-faith efforts to secure voluntary joinder. It's  
8 directly relevant to that. The land witness could not  
9 testify to that, he deferred to the engineering witness.  
10 It still relates to the same question. We're entitled to  
11 know.

12 MR. CARR: We object to any question that seeks  
13 proprietary, in-house economic criteria employed by  
14 McElvain to evaluate their own proposals or negotiations  
15 with other parties. We believe it is proprietary and it  
16 goes beyond the issue before you, and that is whether or  
17 not the parties have attempted to reach a good-faith  
18 agreement. And when you have one party who wants to come  
19 in for substantially less than what it would be if they  
20 just paid their way, it certainly seems to me that -- and  
21 the other party isn't willing to do that, that that  
22 standard has been met, and we object to these questions.

23 EXAMINER ASHLEY: Mr. Hall, what purpose would it  
24 serve to have this information? What purpose would it  
25 serve to you to have this information?

1 MR. HALL: Well, it relates directly to the  
2 questions we put forward to the land witness, whether or  
3 not McElvain's efforts to secure Energen's voluntary  
4 participation were done in good faith, frankly, Mr.  
5 Examiner. They have offered testimony that they thought it  
6 was.

7 We made inquiry, Well, what are your standards  
8 for that?

9 We don't know.

10 Well, does it meet your economic criteria?

11 I don't know, the land witness said, but the  
12 engineering witness will know, and he can testify on that.  
13 That's why we're making the inquiry.

14 MR. CARR: Then an appropriate question would be,  
15 does it meet your economic criteria? And the answer would  
16 be no.

17 EXAMINER ASHLEY: And that's what Mr. -- You  
18 answered that question.

19 THE WITNESS: I answered that question.

20 (Off the record)

21 EXAMINER ASHLEY: Mr. Carr, I will sustain your  
22 objection, that proprietary information is part of every  
23 company's way of doing business, and we're not going to get  
24 into that.

25 Q. (By Mr. Hall) Mr. Steuble, let me ask you, can

1 you explain to the Hearing Examiner why the -- Let me  
2 rephrase the question.

3           Isn't it true, Mr. Steuble, that Energen offered  
4 to bring to the deal a net revenue burden after payout for  
5 their interest of only .2929 percent, or do you know?

6           A.    I don't know.

7           Q.    Is there any other witness here that can testify  
8 today about the negotiations between Energen and McElvain?

9           A.    I think there's an Energen fellow here.

10          Q.    Any other McElvain witnesses?

11          A.    I don't believe so.

12          Q.    Isn't it true, Mr. Steuble, that Energen offered  
13 to bring a net revenue interest burden to the deal finally  
14 of .2929 percent, and McElvain demanded a net revenue  
15 interest burden of only .1468 percent, or do you know?

16          A.    I have not run those numbers, I do not know.

17          Q.    Are you able to testify why the difference  
18 between those two proposals, basically a .1468-percent  
19 interest, would not satisfy McElvain's economic criteria  
20 for the well?

21          A.    Answer, no.

22          Q.    Is there any other witness here that can testify  
23 to that today?

24          A.    Not that I know of.

25          Q.    Can you testify whether it's necessary for

1 McElvain to have a 200-percent risk penalty on Energen's  
2 interest in order to satisfy its economic criteria for the  
3 well?

4 A. Would you repeat that, please?

5 Q. Will McElvain proceed to drill the well without a  
6 200-percent risk penalty or -- on Energen's interest in  
7 this case?

8 A. On Energen's interest?

9 Q. Yes.

10 A. I would -- Logically, I would think so.  
11 Accountingwise, that would be a burden on the accounting  
12 people to try and keep track of various risk penalties.  
13 And I guess to answer your question, I don't know. There's  
14 a lot more than just Energen's interest or the penalty on  
15 the interest that would have to be evaluated. I do know  
16 that accountingwise, it's difficult to keep track of  
17 multiple penalties and who's backing in and who's not  
18 backing in and things like that.

19 Q. You've heard the land witness testify this  
20 morning that McElvain does seek the 200-percent risk  
21 penalty imposition on Energen's and all the enjoined  
22 interests?

23 A. That's correct. I also testified that -- and I  
24 showed you the pool maps, Exhibit 5 and 6, showing the  
25 amount of wells that have been drilled in the area, and

1 that's why we're requesting the 200 percent. It's not a  
2 development-type drilling operation, it's a high-risk  
3 operation. And yes, I think we are entitled to the 200  
4 percent.

5 Q. And you did an economics run on the well with and  
6 without 200-percent risk penalty burdens on the enjoined  
7 interest, I would assume?

8 A. I believe I did, yes.

9 Q. If Energen were to offer a farmout of 100 percent  
10 of its interest, would that be sufficient to satisfy  
11 McElvain?

12 MR. CARR: May it please the Examiner, it seems  
13 that Energen now is attempting to conduct their  
14 negotiations in the context of the hearing. I think I can  
15 say for McElvain we will, as we have been, continue be  
16 willing to discuss with Energen voluntary joinder. But to  
17 sit here with a witness and lop things at them and ask them  
18 to make a commitment for their company is not going to  
19 work, and we object to the line of questioning.

20 MR. HALL: Well, the purpose of the question, Mr.  
21 Examiner, is to test whether or not their efforts to  
22 solicit Energen's joinder have been in good faith, frankly,  
23 and the testimony establishes already that we're talking  
24 about an infinitesimally small burden on the economic  
25 prospects for the well. It's close to a zero-percent

1 burden. I'm entitled to ask the witness whether or not he  
2 would accept a zero burden farmout from Energen.

3 It still has a bearing on whether or not their  
4 demands for a very small farmout burden are made in good  
5 faith. It still bears on whether or not their demands  
6 satisfy their economic criterion for the well.

7 I'm not entitled, according to your ruling, to  
8 make inquiry about that economic criteria directly. I  
9 think I am entitled to get to it indirectly, to see whether  
10 or not their efforts are still in good faith with respect  
11 to that economic criteria, whatever it may be. That's why  
12 I'm entitled to ask the questions.

13 MR. CARR: Mr. Examiner, before those questions  
14 can be asked, I think it should be established whether or  
15 not Mr. Steuble is a negotiator for the company or is in a  
16 position to even respond to those. We're assuming that  
17 he's got all kinds of skills and roles and abilities that  
18 have not been established.

19 I think he should be asked, Do you negotiate for  
20 your company? Are you in a position to make those kinds of  
21 judgments?

22 And those, if they're answered in the negative, I  
23 think would preclude this.

24 EXAMINER ASHLEY: Mr. Steuble?

25 THE WITNESS: No, I do not negotiate land deals

1 for our company. Yes, I do negotiate drilling contracts by  
2 prices, things like that. But as far as the land, I do  
3 not.

4 EXAMINER ASHLEY: Okay.

5 MR. HALL: No further questions of the witness.

6 EXAMINER ASHLEY: Mr. Bruce?

7 CROSS-EXAMINATION

8 BY MR. BRUCE:

9 Q. Just a couple, Mr. Steuble. Your Exhibit 7, the  
10 AFE --

11 A. Yes, sir.

12 Q. -- and I won't hold you to this, but you said, I  
13 think, that the drilling rig costs have gone up and the  
14 cost of pipe has gone up since you prepared this AFE. Do  
15 you have a ballpark figure what a completed well cost would  
16 be? You know, 730, 740?

17 A. I haven't added it up? But I can tell you the  
18 drilling costs are up about three dollars a foot, three to  
19 four dollars.

20 Q. Three to four dollars per foot?

21 A. Per foot, so that would be an additional \$26,000  
22 onto this.

23 Pipe prices, I think the 5 1/2 is in the \$7.80 to  
24 \$7.90 range, so that's gone up probably 50, 60 cents a  
25 foot.

1           The 9 5/8, I'm not sure. I think it's up around  
2 \$13 a foot

3           And tubing is approaching \$2.25 a foot. I  
4 haven't answered your question directly, but --

5           Q.    That's fine, but you're -- But once again, you  
6 said the surface casing has gone up 50 or 60 cents a foot,  
7 and then you said that -- Is that right? And then the  
8 5 1/2 -- or the --

9           A.    The surface casing has probably gone up a dollar  
10 to two dollars a foot.

11          Q.    Okay.

12          A.    The 5 1/2 has gone up about 60 cents a foot.

13          Q.    Okay. That's fine, I just wondered what the  
14 estimates were.

15                And then on your Exhibit 5, there's a well in  
16 Section 34, 26 North, 2 West. Is that McElvain's well?

17          A.    Yes, that is.

18          Q.    Has it produced yet?

19          A.    Yes, it has.

20          Q.    What are its current rates?

21          A.    Its current rates are 150 MCF a day and 40  
22 barrels of water a day.

23          Q.    And then the well in the northwest quarter of  
24 Section 3, that is a McElvain well?

25          A.    Yes, it is.

1 Q. Okay, and those are the current rates and  
2 cumulative production figures?

3 A. That -- As of 5-31.

4 Q. Okay. The well in Section 4, has that been  
5 completed?

6 A. No, we are just drilling it.

7 Q. Currently drilling?

8 A. Currently drilling.

9 Q. And then well in Section 10?

10 A. The well in Section 10 has been drilled but not  
11 completed.

12 EXAMINER ASHLEY: Excuse me, Mr. Bruce, what  
13 exhibit are you looking at?

14 MR. BRUCE: I'm looking at Exhibit 5, the  
15 Mesaverde map.

16 EXAMINER ASHLEY: Okay.

17 MR. BRUCE: And although it's not marked on  
18 there, Mr. Examiner, there is a well in Section 4, 25  
19 North, 2 West, being drilled.

20 EXAMINER ASHLEY: And what's the approximate --  
21 Have you got a unit letter for that, or can you --

22 MR. BRUCE: Mr. Jordan probably knows off the top  
23 of his head. The unit letter for the well in Section 3?

24 EXAMINER ASHLEY: Four.

25 THE WITNESS: Probably G.

1 MR. BRUCE: Or 4.

2 EXAMINER ASHLEY: In Section 4?

3 THE WITNESS: Yes.

4 EXAMINER ASHLEY: Okay. And that's currently  
5 being drilled, you said?

6 MR. BRUCE: That's what Mr. Steuble said, that  
7 that one is currently drilling.

8 And then there's a well drilled but not completed  
9 in Section 10.

10 THE WITNESS: That's also in the northeast  
11 quarter.

12 MR. BRUCE: That's all I have, Mr. Steuble.

13 EXAMINER ASHLEY: Mr. Carr?

14 REDIRECT EXAMINATION

15 BY MR. CARR:

16 Q. Mr. Steuble, does McElvain have a lease expiring  
17 on December 23rd in this spacing unit?

18 A. Yes.

19 Q. Does McElvain request that the order in the case  
20 be expedited?

21 A. Yes, we do.

22 MR. CARR: That's all I have.

23 EXAMINATION

24 BY EXAMINER ASHLEY:

25 Q. Mr. Steuble, when does the lease expire?

1 A. December 23rd.

2 Q. In Exhibit 5, we just talked about the wells,  
3 four additional wells, that McElvain operates or is  
4 drilling --

5 A. Yes, sir.

6 Q. -- at this time. And those are all Mesaverde  
7 wells?

8 A. Those are all Mesaverde wells. And for  
9 clarification, the Cougar Com well, the one we're having  
10 the hearing on, is going to the Dakota. So it is termed a  
11 Basin-Dakota well because it's not within any other of the  
12 pool rules.

13 Q. Okay. And I understand this well is also in a  
14 nonstandard location?

15 A. Yes, sir. It was a nonstandard -- We have  
16 administrative approval on that for the Basin-Dakota  
17 nonstandard, and it was nonstandard due to archeological  
18 finds in the area.

19 Q. What was the proposed TD for this well?

20 A. 8400 feet.

21 Q. Of the exhibits that you have submitted, I don't  
22 really see anything that shows any geology out there. How  
23 come there aren't any structure maps or isopach maps or  
24 cross-sections or anything so that --

25 A. There's a reason for that.

1 Q. Okay, can you tell me?

2 A. If you look on the Exhibit 6 --

3 Q. Okay.

4 A. -- these are Dakota penetrations in the area.

5 Q. Uh-huh.

6 A. It would be more than difficult to come up with  
7 any kind of structure, given the -- I mean, that's what we  
8 were saying, this -- Because we're going to the Dakota, and  
9 because that's our primary target, it's kind of a shot in  
10 the dark.

11 But we felt, because we are drilling Mesaverdes  
12 in the area, we have to at least try to evaluate the Dakota  
13 in one of the wells. And geologicwise, one location is no  
14 different than the other.

15 Q. And on Exhibit 5, these are just Mesaverde wells?

16 A. Yes, sir.

17 Q. So you have some control there?

18 A. On the Mesaverde.

19 EXAMINER ASHLEY: Okay, thank you. I have  
20 nothing further.

21 MR. CARR: That concludes our presentation in  
22 this case.

23 EXAMINER ASHLEY: Mr. Hall?

24 MR. HALL: We call Reg Corcoran to the stand at  
25 this time.



1 MR. HALL: Mr. Examiner, are the witness's  
2 credentials acceptable?

3 EXAMINER ASHLEY: They are.

4 Q. (By Mr. Hall) Mr. Corcoran, let's see if we  
5 can't establish a certain chronology with respect to the  
6 events here today. Let's look at your packet of exhibits,  
7 please, sir.

8 Let me ask you some questions with respect to  
9 McElvain's negotiations with you to secure Energen's  
10 joinder in the well proposal. What does Energen understand  
11 the proposed target interval to be for McElvain's well?

12 A. The primary target was the Dakota.

13 Q. All right. Did McElvain ever discuss a  
14 completion in any other interval other than the Dakota?

15 A. Not as a primary objective, perhaps as a bail-  
16 out.

17 Q. All the AFE materials, cost materials you've been  
18 provided by McElvain are only for a Dakota completion; is  
19 that correct?

20 A. That's correct.

21 Q. There's been no other materials establishing the  
22 allocation of costs for a Dakota and Mesaverde completion,  
23 correct?

24 A. Not to my knowledge.

25 Q. What is Energen's position with respect to the

1 unorthodox well location requested?

2 A. We had no objection to that, and so indicated in  
3 our waiver.

4 Q. All right. And does Energen have a position with  
5 respect to the estimated drilling and completion costs for  
6 the Dakota completion?

7 A. We thought it was in line. We didn't have any  
8 problem with it.

9 Q. All right. And you don't object to the  
10 designation of McElvain as operator for the proposed well?

11 A. No problem.

12 Q. Mr. Corcoran, how long have you practiced as a  
13 landman in the San Juan Basin?

14 A. In the San Juan Basin, approximately 13 years.  
15 Twenty-two years in all.

16 Q. All right. And can you estimate for the Examiner  
17 how many wells, approximately, you've participated in  
18 negotiations on?

19 A. Someplace under a hundred, 75 to a hundred,  
20 approximately.

21 Q. All right. In this case, Mr. Corcoran, in your  
22 opinion, do you believe that McElvain made a good faith  
23 effort to obtain Energen's voluntary participation in this  
24 well?

25 A. I do not.

1 Q. And why not?

2 A. Why not is because we had initially suggested  
3 terms that were terms that McElvain had used in the past  
4 with us, and in turn, we had used the same terms on a well  
5 they drilled called the Seifert, or recompleted, up in  
6 Section 22 of this same township and range.

7 However, before even writing the farmout, I had a  
8 conversation with Mr. Jordan, and he advised me that he  
9 didn't think those terms would be acceptable. To which we  
10 turned around and reduced them significantly. We went from  
11 delivering a 75-percent net revenue to delivering a 78.75-  
12 percent net revenue and changing the after payout from 40-  
13 percent working interest to 25-percent working interest,  
14 which are significant changes in terms that we had done  
15 before.

16 Q. All right, let's put these negotiations in the  
17 context of dates. Why don't we look at your Exhibit Number  
18 1? Can you identify that?

19 A. Yes, that's McElvain's original well proposal,  
20 along with their AFE.

21 Q. And that was the first proposal made to you; it  
22 was the written proposal; is that correct?

23 A. That is correct.

24 Q. It's dated September 1, 1999?

25 A. Right.

1 Q. What is Exhibit 2, 3 and 4?

2 A. That's the application for administrative  
3 approval of an unorthodox location for that particular  
4 well, which we went ahead and waived any objection to.

5 Q. All right. It shows that you received that in  
6 Farmington on October 8th, 1999, on the face of Exhibit 2  
7 there?

8 A. That's correct.

9 Q. There was some problem with the notification  
10 shown on Exhibit 3. Then on Exhibit 4 there, is that  
11 Energen's waiver --

12 A. Yes.

13 Q. -- dated October 25, 1999?

14 A. That is correct, the same -- basically the same  
15 day we received the correction.

16 Q. All right. Tell the Hearing Examiner what was  
17 being negotiated during that specific time frame, late  
18 September or late October.

19 A. We -- I sat down -- After having received their  
20 proposal, I suggested that we farm out our interest, rather  
21 than join or be pooled and was waiting to hear back from  
22 them as to the viability of that. And in a discussion  
23 about another well it was mentioned that they may not be  
24 acceptable, but they would get back to me.

25 Next thing I received was this October -- or

1 these various waiver letters, which we signed. Then the  
2 next thing we received, as is indicated in the exhibits, is  
3 the Application for pooling.

4 Q. You're referring to Exhibit 5?

5 A. Correct.

6 Q. And you received that on November 2, 1999; is  
7 that correct?

8 A. That is correct.

9 Q. And the date of the Application is October 25,  
10 1999?

11 A. Right, the same day we waived our -- any  
12 objection to the unorthodox location.

13 Then two days later, I began writing a farmout  
14 letter to convey the terms that I felt were going to be  
15 acceptable, as is set out in our Exhibit Number 6. And as  
16 is identified in my letter --

17 Q. And for the record, that's the letter from you,  
18 dated November 4, 1999?

19 A. That's correct, Exhibit Number 6. It simply sets  
20 out that we would change our proposal to provide for our  
21 retention of a 2-1/2-percent overriding royalty,  
22 convertible to a 25-percent working interest after payout,  
23 all being proportionately reduced. A 2-1/2-percent  
24 overriding royalty, in this case, equates to a .2929  
25 percent overriding royalty. I mean, we're talking about

1 less than three-tenths of a percent overriding royalty.

2 They rejected that and said, no, that was not  
3 acceptable, but a half of that would be acceptable, if  
4 there was no back-in, which we decided no. The back-in  
5 should not affect the economics of the well until they have  
6 recovered all of their drilling, equipping and producing  
7 costs. And until that time, the back-in would be a non-  
8 issue. So we were saying yes, we would like to retain a  
9 .29-percent overriding royalty.

10 As a last-ditch effort on a phone conversation, I  
11 agreed with them that I would deliver an 80-percent net  
12 revenue interest, being a .14-percent overriding royalty,  
13 provided that after they recovered all of their costs, that  
14 we could then have a back-in, and we didn't get that done.

15 Q. That, you understood, was unagreeable to --

16 A. I understood that was unagreeable.

17 Q. -- unagreeable to McElvain?

18 A. That's correct.

19 Q. Referring back again, to Exhibit 6 then, earlier  
20 you made reference to the Seifert Com Number 1 --

21 A. Yes.

22 Q. -- and there's a reference to that on the first  
23 paragraph of Exhibit 6?

24 A. Yes, that's correct.

25 Q. That well was the precedent for the first farmout

1 you proposed to McElvain; is that correct?

2 A. Yes, it was in exchange. We were drilling wells  
3 in another area whereby we needed McElvain to grant to us a  
4 farmout, which they did under the terms that they had  
5 established.

6 In exchange, they needed our interest in the  
7 Seifert well, which we did grant them under exactly the  
8 same terms. Now, that Seifert well happens to be about,  
9 oh, two miles north of this well. It, however, you know,  
10 for clarification purposes, I believe was a recompletion in  
11 the Mesaverde, not a Dakota.

12 Q. All right. But in that circumstance, those terms  
13 were acceptable to McElvain --

14 A. Yes.

15 Q. -- but not in this circumstance?

16 A. That's correct.

17 Q. And we had asked some questions of McElvain, what  
18 they understood to be the burden imposed on the prospect by  
19 the terms of the farmout that Energen was asking and didn't  
20 get much of a response from them, but you recently -- you  
21 referred to the .29-percent ultimate override burden, and  
22 that's the proportionately reduced interest; is that  
23 correct?

24 A. Right, on the entire well, our interest to retain  
25 a 2-1/2-percent override would equate to .29 percent.

1 Again, less than three-tenths of a percent override. We  
2 even went so far as saying, no, I would accept half of  
3 that, .146, I think is what it turns out to, percent  
4 overriding royalty interest, provided that there would be  
5 an election for us to convert that interest to a working  
6 interest, only after they had received -- recouped all of  
7 their costs associated with drilling equipment for the  
8 well.

9 Q. What's your understanding why that was not  
10 acceptable to McElvain?

11 A. My understanding is, the reason it was not  
12 acceptable to McElvain is that the compulsory pooling would  
13 allow them better economics.

14 Q. And by that do you mean the 200-percent risk  
15 penalty?

16 A. I'm sorry, yeah, that's what I'm referring to.

17 Q. Mr. Corcoran, in your opinion, and based on your  
18 experience as a landman, are the terms that McElvain  
19 demanded for Energen's participation in the well in line  
20 with comparable prospects in the San Juan Basin?

21 A. No, I felt like they were unreasonable.

22 Q. Given the very small net revenue overriding  
23 royalty interest retained under your farmout proposal to  
24 McElvain, isn't that virtually the same as a 100-percent  
25 farmout to them?

1           A.    It's real close.  The last conversation we had  
2 represents 14/100 of a percent overriding royalty.  And you  
3 know, I walk away wondering about a well that would not be  
4 able to take a burden of 14/100 of a percent.

5           Q.    Okay.  So the only difference of opinion between  
6 McElvain and Energen, as far as we can tell, is the  
7 difference between the .29 percent and the .14648 percent?  
8 We're talking about a .14648-percent difference, and that's  
9 all, correct?

10          A.    Prior to payout, yes.  But not -- Now, there is  
11 another difference that's significant, and that's the  
12 after-payout interest.  We felt like we would do that in  
13 exchange for supporting the well in this fashion, yes.

14          Q.    And is the after-payout back-in interest that  
15 Energen sought in line with what's the custom and practice  
16 in the San Juan Basin?

17          A.    It is.  And it only represents a total burden to  
18 the well after payout of 2.9 percent.  We're talking about  
19 we would have a 2.9-percent working interest if we backed  
20 in, if and when all the costs were recouped.

21          Q.    All right.  And in your opinion and based on your  
22 experience, is that generous?

23          A.    In my opinion, that was very generous.  We tried  
24 to demonstrate our willingness to work with McElvain, in  
25 part, by attaching their operating agreement to our

1 farmout, saying basically, We'll take your whole same  
2 operating agreements that you guys know what's in there,  
3 you wrote it, we'll use it, we'll change two things, and  
4 they were insignificant things.

5 Q. And that's what's attached to your Exhibit 6,  
6 correct?

7 A. That is correct. Let's see, that's my farmout,  
8 but the operating agreement is not attached. It's just the  
9 front page of it, the one I have.

10 Q. All right. In your opinion, Mr. Corcoran, based  
11 on your experience as a professional landman in the San  
12 Juan Basin, do McElvain's negotiation efforts constitute a  
13 good-faith effort to secure Energen's voluntary  
14 participation in this well?

15 A. I do not believe it did.

16 Q. In your opinion, does McElvain conduct fall below  
17 the standard that applies to San Juan Basin operators in  
18 negotiating involuntary participation in well proposals?

19 A. I think so.

20 Q. Are you recommending that McElvain's request for  
21 the compulsory joinder of Energen's interest be denied?

22 A. I am.

23 Q. And were Exhibits 1 through 6 prepared by you or  
24 compiled at your direction?

25 A. They were.

1 MR. HALL: Move the admission of Exhibits 1  
2 through 6.

3 That concludes our direct of the witness.

4 EXAMINER ASHLEY: Exhibits 1 through 6 will be  
5 admitted as evidence at this time.

6 Mr. Carr?

7 MR. CARR: Mr. Bruce has a question --

8 EXAMINER ASHLEY: Okay.

9 MR. BRUCE: Just one question.

10 CROSS-EXAMINATION

11 BY MR. BRUCE:

12 Q. You're talking about either a .2929-percent  
13 override or -- I forget the exact thing, .14 or 6, roughly?

14 A. That's correct.

15 Q. That would be for the 320-acre well unit?

16 A. Yes, that's on the entire spacing unit.

17 Q. Okay, that's all I have.

18 EXAMINER ASHLEY: Mr. Carr?

19 CROSS-EXAMINATION

20 BY MR. CARR:

21 Q. Mr. Corcoran, Energen's working interest in the  
22 320 acres comprising the south half of 33 is the 11.718  
23 percent; is that right?

24 A. That is correct.

25 Q. And is that ownership the same in the Mesaverde

1 and the Dakota?

2 A. Let's see, I looked at it. I believe it is.

3 Q. You don't have different ownership at different  
4 depths in this well, do you?

5 A. Not to my knowledge.

6 Q. And the Mesaverde is, to your knowledge, above  
7 the Dakota, is it not?

8 A. Yes, it is.

9 Q. The well was proposed, was it not, as a Dakota  
10 completion? Isn't that what you said?

11 A. Yes.

12 Q. In your experience in the San Juan Basin, doesn't  
13 an operator always retain the right to go uphole and test  
14 shallower zones if the primary objective is dry?

15 A. No.

16 Q. You don't?

17 A. Not always. If it's provided for in whatever  
18 your agreement is, yes.

19 Q. When you were looking at this prospect, did you  
20 think that the pooling order would result in an order that  
21 if the Mesaverde was dry they wouldn't have the right to go  
22 -- I mean, I'm sorry, if the Dakota was dry they wouldn't  
23 have the right to go uphole?

24 A. No, I didn't think that, I thought they would  
25 have the right to come up.

1 Q. Now, when you were making proposals on behalf of  
2 Energen, you were actually proposing back to McElvain terms  
3 that were similar to what they had accepted on other wells;  
4 is that your testimony?

5 A. On another well, yes.

6 Q. And that was the Seifert well?

7 A. Correct.

8 Q. And didn't you testify that was a recompletion as  
9 opposed to a redrill?

10 A. I think that's right.

11 Q. And when you go and make proposals and try to  
12 negotiate -- Do you negotiate for Energen?

13 A. I do.

14 Q. When you go out and negotiate, don't you look at  
15 each individual well and look at the individual  
16 characteristics of the individual well?

17 A. I do.

18 Q. Now, in terms of the options that Energen has,  
19 they could have just joined in the well, correct?

20 A. That's --

21 Q. That's something they could have done?

22 A. That's correct.

23 Q. Instead, you proposed a farmout with an  
24 additional override --

25 A. Correct.

1 Q. -- and a back-in after payout?

2 A. Minor additional override, that's correct.

3 Q. The minor changes, however, would give McElvain  
4 less than if you just joined; isn't that correct?

5 A. Without question.

6 Q. And if they do that, don't they also give you  
7 more?

8 A. I'm not sure -- What do you mean?

9 Q. I mean, if this whole arrangement delivers to  
10 McElvain less, doesn't it mean you're really retaining  
11 more?

12 A. More than what?

13 Q. More than just straight joinder in the well?

14 A. Mr. Carr, I'm not sure I understand. I'm sorry,  
15 I'm not trying to be difficult.

16 Q. No, and I'm not trying to take you someplace you  
17 don't want to go.

18 A. All right.

19 Q. You elected not to join in the well?

20 A. Right.

21 Q. You must have felt a farmout with an override and  
22 a back-in was a better deal for Energen?

23 A. That's correct.

24 Q. And at the same time it was giving to McElvain  
25 less than just your straight-out joinder?

1           A.    Less than what we would have had, right, that is  
2 correct.

3           Q.    And less than what they would have had, because  
4 there would have been additional burdens on it.  There  
5 would have been additional overrides, is that not --

6           A.    Correct.

7           Q.    The would have been small, but they would have  
8 been there?

9           A.    Right.

10          Q.    And you were proposing an override of 2.5  
11 percent, and McElvain wouldn't go for it?

12          A.    That's correct.

13          Q.    You proposed a back-in after payout?

14          A.    That's correct.

15          Q.    And they wouldn't go for it?

16          A.    That's right.

17          Q.    Back-in after payout will affect, actually, the  
18 rate of return on your investment, even if it doesn't  
19 affect payout; isn't that right?

20          A.    After, after you've recouped your money --

21          Q.    But it --

22          A.    -- that's correct.

23          Q.    -- but will it -- it will affect your rate --

24          A.    But not the economics?

25          Q.    Correct, but it does have an economic impact?

1 A. Later, yes.

2 Q. Now, you proposed a farmout back, decided not to  
3 join, McElvain declined to take less than your joinder;  
4 isn't that right?

5 A. That is correct.

6 Q. And you stand before the Division today having  
7 gone through all these negotiations you've described, but  
8 you have no agreement to date for Energen's voluntary  
9 participation in the well; is that correct?

10 A. No, we don't.

11 Q. You do not have agreement?

12 A. We don't have agreement.

13 MR. CARR: Thank you, that's all.

14 EXAMINER ASHLEY: Mr. Hall?

15 MR. HALL: Nothing further.

16 EXAMINER ASHLEY: Mr. Bruce?

17 MR. BRUCE: No, sir.

18 EXAMINER ASHLEY: I don't have any questions.

19 Thank you.

20 THE WITNESS: Thanks.

21 MR. CARR: I have a statement. I'm the  
22 Applicant, I want to go last.

23 EXAMINER ASHLEY: You want to go last, okay. Who  
24 wants to go first?

25 MR. BRUCE: I'll go.

1 EXAMINER ASHLEY: Okay. And in your statement  
2 I'd like if you could tell me, kind of summarize what  
3 you're seeking out of this.

4 MR. BRUCE: I've already got it --

5 EXAMINER ASHLEY: Okay.

6 MR. BRUCE: -- summarized for you, Mr. Examiner.

7 EXAMINER ASHLEY: Great.

8 MR. BRUCE: Mr. Examiner, insofar as my client,  
9 NM&O Operating, is concerned, the chain of events is this:

10 September 1, 1999, McElvain sends out a proposal  
11 letter.

12 September 13th, my client sends a letter saying  
13 it doesn't want to join in the well but making a couple of  
14 proposals.

15 Then my client calls McElvain. McElvain doesn't  
16 call independently, McElvain simply says, They're not  
17 interested, they never make any other proposal whatsoever  
18 during the next two months.

19 This hearing is scheduled November 18th, there  
20 are zero contacts during the prior two months.

21 The hearing was continued. The very next day,  
22 November 19th, a letter goes out to NM&O saying, Well, we  
23 might consider a farmout but there are serious title  
24 defects. However, they don't really specify what those  
25 defects are.

1           September 23rd, NM&O writes to McElvain and asks  
2 for portions of the opinion affecting its interests. We  
3 still haven't seen that.

4           Mr. Examiner, Section 70-2-18 of the Oil and Gas  
5 Act requires good-faith negotiation parties before pooling  
6 is commenced. Certainly before the scheduled November 18th  
7 hearing, there were not good faith negotiations. There  
8 were zero negotiations. They simply sent out a proposal  
9 letter and went to a pooling hearing.

10           Second, McElvain says, after the November 18th  
11 hearing, that, well, we'll consider a farmout, but they  
12 won't inform my clients of what the defects in their title  
13 are. In essence, it won't allow a curative action on the  
14 title defects, but it won't take a farmout until those  
15 title defects are cured. That's a Catch-22.

16           Based on the foregoing, NM&O asserts that  
17 McElvain has not negotiated in good faith in this well  
18 prospect, and this case should be dismissed.

19           If it's not dismissed, it's clear that McElvain  
20 has a substantial ongoing drilling program in this  
21 immediate area. It's already drilled five wells in all of  
22 these adjoining sections. And based on that fact, we do  
23 not believe a risk penalty of 200 percent is appropriate.

24           Thank you, Mr. Examiner.

25           MR. HALL: Mr. Examiner, the scope of inquiry

1 with respect to the concerns of Energen is frankly very  
2 limited in this case, and it has to do with whether or not  
3 the Applicant has made a good-faith effort to obtain  
4 voluntary joinder.

5 Before you can write an order and exercise the  
6 considerable police powers of the Division to compulsorily  
7 pool real property interests, you must make a finding,  
8 based on the evidence, that the Applicant has indeed  
9 exercised good faith to secure voluntary joinder. We  
10 submit to you, Mr. Examiner, that the Applicant has failed  
11 to satisfy that burden of proof on its *prima facie* case and  
12 therefore its Application must be dismissed.

13 In response to questions from me, the Applicant's  
14 land witness testified that good faith is indeed measured  
15 by the accepted custom and practices of the industry in the  
16 San Juan Basin, but at the same time he couldn't tell you  
17 what those standards were. Consequently, he could not tell  
18 you whether or not those standards had been met. And they  
19 are obliged to do that under Section 70-2-17 and 70-2-18 of  
20 the New Mexico Oil and Gas Act.

21 The difference between a .29-percent and .14-  
22 percent after payout back-in override -- I'm sorry, before  
23 payout override, is an insignificant difference. But I  
24 think in this circumstance it's a demarcation for you to  
25 look at and say, This is one instance where the Applicant

1 has crossed the line. This is one instance where the  
2 Applicant is abusing and misusing the compulsory pooling  
3 statute.

4 Not only does the Division have an obligation  
5 under the Oil and Gas Act, and specifically the pooling  
6 statutes, to protect correlative rights, but it is also  
7 obliged to protect real property interests before the  
8 police powers of the state can be exercised. That's what  
9 you must do in this case, Mr. Examiner, because there has  
10 been demonstrated misuse of the statute and because there  
11 has been a failure to approve on the Applicant's direct  
12 case.

13 We submit that the Application must be dismissed.

14 Thank you, Mr. Examiner.

15 EXAMINER ASHLEY: Mr. Carr?

16 MR. CARR: May it please the Examiner, I think  
17 first I'll address NM&O, and I think it's important as you  
18 evaluate the case to recognize that both of the parties who  
19 were here complaining could participate in the well. NM&O  
20 could join, if it knew what its interest was.

21 I think in his closing statement Mr. Bruce  
22 clearly went outside the evidence that's been presented in  
23 this case. He suggests that we're refusing -- sort of  
24 hiding the hiding the ball with NM&O.

25 The testimony is that over a year ago, Mr. Jordan

1 talked with Mr. Sweet of NM&O and discussed their title  
2 problems. And these problems, there has been no action by  
3 them to cure the problems. The problems stand as real  
4 obstacles to going forward and developing the property.

5 And then Mr. Bruce wants to take you beyond the  
6 evidence. He wants to say, Hey, they're leasing out here,  
7 they've been drilling wells, they may drill more. And  
8 that, in and of itself, says there's no risk. I guess what  
9 he says is that in the future if anyone establishes an  
10 ownership position in the area before they drill the first  
11 well, their ownership position would override other  
12 considerations, like the absence of data, the absence of  
13 data that we have here.

14 The data we presented shows that these are rank  
15 wildcats that were out in the areas where there is little  
16 or no information available and that the risk is  
17 substantial, and NM&O would like us to carry the risk for  
18 them until they join. Energen wants us to carry the risk  
19 for them as well.

20 NM&O can join, NM&O can clean up its title  
21 problems, or NM&O can be force pooled. But that isn't bad  
22 faith. If there is bad faith, perhaps it's running in here  
23 screaming and hollering that we don't know what's wrong  
24 with our own property when a year ago we tried to tell  
25 them.

1           As to Energen, there's certain standards that  
2 govern compulsory pooling, and one of those is that the OCD  
3 requires that parties try to reach an agreement. I think  
4 it would be very hard to look at this record and not  
5 conclude that there have been substantial negotiations back  
6 and forth between Energen and McElvain, but they have no  
7 agreement.

8           So Energen comes here today to try and use this  
9 proceeding to force a bad deal. And we submit that's not  
10 the standard, that's not what you're here for. You're here  
11 to see whether or not we negotiated with them, whether we  
12 in good faith tried to reach an agreement.

13           And they can say it's bad faith, but look at the  
14 evidence. You know, first they scream, Oh, they haven't  
15 told us what the standards are. Well, Energen didn't tell  
16 us what the standards are. The standards are, you go out  
17 and try to work a deal with the other party.

18           Are the standards using the same provisions with  
19 every agreement? Mr. Corcoran says, well, you know, we  
20 offered them what they had offered before. But when you  
21 listen to the testimony, they were proposing back what we  
22 were going to do with a recompletion or a re-entry, not a  
23 new drill. Standards haven't been defined by anybody.

24           The issue for you is whether or not voluntary  
25 agreement has been reached after good-faith negotiations.

1 I submit on this record, the answer screams at you, and  
2 it's a screaming no. There is no agreement.

3 Energen could have joined, very simply. They  
4 wanted to give McElvain less than what McElvain would have  
5 gotten had they joined. McElvain has not agreed to take  
6 less, and you're not here to force them to do that. And  
7 when we have tried to get them to come in we have made  
8 counterproposals, they've been reviewed with you. We are  
9 entitled to seek and receive a pooling order.

10 I mean, the standards are simple. We're entitled  
11 to a pooling order. We own an interest, we have a right to  
12 drill, we've proposed the well, we've been negotiating with  
13 them for a long time, and we have no agreement, and the  
14 risk penalty should be imposed at 200 percent because,  
15 simply, there is no data in the area which would tell us  
16 anything but that we're taking a substantial risk for  
17 others.

18 And as to Energen the bottom line remains. They  
19 want us to accept an interest with more burdens on it than  
20 we're willing to accept, and we have said no.

21 On the facts before you, we're entitled to a  
22 pooling order so that we can go forward and drill this  
23 well, and we're entitled to a 200-percent risk penalty.

24 EXAMINER ASHLEY: Okay, what I'd like is a rough  
25 draft order from all three parties by the 10th. That's

1 next Friday.

2 MR. BRUCE: That's fine.

3 EXAMINER ASHLEY: And there being nothing further  
4 in this case, Case 12,284 will be taken under advisement.

5 (Thereupon, these proceedings were concluded at  
6 1:18 p.m.)

7 \* \* \*

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12  
13 I do hereby certify that the foregoing is  
14 a complete record of the proceedings in  
the Examiner hearing of Case No. 12284  
15 heard by me on 12-2 1999  
16 Mark Bahls Examiner  
Off Conservation Division  
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## CERTIFICATE OF REPORTER

STATE OF NEW MEXICO )  
 ) SS.  
 COUNTY OF SANTA FE )

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL December 7th, 1999.



STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 14, 2002