

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

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

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

ORIGINAL

November 6th, 2001

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Tuesday, November 6th, 2001, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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OIL CONSERVATION DIV.  
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 Commission Hearing  
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## A P P E A R A N C E S

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\* \* \*

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

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

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

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

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

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

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

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

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

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

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

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

21 To my left is Commissioner Robert Lee.

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

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

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

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

6 (Thereupon, the witnesses were sworn.)

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

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

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

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

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

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

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

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

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

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

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

25           Another party indicates that, as Ms. Binion will



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

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

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

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

1 the hearing?

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

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

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

1 proposal to the affected parties?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 CHAIRMAN WROTENBERY: Yes, sir.

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

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

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

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

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

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

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

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

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

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

25 My concern that what we learned in the Division-

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 proceed in the future.

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

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

22 CHAIRMAN WROTENBERY: Thank you, Mr. Hall.

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

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

1 Binion to the stand.

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

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

9 DIRECT EXAMINATION

10 BY MR. FELDEWERT:

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

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

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

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

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

21 A. In excess of 25 years.

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

1 A. Yes, I have.

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

5 A. Yes, I am.

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

8 A. Yes, I am.

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

11 MR. HALL: No objection.

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

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

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

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

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

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

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

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

14          Q.   And when was that plugged and abandoned?

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

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

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

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

24          A.   Yes, it was.

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

1 is that developed on 160-acre spacing?

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

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

7 A. Yes.

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

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

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

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

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

25 After that, McElvain continued its exploration of



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

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

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

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

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

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

25 Included in this proposal was an election page

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

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

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

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

20 A. November 10th, right.

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

23 A. I'm sorry, what?

24 Q. The election, the opportunity --

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

1 page 3.

2 Q. Of this exhibit?

3 A. Right.

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

7 A. That's correct.

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

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

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

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

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

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

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

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

1 operators take into account in proposing a spacing unit?

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

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

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

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

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

17 A. Correct.

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

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

25 Q. In your experience do operators in the Lindrith

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

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

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

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

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

23 A. No.

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

1 re-entry project?

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

11 A. That's correct.

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

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

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

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

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

24 A. Yes, it does.

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

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

5 A. No, they did not.

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

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

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

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

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

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

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

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

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

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

23           A.    That's correct.

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

1 A. Correct.

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

5 A. That's correct.

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

8 A. That's correct.

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

12 A. Correct.

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

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

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

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

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

10          A.    Yes.

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

13          A.    That's correct.

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

17          A.    No, McElvain did not.

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

20          A.    Yes, they did.

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

25          A.    No, they did not.

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

3 A. No, they did not.

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

7 A. That's correct

8 Q. Okay. What happened after that?

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

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

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

1 agreement, that you were just talking about?

2 A. Yes, it is.

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

6 A. That's correct.

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

9 A. That's correct.

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

12 A. Correct.

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

15 A. Right.

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

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

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

25 A. Yes, we did.

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

6 A. No, they did not.

7 Q. What happened next?

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

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

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

18 A. Yes, it is.

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

22 A. Correct.

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

25 A. That's correct.



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

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

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

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

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

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

18 MR. FELDEWERT: Hold it.

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

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

25 There was no objection to this letter at that

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

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

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

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

11 (Off the record)

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

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

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

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

1 A. No, they did not.

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

5 A. No, they did not.

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

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

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

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

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

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

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

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

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

15 A. Yes, they did.

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

18 A. Yes, they did.

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

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

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

25 A. No, they did not.

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

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

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

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

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

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

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

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

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

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

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

1 A. We feel we have, yes.

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

4 A. That's correct.

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

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

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

13 A. Yes.

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

15 A. That's correct.

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

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

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

23 A. We do.

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

1 25?

2 A. We have.

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

7 A. No, they did not.

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

11 A. Correct.

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

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

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

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

25 A. Yes.



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

2 A. Yes, I have.

3 Q. And have you studied it?

4 A. Yes, I have.

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

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

14 Q. And where are you reading that from?

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

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

25 However, throughout the entire letter there is no

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

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

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

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

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

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

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

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

1 A. Correct.

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

4 A. Correct.

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

7 A. Yes.

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

10 A. Correct.

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

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

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

19 A. No, it does not.

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

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

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

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

4             A.     Page 2, paragraph 3.

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

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

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

21            A.     No, it's not clear.

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

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

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

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

4 A. Yes.

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

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

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

12 A. That's correct.

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

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

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

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

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

1 southeast-quarter well?

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

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

9 A. Yes.

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

13 A. Yes.

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

16 A. Correct.

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

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

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

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

6 A. Yes, somewhat.

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

9 A. Yes, it does.

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

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

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

21 A. Yes.

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

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

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

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

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

13 A. No, it does not.

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

18 A. No, it does not.

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

21 A. No, it does not.

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

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



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

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

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

15 A. Yes.

16 Q. So does it include the Fruitland formation?

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

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

23 A. No, it does not.

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

1 application?

2 A. Yes.

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

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

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

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

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

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

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

7 A. That's correct.

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

11 A. Correct.

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

14 A. No, they did not.

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

17 A. No, they did not.

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

20 A. No, they did not.

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

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

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

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

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

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

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

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

19 A. Yes.

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

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

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

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

3 A. That's correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 A. Correct.

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

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

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

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

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

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

1 A. No.

2 Q. Okay, all right. Well, you got this letter --

3 Now, you got another letter from D.J. Simmons, then, did  
4 you not?

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

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

7 A. Yes, it is.

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

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

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

23 A. Yes --

24 Q. Okay.

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



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

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

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

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

14 Q. Okay.

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

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

20 A. Correct.

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

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

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

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

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

6 A. Right.

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

11 A. No, it does not.

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

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

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

21 A. No.

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

24 A. No, it does not.

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

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

3 A. What page?

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

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

7 MR. HALL: Yes, I do.

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

19 Do you see that?

20 A. Yes.

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

24 A. I agree.

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

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

5 A. No, they have not.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 A. Yes.

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

23 A. Yes.

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

1           A.    Yes.

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

4           A.    Yes.

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

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

9           CHAIRMAN WROTENBERY:  Your objection on Exhibit  
10 15?

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

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

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

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

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

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



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

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

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

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

12 CHAIRMAN WROTENBERY: Thank you, Mr. Feldewert.

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

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

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

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

21 CHAIRMAN WROTENBERY: Okay.

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

1           A.    Yes, I have.

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

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

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

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

15          MR. HALL:  Same objection.

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

17          MR. HALL:  Just a minute.

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

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

20          CHAIRMAN WROTENBERY:  Sustained.

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

23          A.    Yes, they have.

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

25          CHAIRMAN WROTENBERY:  Thank you, Mr. Feldewert.

1 Mr. Hall?

2 MR. HALL: May I proceed?

3 CHAIRMAN WROTENBERY: Yes.

4 CROSS-EXAMINATION

5 BY MR. HALL:

6 Q. Good morning, Ms. Binion.

7 A. Good morning.

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

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

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

22 Q. Please do.

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

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

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

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

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

25 Q. Earlier you said that McElvain has incurred some

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

4 A. Yes, sir.

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

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

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

13 A. Yes, it is.

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

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

19 Q. McElvain.

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

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

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

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

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

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

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

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

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

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

25 Page 19, line 6:

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

4           Answer: Primary could be, yes. Yes.

5

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

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

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

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

13          A. Sorry.

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

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

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

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

20          A. Yes, sir.

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

23          A. Yes, sir.

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

1 interest owner in order to mitigate its risk?

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

7 Q. All right, so the answer --

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

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

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

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

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

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

21 A. No, sir, I was not.

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

24 A. No, I do not.

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



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

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

5 Q. All right.

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

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

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

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

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

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

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

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

24 A. Right.

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

1           A.    No --

2           Q.    -- the west-half minerals?

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

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

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

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

19           Q.    How did they benefit from that?

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

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

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

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

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

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

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

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

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

20          Q.    3TEC.

21          A.    Yes, sir.

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

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

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

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

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

13 A. Yes, sir.

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

16 A. No.

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

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

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

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

23 Q. Okay, but --

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

1 THE WITNESS: Right.

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

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

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

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

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

12 A. No, sir.

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

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

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

25 A. Okay.

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

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

7 Q. Yeah.

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

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

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

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

17 A. No, sir.

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

20 A. That's correct.

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

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

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

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

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

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

15 A. Okay.

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

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

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

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

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

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

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

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

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

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

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

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

21 Q. Did you construct this time line?

22 A. Not completely.

23 Q. Oh, who did.

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



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

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

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

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

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

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

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

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

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

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

7 A. Well, I guess --

8 MR. FELDEWERT: Objection --

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

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

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

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

17 A. Which hearing?

18 Q. Your hearing on your case.

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

20 Q. Yes.

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

22 Q. Do you recall that?

23 A. No, I don't.

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

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

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

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

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

8 Q. Yes.

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

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

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

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

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

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

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

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

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

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

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

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

3 MR. HALL: I agree, will do.

4 CHAIRMAN WROTENBERY: Thank you.

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

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

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

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

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

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

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

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

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

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

1 proposal?

2 A. No, it does not.

3 Q. What do you do?

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

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

9 A. Correct.

10 Q. Equity positions and acreage?

11 A. Correct.

12 Q. We're talking about geology?

13 A. Correct.

14 Q. Like to know something about the geology?

15 A. Right.

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

18 A. I am not a geologist.

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

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

24 Q. Yes.

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

1 party?

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

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

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

9 A. Typically not.

10 Q. Okay.

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

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

21 A. Right.

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

23 A. Right.

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



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

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

11          A.    Absolutely not.

12          Q.    You don't look for that?

13          A.    No --

14          Q.    You don't --

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

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

20          A.    No, sir, we don't.

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

24          A.    That's correct.

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

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

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

10 Q. All right.

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

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

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

23 Q. All right.

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

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

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

4 A. For the drilling of a new well?

5 Q. Yes.

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

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

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

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

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

25 A. Minimum amount of information that McElvain would

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

2             Q.     Yes.

3             A.     Is that your question?

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

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

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

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

19            A.     Not necessarily.

20            Q.     All right.

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

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

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

1 with geologic information.

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

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

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

14 A. (Nods)

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

16 A. Right, yes, sorry.

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

19 A. Correct.

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

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

1 me.

2 Q. Did she call you?

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

5 Q. Did she call you?

6 A. She called me, correct.

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

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

11 Q. Are you with me?

12 A. Yes, sir, I understand.

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

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

19 THE WITNESS: Well, how --

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

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

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

1 recompletion that we proposed.

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

4 A. Yes, sir.

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

7 A. Yes, sir.

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

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

14 Q. What date did that occur?

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

17 Q. All right. What happened after that?

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

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

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

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

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

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

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

17 Q. The phone conversation.

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

23 Q. Yes.

24 A. That's what you said.

25 Q. That's correct.



1 A. Correct, okay.

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

5 A. Right.

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

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

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

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

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

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

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

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

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

7           A.    The Application itself?

8           Q.    Yes.

9           A.    Yes.

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

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

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

21          A.    Sure.

22          Q.    Why didn't you do that?

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

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

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

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

16           A. No, I did not.

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

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

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

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

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

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

17 Q. Ballpark?

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

20 Q. Yes.

21 A. Okay, probably about ten.

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

25 A. Probably about eight, nine.

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

3 A. Okay.

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

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

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

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

1 report, yes.

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

6 A. That's correct, I --

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

10 A. Yes, sir.

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

12 A. Uh-huh.

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

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

19 Q. Okay.

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

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

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

24 Q. And in Case --

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

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

2 Q. Okay.

3 A. That's just the infill well.

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

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

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

9 A. Yes.

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

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

14 Q. Thank you for pointing that out.

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

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

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

24 CHAIRMAN WROTENBERY: Thank you.

25 MR. HALL: -- this exhibit.

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

3 A. Yes.

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

6 A. Same Section 4, yes.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

5 CHAIRMAN WROTENBERY: Thank you, Mr. Hall.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 Mr. Feldewert, did you have some redirect?

25 MR. FELDEWERT: Just one question, or two

1 questions.

2 REDIRECT EXAMINATION

3 BY MR. FELDEWERT:

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

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

10 Q. And is that Rio Arriba County?

11 A. That's Rio Arriba County.

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

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

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

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

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

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

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

18               CHAIRMAN WROTENBERY:  Thank you.

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

21               COMMISSIONER BAILEY:  Just one.

22                               EXAMINATION

23               BY COMMISSIONER BAILEY:

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

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

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

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

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

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

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

24 Q. Okay, that's all --

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

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

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

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

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

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

10 COMMISSIONER BAILEY: Thank you.

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

13 COMMISSIONER LEE: No.

14 CHAIRMAN WROTENBERY: Anything else?

15 MR. HALL: (Shakes head)

16 MR. FELDEWERT: No.

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

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

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

25 CHAIRMAN WROTENBERY: We do have a request for

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

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

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

9 MR. FELDEWERT: Certainly.

10 CHAIRMAN WROTENBERY: Thank you.

11 JANE ESTES-JACKSON,

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

14 DIRECT EXAMINATION

15 BY MR. FELDEWERT:

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

18 A. Jane Estes-Jackson, 5265 Beech Street, Arvada,  
19 Colorado, 80002.

20 Q. And by whom are you employed and in what  
21 capacity?

22 A. I'm employed by McElvain Oil and Gas as a  
23 geologist.

24 Q. And did you previously testify before the New  
25 Mexico Oil Conservation in this case and had your



1 credentials as an expert in petroleum geology accepted and  
2 made a matter of public record?

3 A. Yes.

4 Q. Are you familiar with Order R-11,663, which was  
5 entered by the Oil Conservation Division in Case Number  
6 12,635?

7 A. Yes.

8 Q. And have you conducted a geologic study of the  
9 area that is the subject of that order?

10 A. Yes, I have.

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

13 MR. HALL: No objection.

14 CHAIRMAN WROTENBERY: Yes, Ms. Jackson is  
15 accepted as an expert.

16 Q. (By Mr. Feldewert) Ms. Jackson, what is the  
17 target of McElvain's proposed recompletion?

18 A. The Mesaverde formation and the Blanco-Mesaverde  
19 Gas Pool.

20 Q. And I want you to turn to McElvain Exhibit Number  
21 16, I want you to identify and explain that exhibit to the  
22 Commissioners, please.

23 A. McElvain Exhibit Number 16 is a net sand isopach  
24 map of feet greater than 8-percent porosity for the entire  
25 Mesaverde formation.

1           What it shows, in my opinion, is a very strong  
2 east-to-west trend that goes through Section 25 with good,  
3 thick, reservoir-quality sand throughout the entire  
4 section. As you move both to the north and to the south  
5 this trend thins. There's no substantial increase in sand  
6 between the east half and the west half of Section 25.

7           And I think this exhibit shows that there's as  
8 good a chance of a successful Mesaverde well with the  
9 existing wellbore in Section 25 as with any new well in  
10 Section 25.

11          Q.    Okay, why don't you turn to McElvain Exhibit  
12 Number 17, identify that and review that for the  
13 Commission, please?

14          A.    McElvain Exhibit Number 17 is also a net sand  
15 isopach map of feet greater than 8-percent porosity.  
16 However, this map is different in that it's limited to only  
17 the Menefee and Point Lookout intervals of the Mesaverde.  
18 I have excluded the Cliff House sandstone, and that is  
19 because our proposed recompletion target in the Naomi well  
20 is the Menefee and Point Lookout intervals, and we feel  
21 like those are the best reservoir intervals in this  
22 particular well.

23           As you can see from this map, it also shows a  
24 very strong east-west trend in the southern portion of the  
25 township, including Section 25.

1 Q. Now, where's Section 25? Is this on the right-  
2 hand side?

3 A. Yes, to the far right-hand side.

4 Q. Okay. So the difference between -- What's the  
5 difference, then, between Exhibit 16 and 17?

6 A. The difference is that Exhibit 16 includes the  
7 Cliff House sandstone and Exhibit 17 does not.

8 Q. Okay. In your opinion, is the location of the  
9 existing wellbore in Section 25 situated to drain Mesaverde  
10 reserves -- is it better situated to drain Mesaverde  
11 reserves from the south half of Section 25 or the west half  
12 of Section 25?

13 A. The south half of Section 25.

14 Q. And why is that?

15 A. Because I think the trend goes east-west, and I  
16 think the orientation of the sandbody is the primary  
17 control on the drainage pattern in the Mesaverde.

18 Q. In your opinion, will the use of the existing  
19 wellbore in Section 25 afford the interest owners in the  
20 south half of that section the opportunity to recover and  
21 receive without unnecessary expense their just and fair  
22 share of the gas underlying their property?

23 A. Yes.

24 Q. Were you present at the Examiner Hearing that  
25 took place in May of this year?

1 A. Yes, I was.

2 Q. And were you present for the testimony of D.J.  
3 Simmons' geologist, Ms. Gusek?

4 A. Yes, I was.

5 Q. And did you review the exhibits that were offered  
6 by D.J. Simmons to the Examiner at that hearing?

7 A. Yes, I have.

8 Q. Okay. Now, what are your observations with  
9 respect to those exhibits?

10 A. Well, my observations are that the exhibits that  
11 D.J. Simmons presented at the hearing in May in regard to  
12 the Naomi well relied primarily on examples from the  
13 literature. In my opinion, none of these papers that were  
14 presented specifically address fracturing in the Mesaverde  
15 formation in Section 25. So I don't think -- In my  
16 opinion, they're not applicable.

17 We can go through them as an example, if you  
18 would like.

19 Q. Let me ask you quickly, do you have -- I'm going  
20 to hand you -- is D.J. Simmons Exhibit 24 that was provided  
21 to the Commission?

22 A. Yes.

23 Q. Okay. Now, is Exhibit 24 the literature that you  
24 were just referencing?

25 A. Yes, it is.

1 Q. Okay. Would you then continue with your  
2 discussion?

3 A. Well, in the first paper, SPE Paper Number 60295,  
4 which I believe is the first one in their exhibit, if you  
5 turn to page 2 of that exhibit, on the right-hand side of  
6 the page, right under the heading that says "Geostatistical  
7 Study", it says that the areas that were studied were  
8 Township 29 North, 7 West, and Township 26 North, 5 West.  
9 That's approximately 15 to 20 miles away from Section 25 of  
10 Township 25 North, 3 West. I don't think that you can  
11 extrapolate the findings in this study to Section 25.

12 COMMISSIONER LEE: I agree with you. This is  
13 just purely the exercise of one of the graduate students,  
14 so you're right.

15 THE WITNESS: Thank you.

16 The next paper that I have is by Alan  
17 Emmendorfer. It's titled "Fracture Orientation: Use of the  
18 Dipmeter Type Fracture Log". This paper was written about  
19 the Gavilan-Mancos Pool, which is just east of the Naomi  
20 well. It's a great paper but it only addresses the Gallup  
21 or the Mancos. It has no bearing on the Mesaverde in  
22 Section 25, in my opinion.

23 The next item that I'm looking at is just simply  
24 an abstract by Harry TerBest on open fractures, fracture  
25 orientations. This is just a very general -- some general

1 observations over some work that was done somewhere in the  
2 San Juan Basin. Once again, because there's no specific  
3 information, I don't think that you can extrapolate it to  
4 Section 25 in the Mesaverde.

5 And the last paper that I'm looking at is SPE  
6 Paper Number 25466, "Determination of Hydraulic Fracture  
7 Direction, San Juan Basin, New Mexico". If you will turn  
8 to the second page of that exhibit, in the left-hand  
9 column, the third paragraph down, it specifically says that  
10 "This field study was undertaken in four wells in the San  
11 Juan Basin...near Cuba", New Mexico. Once again, that's  
12 probably 15 miles from the Naomi well in Section 25. And  
13 again, this paper is only talking about the Dakota  
14 formation. It has nothing to do with the Mesaverde.

15 Q. (By Mr. Feldewert) Okay, now let me show you  
16 what was marked as D.J. Simmons 23. It's a larger map.

17 A. Yes.

18 Q. Do you have a copy of that?

19 A. Yes, I do.

20 Q. Were you present for the testimony on this  
21 exhibit that was offered by D.J. Simmons' geologist?

22 A. Yes, I was.

23 Q. Okay, what are your observations about this  
24 exhibit?

25 A. This is a montage, and the map that you see at

1 the top of the page, which is a structure map, this was  
2 taken from that paper by Alan Emmendorfer in regard to the  
3 Gavilan-Mancos Oil Pool. And once again, this is in regard  
4 to the Mancos or the Gallup; it has no bearing on the  
5 Mesaverde formation.

6 The two wells that are cited at the bottom of the  
7 page as an example, again, those have not been completed in  
8 the Mesaverde formation. So I feel that this is irrelevant  
9 to the Mesaverde formation in the Naomi well.

10 Q. Do you know where the two Meridian wells that are  
11 referenced in the bottom were completed?

12 A. I believe they were completed in the Gallup.

13 Q. Okay, all right.

14 COMMISSIONER LEE: One thing I want to point out  
15 is, this SPE paper, whenever they have a number it's not a  
16 refereed paper. So it's not going through a very serious  
17 referee paper.

18 So whenever you want to present an SPE -- Suppose  
19 right now I want to present an SPE number there. I just  
20 submit the number and I can present it.

21 So next time, if anybody wants to refer to an SPE  
22 number, you'd better say this is not a refereed paper.

23 Q. (By Mr. Feldewert) Okay. Now, Ms. Jackson, I'm  
24 not sure you testified to this. How were your isopach  
25 exhibits prepared? And I'm talking about McElvain Exhibits

1 16 and 17.

2 A. My isopach maps were prepared from porosity logs  
3 on all existing Mesaverde penetrations in the area. At  
4 McElvain we feel that these isopach maps provide a pretty  
5 good indication of the reservoir trend and we use them to  
6 high grade our drilling locations.

7 Q. I'm sorry, did you testify that McElvain has  
8 found that the isopachs provide a pretty good indication of  
9 reservoir --

10 A. We feel that they do, yes.

11 Q. Okay, do you use these isopachs to prioritize  
12 McElvain's drilling locations in the Lindrith area?

13 A. Yes, we do.

14 Q. How many Mesaverde wells has McElvain drilled in  
15 the Lindrith area for the San Juan Basin?

16 A. Since 1998, McElvain has drilled 19 wells in the  
17 Lindrith area. To date, 14 of those have been completed in  
18 the Mesaverde, resulting in a total of 35 completed zones.

19 In addition to that, we've also recompleted the  
20 Mesaverde in five existing wellbores.

21 Q. Do you know, Ms. Jackson, how many Mesaverde  
22 wells D.J. Simmons has drilled in the Lindrith area?

23 A. To the best of my knowledge, they have not  
24 drilled any in this area.

25 Q. Would it be accurate to say that rather than



1 forming your opinion based on literature you used the well  
2 data and McElvain's drilling experience in the San Juan  
3 Basin?

4 A. Yes, I feel that literature can provide good  
5 examples or good models to go off of, but in the end, if  
6 you have actual well data, it's better to rely on that  
7 where you have it.

8 MR. FELDEWERT: Now, I'm going to show you -- I  
9 believe that there -- I thought there was an exhibit that  
10 D.J. Simmons introduced that had an isopach sand map. Do  
11 you have an Exhibit 25, Scott?

12 MR. HALL: Yeah.

13 MR. FELDEWERT: Because I don't have one in my  
14 book.

15 Does the Commission have D.J. Simmons' Exhibit  
16 25?

17 CHAIRMAN WROTENBERY: Yes, we do.

18 Q. (By Mr. Feldewert) Ms. Jackson, have you had the  
19 opportunity to look at what has been marked as D.J.  
20 Simmons' Exhibit 25?

21 A. Yes, I have.

22 Q. What are your observations about that exhibit?

23 A. Well, this is also an isopach map. They're  
24 calling it a net pay map. The difference between this map  
25 and my map is that they're limiting their map to the Point

1 Lookout formation only, and they're using a resistivity  
2 cutoff rather than a porosity cutoff.

3 Q. What does it show about the sand trend in the  
4 area?

5 A. In my opinion it shows an east-west sand trend.

6 Q. Okay. Based on your well control data and  
7 McElvain's experience with Mesaverde wells in the Lindrith  
8 area, do you have any evidence that the drainage in that  
9 area is different from what is reflected by the sandbodies  
10 in that area?

11 A. No.

12 Q. And that would be an east-to-west drainage trend?

13 A. In Section 25, it's east-to-west.

14 Q. Okay. In your opinion, will the re-entry of the  
15 existing wellbore in Section 25 to test the Mesaverde  
16 formation be in the best interests of conservation, the  
17 prevention of waste and the protection of correlative  
18 rights?

19 A. Yes.

20 Q. Were McElvain Exhibits Number 16 and 17 prepared  
21 by you or compiled under your direction and supervision?

22 A. Yes, they were.

23 MR. FELDEWERT: At this point I would move into  
24 evidence McElvain Exhibits Number 16 and 17, as well as  
25 D.J. Simmons' Exhibit Number 25.

1 MR. HALL: No objection.

2 CHAIRMAN WROTENBERY: Okay, McElvain Exhibits 16  
3 and 17 and D.J. Simmons Exhibit Number 25 are admitted into  
4 the record.

5 MR. FELDEWERT: That's all I have, thank you.

6 CHAIRMAN WROTENBERY: Mr. Hall?

7 CROSS-EXAMINATION

8 BY MR. HALL:

9 Q. Ms. Jackson, if we could refer to your Exhibit  
10 16, that sand map doesn't tie into any nearby Mesaverde  
11 production, does it?

12 A. This map is a smaller segment of a much larger  
13 map that covers approximately nine townships in this area  
14 and uses 350 to 400 well logs. So what you're seeing here  
15 is just a small representation. If you could see the whole  
16 map, yes, it does tie into existing Mesaverde production.

17 Q. And how far away is that? Is that nine sections  
18 away, you say?

19 A. Probably the closest production is two to three  
20 miles away.

21 Q. All right. On your Exhibit 17, let's see if we  
22 can understand what this shows here. The way you've  
23 contoured Section 25 there, what is your data point to the  
24 east, Section 25?

25 A. There are some existing wells -- There's a well

1 in Section 30 of Township 25 North, 2 West, and there are  
2 additional wells in that township to the east that are not  
3 shown on this map.

4 Q. Okay. When you drew your isopach contours, did  
5 you include both the fluvial Menefee with the marine Point  
6 Lookout to evaluate your trends?

7 A. Yes, I did.

8 Q. Why did you do that?

9 A. I've also evaluated them separately. I lumped  
10 them together in this map because those are the two one  
11 that we're completing.

12 Q. Did you have any dipmeter data to help determine  
13 the orientation of the Mesaverde --

14 A. Not in the Mesaverde in this area.

15 Q. All right. And again, what is your specific  
16 target formation?

17 A. The Menefee and Point Lookout intervals of the  
18 Mesaverde formation.

19 Q. All right. Again, on your Exhibit 17, if you'll  
20 refer to what appear to be two Mesaverde tests, the  
21 northwest quarter of Section 35 there and the northeast  
22 quarter of Section 34 there, do you locate those on your  
23 exhibit there?

24 A. Yes.

25 Q. Do you know whether those wells are productive or

1 not?

2 A. The Myers Number 1 well, which is in the  
3 northwest of 35, produced a small amount from the Mesaverde  
4 before it was completed in the Chacra. I'm not sure about  
5 the other well.

6 Q. Do you know if the Myers well tested wet in the  
7 Mesaverde?

8 A. I don't know that it tested wet, it just wasn't  
9 very high volume gas.

10 Q. Okay, and you don't know anything about the  
11 Schalk well in Section 34; is that right?

12 A. Not off the top of my head, no.

13 Q. All right. Well, what leads you to conclude from  
14 Exhibit 17 that the Naomi will be productive in the  
15 Mesaverde?

16 A. We actually looked at some wells in Section 27.  
17 That was our -- and also up in Section 17, and that was the  
18 basis for our -- and also combined with our experience in  
19 the Lindrith area to the east, we thought that this would  
20 be a good candidate for recompletion in the Mesaverde.

21 Q. By Exhibit 17 are you trying to establish some  
22 sort of correlation between sand thickness and  
23 productivity?

24 A. It's not a linear correlation, it's just a  
25 general rule of thumb that we use, but there are other

1 factors.

2 Q. All right, but -- so the answer to my question,  
3 to a certain degree, anyway, you are trying to establish  
4 that correlation?

5 A. It's not a direct correlation, it's only a very  
6 general one.

7 Q. I see. Where on Exhibit 17 is the best Mesaverde  
8 production shown?

9 A. It's further -- It's up in the northwest. There  
10 are some pretty good wells in Section 17 and 18 and further  
11 north of that.

12 Q. But yet the sand is contoured thinner in those  
13 areas, correct?

14 A. Yes.

15 Q. Let's see, you show a well in the northwest  
16 northwest of Section 29 there on the thickest portion of  
17 the sand. Do you know what the production from that well  
18 was in the Mesaverde?

19 A. I believe that that well is an old well that's  
20 been recently recompleted in the Mesaverde and in the past  
21 five years has made approximately half a BCF of gas.

22 Q. Do you still have my exhibit notebook in front of  
23 you there?

24 A. I think so.

25 Q. Yes.

1 MR. FELDEWERT: Do you want her to look at  
2 Exhibit 25?

3 MR. HALL: I want you to look at Exhibit 19.

4 MR. FELDEWERT: Do you have a copy for her?  
5 Scott? Or do you have a notebook --

6 MR. HALL: Why don't you just give her that one?

7 Q. (By Mr. Hall) Can you locate that well in the  
8 northwest northwest of 29 on Simmons' Exhibit 19 there?

9 A. Yes.

10 Q. Does that reflect the cums for that well?

11 A. Yes.

12 Q. Can you tell us what they are for the record?

13 A. Approximately -- It's 499,338 BCF -- MCF of gas,  
14 and 538 barrels of oil.

15 MR. HALL: Okay. Now look at -- May I have that  
16 back, please, briefly?

17 CHAIRMAN WROTENBERY: Okay, just for the record  
18 can we clarify? You said Section 29, and I think what you  
19 were referring to is Section 19.

20 MR. HALL: I'm sorry, I do stand corrected.

21 Q. (By Mr. Hall) Let me hand you Exhibit 19 again,  
22 Simmons 19. Okay, I think in the confusion I spoke of  
23 Section 19 because I was referring to our Exhibit 19.

24 Refer again to the production for the well in  
25 Section 29.

1 A. 47,636 MCF of gas and 2507 barrels of oil.

2 Q. All right. Now, let's look at the production  
3 from the well in the southwest quarter of Section 18. Do  
4 you see that there?

5 A. Uh-huh.

6 COMMISSIONER LEE: Wait a minute. Where is it?

7 Q. (By Mr. Hall) Again, if you will refer to  
8 Exhibit 17, McElvain Exhibit 17, there's a well in the  
9 southwest quarter of Section 18. And if you refer to  
10 Simmons' Exhibit 19, how do the thickness and cum  
11 production compare to the well in Section 29?

12 A. I don't understand your question.

13 Q. Well, let's compare the production for the well  
14 in the southwest quarter of Section 18. If you'll look at  
15 Simmons Exhibit 19 --

16 A. Yeah.

17 Q. -- do you have that information there?

18 A. Yes, I do.

19 Q. Now, let's compare that well with the production  
20 with the -- from the well in Section 29. Do you have both  
21 those figures in front of you?

22 A. Yes.

23 Q. Which produced more?

24 A. The one in 18.

25 Q. All right. And let's look at your thickness map



1 again, your Exhibit 17. How does the thickness compare in  
2 Sections 18 and 29? Which is thicker?

3 A. It's thicker in 29.

4 Q. And there's better production in Section 18,  
5 correct?

6 A. I said there's not a direct correlation, there  
7 are other things to consider. For example, what sort of  
8 completion they did, what exact zones they completed. You  
9 don't have any of that information in front of me. We  
10 don't know how long these wells have been on. It's not a  
11 direct correlation.

12 Q. Can you tell us why you chose an 8-percent cutoff  
13 for your isopach maps?

14 A. That's typically the cutoff that we use when we  
15 decide which zones to perforate.

16 Q. And by choosing that 8 percent, what does that  
17 buy you? What zones are you going to reflect on your  
18 isopach as a result?

19 A. The zones with the highest porosity.

20 Q. All right, do you account for water saturation at  
21 all?

22 A. We do not water-saturation calculations.

23 Q. All right. By the way, are you presenting a well  
24 log for the Mesaverde in the area, or even a type log for  
25 the Mesaverde?

1 A. No.

2 Q. Why aren't you?

3 A. Why should I?

4 Q. It's a Mesaverde pooling Application.

5 A. Public information.

6 Q. You're not presenting one?

7 A. No.

8 Q. And your reasons for not presenting one are what?  
9 You don't feel it's necessary?

10 A. Exactly.

11 Q. If you were to map an existing trend, wouldn't it  
12 be more precise to utilize bulk hydrocarbon pay as a basis  
13 for mapping that trend, rather than an 8-percent cutoff?

14 A. What is hydrocarbon pay? How do you define it?

15 Q. Well, how do you define it?

16 A. Every operator defines it differently, and we're  
17 still working on that in our office.

18 Q. Yeah, how do you define it currently?

19 A. Currently we define it as 8-percent porosity.

20 Q. You agree, don't you, that fracture patterns will  
21 influence the direction of drainage for the Naomi Com  
22 Number 1 well, don't you?

23 A. Not in the Mesaverde, I do not agree.

24 Q. Do you agree that there are fracture patterns in  
25 the area?

1           A.    There's no evidence of fracturing in the  
2 Mesaverde in Section 25, in my opinion.

3           Q.    And in other formations?

4           A.    In the Gallup.

5           Q.    And is it your testimony that that will have no  
6 influence on the drainage for the Naomi Com Number 1?

7           A.    That is my testimony.

8           Q.    The fracture patterns that you know to exist in  
9 the Gallup, are they oriented on an east-west or north-  
10 south basis?

11          A.    It varies, depending on where you are.

12          Q.    In the area of the Naomi Com Number 1?

13          A.    I don't think we can say conclusively which way  
14 they go. We do not have any evidence.

15          Q.    All right.

16          A.    The log that we have does not show any evidence  
17 of fracturing.

18          Q.    Do you have an opinion whether or not the  
19 fractures would run in a north-south direction or in an  
20 east-west direction?

21          A.    Where?

22          Q.    In the area of the Naomi Com Number 1.

23          A.    I don't have an opinion as to which way they  
24 would run because I don't have enough information to make  
25 that judgment.

1 Q. All right. Earlier you testified you believe  
2 that the Naomi Com would drain reserves from the south-half  
3 unit, correct?

4 A. Correct.

5 Q. What's the basis for that, how will that well  
6 drain reserves from the southeast quarter of the section  
7 from its unorthodox location?

8 A. The porosity trends are east-west.

9 Q. Is that the extent of the basis for your opinion?

10 A. Yes, it is.

11 Q. Is it your understanding from your employment as  
12 a geologist at McElvain that geology was not the primary  
13 consideration for dedicating a south-half unit to this  
14 well?

15 A. I was not involved in that decision, so I cannot  
16 answer that question.

17 Q. Let me refer you to your testimony from the  
18 Division Examiner Hearing on May 17th, 2001. At page 32,  
19 beginning on line 24, I ask you this question:

20

21 Question: Is it your understanding from your  
22 employment as a geologist at McElvain that geology was  
23 not the primary consideration for dedicating a south-  
24 half unit to this well?

25 Answer: Yes.

1 Do you recall giving that answer?

2 A. Yes.

3 MR. HALL: Nothing further of this witness.

4 CHAIRMAN WROTENBERY: Commissioner Bailey?

5 EXAMINATION

6 BY COMMISSIONER BAILEY:

7 Q. From your work in the San Juan Basin, have you  
8 seen correlations between fracture systems of the different  
9 formations?

10 A. Because the lithologies between the Mesaverde and  
11 the Gallup are so different -- I think it's widely accepted  
12 that the Gallup and Mancos are fractured because they are  
13 shales. I don't think it's as conclusive in something like  
14 the Mesaverde, which is much shallower, it's not cemented  
15 as tightly. And so therefore I don't think fracturing -- I  
16 don't think you can make that assumption that just because  
17 the Gallup is fractured that it carries up into the  
18 Mesaverde.

19 Yes, there may be some fracturing, but it's not  
20 as significant as it is with the deeper formations.

21 Q. Are there any major lineaments that go through  
22 the Lindrith area that would have an influence on fracture  
23 systems?

24 A. Yes, and primarily what we see in the Lindrith  
25 area is a conjugate set of northeast-southwest trends and

1 then northwest-southeast trends, at almost a 90-degree  
2 angle, from the surface work that we've done and aerial  
3 photos and things like that.

4 But we're not sure -- We have not been able to  
5 tie anything like that into our Mesaverde production in the  
6 Lindrith area. So in my opinion, fracturing does not  
7 influence the Mesaverde like it does the deeper formations.

8 Q. I haven't heard a depth estimate for the  
9 Mesaverde in these wells.

10 A. Somewhere between 5300 feet, would be the top of  
11 the Cliff House, to -- down to the base of the Point  
12 Lookout would be around 5800, 6000 feet.

13 COMMISSIONER BAILEY: That's all I have. Thank  
14 you.

15 CHAIRMAN WROTENBERY: Commissioner Lee?

16 EXAMINATION

17 BY COMMISSIONER LEE:

18 Q. What's the major mechanism for Mesaverde gas to  
19 flow? Is it through the fracture or through the matrix?

20 A. My opinion is that it's primarily matrix. And  
21 certainly when you do hydraulic fracturing it connects the  
22 porosity. But I feel that the matrix porosity is --

23 Q. So you don't believe it's a natural fracture  
24 system?

25 A. I don't believe that it's significant in the

1 Mesaverde.

2 Q. So does anybody say this is definitely, is a  
3 natural fracture reservoir?

4 A. I haven't seen anything that definitely says  
5 that.

6 Q. And suppose you have an orientation of your flow  
7 pattern that coming with the thickness theory. When your  
8 reservoir is in a different shape, when you have a  
9 different shape, when you bend it like this, are they going  
10 to introduce you to natural fracture that way?

11 A. You could. I think that if there is natural  
12 fracturing, it's locally influenced by whatever structural  
13 features are there.

14 Q. So your conclusion is regardless -- suppose if we  
15 have a natural fracture there, and in this area the  
16 permeability is -- dramatic differences. It depends on  
17 natural fracture, if you have a natural fracture there?

18 A. It could certainly influence it, but I don't know  
19 to what degree it would influence it.

20 Q. And nobody knows?

21 A. I don't think anyone knows for this particular  
22 area for the Mesaverde.

23 Q. Even other areas?

24 A. Certainly studies have been done in other areas.  
25 I believe one of the papers cited earlier was a study that

1 was conducted for infill drilling.

2 COMMISSIONER LEE: No further questions.

3 CHAIRMAN WROTENBERY: Redirect?

4 MR. FELDEWERT: No.

5 MR. HALL: If I might, in response to a question  
6 from Dr. Lee. It opened up an area to ask a brief question  
7 about.

8 CHAIRMAN WROTENBERY: Yes.

9 FURTHER EXAMINATION

10 BY MR. HALL:

11 Q. Ms. Jackson, you opined about the effects of  
12 hydraulic fracturing in response to a question from Dr.  
13 Lee. What are the prevailing stress trends in the subject  
14 area?

15 A. I don't think we know that in Section 25. I  
16 think we only know a general -- for the Mesaverde, the  
17 generalized stress trends, because you have further east  
18 what's called the Gavilan Dome in the Gavilan area. I  
19 think that influences this area, could influence it more.  
20 But I think there are local perturbations here that we  
21 don't know about.

22 Q. Well, tell us what you know is the general  
23 orientation of the stress trends in this area, based on  
24 what you know.

25 A. Based on what I know, there is a conjugate set of



1 northeast-southwest and northwest-southeast trends.

2 Q. All right. Is there any east-west, pure east-  
3 west stress trend?

4 A. Not that I know of.

5 Q. So when McElvain fracture-stimulates its well,  
6 what do you anticipate the direction the fracture will  
7 take?

8 A. I think that's a question that's better addressed  
9 to our engineer.

10 Q. Well, you opined on it. I want to know what you  
11 know about that, if you can answer that question.

12 A. In my opinion, I think it would follow the  
13 porosity trend and go east-west.

14 Q. And again, I understand it, it's your contention  
15 that the porosity matrix is the predominant factor in  
16 determining --

17 A. Yes.

18 Q. -- drainage flow. Isn't it true that the Blanco-  
19 Mesaverde is designated as a tight sand gas reservoir?

20 A. Yes.

21 MR. HALL: Nothing further.

22 MR. FELDEWERT: No questions.

23 CHAIRMAN WROTENBERY: Thank you for your  
24 testimony in this case.

25 And we will take a break for lunch here until --

1 We will break till 1:30.

2 (Thereupon, a recess was taken at 12:35 a.m.)

3 (The following proceedings had at 1:30 p.m.)

4 CHAIRMAN WROTENBERY: Okay, I think we're ready  
5 to go back on the record.

6 MR. FELDEWERT: We would call then Mr. John  
7 Steuble.

8 JOHN D. STEUBLE,

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

11 DIRECT EXAMINATION

12 BY MR. FELDEWERT:

13 Q. Mr. Steuble, would you please state your full  
14 name and address for the record?

15 A. My name is John Steuble, I reside at 6522 South  
16 Hoyt Way in Littleton, Colorado.

17 Q. And are you employed by McElvain?

18 A. Yes, I am.

19 Q. In what capacity?

20 A. I'm the engineering manager.

21 Q. Have you previously testified before the New  
22 Mexico Oil Conservation Division and had your credentials  
23 as an expert in petroleum engineering accepted and made a  
24 matter of record?

25 A. Yes, I have.

1 Q. Are you familiar with the Order that was entered  
2 by the Division in this case, which is Case Number 12,635?

3 A. Yes, I am.

4 Q. And have you studied the area that is the subject  
5 of that Order?

6 A. Yes, I have.

7 MR. FELDEWERT: So the Commission, are Mr.  
8 Steuble's qualifications acceptable?

9 MR. HALL: No objection.

10 CHAIRMAN WROTENBERY: Yes, they are.

11 Q. (By Mr. Feldewert) Okay, now what, Mr. Steuble,  
12 are McElvain's development plans in the south half of  
13 Section 25?

14 A. McElvain plans to re-enter the Naomi Number 1,  
15 which used to be the Wynona Number 1, and complete it in  
16 the Mesaverde, the Point Lookout and the Menefee sections  
17 of the Mesaverde.

18 Q. Okay, why don't you briefly describe to the  
19 Commission the history of this existing well?

20 A. The well was originally drilled in 1988 by  
21 McElvain as a Gallup-Dakota play, playing off of a paper  
22 that we had in our possession at that time concerning  
23 fractures. So we thought we had a fractured play there in  
24 the Gallup-Dakota.

25 Originally the well was completed only in the

1 Gallup. It pumped -- the initial potential was about 50  
2 barrels of oil and 75 MCF a day.

3 Approximately a year later we went in and opened  
4 up the Dakota formation below the Gallup and commingled the  
5 two zones and produced them. We produced them that way up  
6 until 1998, 1997, somewhere in there. The well had chronic  
7 problems. It had to be pumped from day one, it was not a  
8 flowing well. So we had a pumping unit on it. We had  
9 probably some crooked-hole problems; we had continuous rod  
10 and tubing problems. And it got to the point where the  
11 volume of the well was so low that we couldn't justify to  
12 keep repeating the workovers that it took to keep the well  
13 on.

14 So at that time we chose to plug the well in  
15 1998.

16 Q. Did you find the fracture play that you were  
17 looking for?

18 A. No, we did not.

19 Q. Okay. Did you prepare the AFE that was sent out  
20 to D.J. Simmons and the other working interest owners in  
21 November of 2000?

22 A. Yes, I did.

23 Q. Okay, how was that AFE prepared?

24 A. After we plugged the Wynona well, we were active  
25 over to the east of this well in the Lindrith area, what we

1 call the Lindrith area, in a Mesaverde play. We had some  
2 pretty good success over there, so as a matter of course  
3 one day I just picked up the Wynona and started looking at  
4 the well log, and concluded that we have just as good an  
5 option to make a well there as we do in some of our other  
6 wells.

7 So I took it upon myself to prepare an AFE and a  
8 cost estimate -- a cost estimate and an AFE and an outline  
9 of a procedure for internal approvals. This I did probably  
10 in late August, early September of the year 2000.

11 Q. Okay. Now, the AFE that is attached to  
12 McElvain's Exhibit Number 2, do you have that in front of  
13 you?

14 A. Yes, I do.

15 Q. Okay. Now, that has a date of September 6th,  
16 2000. Do you see that?

17 A. Yes, I do.

18 Q. Okay. Now, the recompletion procedure that went  
19 out with McElvain's Exhibit Number 3 has a date of November  
20 of 2000. Do you see that?

21 A. Yes, I do.

22 Q. Can you please explain to the Commission the  
23 discrepancy in these dates?

24 A. Oftentimes when I prepare procedures and AFEs, I  
25 will do a procedure, on the computer, of course, and

1 prepare the AFE to go out.

2 At a later date, when somebody wants the  
3 procedure or we get closer that I need to send it to the  
4 consultants or outside operated parties that are interested  
5 in it, I will go back in and fill in the pertinent data of  
6 the history of the well. At that time I'll put it in a  
7 final format, and I will go up and adjust the date so I can  
8 keep track on my computer of the different revisions.

9 So even though the procedure is later than the  
10 AFE date, the procedure was written prior to the AFE ever  
11 being made out.

12 Q. Okay, so you had this procedure drafted when you  
13 drafted the AFE?

14 A. Yes, I believe it was August or early September.

15 Q. Okay. Let's now turn to the AFE that was sent  
16 out to the working interest owners. At the time it was  
17 prepared, were these costs in line with what has been  
18 charged by McElvain and other operators in the area for  
19 similar recompletion projects?

20 A. Yes, they were, bearing in mind that this has  
21 been done over a year ago, we have seen significant  
22 increases in cost from the service companies and the rig  
23 companies. I would estimate this is probably 10 to 20  
24 percent low at the present time.

25 Q. Okay. Do you agree with the Examiner's findings

1 in Order R-11,663 that a reasonable charge for overhead and  
2 administrative cost for this recompletion proposal is \$5455  
3 a month drilling and \$545 a month producing?

4 A. Yes, I do. In fact, I believe that it's probably  
5 low compared to today's standards, that we're seeing \$6000  
6 per month for drilling and \$600 per month for operating.

7 Q. Now, do you agree with the Examiner's findings in  
8 Order R-11,663 that the overhead rates approved by the  
9 Division should be adjusted in accordance with the  
10 applicable COPAS guidelines?

11 A. Yes, I do.

12 Q. Order R-11,663 provides for a 100-percent risk  
13 penalty; is that correct?

14 A. That's correct.

15 Q. Do you agree that a 100-percent risk penalty  
16 should be applied against the uncommitted interest owners?

17 A. No, I do not.

18 Q. Okay, what do you feel should be applied?

19 A. I feel that the standard 200-percent penalty  
20 should be applied.

21 Q. Okay, what is the basis for your opinion?

22 A. Virtually, this well is going to be a wildcat --  
23 I have some exhibits I'll show you in a minute -- where  
24 there is no Mesaverde production in the area, and we're  
25 just attempting to re-enter an existing wellbore rather

1 than spend the expense of going to the expense of drilling  
2 a whole new well. So in actuality, it's no different than  
3 a wildcat, we're just using the existing wellbore.

4 Q. Okay, why don't you turn to McElvain Exhibit  
5 Number 18, identify that and explain to the Commission why  
6 it supports your request for a 200-percent risk penalty.

7 A. 18 was an exhibit that we usually prepare for the  
8 Examiners, showing a nine-section area around the proposed  
9 well. And as you can see on this, there is only one other  
10 Mesaverde in the area. It's in the northwest of Section  
11 35.

12 What it shows is the initial potential as  
13 reported through the state and the cumulative production.  
14 So you can see it only made 6000 MCF of gas before it -- I  
15 believe it has been recompleted in the Chacra.

16 Q. Do you recall when it was recompleted in the  
17 Chacra?

18 A. No, I do not.

19 Q. Okay. Would you then turn to McElvain Exhibit  
20 Number 19, identify that for the Commission and explain why  
21 it supports our recommendation?

22 A. Exhibit 19 is basically the same idea. It's an  
23 expanded area showing the existing or plugged and abandoned  
24 Mesaverde wells in the area on a much larger basis. Again,  
25 it shows the initial potential as the top number and the



1 cumulative production number as the bottom number. And  
2 this is as of 4-30-2001.

3 Q. Okay, where is the nearest economic Mesaverde  
4 production?

5 A. I believe the nearest economic production is in  
6 Section 15 to the northwest, which would be approximately  
7 three miles to the northwest.

8 Q. Okay. Has the Division previously approved a  
9 200-percent risk penalty for a similar project?

10 A. Yes, they have.

11 Q. Okay, why don't you -- McElvain Exhibit Number  
12 20, an order that was entered by the Division in September  
13 of 2000 for McElvain's Cougar Com 4 Well Number 1A?

14 A. Yes, it is.

15 Q. Okay, and on page 9 of that order, paragraph (12)  
16 (b), did the Division in this order approve a 200-percent  
17 risk penalty for the -- For McElvain's Cougar Com 4 Well  
18 Number 1A?

19 A. Yes, and I would like to reiterate, this was the  
20 same deal, we had a plugged and abandoned well that we  
21 thought we could go in and test the Mesaverde, so we went  
22 ahead and did it, and they did issue this order in  
23 conjunction with that re-entry attempt.

24 Q. Okay, so that was a re-entry attempt just like  
25 the Naomi here?

1 A. Yes.

2 Q. Okay. How does the Naomi recompletion project  
3 that is the subject of this hearing compare to the -- what  
4 I will call the Cougar Com 4 recompletion project?

5 A. If you'll look on McElvain's Exhibit Number 21,  
6 this was an exhibit that we prepared during the hearing for  
7 the 4-1A, and again I was showing the wells in the  
8 immediate area. The 4-1A is on the south side of the  
9 highlighted yellow spacing unit there, and what it did was,  
10 it showed that there are more wells in the immediate area  
11 than there are in the Naomi area, and we were awarded the  
12 200-percent penalty.

13 Q. Okay, and you were, in essence, stepping out to  
14 the east of a known producing area at that time?

15 A. Stepping out to the west.

16 Q. I'm sorry, stepping out to the west, thank you.

17 Can you orient the Commission as to where the  
18 Cougar Com 4 is located with respect to the Section 25  
19 that's the subject of the hearing today?

20 A. Section 25 would be off of the paper, two  
21 sections down, below Section 13, in 25 and 3.

22 Q. Okay, and if we flip back to your Exhibit Number  
23 19, for this project you're stepping out to the west from a  
24 known producing area -- I think you said what, two or three  
25 miles?

1 A. Yes, sir, to the southwest.

2 Q. So do you think that the Naomi project is more  
3 risky than the Cougar Com 4 project?

4 A. I do because of the total lack of Mesaverde  
5 production in the area. It will be interesting.

6 Q. Now, I want to -- Were you present at the three-  
7 hour Division hearing which took place in May of this year?

8 A. Yes, I was.

9 Q. And did you have an opportunity to listen to the  
10 testimony and review the exhibits that were offered by D.J.  
11 Simmons at the hearing?

12 A. Yes, I have.

13 Q. Did you review the exhibits concerning fracturing  
14 studies in the San Juan Basin?

15 A. I realize another witness has gone over this, but  
16 I would like to get my two cents' worth in --

17 Q. Briefly.

18 A. -- from an engineering perspective.

19 Q. Briefly.

20 A. SPE Paper 25466, which is in D.J. Simmons'  
21 book --

22 Q. Okay, that would be their --

23 A. -- Exhibit 24, I believe. This is a paper --

24 Q. Let me -- you're on -- It's the last paper of  
25 Exhibit 24?

1           A.    It's called "Determination of Hydraulic Fracture  
2   Direction" --

3           Q.    Yeah.

4           A.    -- in the "San Juan Basin". I just want to  
5   reiterate that this paper deals with hydraulically  
6   fractured wells, not naturally fractured wells, in the  
7   Dakota formation in New Mexico somewhere around Cuba.  
8   Nowhere in the paper do they give us specific well  
9   locations or anything like that. It's a generalized paper  
10   concerning hydraulic fracturing in the Dakota formation.

11                  The thing that I found interesting was that they  
12   did say that the average fracture direction was 41 degrees  
13   to the northeast, but it had a plus or minus 10 degrees  
14   variance. So in reality it could be anywhere from 51 to  
15   31, and that's the direction when you hydraulically  
16   fracture a well.

17                  The other thing I found interesting was that in  
18   the paper they quoted other investigators at the MWX  
19   Project over by Rifle, I believe is where it is --

20           Q.    Rifle -- where?

21           A.    Rifle, Colorado.

22           Q.    Okay.

23           A.    -- where Mesaverde studies were done. And they  
24   actually found that the stress fields rotated quite  
25   significantly within -- as they come up the wellbore. And

1 I could quote it to you, it is in the paper. But what that  
2 told me was that just because you have certain stresses in  
3 one formation at one depth does not necessarily mean those  
4 same stresses or fracture directions equate to formations  
5 in the upper part of the hole.

6 The other part of the paper, titled "Fracture  
7 Orientation: Use of the Dipmeter Type Fracture Log", again  
8 is in the Gavilan-Mancos Pool, which is below the Mesaverde  
9 formation. The interesting thing about that paper is that  
10 it does show, and by the exhibit in the paper you can see  
11 that the fracture direction does follow structure trend.  
12 So I think from the engineering perspective that's very  
13 interesting. But I don't think you can draw conclusions  
14 that the fractures in the structure in the Gavilan-Mancos  
15 Pool will necessarily go up to the Mesaverde, unless you're  
16 on the same structure.

17 So from those perspectives these papers are very  
18 interesting to me as an engineer.

19 The final SPE paper discusses permeability  
20 variations in the 27-5 and 29-7 areas, and this was done, I  
21 believe, in conjunction with Burlington, or Burlington has  
22 presented quite a few papers on this, or talks on this.  
23 And it deals with the orientation for infill drilling.

24 It's interesting, and I do use it in some  
25 instances. But down in the -- This again is 20 miles away

1 from our location. So I don't know how pertinent what they  
2 find up there is to our location.

3 Q. Mr. Steuble, as an engineer do you think that  
4 these papers can be used to support a theory that there are  
5 going to be north-to-south fractures in the Lindrith area  
6 or Section 25?

7 A. These papers alone, no, I do not.

8 Q. Okay. How much experience have you had with  
9 McElvain with respect to the Mesaverde formation in the  
10 Lindrith area?

11 A. McElvain started a play east of here in our  
12 Lindrith area in 1998. Since that time we have drilled 19  
13 wells, we've completed 14 in the Mesaverde section, or in  
14 the Mesaverde formation, with 35 frac jobs on 35 different  
15 zones within the formation. We've also had five wells that  
16 we've entered and recompleted in the Mesaverde formation.

17 Q. Have you seen any evidence, Mr. Steuble, of a  
18 north-to-south drainage trend in any of these wells as a  
19 result of fracturing?

20 A. No, we have not.

21 Q. Did you have the opportunity to review the  
22 economic summary that was submitted by D.J. Simmons at the  
23 May hearing as their Exhibit Number 15?

24 A. Yes, I have.

25 Q. Okay. Is that economic summary that was

1 submitted by D.J. Simmons at the May hearing before the  
2 Division Examiner, is that marked as McElvain's Exhibit  
3 Number 22?

4 A. Yes, it is.

5 Q. Okay. Have you had an opportunity to compare  
6 that economic summary prepared by D.J. Simmons in May with  
7 the economic summary that they have submitted to the  
8 Commission in connection with the hearing today?

9 A. Yes, I have.

10 Q. Okay, and is D.J. Simmons' new economic summary  
11 contained in Exhibits 31 and 32 of D.J. Simmons' package?

12 A. Yes.

13 Q. Okay. What are your observations when you look  
14 at what they submitted to the Division Examiner in May and  
15 what they are submitting to the Commission today?

16 A. If I could get a copy of that, I would appreciate  
17 it.

18 Q. Always helpful. There we go. Make sure you  
19 identify which exhibit you're on.

20 A. I'm on McElvain Exhibit Number 22. In the May  
21 hearing D.J. Simmons submitted this as their economics. As  
22 you can see, the well investment was \$500,000 with a 22.1-  
23 percent rate of return. They also said that they could  
24 incrementally complete the Mesaverde for \$50,000 and  
25 increase their rate of return to 25.3 percent.

1 I believe at the time that these numbers were  
2 somewhat low, but this was their testimony of what they  
3 could do.

4 Q. What did they use as a gas price at that time?

5 A. They used \$4.50 per MCF for gas and \$26.90 per  
6 barrel --

7 Q. Okay.

8 A. -- for oil.

9 D.J. Simmons Exhibit Number 30, concerning this  
10 hearing, they're using the same gas and oil prices, yet  
11 they've raised their drilling investment to \$658,153, with  
12 a rate of return of 15.5 percent.

13 They also state in there that at the present time  
14 it is uneconomic to recover any Mesaverde reserves. They  
15 say well logs and mud logs from the new drill may improve  
16 the confidence in the Mesaverde.

17 Q. Now, you're on which exhibit?

18 A. I'm on D.J. Simmons Exhibit 30.

19 Q. Okay.

20 A. So what that tells me is that there is no  
21 intention of recompleting in the Mesaverde.

22 On their Exhibit Number 31 where it has costs and  
23 economics information, they stated in the earlier hearing  
24 that the \$50,000 incremental investment would be required  
25 to recover the reserves. In this exhibit they say that the



1 incremental investment less the wellbore cost -- this is  
2 just completion cost -- is now \$236,400.

3 The cost for owners to buy into their well and  
4 complete the well is now estimated at \$461,706, where our  
5 proposal is in the \$360,000 range.

6 So I see some discrepancy in their testimony.

7 CHAIRMAN WROTENBERY: We just need to clarify the  
8 order of the exhibits. My Exhibit 31, and I see  
9 Commissioner Lee's is the same way, has drainage  
10 calculations.

11 THE WITNESS: I'm sorry, did I say the wrong  
12 number?

13 CHAIRMAN WROTENBERY: 32 has costs and economic  
14 information. Is that --

15 MR. FELDEWERT: 32 is --

16 CHAIRMAN WROTENBERY: 32.

17 THE WITNESS: I'm sorry.

18 CHAIRMAN WROTENBERY: Okay.

19 THE WITNESS: I get excited, you know?

20 I guess the important issue here is the \$236,000  
21 to recomplete in the Mesaverde and their own economics  
22 stating that the Mesaverde is no longer economical. My  
23 question becomes, if they're not going to complete in the  
24 Mesaverde, then should we not be allowed to have our south-  
25 half drainage -- or south-half spacing so we can.

1 Q. (By Mr. Feldewert) Okay, so they originally, in  
2 McElvain's Exhibit 22, showed a 22.1-percent rate of return  
3 for a Gallup-Dakota well; is that correct?

4 A. That's correct.

5 Q. In your opinion, is that an acceptable rate of  
6 return for a Gallup well?

7 A. I would think so, but I believe their testimony  
8 was that it was not.

9 Q. Okay. Is that an acceptable rate of return for  
10 McElvain?

11 A. For a Gallup-Dakota well, yes.

12 Q. Okay. And they showed a \$50,000 incremental  
13 investment for the Mesaverde formation, which has now  
14 changed to what, \$236,000?

15 A. \$236,000.

16 Q. Okay. I'm going to skip through some of your  
17 testimony because we've already covered most of it.

18 A. Are we done?

19 Q. No. Let me ask you something. In your opinion,  
20 is McElvain's proposal to test the Mesaverde formation in  
21 Section 25 more economical for the interest owners in that  
22 section than drilling a well to the Gallup-Dakota  
23 formation?

24 A. Yes, it is. Our re-entry proposal, if they -- if  
25 D.J. Simmons wanted to recomplete theirs, ours would still

1 be \$100,000 less expensive.

2 Q. In your opinion, is McElvain's re-entry proposal  
3 in the best interests of conservation, the prevention of  
4 waste and the protection of correlative rights?

5 A. Yes, I believe so.

6 Q. In your opinion, will the granting of McElvain's  
7 Application result in any waste of oil and gas reserves in  
8 Section 25?

9 A. No, I do not believe it will.

10 Q. Is McElvain, Mr. Steuble, faced with any drilling  
11 window for this recompletion effort, given the delay which  
12 has thus far occurred?

13 A. Yes, originally we planned to re-enter this well  
14 in the summertime. We have an agreement with the land  
15 owner. But because of hunting season now, he will only  
16 allow us on the lease during the month of December due to  
17 -- he imports hunters on the land.

18 So our plans were to recomplete the well during  
19 the summertime and be out of his hair, and everything would  
20 be fine. Unfortunately, that didn't happen. We now have a  
21 window of December. After December, I'm not sure what will  
22 happen. If he -- he has -- There's later hunting seasons  
23 in January and February, I know, but I don't know how we  
24 have not addressed that with him. Right now he has allowed  
25 us to enter in December, and the month of December only.

1           That, combined with the weather and the road  
2 situation out there, we feel it's imperative to move  
3 forward if we can, to get it done so we're not put off  
4 again until next summer.

5           Q.   Did McElvain in your opinion, did they do  
6 anything different with this well proposal that you've been  
7 involved in, in the Lindrith area and the San Juan Basin?

8           A.   Not to my knowledge.

9           Q.   Were McElvain Exhibits 18 to 22 prepared by you  
10 or compiled under your direction and supervision?

11          A.   Yes, they were.

12          MR. FELDEWERT: At this time I would move the  
13 admission into evidence of McElvain Exhibits 18 to 22.

14          MR. HALL: No objection.

15          CHAIRMAN WROTENBERY: Okay, McElvain Exhibits 18  
16 through 22 are admitted.

17          MR. FELDEWERT: And that concludes my direct  
18 examination of this witness.

19          MR. HALL: Can we dispose of Exhibits 23 and 24?

20          MR. FELDEWERT: Not yet. I have to see what you  
21 guys are going to say.

22                               CROSS-EXAMINATION

23          BY MR. HALL:

24           Q.   Mr. Steuble, you mentioned your drilling window  
25 for getting onto the southwest quarter, your Naomi

1 location. The fact is, you have a compulsory pooling order  
2 in hand now, do you not?

3 A. Truthfully, I don't know. I understood that that  
4 was not effective, pending this hearing.

5 Q. All right. Is that what prevented you from going  
6 onto the location and starting your recompletion, is that  
7 you didn't know whether you had a compulsory pooling  
8 order --

9 A. No, sir.

10 Q. -- in effect? What was preventing you?

11 A. Our compulsory pooling, I think, came in, in our  
12 shop on September 24th. Hunting season starts October 1st.  
13 We could not get a -- we did not have a rig sitting there  
14 available to go do, or try to do, the completion in six  
15 days.

16 Q. All right. Before you received your compulsory  
17 pooling Application, there was nothing preventing McElvain  
18 from entering onto site and recompleting the Naomi Com as a  
19 west-half well, was there?

20 A. I don't believe so, no.

21 Q. So other than your surface-use restriction with  
22 your private landowners, you had no federal surface  
23 involved, did you?

24 A. No, sir.

25 Q. So you didn't have any sort of permitting problem

1 with the BLM that would have prevented your entry onto the  
2 lands?

3 A. No, sir.

4 Q. Early on you testified that when you first looked  
5 at the Wynona you utilized McElvain's internal -- I'm  
6 sorry, your procedure -- McElvain's procedure for internal  
7 approvals, and I want to ask you a little bit about that.

8 I believe you were present when Ms. Binion  
9 testified this morning. She said, We don't have an  
10 established procedure, it's a small company, we're informal  
11 about it.

12 But in fact, do you have different knowledge? Is  
13 there, in fact, an established procedure for internal  
14 approvals, like you say?

15 A. Not a printed one, no.

16 Q. What is your procedure?

17 A. What is my procedure? If I get an idea or the  
18 geologists get an idea, we usually take it, get offset logs  
19 or whatever we have, lay it out on the conference-room  
20 table, we get my boss and the geologists and the land  
21 people together and kind of look at it.

22 Normally, engineering and geology will get  
23 together to see if there's a potential there. If there's a  
24 potential there, then I usually write up somewhat of a  
25 procedure and a cost estimate, and we go from there.

1 Q. What is the procedure from an engineering  
2 perspective for evaluating well proposals by third parties  
3 brought to McElvain? What do you do?

4 A. We look at the AFE costs and see if they're  
5 reasonable. If they're reasonable, then we get with  
6 geology and see if there's any interest on McElvain's part  
7 to go forward with it, or go nonconsent or whatever the  
8 options are.

9 Q. I see. And what's the minimum amount of  
10 information that you like to see a third party provide  
11 McElvain when it's evaluating a well proposal like that?  
12 What's the least amount of information you need before you  
13 feel you can commit capital to a project?

14 A. Well, we're partners in many of the units in the  
15 San Juan Basin, so what we usually get is an AFE, and there  
16 may be a little blurb on the AFE to recomplete into the  
17 Lewis or whatever the project is. And that's basically  
18 what we receive on the majority of our AFEs that we have to  
19 evaluate.

20 Q. Yes. My question is, what do you like to  
21 receive? What information do you feel that you need as a  
22 minimum to evaluate a proposal?

23 A. As a minimum, we have to receive the AFE and what  
24 they want to do. Typically, we don't get much more than  
25 that.

1 Q. All right.

2 A. If it's a big-dollar item for us, we'll spend  
3 more time and try to look internally to the information  
4 that we have in our databases to see if we want to go  
5 forward with the project.

6 Q. Do you try to get well logs from the operator?

7 A. No, sir.

8 Q. Do you ask the person proposing the well to give  
9 you an idea of the estimated recoveries from the project?

10 A. No, sir.

11 Q. How about initial production rates? Do you ask  
12 for that information?

13 A. No, sir.

14 Q. Now, you gave us what you say was your two cents'  
15 worth about the literature, the SPE papers. Let me ask you  
16 about that briefly. Do you know whether or not industry  
17 relies on data such as this, such as shown as Exhibit 24?

18 A. Oh, yes. Now, I'm speaking specifically from the  
19 engineering aspect as far as SPE and stuff, but the SPE is  
20 very active in promoting papers and paper presentations  
21 every year and at different functions in the United States.  
22 Yeah, they're active.

23 But you can't take them for face value, you can't  
24 take them and apply them worldwide. I mean, papers are  
25 research papers, and they're the best -- they're a summary



1 of the best intentions of the authors with the data they  
2 have.

3 Q. Are you saying that these articles under Exhibit  
4 24 have no value to the Commission in the context of this  
5 proceeding?

6 A. No, that's not what I said. Didn't I say that  
7 they were very interesting from an engineering aspect?

8 Q. So they do have some value?

9 A. Sure.

10 Q. How large an area do you expect the Naomi to  
11 drain in the Mesaverde?

12 A. Numberwise? Acrewise?

13 Q. Areawise.

14 A. Areawise. I don't know, because we don't feel  
15 it's fractured. Studies, specifically SPE studies and  
16 Burlington studies, have shown that the area of drainage is  
17 relatively small. That's why they downspaced to 80-acre  
18 spacing, so --

19 Q. Well -- I'm sorry, were you finished?

20 A. Well, I mean the point is, we feel that this area  
21 is probably a little bit tighter, less fractured than the  
22 main part of the Basin, so it's probably going to drain  
23 smaller areas than the main part of the Basin does. And  
24 the main part of the Basin, or all of the Blanco-Mesaverde  
25 has been downspaced, as you're aware.

1 Q. Now, let's see, the Naomi is located 410 off the  
2 west line; is that right?

3 A. Yes, sir, I believe so, something like that.

4 Q. Do you believe that that well is situated to  
5 efficiently drain reserves from the southeast quarter,  
6 given that -- talking about a tight --

7 A. No, sir, I don't. But I also know that if you  
8 have a south-half spacing unit, you have the option to  
9 drill an infill well, which by the way we've done in the  
10 Lindrith area.

11 Q. So you're not presenting any data today, any  
12 engineering data that would support any proposition that  
13 the well will drain along an east-west axis; is that  
14 correct?

15 A. Other than the geology and the sand trends --

16 Q. All right.

17 A. -- porosity trends.

18 Q. And correct me if I'm wrong, but you do not have  
19 an expectation that the Naomi well will drain the reserves  
20 in the southeast quarter? Did I misunderstand you on that?

21 A. No, I don't have expectations that they'll drain  
22 it in the northwest quarter either. What I'm saying is,  
23 the whole entire Blanco-Mesaverde has been downspaced to  
24 80s on information provided by people with a lot more  
25 information than you or I have. So that would tell me that

1 the area of -- radius or drainage or area of drainage is  
2 relatively small in the Blanco-Mesaverde Pool.

3 Q. Am I correct when I say I understand that  
4 McElvain opposes the creation of 160-acre nonstandard  
5 proration units for this area?

6 A. Yes, that's --

7 Q. You oppose 160s for the Mesaverde?

8 A. Yes.

9 Q. And the reason for that is?

10 A. Because they're spaced on 320s.

11 Q. And isn't it true that the real reason for that  
12 is, you need the southeast quarter to mitigate your risk,  
13 once again?

14 A. We like to have people that are going to benefit  
15 from our development to share the risk, yes. They also  
16 share the benefits. That's not unusual in the industry.

17 Q. Now, you're going to fracture-stimulate the well,  
18 I assume; is that correct?

19 A. That's correct.

20 Q. Can you tell us what you anticipate what those  
21 fracture lengths would be from the job you propose to  
22 perform?

23 A. We've not done any fracture-length studies, no,  
24 but because of the way we do them, limited-entry-type  
25 perforating, I would anticipate that they're less than 300

1 feet.

2 Q. All right. And can you tell us what the  
3 orientation of those fractures might be?

4 A. No, I cannot.

5 Q. I'm sorry, I didn't hear --

6 A. No, I cannot.

7 Q. So you can't tell us whether or not they will be  
8 on an east-west axis, as opposed to a north-south axis?

9 A. Nor can I tell you if they're clusters, if  
10 they're -- if they cluster around the perforations and they  
11 only go up 50 feet but they're all interconnected. That's  
12 another common theory right now. I don't know that anybody  
13 can tell you that.

14 Q. All right. Do you know whether we have enough  
15 information to say where the stress trends might be located  
16 in Section 25?

17 A. No, I do not.

18 Q. What is McElvain's Mesaverde reserve estimates  
19 for the Naomi?

20 A. I haven't reviewed that for a year, so I'd be  
21 reluctant to say, but we -- typically, it's probably going  
22 to be in the half-to-one-B range.

23 Q. All right. And so you've had those for at least  
24 a year or long?

25 A. No, I'm just saying I don't know that. But if I

1 were to sit here and give you a number, it would be between  
2 one half and one B.

3 Q. I understand, but you say you reviewed them over  
4 a year ago. Did I understand you correctly?

5 A. Yes, I've reviewed them.

6 Q. So they've been in existence for at least a year  
7 or more, whatever the number might be?

8 A. Yeah, whatever.

9 Q. Okay. Did you ever provide that number to D.J.  
10 Simmons?

11 A. No, it was never requested.

12 Q. Let me ask you about your Exhibits 19 and 21, if  
13 you could take those in front of you, please?

14 A. Uh-huh.

15 Q. Those are your Mesaverde cum production maps.  
16 And you talked about a well located in the northwest of  
17 Section 15, 25 North, 3 West, and you show that that's  
18 located in the lower left-hand corner on Exhibit 21 and  
19 upper left-hand corner on Exhibit 19. I notice that the  
20 cum -- Do you have those?

21 A. Do that again, please?

22 Q. Do you have Exhibits 19 and 21, there?

23 A. Yes, I do.

24 Q. Let's look at the well in Section 15, 25 North, 3  
25 west.

1 A. 25-3? Okay.

2 Q. Yeah. If you have that located on both exhibits,  
3 on Exhibit 21 --

4 A. It's not on -- it's -- oh.

5 Q. Are you with me?

6 A. Okay, I'm with you.

7 Q. Now, the cum numbers for that well on the two  
8 exhibits are different. Can you explain why that is?

9 A. No, I can't.

10 Q. Do you know whether the production reported for  
11 that well would include Gallup-Dakota production?

12 A. It should not be. These maps are generated off  
13 of Geographics software, which filters -- you can filter --  
14 it should be just Mesaverde production, but I'm not --  
15 That's one I didn't catch, I don't know.

16 MR. HALL: That's all I have, Mr. Steuble, thank  
17 you very much.

18 CHAIRMAN WROTENBERY: Commissioner Bailey?

19 COMMISSIONER BAILEY: I have no questions.

20 COMMISSIONER LEE: No questions.

21 CHAIRMAN WROTENBERY: Any redirect?

22 MR. FELDEWERT: Just a couple.

23 REDIRECT EXAMINATION

24 BY MR. FELDEWERT:

25 Q. Just a couple. Mr. Steuble, you didn't have a

1 chance to look at this.

2 Exhibit 21, does it have a different -- It says  
3 down there in the legend, "cum as of 2/28/00". Do you see  
4 that?

5 A. Yes, I do.

6 Q. What is the date for the cum on the Exhibit 19?

7 A. 4-30 of 2001.

8 Q. Okay, so this is a much more recent map than the  
9 map that's marked as Exhibit 21?

10 A. Yes, it is.

11 Q. Mr. Hall asked you about why you didn't just go  
12 ahead out there and drill the well where you had your  
13 pooling order for a south-half spacing unit. Did you  
14 receive administrative approval for your unorthodox well  
15 location?

16 A. Yes, we have.

17 Q. And was that for a west-half unit or was it for a  
18 south-half unit?

19 A. I believe it was for a south-half unit.

20 Q. Okay. Mr. Hall asked you also about what you do  
21 when you receive a proposal from another working interest  
22 owner to develop a property, okay? If McElvain has an  
23 alternative plan to develop the property when it receives a  
24 proposal from a working interest owner, do you sit around  
25 and do nothing?

1 A. No, sir.

2 Q. Do you take action?

3 A. We usually try to get ahold of the other company,  
4 yes.

5 Q. Okay, and you discuss with them your alternative  
6 development plan?

7 A. Yes, we do.

8 Q. Do you in a diligent fashion send out an  
9 alternative proposal to the affected working interest  
10 owners?

11 A. I'm sure we would. I can't recall that we've  
12 ever had this issue.

13 Q. Okay, all right. I mean, would you recommend to  
14 your company that if you received a development proposal  
15 for a particular piece of property and you had an  
16 alternative plan, that you not also send out your  
17 alternative plan to the working interest owners for  
18 consideration?

19 A. Yes.

20 Q. Mr. Hall asked you about the literature which  
21 they have marked as Exhibit 24, and I think you indicated  
22 it has some value; is that correct?

23 A. That's correct.

24 Q. Does it have any value, and would an engineer  
25 customarily rely on those studies to determine the drainage



1 pattern in the Lindrith area in the San Juan Basin?

2 A. I think an engineer would use them, given the  
3 specific area that they pertain to. I don't know of many  
4 engineers that would take them and apply them Basinwide to  
5 the -- as a result of the paper being published.

6 Q. Okay, so as an engineer would you take those  
7 studies and apply them to the Lindrith area of the San Juan  
8 Basin?

9 A. No, I would look for their significance to the  
10 Lindrith area, but I don't think I would just blanketly  
11 apply them to our properties.

12 MR. FELDEWERT: Okay, that's all I have. Thank  
13 you.

14 RECROSS-EXAMINATION

15 BY MR. HALL:

16 Q. Brief follow-up on the exhibits again, the cum  
17 numbers.

18 Given the, what, 13-month difference between the  
19 data points on here, that difference is not enough to  
20 account for the difference in the numbers, is it? Because  
21 we're talking about 478,702 on Exhibit 19 and then Exhibit  
22 21 shows only 87,579 for the cum.

23 A. Yes, again, I don't feel that that would account  
24 for the difference, but I think it was a filtering problem  
25 within the Geographics software.

1 Q. Okay.

2 A. We have noticed -- and we didn't catch it here,  
3 but we have noticed that *P.I. -- Dwight's Production*  
4 *Information* is sometimes skewed a little bit also.

5 MR. HALL: Nothing further.

6 CHAIRMAN WROTENBERY: Thank you.

7 Thank you, Mr. Steuble.

8 THE WITNESS: Thank you.

9 CHAIRMAN WROTENBERY: Anything further, Mr.  
10 Feldewert?

11 MR. FELDEWERT: Members of the Commission, that  
12 concludes our presentation in this case.

13 CHAIRMAN WROTENBERY: Okay.

14 Mr. Hall?

15 MR. HALL: If I might have a moment to set up.

16 CHAIRMAN WROTENBERY: Okay. Do we need like a  
17 five-minute break or --

18 MR. HALL: Sure, since you're offering.

19 CHAIRMAN WROTENBERY: Okay, just a quick break.

20 (Thereupon, a recess was taken at 2:15 p.m.)

21 (The following proceedings had at 2:25 p.m.)

22 CHAIRMAN WROTENBERY: Okay, we'll go back on the  
23 record.

24 MR. HALL: At this time, madame Chairman, we'd  
25 call Ed Dunn to the stand.

1                                    EDWARD B. DUNN,  
2    the witness herein, after having been first duly sworn upon  
3    his oath, was examined and testified as follows:

4                                    DIRECT EXAMINATION

5    BY MR. HALL:

6                    Q.    Mr. Dunn, if you would, please, state for the  
7    record your full name and place of residence.

8                    A.    My name is Edward Dunn, I live in Farmington, New  
9    Mexico.

10                  Q.    And by whom are you employed and in what  
11    capacity?

12                  A.    D.J. Simmons, landman.

13                  Q.    And let me ask you, you've previously testified  
14    before the Division and had your credentials established as  
15    a matter of record, have you not?

16                  A.    Yes, I have.

17                  Q.    You're familiar with the Application that's been  
18    filed by both McElvain and Simmons in this case?

19                  A.    I am.

20                  Q.    And you're familiar with the lands that are the  
21    subject of these two Applications?

22                  A.    Yes, I am.

23                  Q.    So the Commission knows, how long have you been  
24    practicing as a landman in the San Juan Basin of New  
25    Mexico?

1           A.    Oh, probably on and off, ten years, I guess.  Not  
2 with Simmons but with various other companies.

3           Q.    All right.  And overall, how long have you been a  
4 landman?

5           A.    For Simmons?

6           Q.    No, overall.

7           A.    Oh, 30, 35 years.

8           MR. HALL:  All right.  At this time, madame  
9 Chairman, we'd offer Mr. Dunn as an expert petroleum  
10 landman.

11           MR. FELDEWERT:  No objection.

12           CHAIRMAN WROTENBERY:  We accept Mr. Dunn's  
13 qualifications.

14           Q.    (By Mr. Hall)  Mr. Dunn, if you would, briefly  
15 explain to the Commission what it is that Simmons seeks by  
16 its Application in this case.

17           A.    Simmons seeks to pool interests from the surface  
18 to the base of the Mesaverde formation, less the Fruitland  
19 Coal, underlying the east half of Section 25, 25 North, 3  
20 West, for the drilling of the Bishop 25-1 well.  We propose  
21 to drill the well in a standard location within the  
22 section.  The well will be drilled to approximately 8174 to  
23 test the Gallup-Dakota formation, as well as the Mesaverde  
24 formation.

25           Q.    All right.  You've prepared certain exhibits in

1 connection with your testimony today?

2 A. I have.

3 Q. Let's look at Exhibits 1 and 2 quickly. First  
4 let me ask you, does Simmons propose to dedicate an east-  
5 half proration unit to its well?

6 A. Yes.

7 Q. Review briefly -- Why don't you identify Exhibits  
8 1 and 2 and explain what they show?

9 A. Exhibits 1 and 2 show the description of the land  
10 acreage owned by Simmons 100 percent, interest owned by  
11 Forest, McElvain and Dugan in the south half of the  
12 southeast, and then interest owned by McElvain in the west  
13 half of Section 25.

14 Q. And why don't you identify the owners of the  
15 interests you're seeking to pool today?

16 A. We're seeking to pool Forest Oil Company 50  
17 percent as to the south half, southeast; McElvain 37.5  
18 percent; Dugan 12.5 percent in the south half, southeast.

19 Q. Now tell us, when did Simmons first acquire its  
20 acreage in Section 25?

21 A. The federal lease was issued September 1st of  
22 2000.

23 Q. Okay. And what percentage of the acreage in the  
24 east half is now voluntarily dedicated to your proposed  
25 well, the Bishop 25-1?

1           A.    The northeast quarter; north half, southeast  
2 quarter.

3           Q.    All right. Mr. Dunn, in the interests of time  
4 I'm going to try to shorten my examination on various  
5 matters today. I'd like to discuss your efforts to secure  
6 the voluntary participation of the other interest owners in  
7 your east-half well. Let's do that this way.

8                   Let's refer to, first of all, Exhibit 3, if you  
9 would identify that, please, sir.

10          A.    Exhibit 3 is a sequence of events. Is that the  
11 one you're talking about?

12          Q.    Yes.

13          A.    It covers the letters and conversations by both  
14 Simmons and McElvain.

15          Q.    So is it accurate to say that Exhibit 3 would  
16 show the history of this dispute in all of the  
17 communications back and forth between McElvain and Simmons  
18 with respect to their well proposal and your proposal, as  
19 well as, in fact, their proposal for a north-half well?

20          A.    That's correct.

21          Q.    Now, let's refer to Exhibit 4. Identify that,  
22 please sir.

23          A.    Okay, this is a sequence of events concerning  
24 McElvain as to the Naomi Com Number 1 well. This is  
25 letters and conversations from November 10th of 2000.

1 Q. All right. And so we're clear on this, I believe  
2 we discussed this exhibit with Ms. Binion this morning; is  
3 that correct?

4 A. Yes, we did.

5 Q. And what Exhibit 4 shows is all the initiatives  
6 undertaken by McElvain to communicate with Simmons?

7 A. That's correct.

8 Q. Now, let's refer to Exhibit 5. Identify that,  
9 please, sir.

10 A. Exhibit 5 is a sequence of events pertaining to  
11 Simmons concerning the Naomi Com Number 1 well, letters and  
12 conversations.

13 Q. So if I understand correctly, Exhibit 5 shows the  
14 initiatives taken by Simmons to communicate with McElvain  
15 regarding McElvain's well proposal?

16 A. That is correct.

17 Q. Now, let's refer to Exhibit 6. What does that  
18 show?

19 A. Exhibit 6 is a sequence of events, starting from  
20 November 10th, 2000, concerning our well, the Bishop 25-1  
21 and the Bishop 25-2, letters and conversations between the  
22 various working interest owners in the south half,  
23 southeast, Section 25.

24 MR. HALL: All right. Now, madame Chairman, if  
25 it's agreeable with counsel and the Commission, what I

1 would propose to do to shorten the examination is, rather  
2 than go over once again the communications relating to the  
3 McElvain well proposal, if I skip those and focus on  
4 Simmons' well proposal and discuss only the exhibits  
5 related to those, I believe we'll save quite a bit of time.

6 However, I think I'd go ahead and tender the  
7 chronology exhibits through Mr. Dunn, and they refer to the  
8 supporting exhibits.

9 In terms of other exhibits, that would take us up  
10 through everything through Exhibit 11. I think we could  
11 start there and discuss the efforts of Simmons to obtain  
12 McElvain's joinder. If that's agreeable to everyone, I'll  
13 do it that way.

14 COMMISSIONER LEE: Do whatever you want to do.

15 MR. FELDEWERT: I have no -- It's his case.

16 CHAIRMAN WROTENBERY: Sounds good to me.

17 MR. HALL: Well, what I'm --

18 COMMISSIONER LEE: You're not doing us any favor,  
19 okay?

20 Q. (By Mr. Hall) Let's look at Exhibit 6, please,  
21 Mr. Dunn. If you would summarize for the Commission all  
22 the efforts you took to secure McElvain's participation in  
23 your well.

24 MR. FELDEWERT: We're on Exhibit 6?

25 MR. HALL: Yes. I'm sorry, in -- Yes, summarize



1 the efforts that you made to obtain McElvain's  
2 participation in the Bishop 25-1 well.

3 A. Well, on June 7th, 2001, we sent a proposal  
4 letter to the parties in the south half, southeast, asking  
5 them to -- or proposing a well, proposing two wells, the  
6 Bishop 25-1 and the Bishop 25-2, and forming an east-half  
7 spacing unit. The letter included a drilling and  
8 completion plan and an AFE.

9 On June 14th, 2001, Simmons -- Well, never mind.  
10 Let's see. Do you want to go down the entire list?

11 Q. Yes, and you can be brief about it. Just  
12 identify the date and what was done on those dates.

13 A. Okay. Well, on June 14th, 2001, Simmons received  
14 a certified letter from McElvain proposing a Mesaverde well  
15 in the northwest quarter of Section 25, 25-3, the Naomi Com  
16 Number 2. We received a JOA and exhibits A through F and  
17 an AFE.

18 Q. All right, let me do it this way, might be a  
19 little quicker. You talk about your well proposal you sent  
20 on June 7th. That's item 3 of Exhibit 6, correct?

21 A. Yes.

22 Q. When you first proposed your well --

23 A. Right.

24 Q. -- to McElvain?

25 A. Right.

1 Q. And that well-proposal letter is Exhibit 11,  
2 correct?

3 A. That's correct.

4 Q. Now, and the response you got was Exhibit 12.  
5 That's the response on June 14th, referenced in item 4; is  
6 that correct?

7 A. Right.

8 Q. And the response was, they were proposing their  
9 own well instead?

10 A. That's right.

11 Q. Now, what happened on August 6th?

12 A. August 6th, we received -- Simmons sent out a  
13 letter to Forest, McElvain and Dugan. We were clarifying  
14 the percentages of cost to drill and complete a Mesaverde  
15 well.

16 Q. And that's Exhibit 13?

17 A. That's Exhibit 13.

18 Q. And then let's look at item 7, September 13th,  
19 2001. What happened there.

20 A. A letter to Forest, McElvain and Dugan, let's  
21 see, setting out interest in the Mesaverde formation,  
22 including AFE, drilling and completion procedure for the  
23 Mesaverde formation. That would be Exhibit 14.

24 Q. All right, and that's the follow-up AFE, Exhibit  
25 14?

1 A. Right.

2 Q. Now, September 13, what did you do?

3 A. Offered to settle. We sent that to McElvain.

4 Simmons offer was to sell to McElvain our interest in the  
5 north half of the southeast section of 25, as to all depths  
6 from 750 feet below the Huerfano bentonite marker to the  
7 base of the Mesaverde formation and, in addition, to form  
8 two 160-acre units, the north half of Section 25.

9 Q. What sort of response did you get to that?

10 A. We didn't get any response.

11 Q. Let's look at Exhibit 16.

12 A. Simmons received a letter dated October 3rd,  
13 2001, from McElvain. They agreed it would be beneficial to  
14 reach an agreement concerning development of the Mesaverde  
15 under the north half of Section 25. No proposals were  
16 suggested by McElvain.

17 Q. All right. So the next communication you  
18 received from McElvain was October --

19 A. -- 11th.

20 Q. -- 11th? And what was that?

21 A. And that was a letter from Holland and Hart, and  
22 it was an application for compulsory pooling in the north  
23 half of Section 25.

24 Q. And that's Exhibit 17, is it not?

25 A. Exhibit 17.

1 Q. All right. Were there any further efforts by  
2 Simmons to try to reconcile the problem here? Let's look  
3 at Exhibit 18.

4 A. October 25th Simmons sent a letter overnight to  
5 McElvain offering to settle the differences. We asked for  
6 two special 160-acre units in the north half. We would  
7 drop our appeal concerning their 320-acre south-half unit.  
8 We kept the offer open till October 31st, 2001. We didn't  
9 get any response.

10 Q. All right. Now let me ask you, as a practicing  
11 landman, based on your experience, are you familiar with  
12 the industry custom and practice prevailing in the San Juan  
13 Basin that operators follow when proposing drilling  
14 projects and soliciting the participation of other working  
15 interest owners?

16 A. Yes, most of them.

17 Q. When Simmons sent its well proposal to McElvain,  
18 it did include an AFE, did it not?

19 A. That's right.

20 Q. And there were follow-up clarification AFEs; is  
21 that correct?

22 A. Yes.

23 A. And was there a well plan?

24 A. Yes.

25 Q. Was there a TD specified in the well proposal, if

1     you recall?

2             A.     There was a TD mentioned in the letter.

3             Q.     All right, that was my question.    So the answer  
4     is yes?

5             A.     Yes.

6             Q.     In your opinion, did D.J. Simmons make a diligent  
7     and good-faith effort to obtain the voluntary participation  
8     of unjoined interest owners in the drilling of the Bishop  
9     25-1 well?

10            A.     I think we did.

11            Q.     Let's talk briefly for the record, the other  
12     communications you had with the other interest owners,  
13     other than McElvain.    Tell us about that.

14            A.     Well, I had communication with Forest.   I talked  
15     to Chuck Ramsey with Forest, and they hadn't made their  
16     mind up which way they wanted to go, as far as whether they  
17     would join us or McElvain, or commit, whatever, until after  
18     the hearing.

19            Q.     You communicated directly with Forest --

20            A.     Yes.

21            Q.     -- and Dugan?

22            A.     Dugan I didn't.

23            Q.     All right, but you sent them a well proposal, did  
24     you not?

25            A.     Oh, yes, yes.

1 Q. And they indicated they weren't participating?  
2 They were participating with McElvain; is that correct?

3 A. They were going with McElvain.

4 Q. All right. Did you make follow-up efforts to  
5 communicate with Forest and the other interest owners?

6 A. Some conversations here and there, yes. And also  
7 letters too.

8 Q. Now, let me ask you, you were present for the  
9 testimony of McElvain's witnesses this morning, you're  
10 familiar with the dispute here. Based on your knowledge of  
11 the facts, in your opinion did McElvain's efforts to obtain  
12 the voluntary participation of Simmons in the Naomi Com  
13 well comply with the prevailing industry custom and  
14 practice in the San Juan Basin?

15 A. This is the Naomi 1?

16 Q. Yes.

17 A. They were pretty poor.

18 Q. All right, so the answer is no?

19 A. (Nods)

20 Q. You need to indicate verbally for the court  
21 reporter.

22 A. The answer is no.

23 Q. All right. In your opinion, did McElvain make a  
24 serious and diligent effort to obtain Simmons' voluntary  
25 agreement in their well?

1 A. No, I don't think so.

2 Q. If I may approach the witness, madame Chairman.

3 Mr. Dunn, if you would, please, would you refer  
4 to Exhibit D-1 and identify that for the Commissioners?

5 A. D-1, yes. It's a letter from Conoco with an  
6 attached AFE. This happens to be a unit that we're  
7 involved in, the 28-7 unit. Conoco is the operator, and we  
8 drilled quite a few wells down there with them, or  
9 participate in quite a few wells down there. It's an AFE,  
10 a well completion, drilling and completion, AFE, and a log.

11 Q. All right, let's go through these. Specifically,  
12 it consists of two well proposals, does it not?

13 A. That's right.

14 Q. And the first well is the San Juan 28-7 Number  
15 183?

16 A. That's correct.

17 Q. And is this typical of the well proposals that  
18 Conoco sends to its --

19 A. Yes, it is.

20 Q. What does it consist of? Let's go through it  
21 briefly.

22 A. It consists of the Mesaverde recompletion  
23 procedure.

24 Q. All right, so we have an AFE, we have a  
25 recompletion procedure. What comes after that?

1 A. Well, the AFE is the last thing on the list.

2 Q. All right, so you have a cost estimate as well?

3 A. Right.

4 Q. Just so we're clear on this, the second page of  
5 the exhibit is Conoco's form AFE, correct?

6 A. That's correct.

7 Q. And the next to the last page for the 28-7 183  
8 well is a cost estimate?

9 A. Cost estimate, yeah, uh-huh.

10 Q. And again, behind that the last page for that  
11 well is, again, another form AFE?

12 A. That's right.

13 Q. Now, let's look at what else is combined with  
14 Exhibit D-1. Is that a well proposal for the San Juan 28-7  
15 Unit Well Number 261?

16 A. It's a Mesaverde recompletion procedure.

17 Q. And does this have a work summary attached to it?

18 A. Yes, it does.

19 Q. And it has a recompletion procedure attached to  
20 it?

21 A. That's correct.

22 Q. And it has a cost estimate attached to it?

23 A. At the end, right, or an extra log.

24 Q. And finally there is a set of logs included with  
25 it?



1 A. That's right.

2 Q. In your opinion, Mr. Dunn, is the Conoco well  
3 proposal more reflective of the standard of well proposals  
4 that operators in the San Juan Basin send out, soliciting  
5 third-party participation?

6 A. This is usually what I see.

7 Q. Yeah.

8 A. Yes.

9 Q. Is this, the Conoco well proposal, closer to the  
10 standard than McElvain's well proposal?

11 A. I would say that it's -- It's a little closer,  
12 yes.

13 Q. Well, in fact, it's significantly closer to the  
14 prevailing standard, is it not?

15 MR. FELDEWERT: Object, counsel's leading the  
16 witness. The witness has answered the question.

17 CHAIRMAN WROTENBERY: Sustained.

18 Q. (By Mr. Hall) Finish up with you, Mr. Dunn.  
19 Does D.J. Simmons seek the imposition of a 200-percent risk  
20 penalty for the Bishop 25-1 well?

21 A. Yes, sir.

22 Q. And does Simmons also seek to be designated  
23 operator of the well?

24 A. Yes, they do.

25 Q. Now, were Exhibits 1 through 18 and D-1 compiled

1 by you or at your direction?

2 A. Yes.

3 MR. HALL: We'd move the admission of Exhibits 1  
4 through 18 and D-1.

5 CHAIRMAN WROTENBERY: Any objection, Mr.  
6 Feldewert?

7 MR. FELDEWERT: I don't know if we necessarily  
8 went through each one of these. Give me one minute here.

9 MR. HALL: What I was suggesting, madame  
10 Chairman, is, when we discussed Exhibits 3, 4 and 5, the  
11 chronologies, each of those entries are supported by the  
12 exhibits I'm seeking the introduction of now. We discussed  
13 most of them this morning anyway.

14 CHAIRMAN WROTENBERY: I think the ones that we  
15 didn't walk through specifically were 7 through 10.

16 MR. FELDEWERT: Yeah, I may not have an  
17 objection, just give me -- page through these.

18 CHAIRMAN WROTENBERY: Sure.

19 MR. FELDEWERT: 1 through 18?

20 MR. HALL: Yes.

21 MR. FELDEWERT: I have no objection.

22 CHAIRMAN WROTENBERY: And D-1.

23 MR. FELDEWERT: D-1 would be one of those hearsay  
24 letters, I'm afraid.

25 Let me ask Mr. Dunn.

## VOIR-DIRE EXAMINATION

BY MR. FELDEWERT:

Q. Did this come out of your files?

A. Yes, it did.

Q. Are these files that you normally keep in the ordinary course of business?

A. Yes.

Q. These are your business records?

A. They're in the engineering records, yes.

MR. FELDEWERT: Okay, I don't have any objection.

CHAIRMAN WROTENBERY: Then Exhibits 1 through 18 and D-1 are admitted into evidence.

MR. HALL: At this time, madame Chairman, we would call --

MR. FELDEWERT: I do have some questions.

MR. HALL: I'm sorry. I'm trying.

CHAIRMAN WROTENBERY: Mr. Feldewert?

## CROSS-EXAMINATION

BY MR. FELDEWERT:

Q. Mr. Dunn, you testified here that in your opinion there was a good-faith effort made by D.J. Simmons to reach a voluntary agreement for their east-half proposal?

A. Yes.

Q. Okay. As I understand it, in connection with those efforts in which you base your good-faith testimony

1 on is that you sent out a letter proposing the well?

2 A. Right.

3 Q. Sent out an AFE?

4 A. That's correct.

5 Q. And you sent out a well-completion report?

6 A. A well --

7 Q. The working report?

8 A. Drilling and completion, yeah.

9 Q. Did you send out anything else?

10 A. That was -- we set out in the letter -- I set out  
11 in the letter what the JOA would contain, if we got that  
12 far.

13 Q. But you didn't send out a JOA?

14 A. No, I didn't.

15 Q. Okay. So in your opinion, good-faith efforts are  
16 met when you send out a letter, an AFE and a well  
17 completion?

18 A. Yes.

19 Q. Okay. And in this particular case, when you  
20 received McElvain's Application for a south half, you had  
21 their proposal letter, their AFE, the well-completion or  
22 project report and, in addition, you also had well logs by  
23 the end of November, 2000, did you not?

24 A. That's right.

25 Q. Okay. So would you agree with me that McElvain

1 had undertaken good-faith efforts to reach a voluntary  
2 agreement with D.J. Simmons in this case?

3 A. I would agree with you as far as having to get  
4 that stuff from McElvain, yes. We had to ask for all that.

5 Q. Did you have to ask --

6 A. It wasn't sent out --

7 Q. I understand.

8 A. -- we had to ask for it.

9 Q. I don't want to be caught -- bogged down in  
10 semantics, but you received what you asked for; is that  
11 correct?

12 A. Yes, yes.

13 Q. And correct me if I'm wrong, but I thought you  
14 testified at the first hearing that you thought McElvain  
15 had engaged in good-faith efforts to reach an agreement?

16 A. Well, yeah, I did.

17 Q. Okay, all right. Just want to make sure that's  
18 clear.

19 All right, now -- And if you look at the Conoco  
20 letter, what did -- they sent out an AFE, they sent out a  
21 well-completion report and they sent out a well log?

22 A. Right.

23 Q. Did they not?

24 A. Yes.

25 Q. Okay, all that information you had by the end of

1 November of 2000, D.J. Simmons did. Strike that, you've  
2 already answered that question.

3 Did you ever send out to McElvain any geologic  
4 information?

5 A. No.

6 Q. Did you ever send out any engineering economics?

7 A. It wasn't requested.

8 Q. Did you ever send out any estimate of the  
9 reserves?

10 A. It wasn't requested, no.

11 Q. Okay, did you send out any well logs?

12 A. No.

13 Q. Okay. You sent out your proposal for an east-  
14 half unit on June 7th; is that right? Let's look at your  
15 Exhibit Number 6, we don't want to guess here. Exhibit  
16 Number 6 indicates you sent out your well proposal on June  
17 7th; is that right?

18 A. That's correct.

19 Q. Okay. And then you received a week later from  
20 McElvain an alternative development proposal, did you not?  
21 That's entry number 4?

22 A. Right.

23 Q. Okay, all right.

24 A. That's for the -- yeah, Naomi Number 2.

25 Q. Now, when did you file your pooling application

1 for your east half? I didn't see that on here.

2 A. I don't know, I can't recall --

3 Q. Okay.

4 A. I'd have to --

5 Q. All right. And did -- You know, entry 8 down  
6 there, you indicate that you have offered to McElvain to  
7 sell your Mesaverde interest in the north half of the  
8 southeast quarter of Section 25, right?

9 A. That's correct.

10 Q. Okay, is that because D.J. Simmons has no  
11 interest in pursuing that Mesaverde reserve?

12 A. No, I think we just wanted to -- you know, to  
13 come to some kind of settlement.

14 Q. Okay. And then you also again made an offer to  
15 farm out your Mesaverde reserves in the southeast quarter;  
16 is that correct?

17 A. That is correct.

18 Q. And I believe you testified -- now let me make  
19 sure I didn't hear this wrong -- that you didn't receive  
20 any response to that proposal from McElvain?

21 A. To the --

22 Q. To your last entry, Number 11, in your Exhibit  
23 Number 6. You received a response, didn't you?

24 A. Okay, let's see. That would have been --

25 Q. I don't want to guess.

1 A. Well, hang on just a second.

2 Q. Let me show you what has been marked as --

3 A. The only response, I think, that I got was --  
4 nothing in writing. What had happened was --

5 Q. I want --

6 A. -- there was no response by October 31st.

7 Q. Okay.

8 A. We got a response afterwards.

9 Q. November 1st, wasn't it?

10 A. Yes.

11 Q. Okay, all right. And that's marked here as  
12 McElvain Exhibit B-1; is that right?

13 A. Yes.

14 Q. Okay. If I may approach. Okay, now did you  
15 review this response?

16 A. I did.

17 Q. Okay. Do you see in there -- Did you understand  
18 that McElvain said -- indicated to you that they would be  
19 willing to farm out -- have you farm out your southeast  
20 quarter interest to them under the terms that were set out  
21 in your October 25th letter?

22 A. Uh-huh, I see that.

23 Q. Okay. The one thing they would not agree to  
24 would be to support your request for 160-acre spacing --  
25 abnormal 160-acre spacing units for the Mesaverde formation



1 in the north half?

2 A. Right.

3 Q. Okay. As you understand it, the Division has  
4 determined that the Mesaverde formation is to be spaced on  
5 320 acres?

6 A. That's right.

7 Q. All right. And if I understand, what you seem to  
8 be saying here is, you want to try to go before the  
9 Commission and ask them to approve special spacing units  
10 for the north half of this section?

11 A. I think McElvain and Simmons would have -- Yes,  
12 we would have to go before the Commission.

13 Q. You want -- and what you want in order to close  
14 this deal is, you want McElvain to go along with you and  
15 support that request?

16 A. Yes.

17 Q. Okay. Do you recall raising that issue with the  
18 Examiner at the hearing in May?

19 A. Not exactly.

20 Q. Okay, you don't remember Examiner Stogner's  
21 reaction when you suggested to him that what we ought to do  
22 here is create two nonstandard 160-acre spacing units in  
23 the north half of Section 25?

24 MR. HALL: I'm going to object if, in fact, that  
25 was he that did that. Can refer us to --

1 Q. (By Mr. Feldewert) You don't remember that?

2 A. At 63 I'm getting to the point where I can't  
3 remember what happened last week.

4 Q. That's all right, the transcript -- You don't  
5 remember that?

6 A. No, I don't --

7 Q. Okay, that's --

8 A. -- I'm sorry.

9 Q. Okay. Do you know what rate of return D.J.  
10 Simmons usually shoots for with respect to their drilling  
11 projects?

12 A. I can't say I do.

13 Q. You don't know at all? Okay.

14 A. I'd have to refer to, you know, either an  
15 engineer or a geologist.

16 Q. Is D.J. Simmons going to pursue a drilling  
17 project for the Dakota formation in the east half of  
18 Section 25? Have you made a decision to go ahead and drill  
19 those wells?

20 A. Oh, yes.

21 Q. Okay.

22 A. Yeah.

23 Q. Have you gotten the approval from the BLM that  
24 you need?

25 A. Right now we have the APDs at Albuquerque --

1 Q. You haven't received --

2 A. -- for approval -- No, they haven't been approved  
3 yet.

4 Q. They haven't. Do you know why?

5 A. Mainly because of some surface-owner problems  
6 that we have out there.

7 Q. You don't have a landowner agreement yet?

8 A. No, we don't.

9 Q. So --

10 A. We're in the nego- -- Well, what had happened, if  
11 I may, is, on the Bishop lease, Section 25, we had a  
12 surface owner and we had an agreement with him. We had two  
13 wells staked. In the meantime, he sold his surface to a  
14 party from California, so what has happened is, we have  
15 started all over again, as far as --

16 Q. Now, I thought you told me at the last hearing  
17 that you had acquired your federal lease in April of --  
18 July of 2000. Was that not correct?

19 A. No, that federal lease was approved September  
20 1st.

21 Q. Okay.

22 A. We bid on it sometime the middle of July.

23 Q. And so you --

24 A. At that point we were awarded --

25 Q. I see, all right, okay. So as of July of 2000,

1 you knew you were awarded a federal lease for this acreage?

2 A. Yes.

3 Q. And then you finally got the paperwork from  
4 the --

5 A. It hadn't been issued.

6 Q. I understand. And you got that on September the  
7 1st of 2000?

8 A. September the -- Well, it was approved on the 1st  
9 of September so, you know, I don't know exactly when we got  
10 it --

11 Q. I understand.

12 A. -- three or four days later or --

13 Q. And at this point in time, after that passage of  
14 time, you still don't have your BLM APDs and you still  
15 don't have an agreement?

16 A. No.

17 Q. Do you remember when at the last hearing we had a  
18 discussion about this idea of whether an operator should  
19 take into account the sharing of risk with those who were  
20 going to benefit from the project?

21 A. Uh-huh.

22 Q. Okay. And do you recall testifying at that time  
23 that you thought it was a reasonable consideration for an  
24 operator to take into account when proposing an initial  
25 test well in a property like Section 25?

1 MR. HALL: Let me object. First of all, that's  
2 beyond the scope of direct here. It's improper use of the  
3 transcript as well. So I would object.

4 MR. FELDEWERT: I've asked a question and I'm  
5 waiting for the answer. I may not have to use the  
6 transcript.

7 CHAIRMAN WROTENBERY: I'll allow it.

8 MR. HALL: Still beyond the scope.

9 CHAIRMAN WROTENBERY: I'll allow it.

10 THE WITNESS: You allow it? It's always been my  
11 contention that if you can share the risk, yes, it's a --  
12 it's rather obvious.

13 Q. (By Mr. Feldewert) It's a reasonable  
14 consideration?

15 A. Well, sure.

16 Q. And it's customary for operators to take that  
17 into account when they're trying to propose a spacing unit  
18 and develop property, correct?

19 A. Yes, yeah, I think -- Yes.

20 Q. Okay, that's all I have. Thank you.

21 Hold on one minute.

22 When you applied for your APDs with the BLM, Mr.  
23 Dunn, have you included in that plan a proposal to complete  
24 in the Mesaverde, or is it just the Dakota?

25 A. You know, I couldn't answer, I'd have to -- I

1 didn't fill them out myself. We have somebody that does  
2 that, so I couldn't tell you.

3 Q. Okay, at this point in time, to your knowledge,  
4 D.J. Simmons only plans to drill a well and complete the  
5 well in the Dakota; is that right? In the northeast  
6 quarter?

7 A. That is correct.

8 Q. Okay.

9 A. We're going to take a good look at whatever, you  
10 know, options we have, yeah.

11 MR. FELDEWERT: Okay, that's all I have. Thank  
12 you.

13 CHAIRMAN WROTENBERY: Commissioner Bailey?

14 COMMISSIONER BAILEY: No.

15 CHAIRMAN WROTENBERY: Commissioner Lee?

16 COMMISSIONER LEE: (Shakes head)

17 EXAMINATION

18 BY CHAIRMAN WROTENBERY:

19 Q. I have a couple of questions because I'm a little  
20 bit unclear on the scope of D.J. Simmons' Application for  
21 compulsory pooling in this case, and I'm not sure I  
22 understood you correctly when you responded to the very  
23 first question, I believe, asked by Mr. Hall about the  
24 scope of the Application.

25 First of all, what pools are you seeking to force

1 pool, what zones and what vertical interval?

2 A. Just the Mesaverde.

3 Q. Okay. And the notice of hearing had indicated  
4 any zone from the surface --

5 A. Oh, I see what you're saying.

6 Q. -- to the -- I'm trying to remember. Let me look  
7 at it, just to get it right. From the surface to the base  
8 of the Mesaverde, that was spaced on 320 acres.

9 A. Right.

10 Q. Now, I think I heard you say something  
11 different --

12 A. Less --

13 Q. -- in your testimony.

14 A. Less the Fruitland Coal, less the Fruitland Coal  
15 formation.

16 Q. Okay.

17 A. From the surface to the base of the Mesaverde,  
18 less the Fruitland Coal.

19 Q. Okay.

20 A. Now, the Fruitland Coal --

21 Q. It is spaced on 320 acres, but you're not  
22 requesting to pool that zone.

23 What pools in that interval are currently spaced  
24 on 320 acres?

25 A. As far as I know, just the Mesaverde and the

1 Fruitland Coal.

2 Q. That's as far as I know too. Okay, I just wanted  
3 to double-check on that.

4 You also testified that you're not at this point  
5 really planning to complete in the Mesaverde. And I may  
6 not have accurately summarized your testimony, but I got  
7 the impression that your target is really the Dakota and  
8 that you do not have immediate plans to complete in the  
9 Blanco-Mesaverde?

10 A. Right. Right, the Gallup-Dakota is our main --  
11 That's our objective, our main objective.

12 Q. So why are you asking to compulsory pool the  
13 Blanco-Mesaverde?

14 A. Well, we would like to have the Blanco -- or the  
15 Mesaverde, we would like to have that in our pocket just in  
16 case the Gallup-Dakota does not turn out too good and the  
17 Mesaverde is good.

18 CHAIRMAN WROTENBERY: Thank you.

19 Any redirect?

20 MR. HALL: Brief redirect to a question asked by  
21 Mr. Feldewert.

22 REDIRECT EXAMINATION

23 BY MR. HALL:

24 Q. Mr. Dunn, Mr. Feldewert asked you about  
25 mitigation of risk, and you indicated that you thought



1 sharing of risk was certainly a reasonable thing to take  
2 into consideration when parties are negotiating; is that  
3 right?

4 A. Absolutely.

5 Q. When they're unable to negotiate and when they  
6 invoke the compulsory pooling statute, have you ever seen  
7 the Division's compulsory pooling process invoked for  
8 purposes of mitigating risk?

9 A. I haven't. But there again, my experience hasn't  
10 been all that --

11 Q. Right, so you have not seen the pooling  
12 statute --

13 A. No.

14 Q. -- used for that purpose?

15 A. No, I haven't.

16 Q. Is Simmons seeking to prevent McElvain from  
17 completing its well in the Mesaverde and dedicating a west-  
18 half unit?

19 A. Absolutely not.

20 Q. Are they still free to do that?

21 A. Absolutely.

22 MR. HALL: Nothing further.

23 CHAIRMAN WROTENBERY: Thank you very much, Mr.  
24 Dunn.

25 MR. HALL: At this point, madame Chairman, we'd

1 call Lisa Gusek to the stand.

2 LISA GUSEK,

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

5 DIRECT EXAMINATION

6 BY MR. HALL:

7 Q. For the record, please state your name.

8 A. Lisa Gusek.

9 Q. And how do you spell that, please?

10 A. It's G like in George, u, s like in Sam, e, k.

11 Q. All right. By whom are you employed and in what  
12 capacity?

13 A. By D.J. Simmons, Inc., as a geologist.

14 Q. And you testified at the Division Examiner  
15 Hearing in these matters and had your credentials accepted  
16 as a matter of record, did you not?

17 A. Yes.

18 Q. And you're familiar with the Applications that  
19 have been filed in these cases?

20 A. Yes.

21 Q. And you're familiar with the lands that are the  
22 subject of these Applications?

23 A. Yes.

24 MR. HALL: Once again, Madame Chairman, we would  
25 offer Ms. Gusek as a qualified petroleum geologist.

1 MR. FELDEWERT: I've read through that  
2 transcript, I do have a couple questions.

3 VOIR-DIRE EXAMINATION

4 BY MR. FELDEWERT:

5 Q. Ms. Gusek, how long have you been employed as a  
6 geologist?

7 A. Since 197- -- or actually 1981. I first went to  
8 work in 1979 as a physical science technician with Minerals  
9 Management Service in Los Angeles, and then I was promoted  
10 to a geologist shortly thereafter, and I've worked as a  
11 geologist ever since.

12 Q. When did you begin your employment with D.J.  
13 Simmons?

14 A. In June of 1998.

15 Q. Was that your first time that you were employed  
16 with a company that operates in the San Juan Basin of New  
17 Mexico?

18 A. No, I had been employed with Martin Exploration  
19 for 10 years in Boulder, Colorado, and we had some  
20 operations, some wells that we operated in the San Juan  
21 Basin in Colorado.

22 Q. San Juan Basin, Colorado?

23 A. Yeah, in La Plata County.

24 Q. Did you have any property that you operated in  
25 the San Juan Basin of New Mexico?

1 A. Not at that time, no.

2 Q. Have you had any experience with the Lindrith  
3 area of the San Basin of New Mexico?

4 A. Well, from all of my mapping experience in the  
5 area, yes, in looking at production.

6 Q. I'm sorry, outside of your work that you've done  
7 in this case, have you had any experience with the Lindrith  
8 area of the San Juan Basin?

9 A. I haven't actually -- we haven't -- actually with  
10 operators who have operated wells there, no.

11 Q. Okay, so you -- All right. Have you had any  
12 experience with drilling of Mesaverde wells or the  
13 recompletion of Mesaverde wells?

14 A. Yes.

15 Q. Okay, with what company?

16 A. D.J. Simmons.

17 Q. Okay, and that would have been beginning in 1998?

18 A. Yes.

19 Q. Okay, and how many wells have you had -- How many  
20 Mesaverde wells have you --

21 A. We --

22 Q. Well, let me finish.

23 A. Okay.

24 Q. How many Mesaverde wells have you been involved  
25 in that were completed in the Mesaverde formation in the

1 San Juan Basin of New Mexico?

2 A. I think at this point since my employment, we've  
3 drilled and completed six wells in the 29 North, 9 West,  
4 area, and we operate 12 wells in that area. I've also been  
5 involved in Lewis completions in that area, part of which  
6 is incorporated into the Blanco-Mesaverde Pool, and we've  
7 recompleted approximately, I think, six wells in the  
8 Chacra-Lewis. We've also recently completed the Mesaverde  
9 over in 24 North, 4 West, which is actually in the Lindrith  
10 West Pool. We did some tests with the Mesaverde there.

11 Q. How far is this -- You say you've drilled --  
12 you've been involved with six Mesaverde wells in the 29  
13 North, 9 West area?

14 A. Yes.

15 Q. How far away is that from the Lindrith area of  
16 the San Juan Basin?

17 A. Oh, I guess that would be approximately 30 miles  
18 or --

19 Q. Okay.

20 A. -- 30 to 40 miles.

21 Q. And you said that you've completed six Chacra-  
22 Lewis wells?

23 A. Yes.

24 Q. Okay, in that same area?

25 A. Yes, but we've also completed one in 24 North, 4

1 West.

2 Q. All right, I was going to ask you about that.  
3 One in 24 North, 4 West, and that was in the Mesaverde?

4 A. We tested the Mesaverde, and we also tested the  
5 Chacra-Lewis there.

6 Q. Did you --

7 A. We're currently producing it from the Chacra-  
8 Lewis to get an IP on that, or to establish a production  
9 curve, and then our plans are to also produce the Mesaverde  
10 for a while, because our plans are to commingle those  
11 formations.

12 Q. Okay, but you haven't completed or produced a  
13 well in the Mesaverde formation in 24 North, 4 West?

14 A. We have completed and then we've done initial  
15 tests on it, we just haven't produced it for some period of  
16 time.

17 Q. In the Mesaverde?

18 A. Yes.

19 Q. And it has produced from the Mesaverde?

20 A. We have test data on that well.

21 Q. Test data, okay. All right, any other experience  
22 with the Mesaverde formation in the San Juan Basin of New  
23 Mexico?

24 A. Up in -- Well, not in New Mexico but up in La  
25 Plata County.

1 MR. FELDEWERT: Okay. How are you tendering Ms.  
2 Gusek, Mr. Hall?

3 MR. HALL: As an expert petroleum geologist.

4 Madame Chairman, would you like me to go through  
5 a more extensive direct examination of her qualifications,  
6 or are they acceptable to you, Mr. Feldewert?

7 MR. FELDEWERT: I would object to an expert  
8 petroleum geologist in the San Juan Basin of New Mexico.  
9 If she -- I think Ms. Gusek is qualified to testify about  
10 geology in other parts of the country, but I'm not so sure  
11 she's qualified to testify about the geology in this area.  
12 I'll leave it up to the Commission.

13 CHAIRMAN WROTENBERY: We accept her  
14 qualifications.

15 DIRECT EXAMINATION (Resumed)

16 BY MR. HALL

17 Q. All right. Ms. Gusek, you've prepared certain  
18 exhibits in conjunction with your testimony here today.  
19 Let's refer to Exhibit 19. Would you identify that,  
20 please?

21 A. Exhibit 19 is a cumulative production map for  
22 both the Chacra or Lewis production in the area and  
23 Mesaverde production. It covers the west half of 25 North,  
24 2 West, as well as all of 25 North, 3 West.

25 The symbols that you see that are colored in kind

1 of a purplish-brown color up to the northwest of the  
2 acreage, those wells are Mesaverde-producing wells. Then  
3 you'll note that there are two wells approximately one to  
4 one and a half miles southwest of the subject acreage in 25  
5 that have produced from the Lewis.

6 I have a mistake on here that I recently  
7 identified, as they stated about *Dwight's*, *Dwight's* and  
8 *P.I.* joined, and through the consolidation of the data some  
9 of the things have been -- some of the data has been put in  
10 there with the wrong producing formation.

11 So yesterday I did print out the production on  
12 the Myers well in the northeast quarter of Section 35, and  
13 through the OCD or the state records, all of that  
14 production is actually Chacra-Lewis production, not  
15 Mesaverde production.

16 The well in the northeast quarter of Section 34  
17 was perforated and frac'd in the Mesaverde. Notes from the  
18 completion report on that Schalk 43-2 well show that they  
19 had recovered small amounts of gas and excessive water.

20 I would also like to point to a Mesaverde test in  
21 the northeast northwest of Section 13, approximately two  
22 miles north of the acreage. That well was also perforated  
23 and frac'd in the Mesaverde and tested water only.

24 And as I stated, the Myers well in the northwest  
25 quarter of 35 tested only small amounts of gas, and they



1 ended up plugging back and completing an interval in the  
2 Lewis.

3 Those two wells in 34 and 35 actually have 160-  
4 acre units designated to the Chacra-Lewis.

5 You'll notice also, over to the northeast of the  
6 acreage is what they refer to as their Lindrith area  
7 production. The largest well symbol in that area is a  
8 Mallon well. It's been producing for a long time. And as  
9 you can see, it's produced in excess of 650,000 MCF. It's  
10 over in Section 3 of 25-2.

11 Q. Of all these, what is the closest commercial  
12 Mesaverde production to the --

13 A. Okay --

14 Q. -- Bishop 25-1?

15 A. -- John Steuble had said that the well in the  
16 northwest quarter of 15 was the nearest economic  
17 production. But as you'll see from my map, that well has  
18 only produced a cum of 93,000 MCF gas.

19 I also pulled the production on that well  
20 yesterday from the State records. It appears that the  
21 Gallup-Dakota production must have been added in McElvain's  
22 Exhibit -- I think it was 19.

23 So really, the nearest economic production would  
24 be in the north half of Section 16 there. So approximately  
25 three, three and a half miles northwest of the subject

1 acreage.

2 Q. So this shows that the Mesaverde is quite a large  
3 stepout for the lands that are the subject of this  
4 Application, does it not?

5 A. Yes, it is.

6 Q. I want to talk to you about the vertical extent  
7 of the formations McElvain seeks to pool -- I'm sorry --  
8 yes, that McElvain seeks to pool. And if I could have you  
9 refer to Exhibit Number 20, please, identify that.

10 A. Okay. Well, first off, McElvain -- It's my  
11 understanding that McElvain seeks to pool from the base of  
12 the Pictured Cliffs formation to the base of the Mesaverde.

13 Exhibit 20 is an excerpt from Order Number  
14 R-10,987, the special pool rules for the Blanco-Mesaverde  
15 Gas Pool showing the vertical limits of the pool north and  
16 south of the Chacra line.

17 And if you turn to the second page in this, note  
18 at the bottom where it states "Blanco-Mesaverde Gas Pool",  
19 and it talks about the vertical limits for the Blanco-  
20 Mesaverde Gas Pool, that it shall be as follows. And first  
21 it's going to define what this Chacra line is:

22

23 North and east of a line generally running from  
24 the northwest corner of Township 31 North, Range 13  
25 West, San Juan County, New Mexico, to the southwest

1 corner of Township 24 North, Range 1 East, NMPM, Rio  
2 Arriba County, New Mexico, (as fully described on  
3 Exhibit "A" of Order R-5459, August 1, 1977, as  
4 amended, and in Rule 25 of this order), the vertical  
5 limits shall be from the Huerfanito Bentonite marker  
6 to a point 500 feet below the top of the Point Look  
7 Sandstone.

8  
9 But...

10  
11 South and west of the line described in (A)  
12 above, the vertical limits shall be from a point 750  
13 feet below said Huerfanito Bentonite marker to a point  
14 500 feet below the top of the Point Lookout Sandstone.

15  
16 If I could direct your attention to Exhibit 21, I  
17 have a copy of a map here that was put together by Hopkins  
18 Map Service, and the Chacra line is designated on this map.  
19 It's that dark line that you see running from the southeast  
20 corner of 24 North, 1 West, in sort of a northwest trend,  
21 up to the southern boundary of 27 North, 3 West. Okay?  
22 And there's a box down there that once again identifies  
23 these special rules for the Blanco-Mesaverde Gas Pool  
24 regarding what vertical limits will be included in the  
25 pool.

1           And if you'll notice, D.J. Simmons' acreage is  
2 colored in yellow on here. McElvain's proposed south-half  
3 unit is the red unit that's outlined here on Section 25,  
4 and the green is Simmons' proposed unit. And this acreage  
5 is located south and west of the Chacra line. Therefore  
6 the top of the pool is a point 750 feet below the  
7 Huerfanito marker, and northeast of the line the top of the  
8 pool is a point contiguous with the Huerfanito bentonite  
9 marker.

10           This marker happens to lie, in general, a couple  
11 hundred feet or -- you know, it's below the base of the  
12 Pictured Cliffs sandstone, base of the Pictured Cliffs.

13           Q.   As I understand it, McElvain seeks to pool and  
14 call a 320 formation that vertical section lying above that  
15 750 point -- reference point from the Huerfanito bentonite;  
16 is that correct?

17           A.   Right, so somewhere on the order of 750 feet-plus  
18 section of Lewis is being included in their Application  
19 that is not included in the special rules for the Blanco-  
20 Mesaverde Gas Pool.

21           Q.   So what are they picking up in addition to the  
22 Mesaverde?

23           A.   They're picking up some of the sands that have  
24 been proven to be productive in other portions of the  
25 Basin, specifically what's known as the Chacra unit. You

1 have the Chacra sands, and you have the underlying Otero  
2 sands that overlie the Mesaverde, so it would be picking up  
3 some of that section.

4 Q. All right. Let's refer to Exhibit 22 now. This  
5 is your Gallup-Dakota production map. Could you identify  
6 that for the record and explain what that reflects to the  
7 Commission?

8 A. Okay, this production map covers the same area as  
9 the Chacra-Mesaverde cumulative production map. What's  
10 shown on here is Gallup-Mancos production. And you'll  
11 notice over in the Gavilan field, the Gallup production is  
12 referred to as Mancos, because there are some additional  
13 zones than what's just strictly identified as Gallup.

14 Then there is some production from the Greenhorn  
15 that is shown with the brown numbers. There's also wells  
16 that have been completed in both the Gallup-Dakota, which  
17 is designated with blue symbols, and the green-only symbols  
18 are wells that are only completed in the Dakota production.

19 One thing you'll -- And the size of the symbol  
20 corresponds to the amount of production. So the larger the  
21 symbol, the greater the production will be.

22 One thing you'll notice, if you look east of the  
23 subject acreage, is there's some very high variability in  
24 the cumulative production that you see from these wells.  
25 These wells were all pretty much drilled in and around the

1 same time, back in the 1980s, and so they're pretty good  
2 indicators too of reserves.

3 Specifically, if you'll look at the well in  
4 Section 34 you'll notice a cumulative oil number of 304  
5 barrels. But you can go less than three-quarters of a mile  
6 to the east and you see a well that's produced 157,000  
7 barrels of oil from the Mancos.

8 This high variability that you see throughout  
9 this township, I believe, based on my experience throughout  
10 the Rocky Mountains and fractured reservoirs, that it is a  
11 consequence of fracturing in the area. And therefore  
12 production, at least in that area, appears to be enhanced  
13 by production.

14 In addition, if you look just southwest of the  
15 acreage you'll see some very large wells that are denoted  
16 as Gallup-Dakota producers. Those producers actually were  
17 originally completed in the Dakota. The majority of the  
18 production is from the Dakota. They were later recompleted  
19 in the Gallup. But that production is predominantly from  
20 the Dakota "D" sand, and then there is some production from  
21 the Gallup interval as well.

22 Q. Is that all you have with respect to Exhibit 22?

23 A. Yes.

24 Q. All right, let's refer to Exhibit 23, the foldout  
25 exhibit there. Please identify this for the record and

1 explain what it shows.

2       A.    Okay, this exhibit is what I refer to as a  
3 fracture orientation data montage. Basically there is a  
4 land grid covering an area from 24 North, 1 West, up to  
5 about 26 North, 3 West. Superimposed on there is a  
6 structure map and the fracture orientation data that was  
7 compiled by Alan Emmendorfer for an article that he  
8 published in *The Mountain Geologist* in April, 1989.

9           Alan Emmendorfer used a dipmeter-type fracture  
10 log to try to understand the structural relationship of the  
11 fracture patterns within the Mancos-Gallup Reservoir, which  
12 directly underlies -- the Mancos directly underlies the  
13 Mesaverde formation. In fact, the base of the Point Look  
14 is the top of the Mancos.

15          Then he plotted all of the fracture orientation  
16 measurements on the rose diagram plots that you see  
17 superimposed on here.

18          In addition, I have two rose diagrams from FMI  
19 that were done from sampling, and two Meridian oil wells,  
20 and these wells are located probably about four miles and  
21 ten miles, respectively, southwest of the subject acreage.

22          In the Cullins Federal Number 6 well there were  
23 104 samples taken from breakouts and fractures, and if you  
24 look at that you see pretty much a north-south orientation.  
25 These samples were taken from depths -- if you notice over

1 on the right, starting at a depth of about 64-something. I  
2 think up in Section 25 the Point Lookout formation is  
3 probably at a depth of about 5800 to 6000 feet, so we're  
4 talking about maybe 400 feet below the Mesaverde, but  
5 they're all Cretaceous reservoirs.

6 The Meridian Oil Medio Canyon Number 7 well,  
7 located in the southwest northwest of 35, 24 North, 4 West,  
8 had 12 samples taken, and it shows some of the best  
9 fractures were oriented in a north-south direction. You do  
10 see some fracturing in other directions, but most of it is  
11 a north-south direction.

12 If you look at the rose plots that are plotted on  
13 Alan Emmendorfer's data, there is variance in the  
14 predominant direction of fracturing. However, the majority  
15 of it is in a north-south to about a north-40-degrees-east  
16 orientation.

17 The papers that I referenced on here are not the  
18 only studies that have been conducted throughout the San  
19 Juan Basin on the Mesaverde, Gallup and Dakota. They were  
20 just four that I selected to include in here. Burlington  
21 Resources did extensive research in the Blanco-Mesaverde  
22 Pool and had several different drilling pilot programs to  
23 try to understand the fracture orientation, not only from  
24 natural fractures, but also that fracture orientation that  
25 is induced when you artificially frac a well.



1           The Mesaverde is a tight sand reservoir, and  
2   that's shown by the fact that they have now downspaced from  
3   320 acres to include one infill well at 160, and now we've  
4   gone to 80 acres. And Burlington did extensive studies in  
5   conjunction with other people and found that the  
6   predominant fracture orientation for the elliptical  
7   drainage pattern was in a -- like -- I think they were  
8   saying a north-10-degrees-east orientation most of the  
9   time.

10           From that the new rules came down for 80-acre  
11   infill drilling, and in addition I've been to several talks  
12   over the last few -- several industry symposiums that have  
13   been put on by the PTTC, as well as Rocky Mountain  
14   Association of Geologists, Four Corners, et cetera, where  
15   John Lorenz and other have presented papers regarding the  
16   predominant fracture orientation of natural fractures in  
17   the Mesaverde, the Gallup, the Dakota. All of them  
18   indicate a north-south to about a north-40-degrees-east  
19   orientation for those natural fractures.

20           It's also believed that due to this, when you  
21   artificially frac the well, that elliptical orientation is  
22   going to align itself with the local trends of fracturing.

23           So when we have gone to infill our wells in 29  
24   North, 9 West, we've been utilizing all of this data to  
25   help us better develop a plan for infill drilling.

1           We also up in that area did see some  
2 communication between wells that were offset in somewhat of  
3 a northwest-southeast direction, slightly off of north-  
4 south. We saw that when drilling one of our -- we actually  
5 ended up sidetracking one of our wells in the Mesaverde  
6 that wasn't performing very well, and it turned out that it  
7 was aligned with another Mesaverde producer and we saw  
8 communication between the two wells.

9           So we feel that the Gallup, Dakota, Mesaverde,  
10 they all tend to, throughout the San Juan Basin, tend to  
11 show primary directions of fracturing. And that's not to  
12 say that there aren't other orientations for fractures, but  
13 the predominant direction is in a north-south to north-40-  
14 degrees-east direction.

15           Q.   Now, for the record, Exhibit 24 is the  
16 compilation of articles that are referenced on the face of  
17 Exhibit 23?

18           A.   That's right.

19           Q.   Do you agree with Ms. Jackson and Mr. Steuble  
20 when they say that you can't extrapolate from the data  
21 shown in Exhibits 23 and 24 and apply it meaningfully to  
22 Section 25 lands?

23           A.   No, I don't, primarily because with the work that  
24 Burlington Resources did -- they did it in lots of  
25 different areas throughout the Basin, they've also run a

1 lot of FMIs, they've done a lot of coring, they have a lot  
2 of data regarding the fracture orientation for the  
3 Mesaverde.

4 If you notice on Exhibit 21, it shows the extent  
5 of the Blanco-Mesaverde Pool, and this extends down to the  
6 very top of Section 25, those sections that have been  
7 included in the spacing, and the downspacing for that 80  
8 acres was, in part, done based on their studies of fracture  
9 orientation and the orientation of -- the elliptical  
10 orientation of the drainage ellipse for the Mesaverde. And  
11 therefore I feel it's totally applicable to Section 25.

12 Q. Now, has industry relied on the data and the type  
13 of data typified by Exhibits 23 and 24 for purposes of  
14 committing capital to their drilling and development  
15 programs?

16 A. Yes. In fact, our proposed Bishop Federal 1-25,  
17 we've proposed as a Gallup-Dakota test. What we want to do  
18 is drill a test to sufficiently test all of those  
19 reservoirs from the surface down the base of the Dakota.

20 And one thing we're doing, because we do believe  
21 that the Gallup's production is greatly enhanced by  
22 fractures, we're drilling that well at a 45-degree angle  
23 through the Gallup. We won't be kicking out until below  
24 Mesaverde. At the top of the Gallup we'll be drilling at  
25 45 degrees to the base, and then we will drop down to the

1 Dakota. And in both cases we'll be in a standard location  
2 for those reservoirs.

3 Our engineer, our drilling engineer at Simmons,  
4 we've done this on some of our Mesaverdes in 29-9 as well,  
5 to see whether or not we can get enhanced production from  
6 the Mesaverde by increasing the probability of penetrating  
7 more vertical fractures with a deviated wellbore.

8 Q. So do you agree with Ms. Jackson's conclusions  
9 that it will be the matrix porosity that determines the  
10 direction of drainage for these wells?

11 A. No, I don't. The Mesaverde is a tight, tight  
12 reservoir and is going to have to be artificially  
13 stimulated in order to produce.

14 Q. All right. If you would, please, give the  
15 Commission a very brief geologic overview of the Blanco-  
16 Mesaverde-Gallup-Dakota in this area.

17 A. Okay. The Dakota occurs as northwest-southeast-  
18 trending stacked, coarsening-upward shallow marine sands.  
19 The majority, except for the lowest member -- which is the  
20 Burro Canyon and is a fluvial type of deposit -- the  
21 majority of the production from the Dakota in this area is  
22 from the Dakota "D" or Cubero member.

23 The Mesaverde also trends northwest-southeast  
24 across the Basin. It is composed of three members: the  
25 uppermost Cliff House, the Menefee and the Point Lookout.

1 They occur as a regressive-transgressive wedge that  
2 interfingers with the shallow marine Mancos and Lewis  
3 shales.

4 The majority of the production, really throughout  
5 the Basin, is from the Point Lookout member. In fact, even  
6 if you look at the wells in this area, specifically those  
7 wells that are in like Sections 3, 15, 10, 21 of 25 North,  
8 3 West, those wells are only perforated in the Point  
9 Lookout. Also up in like Sections 6 and 7, I believe most  
10 of those wells are only Point Lookout completions.

11 The Cliff House has been shown to be water-wet in  
12 this area. Both the Dakota and Mesaverde are tight  
13 reservoirs where production is highly dependent and greatly  
14 enhanced by natural fractures, and that's been shown in  
15 different areas throughout the Basin.

16 Q. Now, Ms. Gusek, in your expert opinion, are these  
17 Mesaverde reservoirs more appropriately developed on a  
18 standup spacing unit basis in this particular area?

19 A. Yes, I believe so.

20 Q. And why is that?

21 A. Based on the fact that I believe that the  
22 fractures that will be induced in the Mesaverde will follow  
23 or align themselves with the primary fracture orientation  
24 in the Basin, which I believe is in a north-south to north-  
25 40-degrees-east direction, therefore I don't believe

1 there's any way that it's going to drain the southeast  
2 quarter, that well that's pushed up against -- it's in the  
3 west half, west half of the southwest.

4 Also, based on the fact that it is tight -- and  
5 McElvain has also said that, I think John Steuble said it  
6 -- the drainage area, it isn't believed, would be more than  
7 160 acres, you know, somewhere between that 80 to 160 that  
8 Burlington has come up with. And therefore it would not  
9 drain the southeast quarter either.

10 Q. Now, based on the available geologic data you  
11 have, what are Simmons' primary development targets here in  
12 Section 25?

13 A. When Simmons decided to bid on the acreage that's  
14 colored in yellow on these maps, our lease not only covers  
15 the northeast quarter of 25 and the north half of the  
16 southeast of 25, but it also covers the west half of 24.  
17 We decided to bid on this acreage because it's in an area  
18 with multi-pay potential. There is offsetting, or it's on  
19 trend with production from multiple reservoirs.

20 If you'll notice on the production maps, there  
21 are several wells that have no data, either on the Gallup-  
22 Dakota or the Mesaverde, and that's because those are  
23 Pictured Cliffs production.

24 We feel that it's prudent to drill a well to the  
25 base of the Dakota in order to test and thoroughly evaluate

1 -- from mudlogging, well logs, et cetera -- all of those  
2 formations that could be productive on our acreage so that  
3 we can better develop those reserves.

4 Yes, it is true the Gallup-Dakota is our primary  
5 target. I believe there's a Dakota "D" sand that runs down  
6 through that area.

7 But we would like the option and the opportunity  
8 to be able to recomplete, and not only the Mesaverde but  
9 the Lewis Chacra within our wells. We've had some very  
10 good success with that in other parts of the Basin.

11 Q. Now, Ms. Gusek, if McElvain's Application for a  
12 south-half Mesaverde unit is granted, what in your opinion  
13 will be the likely future development of the remainder of  
14 Section 25?

15 A. Simmons will drill the Bishop Federal 1-25.  
16 Based on the success of that well, that will determine  
17 whether or not we drill the southeast quarter.

18 As far as the Gallup-Dakota goes in that  
19 township, I believe that Simmons is the only one that's  
20 looking at the potential of that reservoir, and so I don't  
21 know that any other -- you know, that the Gallup-Dakota  
22 will be developed in the northwest quarter.

23 If both the Chacra-Lewis and Mesaverde were  
24 unavailable for us to recomplete, it would even be more  
25 unlikely that we would drill that southeast quarter if we

1 weren't extremely -- if we weren't successful in one of  
2 those potential zones in the northeast quarter.

3 Q. Now, if the remaining 360-acre proration units  
4 for the Gallup-Dakota are not evaluated, will the  
5 abandonment of those reserves result in waste?

6 A. Yes.

7 Q. Let's refer to Exhibit 25, if you would, please.

8 A. This book doesn't have one.

9 Q. Would you identify that for the record?

10 A. Yes, this is a Point Lookout net pay map that I  
11 have prepared for the Point Lookout member in the 25 North,  
12 2 West and 3 West area.

13 I opted to only map the Point Lookout because I  
14 feel it's the most productive reservoir in the Mesaverde,  
15 based on work that I've done in various areas, as well as  
16 looking at the logs in 25 North, 3 West and comparing it  
17 with production.

18 In addition, I used a resistivity cutoff of 25  
19 ohms.

20 I also looked at using a porosity cutoff such as  
21 Ms. Estes-Jackson did. In fact, I mapped both of them.

22 I felt that there was a higher correlation  
23 between the productivity or cumulative production and  
24 reserves from the Mesaverde using the resistivity cutoff  
25 than I did from the porosity. In fact, if you look at the



1 well in the southwest-northwest of Section 3, you'll notice  
2 that I have 102 feet of sand with greater than 25 ohms'  
3 resistivity.

4 That well also corresponds, if you'll look on  
5 Exhibit 19, to one of the best Mesaverde producers in the  
6 township. It has cum'd in excess of a BCF of gas to date.

7 One thing you'll notice too is, predominantly the  
8 trend of the Point Lookout in this area is in a northwest-  
9 southeast direction. There are some areas just north of  
10 the Section 25 acreage where it appears to take more of an  
11 east-west trend. However, once again I do think that it is  
12 the induced fractures, and that elliptical orientation that  
13 will result from that, that will determine the direction of  
14 drainage.

15 In addition, you know, I really feel that the  
16 acreage is more prospective to the north.

17 Q. Now, why did you just map the Point Lookout?

18 A. I mapped only the Point Lookout because -- Well,  
19 number one, I don't think that the Cliff House, the Menefee  
20 and the Point Lookout should all be lumped together.  
21 You're looking at a 700- or 800-foot gross thickness within  
22 the Mesaverde.

23 In addition, I don't believe that you should lump  
24 the Menefee and the Point Lookout together because the  
25 Menefee is a fluvial or a continental deposit, whereas the

1 Point Lookout are marine deposits. Therefore, if you're  
2 truly looking for a depositional trend, I would think you  
3 would want to map those independent depositions -- or those  
4 independent units.

5 Q. Earlier today we discussed the fact that Ms.  
6 Jackson had used an 8-percent porosity cutoff for her map.  
7 Do you believe that that's appropriate?

8 A. No, and basically I'll explain why. When I look  
9 at whether or not I think a reservoir is going to be  
10 productive in the area, I try to come up with reservoir  
11 parameters, be it a water-saturation cutoff, a resistivity  
12 cutoff, a porosity cutoff, whatever, that ties in with  
13 those producing wells, especially if I'm stepping out such  
14 as in this case where the nearest economic Mesaverde  
15 production is approximately three and a half to four miles  
16 northwest of the subject well.

17 By using an 8-percent porosity cutoff, I think  
18 that it's likely that you will include sands that are water  
19 wet or nonproductive. And I will explain this by going  
20 over McElvain's Exhibit Number 17 and D.J. Simmons' Exhibit  
21 19, which is the Mesaverde production map.

22 Ms. Jackson said there was not a direct  
23 correlation. Well in my mind, if I'm going to determine  
24 how much pay I have, there's different parameters I want to  
25 look at, because it's not just porosity that will determine

1 whether or not the well is productive, it's what fluids are  
2 in that porosity.

3 Scott -- Mr. Hall already drew your attention to  
4 the well in the northwest northwest of 29 which shows the  
5 thickest net sand with greater than 8-percent porosity.  
6 However, it's one of the poorest producers in the township.  
7 It has 244 feet of net sand with greater than 8 percent  
8 indicated, and its cumulative production through April of  
9 2001 is under 48,000 MCF gas.

10 On the other hand, if you go up to the west half  
11 of Section 18, those two Mesaverde producers there show net  
12 sand thicknesses of 127 feet and 132 feet. This is on the  
13 order of 110-feet-plus less net sand greater than 8  
14 percent. However, these wells have produced in excess of  
15 three-quarters of a BCF. And most of the Mesaverde  
16 development in this area occurred during the 1980s. So  
17 most of the wells are all pretty much the same vintage, you  
18 know, plus or minus a few months, a year, whatever.

19 Then I'd like to draw your attention to the very  
20 nearest test to the subject acreage, those wells in the  
21 northwest quarter of Section 35 and the northeast quarter  
22 of Section 34.

23 The northeast northeast of 34 shows a net sand  
24 thickness with greater than 8-percent porosity of 165 feet.  
25 This is comparable to what is mapped at the Naomi Com or

1 Wynona Number 1 well, 172 feet. However, that well tested  
2 only small amounts of gas and excessive water.

3 Schalk then elected to plug the Mesaverde off and  
4 move uphole and complete in an interval within the Lewis.

5 There are no data points on the northeast of 35.  
6 However, based on the mapping trend, it looks like it has  
7 comparable thickness. And that well also tested  
8 predominantly water and shows, you know, basically about  
9 the same feet of greater than 8-percent porosity.

10 It's my contention that I cannot use this isopach  
11 map to try and estimate what kind of reserves I could  
12 expect from the completion in the Wynona Number 1.

13 Q. For the record, you're referring to McElvain  
14 Exhibit 17?

15 A. Yes.

16 Q. All right.

17 A. And like I say, it appears that the best  
18 producers actually have -- if this is pertaining to  
19 reservoir rock, they actually have thinner reservoir. And  
20 so my question would be, why is that?

21 Q. In your opinion, is your map here, Exhibit 25, a  
22 more accurate depiction of reservoir potential and trend  
23 for Section 25?

24 A. Yes, I believe it is, because it ties in more  
25 directly to Mesaverde production in the area.

1 Q. All right. Ms. Gusek, in your opinion is there a  
2 geologic risk that the Bishop 25-1 well won't be completed  
3 as a commercial success?

4 A. Yes.

5 Q. Is D.J. Simmons seeking a 200-percent risk  
6 penalty in connection with its pooling Application?

7 A. Yes.

8 Q. And what's the basis of that recommendation?

9 A. Well, there are no Mesaverde economic producing  
10 wells within the three miles of the proposed unit.

11 Q. And that's shown on your Exhibit 19?

12 A. Yes.

13 Q. In your opinion, will granting Simmons'  
14 Application be in the interest of conservation, the  
15 prevention of waste and protection of correlative rights?

16 A. Yes.

17 Q. How will waste be prevented?

18 A. We will be developing the reserves from the  
19 Gallup-Dakota, as well as any other potential reservoirs  
20 that we see when we drill that well. That would include  
21 the Mesaverde, the Lewis potentially, the Pictured Cliffs,  
22 Nacimiento is productive down to the south, there's some  
23 Ojo Alamo to the north, there could be a lot of things.  
24 Also in drilling the one well, we conserve on the surface  
25 as well.

1 Q. All right. Now, were Exhibits 19 through 25  
2 compiled or prepared by you?

3 A. Yes.

4 MR. HALL: At this time, Madame Chairman, we'd  
5 move admission of Exhibits 19 through 25.

6 That concludes our direct of this witness.

7 CHAIRMAN WROTENBERY: We've already admitted  
8 Exhibit Number 25. Any objection to admission of Exhibits  
9 19 through 24?

10 MR. FELDEWERT: Mr. Ross is going to love me  
11 because I will object to Exhibits 23 and 24 on the grounds  
12 of hearsay. Exhibit 23 is apparently a document that Ms.  
13 Gusek put together based upon hearsay studies, some of  
14 which she's included, some of which is not. It apparently  
15 references a work that Burlington did in connection with  
16 this, which is not produced anywhere.

17 Exhibits 24 are nothing but hearsay studies that  
18 were put out. As Mr. Lee points out, it's not refereed, et  
19 cetera. So I think we do have a hearsay problem with  
20 Exhibits 23 and 24. There's been no foundation to overcome  
21 that exception or that evidentiary problem.

22 MR. HALL: Shall I respond?

23 CHAIRMAN WROTENBERY: Mr. Hall, please.

24 MR. HALL: Of course we should bear in mind that  
25 the witness has been qualified as an expert. Her expertise

1 has, in fact, been stipulated to by McElvain. There is an  
2 exception under the hearsay rule for experts who may  
3 expressly rely on what otherwise would be hearsay evidence.  
4 It's literature that we've established in this record is  
5 relied on by other experts, including this expert, as well  
6 as industry.

7 CHAIRMAN WROTENBERY: I will overrule the  
8 objection to the admission of Exhibits 23 and 24. We will  
9 have, I'm sure, a lot more discussion on the weight that  
10 should be given to those exhibits, but we will admit them  
11 into evidence, along with Exhibits 19, 20, 21 and 22. See  
12 if we've got them all there. Yes, we've got them all.

13 CROSS-EXAMINATION

14 BY MR. FELDEWERT:

15 Q. Ms. Gusek, in looking at Exhibit 21 involving the  
16 Chacra line --

17 A. Uh-huh.

18 Q. -- do you -- you don't need to turn to that -- is  
19 that -- do you know whether that's developed on 320-acre  
20 spacing or 160-acre spacing?

21 A. This Chacra line pertains to the special rules of  
22 Blanco-Mesaverde.

23 Q. Okay.

24 A. Okay, Blanco-Mesaverde Gas Pool, which is my  
25 understanding that the Blanco-Mesaverde Gas Pool is spaced

1 on 320 with the option to infill up to as many as three  
2 additional wells.

3 Q. Did you mention -- You mentioned something about  
4 this including the -- did you say the Chacra Pool --

5 A. No, what it --

6 Q. -- or, I'm sorry, McElvain's pooling

7 Application --

8 A. What it includes is, if you notice, this acreage  
9 lies south and west of the Chacra line --

10 Q. Uh-huh.

11 A. -- and the special rules designate that the  
12 Blanco-Mesaverde Gas Pool, from a vertical extent in the  
13 wellbore, will include those rocks or reservoirs from a  
14 point 750 feet below --

15 Q. Okay.

16 A. -- the Huerfanito marker.

17 Q. Let me clarify.

18 A. Okay.

19 Q. You seem to have a problem with McElvain's  
20 pooling Application; I'm trying to figure out what it is.  
21 Did you think it included something it should not?

22 A. Yes, it --

23 Q. And what is that?

24 A. -- includes that section from the point that's  
25 750 feet below the Huerfanito marker, okay, so that goes to



1 some depth here --

2 Q. Huh-huh.

3 A. -- so it includes that 75 feet, plus it includes  
4 any section above the Huerfanito bentonite marker to the  
5 base of the Pictured Cliff.

6 Q. Okay, and that's where I want to stop you.

7 A. Yes.

8 Q. Did you read -- If you read that pooling  
9 Application you saw that they only are pooling for  
10 formations or pools developed on 320-acre spacing. Were  
11 you aware of that?

12 A. Yes. However, I thought it was including this.

13 Q. Are you aware of any pool from the base of the  
14 Pictured Cliffs that goes to the top of this Chacra line  
15 that is spaced on 320-acre spacing?

16 A. No, not in this area.

17 Q. Okay, all right. Now, are you -- Is D.J. Simmons  
18 in this case seeking to pool Dakota interests for its  
19 northeast quarter well?

20 A. No.

21 Q. All right. So is there some reason why Exhibit  
22 22 has any bearing on this case, on the pooling  
23 Application?

24 A. No, it's not pooled, the Dakota.

25 Q. Okay, does the economic risk of a Dakota well

1 have any bearing on your pooling Application in this case?

2 A. No, and so I guess I shouldn't include McElvain's  
3 Application on that exhibit as well.

4 Q. And are you -- I think you testified you're going  
5 to drill this northeast-quarter well; is that correct?

6 A. Yes.

7 Q. All right. Can you explain to me how waste is  
8 going to occur if the Division grants McElvain's  
9 Application for a south-half spacing unit for a Mesaverde  
10 well?

11 A. Yes, it is D.J. Simmons' intent to drill not only  
12 a northeast-quarter well but a southeast-quarter well. And  
13 when we look at the economics of drilling these wells, we  
14 also take into consideration whether or not we believe that  
15 there is any additional potential from other reservoirs to  
16 help offset the risk. And it may be that we don't have  
17 exact numbers or, you know, like right now I'm not  
18 convinced that the Mesaverde will be a commercial success  
19 in Section 25.

20 However, we would like the option, the  
21 opportunity, to be able to recomplete not only the  
22 Mesaverde but all of that Lewis section that has been shown  
23 to have potential in many areas throughout the Basin, in  
24 either the Bishop Federal 1-25 or the Bishop Federal 2-25  
25 when we drill this.

1           If the south-half unit is granted, Simmons will  
2 not only not have the opportunity itself to recomplete in  
3 its borehole that it took the risk to drill through all of  
4 those formations, logged and looked at them, et cetera, it  
5 will not only not have the opportunity to recomplete in the  
6 Mesaverde, but also a good portion of those Lewis sands.

7           Q.    Let me ask you, the southeast-quarter well,  
8 there's four interest owners down there, right? D.J.  
9 Simmons, McElvain, Dugan and Forcenergy?

10          A.    Uh-huh.

11          Q.    Okay, and if you drill that southeast-quarter  
12 well you're going to need to pool for the Dakota reserves,  
13 correct?

14          A.    Yes.

15          Q.    And the parties will have the opportunity to  
16 participate or not participate --

17          A.    Yes.

18          Q.    -- correct?

19          A.    Uh-huh.

20          Q.    The parties are going to share in the risk of  
21 that Dakota well?

22          A.    Yes, and the parties will also share in the  
23 information of data from the well that we drill in the  
24 northeast quarter for the Gallup-Dakota which is spaced --

25          Q.    Okay.

1           A.    -- on 160.

2           Q.    And your concern is -- as I understand your  
3 concern about waste is that it's your testimony that D.J.  
4 Simmons may not drill its southeast-quarter well if they  
5 don't have the Mesaverde and these other reserves in their  
6 back pocket?

7           A.    Yes, and this is based on when we drilled the  
8 northeast quarter of Section 25. We believe we're going to  
9 get a good well, we believe that by drilling at 45 degrees  
10 through the Gallup we will enhance -- we will potentially  
11 enhance our production by penetrating more vertical  
12 fractures.

13                   But let's say that well is not an economic  
14 success in the Gallup-Dakota, and let's say we couldn't  
15 complete the Mesaverde in that well, or we complete the  
16 Mesaverde in that well and it's not very economic. If we  
17 did not have all of those zones to put together in the  
18 southeast quarter, we might not drill those Gallup-Dakota  
19 reserves.

20           Q.    Now, you testified at the last hearing, though,  
21 that you were going to drill your southeast-quarter well,  
22 did you not?

23           A.    It's our intent to drill both wells, but the  
24 second well will definitely be based on the success of the  
25 Bishop 1-25.

1 Q. Okay, but you didn't testify at the last hearing  
2 that you were not going to drill your southeast-quarter  
3 well if you didn't have the Mesaverde reserves in your back  
4 pocket, did you?

5 A. I thought that there was a point made to that  
6 effect.

7 Q. Do you have that transcript?

8 A. No, I -- Oh, here.

9 Q. Well, just let me ask you, is it your testimony  
10 that D.J. Simmons is not going to drill their southeast-  
11 quarter well if they do not have the Mesaverde reserves  
12 available to them?

13 A. I cannot say today that we will not drill it  
14 until I have seen the success of our well in the northeast  
15 quarter.

16 Q. All right. Now, didn't you also testify that  
17 even if McElvain's Application is granted, that the  
18 interest owners in that southeast quarter, if they drill a  
19 Dakota well, have the opportunity to recomplete that well  
20 in the Mesaverde as an infill well, under the pool rules?

21 A. Under the pool rules, it's my understanding that  
22 we would give up our operatorship in order for that  
23 Mesaverde --

24 Q. So the only thing lost is your ability to operate  
25 the well if you recomplete in the Mesaverde?

1           A.    Yes, and we will pay additional cost to someone  
2 else to operate.

3           Q.    Okay. And in your opinion, that constitutes  
4 waste?

5           A.    Well, if we don't drill the southeast quarter of  
6 Section 25, I think it will constitute waste.

7           Q.    You reference some work that Burlington did in  
8 connection with your compilation of studies. Is that work  
9 that Burlington did included anywhere in your exhibits?

10          A.    No, that work was included with their Application  
11 for doing 80-acre infill drilling for the Mesaverde and the  
12 Blanco Mesaverde Gas Pool across the Basin.

13          Q.    But you didn't provide that work to the  
14 Commissioners or McElvain or myself in connection with this  
15 hearing?

16          A.    No, it's information of public record that was  
17 filed with their Application and presented at several  
18 industry meetings.

19          Q.    Do you reference that work anywhere in these  
20 exhibits?

21          A.    No, I don't. I referenced it in my testimony.

22          Q.    Oh, I -- Okay. And you also indicated that that  
23 work, that Burlington work that you talked about, that that  
24 was part of the reason that the Commission downspaced the  
25 Blanco-Mesaverde Pool?

1           A.    That they allowed for additional infill wells to  
2 be drilled on the 320-acre units.

3           Q.    Is it your testimony that the Commission, as part  
4 of that downspacing, recognized that there was fracturing  
5 in the Blanco-Mesaverde Gas Pool in the San Juan Basin?

6           A.    Yes, I believe so.

7           Q.    You believe the Commission recognized that there  
8 was fracturing in the Mesaverde --

9           A.    Yes, because some areas, some areas, okay, have  
10 special rules regarding the option to drill the additional  
11 wells, and I believe that they seek approval from  
12 offsetting operators. And these are areas where there  
13 appears to be higher permeability that's potentially either  
14 from higher permeability within the reservoir or fracture  
15 permeability, and they've seen larger drainage areas in  
16 those areas --

17          Q.    Well, I'm trying --

18          A.    -- and they've denoted on a map that they did,  
19 they denoted areas where they felt that the Mesaverde was  
20 draining less than 80, 80 to 160 and potentially greater  
21 than 160 acres.

22          Q.    Okay, I understand the drainage radius issue.  
23 I'm talking about fracturing. Is it your testimony that  
24 you believe the Commission recognized that there was  
25 fracturing in the Blanco-Mesaverde Gas Pool when they

1       downspaced the spacing units?

2           A.     Yes.

3           Q.     You do?

4           A.     Uh-huh.

5           Q.     Okay. And do you believe that the Commission  
6 recognized when they accepted this --

7                   CHAIRMAN WROTENBERY: May I interrupt for just a  
8 moment? You should be referring to the Division. That  
9 particular case --

10                  MR. FELDEWERT: Thank you, I'm sorry.

11                  CHAIRMAN WROTENBERY: -- was addressed at the  
12 Division level.

13           Q.     (By Mr. Feldewert) And do you believe that the  
14 Division, when they agreed to accept infill drilling in the  
15 Blanco-Mesaverde Gas Pool, that they recognized that there  
16 was fracturing which occurred in a north-and-south  
17 direction in the Blanco-Mesaverde Gas Pool?

18           A.     I believe so, and I believe that's part of the  
19 reasons why specific windows were set up --

20           Q.     Do you --

21           A.     -- for that --

22           Q.     Do you --

23           A.     -- infill drilling.

24           Q.     Do you know, then, why as part of the pool rules  
25 for the Blanco-Mesaverde Gas Pool they would not have



1 required that all Mesaverde spacing units be standup  
2 spacing units rather than laydown units?

3 A. No, a lot of units had already been designated  
4 throughout the Basin.

5 Q. But there's nothing in the Blanco-Mesaverde Gas  
6 Pool Rules that says you as an operator have to space the  
7 units -- spacing units, the 320s, on standups rather than  
8 laydowns?

9 A. No, there isn't.

10 Q. Okay. And is it your testimony that the Division  
11 should require all spacing units from this point forward in  
12 the Blanco-Mesaverde Gas Pool to be developed on standup  
13 spacing units?

14 A. No, I feel in this case it would be a more  
15 appropriate way, especially considering that McElvain had a  
16 west-half unit available to them that they own 100 percent  
17 of.

18 Q. Okay, is there any other situation? Or is that  
19 the only reason, is that you think it's appropriate here  
20 because McElvain owns the entire west half?

21 A. It's not only appropriate here for that reason.  
22 I feel that those fractures are playing a part in that.  
23 And I do not believe that a well that is situated 400-and-  
24 some feet east of the west section line is going to drain  
25 the southeast quarter.

1 Q. How much -- What's going to be the drainage  
2 radius for that well in the southwest quarter?

3 A. I have not calculated that.

4 Q. You testified you think it's not going to drain  
5 from the southeast quarter. Do you think it's going to  
6 drain from the southwest quarter?

7 A. Basically, based on the work that Burlington has  
8 done throughout the Basin, and also from John Steuble's  
9 testimony today when he believed that the drainage area  
10 would be small, there's nothing to indicate that it will  
11 drain in excess of the 160-acre southwest quarter.

12 Q. Okay, so you believe that that well is only going  
13 to drill that 160 acres in the southwest --

14 A. Some- --

15 Q. -- is only going to drain that 160 acres in the  
16 southwest quarter?

17 A. Somewhere between probably 80 and 160 acres, yes.

18 Q. Okay, so it's not going to be draining anything  
19 from the northwest quarter?

20 A. I'd have to see where that location is and see a  
21 drainage ellipse drawn around it. I do think it's probably  
22 draining some of the acreage in Section 26 to the west, or  
23 it could potentially, if it's productive.

24 Q. Do you agree with McElvain's testimony that this  
25 Mesaverde completion -- recompletion effort is really kind

1 of a wildcat in this area?

2 A. Yeah.

3 Q. And that the nearest production is 3 miles away?

4 A. Probably more.

5 Q. And that this is a very risky project?

6 A. Yes.

7 Q. Okay. Were you aware that McElvain informed D.J.  
8 Simmons as early as January of 2001 that its mapping of the  
9 sands in this area supported a south-half spacing unit?

10 A. Yes, but we were not provided that data, and our  
11 landman did ask Steve Shefte to call me and discuss the  
12 geology of the area, but I never received that call.

13 Q. Did you submit to McElvain at any time your maps  
14 and your studies under which you thought that the drainage  
15 in this area would be north-to-south?

16 A. No, but it was presented at the May 17th hearing.

17 Q. Have you conducted any study of the area that is  
18 the subject of this Application using the log data  
19 available from wells in the area other than your section --  
20 your Exhibit -- 19? Is that right? Which Exhibit? That  
21 Exhibit 25?

22 A. Could you repeat the question?

23 Q. Have you conducted any study of the area that is  
24 the subject of this Application with any log data --

25 A. Yeah.

1 Q. -- other than map that's been marked as Section  
2 25 --

3 A. I --

4 Q. -- as Exhibit 25?

5 A. I also have a porosity isopach. I also have maps  
6 that go further west in the area, over into the Mesaverde  
7 production up in the northwest quarter. I also have some  
8 maps down in 24 North.

9 Q. Do you have any direct evidence based on your  
10 study of fractures in the Mesaverde formation in the  
11 Lindrith area?

12 A. Not specifically in those specific wells.  
13 However, I do know that it's industry belief that the  
14 Mesaverde and -- well, first off, throughout the Rocky  
15 Mountains --

16 Q. You're talking about --

17 A. -- the Cretaceous sandstones, the majority of  
18 them are designated tight.

19 Q. You're talking about --

20 A. The Mesaverde is designated tight.

21 Q. Okay.

22 A. And therefore it is going to be more -- It will  
23 fracture more easily than a more permeable, more friable  
24 sand.

25 Q. Do you have any direct evidence of north-to-south

1 drainage pattern in the Lindrith area of the San Juan  
2 Basin?

3 A. From the studies that I've looked at and the  
4 talks that I've been to, everything indicates that across  
5 the Basin, fractures in the Dakota-Gallup-Mesaverde, most  
6 of the Cretaceous reservoirs of the Basin, is in a north-  
7 south to north-40-degrees-east orientation.

8 Q. What rate of return does D.J. Simmons use to  
9 evaluate its drilling project?

10 A. It depends on the risk of the projects.

11 Q. What of return did you use to evaluate your  
12 northeast-quarter well?

13 MR. HALL: Take a shot at an objection, time-  
14 saving objection. This is beyond the scope of direct.

15 CHAIRMAN WROTENBERY: I'll allow it.

16 THE WITNESS: Okay. We, in general, if it's a  
17 development well, will be looking for a return in excess of  
18 20 percent.

19 Q. (By Mr. Feldewert) Okay.

20 A. Other factors that we will take into  
21 consideration is whether or not we believe there are  
22 additional zones that we will penetrate when drilling for  
23 that reservoir that potentially we can recomplete and  
24 improve the economics of the well.

25 Q. D.J. Simmons acquired its -- You're aware that

1 D.J. Simmons acquired its lease -- was awarded in July and  
2 then it was, I guess, issued in September of 2000?

3 A. Right, we got it in September.

4 Q. Okay. Do you recall being asked by the Division  
5 Examiner why you didn't propose a Mesaverde well after  
6 receiving McElvain's proposal in November of last year?

7 A. Yes.

8 Q. Do you recall what you told him?

9 A. No.

10 Q. You don't?

11 A. Not exactly.

12 Q. You don't recall telling him that you were too  
13 busy with other projects to propose a Mesaverde completion?

14 A. We were at that time recompleting numerous wells  
15 in our sort of core area of production that we operate in  
16 the San Juan Basin, and that's 29 North, 9 West. At that  
17 time we were not only drilling Mesaverde wells over there  
18 but we were recompleting in the Lewis interval in those  
19 wells.

20 We had also recently made an acquisition from  
21 Greystone for those properties that I discussed in 24  
22 North, 4 West, and we were looking at additional  
23 opportunities that we might have on that acreage.

24 We also were trying to get some additional  
25 partners for that acreage in the 25 North, 3 West area.

1 Q. This acreage 24 North, 4 West where you just  
2 completed a Mesaverde well, did you do it on a standup  
3 spacing unit or a laydown?

4 A. I can't tell you what it was.

5 Q. You don't know?

6 A. No, I don't know. The engineer filed that.

7 Q. How about your other wells in the 29 --

8 A. They're standups, all of them are standups in  
9 29-9.

10 Q. They're all standup?

11 A. Uh-huh.

12 Q. Okay.

13 A. Every one.

14 Q. Are you going to drill directionally through the  
15 Mesaverde formation?

16 A. No, as I stated, we will kick off below the  
17 Mesaverde and drill at a 45-degree angle through the  
18 productive interval of the Gallup.

19 Q. If you really believe it's fractured, why  
20 wouldn't you directionally drill through that formation?

21 A. I think we'll determine that at the time we drill  
22 it based on mudlogging evidence that we get and whether or  
23 not we believe that we see any fractures at that time.

24 Q. Well, now, you're going to have your northeast-  
25 quarter well drilled already, right?

1           A.   Well, what I'm saying is, at the time we drill  
2 that northeast quarter well --

3           Q.   Uh-huh.

4           A.   -- we will mudlog, look at samples, you know, try  
5 to gather as much data as we can on all of the reservoirs  
6 from the surface down through our TD.

7           Q.   But based on your --

8           A.   And so if we see indications of fractures in our  
9 samples, if we see and we can identify fractures in that  
10 Gallup section, we may opt to drill additional wells, and  
11 we may opt at that point, if we believe it's necessary, to  
12 drill directionally through the Mesaverde, and we have done  
13 that in other areas.

14          Q.   Okay, now I'm just talking about the Mesaverde  
15 formation in a northeast-quarter well. You're not  
16 comfortable enough with your opinion that there's  
17 fracturing to directionally drill through that Mesaverde  
18 formation?

19          A.   There may be fractures, but they could be water-  
20 wet. Based on the nearest wells that have tested the  
21 Mesaverde surrounding the Section 25 acreage, they tested  
22 wet. Structure maps of that area do indicate that we're at  
23 a structural elevation essentially equal or maybe slightly  
24 lower than the two wells that are in Sections 34 and 35.

25                   But we would want to look at what kind of oil and



1 gas shows we see through the Mesaverde before we spend that  
2 kind of money on a directional well through the Mesaverde.  
3 It's also why we've proposed the northeast quarter as a  
4 directional through the Gallup, is to look at whether or  
5 not we do actually penetrate vertical fractures and enhance  
6 our production, and is that a good way for us to develop  
7 the Gallup reserves in that 25 North, 3 West acreage area.  
8 As I stated, Section 25 isn't our only acreage in the area.

9 MR. FELDEWERT: That's all the questions I have.

10 CHAIRMAN WROTENBERY: Commissioner Bailey?

11 COMMISSIONER BAILEY: I don't have any questions.

12 EXAMINATION

13 BY COMMISSIONER LEE:

14 Q. I just want to warn to you, the theory you're  
15 talking about, yes, this is well accepted here in New  
16 Mexico. However, it's not universally accepted. The  
17 fracture may not help your production. It also depends on  
18 the initial fluids inside of that fracture.

19 So for example, the people that you referenced,  
20 that student here, I asked him what is drainage area? He  
21 cannot answer that. Do you have an answer, what's the  
22 definition of a drainage area you have?

23 A. In this specific area I don't --

24 Q. What's your general -- You know, the Burlington,  
25 everybody's talking about it but they never talk about what

1 drainage area they are talking about. What is the drainage  
2 area that you think?

3 A. I think the drainage area is when you -- Well,  
4 when you frac the well, your frac is going to go out into  
5 the formation. In many areas they've seen like a -- I  
6 think it's about a three to one on the ellipse --

7 Q. Three to one to the ellipse, only if you don't  
8 have a well nearby.

9 A. Right, right. But then there's areas up around  
10 the Mudge wells, which I forget if that's 31 North, 10  
11 West, where they've actually seen drainage ellipses that  
12 were much greater than that, and I saw papers presented by  
13 Schlumberger that showed, you know, in excess of a 10-to-1.  
14 and they felt that some of those wells were draining  
15 several miles in the preferred orientation of the ellipse.

16 Q. I believe they're trying to do this study just to  
17 get 80-acre spacing.

18 Well, the drainage area is -- I don't think --  
19 you know, the people writing this paper doesn't know the  
20 drainage area, so that really worries me. Think about it.  
21 The drainage area, you have a well nearby, you don't have a  
22 well nearby. It's totally different definition so -- Okay.

23 EXAMINATION

24 BY CHAIRMAN WROTENBERY:

25 Q. I just had one point I wanted to clarify again,

1 Ms. Gusek.

2 You, I believe, stated that D.J. Simmons does  
3 want to preserve the opportunity to recomplete in the  
4 Mesaverde, in the east half of this section.

5 When you say you want to preserve the opportunity  
6 to recomplete, does that indicate that you don't have any  
7 immediate plans to recomplete or to complete in the  
8 Mesaverde in the well in the northeast quarter of Section  
9 25?

10 What is your proposed time frame there?

11 A. Our standard practice would be to complete the  
12 deeper zones first.

13 In general, the practice would be to establish  
14 production in those zones before you moved uphole and  
15 completed additional zones.

16 So based on the information that we gather at the  
17 time that we drill the Bishop 25 -- or 1-25, I keep putting  
18 the 25 first -- 1-25, I could see us recompleting the  
19 Mesaverde if we felt it warranted it, you know, as early as  
20 within a couple of months.

21 But we would need to establish that curve before  
22 we could do it, and that would be something that the  
23 Division would also require us to do before commingling  
24 those reservoirs, I believe.

25 COMMISSIONER LEE: Are you going to take a core

1 sample?

2 THE WITNESS: We don't have plans right now of  
3 coring, but it's not to say we might not consider doing  
4 that or testing the interval if we felt it warranted it.

5 Q. (By Chairman Wrotenbery) Are you aware that if  
6 the Commission were to approve D.J. Simmons' Application to  
7 pool the east half for the Blanco-Mesaverde Gas Pool there  
8 would be a time limit in the pooling order for completion  
9 in the Blanco-Mesaverde Pool?

10 A. Yes, and we would have to abide by that, if that  
11 were the case.

12 CHAIRMAN WROTENBERY: Thank you.

13 MR. HALL: I have nothing further of the witness.

14 MR. FELDEWERT: I don't have anything further.

15 CHAIRMAN WROTENBERY: Thank you very much Ms.  
16 Gusek.

17 THE WITNESS: Thank you.

18 CHAIRMAN WROTENBERY: We'll take a five-minute  
19 break here.

20 (Thereupon, a recess was taken at 4:10 p.m.)

21 (The following proceedings had at 4:15 p.m.)

22 CHAIRMAN WROTENBERY: Okay, I think we're ready  
23 to go now.

24 MR. HALL: At this time, Madame Chairman, we call  
25 Tom Mullins to the stand.

1                                    THOMAS E. MULLINS,  
2     the witness herein, after having been first duly sworn upon  
3     his oath, was examined and testified as follows:

4                                    DIRECT EXAMINATION

5     BY MR. HALL:

6                Q.     For the record, sir, please state your name and  
7     place of residence.

8                A.     It's Thomas E. Mullins, and I reside at 22 Road  
9     3777 in Farmington, New Mexico, zip code 87401.

10              Q.     By whom are you employed and in what capacity?

11              A.     I am self-employed with Mullins Energy,  
12     Incorporated. I'm a consulting petroleum engineer that's  
13     registered as a petroleum engineer in the State of New  
14     Mexico.

15              Q.     Would you give the Commissioners a brief summary  
16     of your background experience in the San Juan Basin?

17              A.     I started -- I've been working in the San Juan  
18     Basin specifically for 12 years. I started my employment  
19     with Meridian Oil Company in 1991, and I've served in  
20     reservoir, production and acquisition engineering positions  
21     for Burlington specifically down here in this Lindrith  
22     area, as well as throughout the San Juan Basin. In fact, I  
23     was the starting reservoir engineer for the 80-acre infill  
24     pilot development programs in both 30-and-6 and 29-7, and  
25     I've spent an enormous amount of time working in formations

1 across the Basin.

2 For the past five years I've been practicing  
3 consulting work for Conoco, Phillips Petroleum, Benson-  
4 Montin-Greer, D.J. Simmons and numerous other operators  
5 here in the Basin, and I feel I'm well versed on all of the  
6 formations here in the Basin.

7 Q. All right, and you testified at the Division  
8 Examiner hearing in these matters and you had your  
9 credentials as an expert petroleum engineer accepted and  
10 made a matter of record then; is that correct?

11 A. That's correct.

12 Q. And you're familiar with the Applications that  
13 have been filed in this case?

14 A. Yes, I am.

15 Q. And the lands that are the subject of the  
16 Applications?

17 A. Yes, I am.

18 MR. HALL: At this point, Madame Chairman, we'd  
19 tender Mr. Mullins as an expert petroleum engineer.

20 MR. FELDEWERT: No objection.

21 CHAIRMAN WROTENBERY: He's qualified.

22 Q. (By Mr. Hall) If you would, please, Mr. Mullins,  
23 give the Commission a brief overview of D.J. Simmons'  
24 operation in the area. And you might refer to Exhibit 22  
25 to do that.

1           A.     That's correct, I'm going to refer to D.J.  
2     Simmons Exhibit Number 22. This Exhibit 22 has been  
3     referred to previously. It is the Gallup-Dakota-Mancos  
4     production map. And on this particular map you'll see the  
5     yellow acreage that's associated with D.J. Simmons'  
6     specific lease, and you'll see the two proposed spacing  
7     units, the south half in red and the east half in green,  
8     for D.J. Simmons.

9                 On that, the well in the southwest quarter is the  
10    Naomi Com Number 1, also referred to as the Wynona Number  
11    1. And that production number that's listed there is from  
12    the Gallup-Dakota production.

13                The additional wells that you see listed within  
14    Section 25, you'll see a directional-type well that's in  
15    the northeast quarter, and that is the Bishop 25 Number 1  
16    well. And you'll also see a vertical proposed drill  
17    location in the southeast quarter, and that is the Bishop  
18    25 Number 2 well.

19                So basically the plan for D.J. Simmons'  
20    development in the area is to drill the directional hole in  
21    the northeast quarter first in their development program.  
22    that well will be drilled vertically through the Mesaverde,  
23    through the Point Lookout formation and then deviated at a  
24    45-degree angle through the Gallup and Mancos interval.  
25    And as you can see, it's drilled from the east-to-west

1 pattern so that it should intercept the predominant natural  
2 fracture direction in the area.

3 And then once we're through the Gallup-Mancos  
4 interval we'll return to a vertical position and the well  
5 will TD in the fluvial section of the Dakota.

6 So that's the plan for the development.

7 Q. All right. Since you've mentioned fracture  
8 orientation, again, do you wish to refer to Exhibit 23 for  
9 purposes of your testimony at all?

10 A. I think I do. I don't seem to have 23. Thank  
11 you. Exhibit Number 23 has been referred to previously.  
12 It is the fracture montage that Lisa has referenced. I was  
13 the reservoir engineer and production engineer for both of  
14 the Meridian oil wells, the Medio Canyon Number 7 and the  
15 Cullins Federal Number 6.

16 In addition, there was some question regarding  
17 one of the specific papers that says, you know, in Cuba,  
18 the Mobil Oil Company, you know, in the neighborhood of  
19 Cuba. That specific area is 24 North, 2 West, which is  
20 directly south and southwest of the specific lease, Section  
21 25, that we're talking about here today. Those are the  
22 only wells that Mobil Oil Company had operating in the San  
23 Juan Basin. They operated the Dakota-Gallup-Mancos  
24 production in the Lindrith B Unit.

25 I'm very familiar with that particular unit,



1 because when I left Burlington in 1996, Conoco had recently  
2 purchased the Lindrith B Unit, and I did a project  
3 evaluating all of the Dakota, Gallup and uphole horizons  
4 for Conoco, which did include the Mesaverde at that time,  
5 and still does in that particular area.

6 So the reference to the Mobil Oil Company paper  
7 with regard to the hydraulically induced fracture direction  
8 is specifically located close to the project area here.

9 Q. Well, what was learned about the drainage pattern  
10 in the area from the development of the Lindrith B Unit?

11 A. The Lindrith B Unit is predominantly developed on  
12 the Dakota "D" sand production. I believe McElvain had an  
13 exhibit that they filed that shows the Gallup-Dakota  
14 section. I'm not going to reference it in the interests of  
15 time, but you'll see the perforations that are placed on  
16 that log in the Dakota "D" interval. So the predominant  
17 production development was in the Dakota "D" sand in the  
18 Lindrith B area. And after that there was additional  
19 recompletions in the Gallup and Mancos interval to cover  
20 additional reserves.

21 The fracture-orientation work -- and I was  
22 specifically allowed to see some of the proprietary  
23 information. I have well numbers and a sheet of paper here  
24 that references some specific wells within the Lindrith B  
25 Unit directly to the south, and that's the Miller Com

1 Number 1, the Lindrith B Unit Number 84, the Lindrith B  
2 Unit Number 78 and the Lindrith B Unit Number 79.

3 We ran an FMI, FMS and Newmar equivalent logs at  
4 that particular time, magnetic-resonance-imaging logs,  
5 specifically to try to determine depositional trend and  
6 also fracture orientation, both natural, induced during  
7 drilling operations and then hydraulically fractured.  
8 There was some work done by running a Schlumberger cement  
9 evaluation tool specifically to try to see some things on  
10 cement logs, but that was indeterminate at that time.

11 The predominance of the information agrees with  
12 what's presented here on this exhibit, but there is a  
13 north-south orientation to the principal permeability  
14 direction in the area, and that is believed to be natural  
15 fractures, and that is what this exhibit represents.

16 Q. In your opinion, is it prudent to apply the data  
17 that was derived from the development of the Lindrith B  
18 Unit and then what's referenced in Exhibits 23 and 24 to  
19 Section 25 here?

20 A. Yes, it is, absolutely. You know, there's some  
21 discussion about the appropriateness of, you know,  
22 information in the Gallup and Dakota zones relative to the  
23 Mesaverde. The fracturing and the theories behind the  
24 fracturing present in the San Juan Basin are consistent for  
25 those Cretaceous sediments from Dakota, Gallup, Mancos and

1 the Mesaverde intervals.

2 Q. So in your opinion, what will that fracture  
3 orientation be in Section 25?

4 A. In my opinion, the fracture orientation in  
5 Section 25 is going to be on a north-south basis, and that  
6 the highest deviation would be on a north-40-degrees-east  
7 basis from the Naomi Com Number 1 well.

8 Q. All right, let's turn to Exhibit 29, if you  
9 would, please, sir. Can you identify that exhibit for the  
10 record?

11 A. Yes, Exhibit Number 29 was prepared by me. It is  
12 a -- It's actually an Autocad-based lease map of the  
13 subject acreage. It's a -- I guess a mapping system that  
14 Burlington Resources also used and is using within the San  
15 Juan Basin.

16 On the map you'll specifically see that the  
17 Wynona Number 1 well, or also referred to as the Naomi Com  
18 Number 1, is located in the southwest quarter of Section  
19 25.

20 What I've drawn on the Exhibit Number 29 are two  
21 elliptical drainage patterns that result in a 160-acre  
22 drainage area specifically. The radiuses, the long radius  
23 and the short radius, in particular, are based upon  
24 Burlington's work where they had presented a three-to-one  
25 permeability anisotropy or change or basically the higher

1 preferred permeability direction would be three times the  
2 shorter distance.

3           There's two ellipses on there. The first ellipse  
4 is a north-south orientation, and the second ellipse is a  
5 north-40-degrees-east orientation. This is an Autocad  
6 plot, so the distances of the ellipse are drawn with the  
7 actual footages from Autocad to try to represent my  
8 predicted drainage area for the Naomi Com Number 1 well.

9           Q. And so the radii referenced on Exhibit 29 show  
10 the maximum range for the deviation from north and south;  
11 is that correct?

12          A. That's correct.

13          Q. Is it your opinion that actual orientation of the  
14 drainage radius for the Naomi will lie somewhere in between  
15 the two range extremes you show?

16          A. That's correct, that's why I've drawn both of  
17 those ellipses.

18          Q. All right. In your opinion, what will be the  
19 drainage area for the Naomi Com Number 1?

20          A. That's a very difficult number to determine.  
21 What I utilized was the 160-acre maximum drainage area that  
22 I believe the well would drain.

23               In Burlington Resources' work, they have this  
24 particular Autocad map on every single Mesaverde well in  
25 the Basin. What they have done is, they have tied their

1 ellipses that they have drawn back to the volumetric  
2 production and the material-balance production that they  
3 see on each individual zone. So they tied the well logs  
4 into that specifically to try to determine what their  
5 drainage-ellipse size is, and that drainage ellipse varies  
6 in size. What I utilized is the 160-acre, which I believe  
7 is the maximum size.

8 Based upon the proximity of producing wells to  
9 this particular attempted completion, I don't have an  
10 ability to tie back the ellipses in, you know, the adjacent  
11 area within three miles of this to try to predict, you  
12 know, the actual size of that ellipse. So what I did was  
13 take the maximum case, in my opinion, for the development  
14 of the well, which would be a 160-acre pattern.

15 Q. So in your opinion, drainage is not likely to  
16 exceed 160 acres, then?

17 A. I do not think so, no.

18 Q. Let's refer to Exhibit 31, please, sir. Would  
19 you identify that for the record and explain what that  
20 shows?

21 A. Exhibit Number 31 basically explains the  
22 mathematics behind the distances on the drainage area. A  
23 circle is  $\pi r^2$ , which we all remember from -- you know, from  
24 elementary or junior high, I believe it is, and then an  
25 elliptical drainage pattern has each of the radiuses

1 multiplied together times  $\pi$ . And with the longer drainage  
2 radius being three times the shorter radius, it works out  
3 that the long radius direction is 2580, and 859 feet  
4 associated with the 160-acre ellipses that are drawn on  
5 Exhibit Number 29, I believe it is.

6 Q. Let's talk about the Bishop 25-1 well. In your  
7 opinion will that well drain along a north-south pattern or  
8 an east-west pattern?

9 A. The Bishop 25 Number 1, as the other wells in  
10 Section 25, I believe is going to drain along a north-south  
11 orientation to a north-40-degrees orientation.  
12 Specifically, you know, D.J. Simmons has looked at all the  
13 horizons, Dakota, Gallup, Mesaverde, Chacra, Lewis, and the  
14 propensity of natural fracturing in the Gallup production,  
15 there's a preponderance of information for that, and that's  
16 the reason why D.J. Simmons has elected to drill deviated  
17 or directional through that Gallup-Mancos interval, to try  
18 to increase the probability of encountering those natural  
19 fractures in that specific interval.

20 There was a question raised earlier about, you  
21 know, why doesn't D.J. Simmons want to do that  
22 directionally in the Mesaverde? I've drilled three or four  
23 Mesaverde horizontal wells and deviated wells in the Basin,  
24 and it gets down to a permeability ratio of vertical  
25 permeability versus horizontal permeability. And because

1 the Mesaverde interval, specifically Point Lookout-Menefee,  
2 have multiple stacked pay zones, the vertical-to-horizontal  
3 permeability ratio is really not conducive in that zone, as  
4 well as, you know, being a tight rock to drill and deviate  
5 it through there.

6 So I guess to answer a question that wasn't  
7 asked, that's why the well specifically targeted is  
8 deviated just through the Gallup-Mancos interval.

9 Q. All right. Other than the fracture patterns,  
10 what are the other factors affecting the drainage patterns  
11 in this area?

12 A. The drainage patterns in all reservoirs are based  
13 upon the permeability of the rocks. The directional  
14 permeability of the natural fractures in this area is on  
15 the north-south, north-40-degrees-east orientation. That's  
16 going to have the primary effect on the drainage pattern.

17 The second factor in the production will be the  
18 hydraulic fracture direction. All of these wells are  
19 hydraulically stimulated. The hydraulically stimulated  
20 fracture direction is also inferred to be in that north-40-  
21 degrees-east direction. Wells that are hydraulically  
22 fractured produce initially from those fracture wings that  
23 are directed in a specific orientation, and then after that  
24 point you'll get matrix-type flow into the fracture system,  
25 and hence that's some of the thinking behind the elliptical

1 patterns on the drainage areas.

2 Q. All right, let's talk about the Naomi Com Number  
3 1 again. In your opinion, will that well at its unorthodox  
4 location be capable of efficiently draining reserves from  
5 the south half of Section 25?

6 A. Absolutely not.

7 Q. In your opinion, is Section 25 best developed by  
8 way of standup or laydown units?

9 A. Section 25 would be best developed for the  
10 reservoirs on 320-acre spacing, on a standup basis.

11 Q. And tell us why.

12 A. The predominant permeability direction is on the  
13 north-south, north-40-degrees-east direction. My belief is  
14 that the predominant drainage areas will also correspond to  
15 that north-south, north-40-degrees-east orientation.

16 There has been some testimony relative to the  
17 production from the Mesaverde intervals. The Point Lookout  
18 formation, depositionally, as with the Pictured Cliffs and  
19 Dakota sandstones and all of the sandbodies, actually,  
20 Tocito, in the San Juan Basin, are deposited on a  
21 northwest-to-southeast orientation for the marine  
22 environments. The fluvial systems are inferred to be  
23 perpendicular to that in their deposition.

24 The predominance of -- in this particular area,  
25 Section 25, based upon the geology that I've reviewed along



1 with -- I believe Lisa Gusek has done with D.J. Simmons, in  
2 my estimation, from reviewing geological work from several  
3 companies, has done a very fine job in indicating that the  
4 predominant depositional direction for the Point Lookout is  
5 in a northwest-southeast orientation, and her mapping, I  
6 think, more accurately describes the Mesaverde reservoir in  
7 that section.

8 Q. All right, let's look at Exhibits 26, 27 and 28  
9 together. Can you identify those three exhibits and  
10 explain them to the Commission?

11 A. Exhibit Number 26 is a production plot of the  
12 Wynona Number 1, also referred to as the Naomi Com Number  
13 1, from its initial production until 1997, or excuse me,  
14 1998, when it was plugged and abandoned.

15 The top curve that you see is the gas production  
16 curve, the middle curve on this plot is the oil production,  
17 and the lower curve is actually the water production  
18 associated with the well.

19 Q. And we can locate these wells on Exhibit 22,  
20 correct?

21 A. That's correct, all of the following wells I'll  
22 be referencing to you on Exhibit Number 22.

23 Q. Okay.

24 A. And the Wynona Number 1 is located in the  
25 southwest quarter of Section 25, 25 North, Range 3 West.

1 Q. All right, go ahead.

2 A. What's interesting to note on this exhibit is  
3 that there is commercial Gallup-Dakota production within  
4 the section, within this wellbore. In fact, this Wynona  
5 Number 1 is my basis for the Gallup-Dakota production in  
6 the southeast quarter, the directly adjacent well location  
7 where D.J. Simmons would drill the Bishop 25 Number 2 well.

8 Exhibit Number 27 is a production plot of the Ora  
9 Number 2. This particular well, the curves are slightly  
10 different. The top curve is actually a gas-oil ratio  
11 curve. The second curve coming from the top down is the  
12 gas production, and the bottom curve is the oil production.

13 What this demonstrates, this well, the Ora Number  
14 2, referencing Exhibit Number 19, is located in the  
15 northeast quarter of Section 21, 25 North, Range 3 West.  
16 This is the closest on-trend depositional well to the Naomi  
17 Com Number 1 Mesaverde completion. It shows an uneconomic  
18 completion with an initial production of approximately 10  
19 MCF a day and about a barrel of oil a day and is currently  
20 producing approximately two or three MCF a day, it looks  
21 like, on the production curve.

22 Q. All right, let's refer to Exhibit 28. Identify  
23 that well.

24 A. Exhibit Number 28 has been referred to several --  
25 I guess the well that's indicated on Exhibit Number 28 has

1    been referred to several times.  It is the Schalk Myers  
2    Number 1 well.  It is located in the northwest quarter of  
3    Section 35, Township 25 North, Range 3 West.  It is, you  
4    know, very close to the subject acreage that we're  
5    discussing here today.

6               This well is inaccurately reported in the public  
7    information as a Mesaverde production.  This is -- All this  
8    production is actually Chacra production.

9               The well was initially tested from 5746 to 5838  
10   feet in just the Point Lookout interval, so they did not  
11   test the Menefee interval whatsoever in that well.  And  
12   they tested water on the completion in that well and  
13   immediately went uphole and completed the Chacra interval,  
14   which we've discussed, Lisa mentioned, and that  
15   specifically, the depth that it was completed in was 4439  
16   feet to 4465 foot.

17              The reason that's important is, the order that  
18   McElvain had received previously could be interpreted to  
19   say that their rights were established from the base of the  
20   Pictured Cliffs down to the base of the Mesaverde.  
21   Specifically, this Chacra interval does show production,  
22   and you could read the order that McElvain's order could  
23   include this particular horizon by going all the way up to  
24   the base of the Pictured Cliffs.

25              So I guess the importance would be the specific

1 Mesaverde pool definition and its limitations being south  
2 of the Chacra line for the Commission to consider in their  
3 evaluation.

4 So to review that, the Wynona Number 1 I used for  
5 the Gallup-Dakota production model, and the Myers Number 1  
6 and the Ora Number 2 I used for the Mesaverde production  
7 model, because I mean they're right -- they're on trend  
8 depositionally. I have a cross-section to review here in a  
9 minute, and they're the closest wells to the subject  
10 acreage in the Mesaverde.

11 Q. All right. What's your estimate of recoverable  
12 reserves from the Dakota in the east half of Section 25?

13 A. I'm going to refer to an exhibit, and that would  
14 be Exhibit Number 30. Exhibit Number 30 demonstrates the  
15 reserve number, I guess, that I'm anticipating for the  
16 Gallup-Dakota production in the southeast quarter of 25.  
17 That would be 326 million cubic feet of gas and 12,000  
18 barrels of oil. That's listed at the most recent AFE of  
19 \$658,000.

20 I'm anticipating I'm going to get the question  
21 regarding, you know, the last hearing there was \$500,000  
22 listed in that number and, you know, now it's \$658,000.  
23 Well, what's the difference?

24 The difference between the two hearings and the  
25 reason why the proposals had not been sent out, one of the

1 reasons, is that D.J. Simmons was going through their cost  
2 estimate, verifying the cost increases that have recently  
3 occurred, and putting together a valid AFE for a Gallup-  
4 Dakota well. And when I received the information, the  
5 \$658,000, which is the new number, I incorporated that.  
6 That has affected the economics by reducing the economics  
7 to a 15-1/2-percent rate of return rate.

8 I might add that I did leave the gas and oil  
9 price, you know, at the same level. And of course those  
10 fluctuate, and the economic decisions will fluctuate based  
11 on that. I would be very interested to see McElvain's  
12 numbers in regard to, you know, all of this. They utilized  
13 my presentation from the last hearing with regard to both  
14 the Dakota-Gallup and Mesaverde. And I did not hear  
15 McElvain indicate that it was not economic to drill a  
16 Gallup-Dakota zone, which D.J. Simmons is doing in the  
17 area.

18 And so, you know, specifically regarding waste,  
19 you know, they have not objected to it being economic, and  
20 they're not even considering that zone, which D.J. Simmons  
21 is very much interested in.

22 And I guess I'll leave that part of that right  
23 now.

24 Q. Okay. What does your Exhibit 30 show for  
25 recoveries out of the Mesaverde?

1           A.    The Mesaverde recovery is uneconomic. I'm  
2   estimating 66 million cubic feet of gas and about 10,000  
3   barrels of oil recovery from a completion attempt.

4                Last hearing I was estimating a \$50,000 cost to  
5   incrementally add the Mesaverde. At the last hearing, my  
6   economics were considering that we would complete all three  
7   zones, one right after the other on a new-drill well,  
8   Dakota-Gallup, Mesaverde, you know put them all to the  
9   sales line, as some operators do within the San Juan Basin.

10               The new numbers reflect putting the Gallup-Dakota  
11   on line production for several months, several years,  
12   whatever that appropriate time frame ends up being, and  
13   then moving back a second rig operation, basically a second  
14   event to complete the Mesaverde. So there's a lot of  
15   additional expenses for moving the rig in and out and frac  
16   tanks and things like that. And that's why there's  
17   additional cost.

18           Q.    All right. In your opinion, can McElvain's  
19   refusal to further develop the Gallup-Dakota be justified?

20           A.    No.

21           Q.    Why not?

22           A.    This area is initially developed based upon  
23   Gallup-Dakota production, as exhibited on Exhibit 22, I  
24   believe it is. There is -- Excuse me, 23, D.J. Simmons  
25   Exhibit Number 23. The southeast quarter, and specific the

1 east half, shows very good potential in the Dakota-Gallup  
2 production.

3 Q. Let me straighten something out. Are you  
4 referring to Exhibit 22? Is that the Gallup-Dakota  
5 production map?

6 A. Yes, I was right the first time, I think.  
7 Exhibit 22, I'm sorry.

8 Q. Let's refer to Exhibit 30 again, and if you can  
9 discuss in some detail the economics of development in new-  
10 drill Gallup-Dakota.

11 A. The best -- I guess the best manner to discuss  
12 Exhibit 30 is to go -- jump to Exhibit 32, so --

13 Q. All right.

14 A. Explaining Exhibit Number 32, this is a summary  
15 sheet, basically, that shows the costs associated and the  
16 proposals associated with Section 25. I appreciate the  
17 Commission consolidating these cases to allow me to come  
18 down and just testify at one.

19 The first proposal was for a re-entry on the  
20 Naomi Com Number 1 for \$364,000.

21 The second proposal and the third proposal were  
22 submitted simultaneously. That was for D.J. Simmons'  
23 development of the east half. The well on the northeast  
24 quarter shows \$785,000 cost to drill, complete and  
25 facilitate as a Gallup-Dakota well. The well on the

1 southeast quarter is \$658,000.

2 McElvain has recently resubmitted a proposal to  
3 drill the second well within a -- I guess on that same  
4 lease, it's called the Naomi Number 2, but I believe  
5 they're trying to dedicate that to a north-half spacing  
6 unit, and that is the cost that McElvain estimates to drill  
7 a stand-alone Mesaverde well at \$698,000.

8 Q. All right. Now, does Exhibit 32 also show how  
9 the costs will be allocated among the two formations for  
10 the Bishop 25-1?

11 A. Yes, it does.

12 Q. Given your economic testimony, in your opinion,  
13 if McElvain's Application for a south-half unit is granted,  
14 how will the remainder of the section likely be developed?

15 A. If the granting of the south-half unit is granted  
16 by the Commission, it is my belief that D.J. Simmons will  
17 drill the northeast quarter and complete that as a Gallup-  
18 Dakota well. We'll be back before this Commission again,  
19 debating the north half of that particular unit, based upon  
20 the McElvain proposal to drill a well in the northwest  
21 quarter.

22 My personal belief and engineering opinion is  
23 that the Mesaverde completion is going to be unsuccessful  
24 or uneconomic in McElvain's attempt, and the drilling of  
25 D.J. Simmons' well is going to be marginally economic,



1 depending upon the deviated interval in that Gallup to see  
2 if it gets that extra boost in production that's going to  
3 improve the economics.

4 The southeast quarter, which I've referenced back  
5 on Exhibit Number 30, from the last hearing the costs have  
6 increased, the reserves have gone down economically. The  
7 loss of the opportunity to come uphole and complete that  
8 Mesaverde and Chacra interval, to me, would be a critical  
9 factor in the full development of reserves in Section 25,  
10 that that extra 66 million cubic feet hopefully will be  
11 improved by information drilled on the northeast quarter.

12 Simmons is going to drill the northeast quarter.  
13 They're not asking for McElvain's, you know -- drug in, in  
14 the development of the unit. They have offered, if  
15 McElvain had some interest, to buy into the development in  
16 one of the proposals in the northeast quarter, to even earn  
17 in on some of that information.

18 You know, I think D.J. Simmons is approaching the  
19 development properly for the entire section. I see  
20 McElvain is trying to obtain additional acreage that they  
21 may never develop and that won't be drained by the Naomi  
22 Com Number 1.

23 Q. All right. Let's talk about the well costs shown  
24 on some of the earlier exhibits. If you could refer to  
25 Exhibit 11 -- that was the Simmons well proposal -- there's

1 an AFE attached to that. Could you review those costs for  
2 both the Gallup-Dakota and Mesaverde completions? You  
3 might also want to look at Exhibit 14.

4 A. Those specific exhibits are the letters and the  
5 well proposals and the AFEs associated with drilling the  
6 Bishop 25 Number 1 and 25 Number 2 wells. The -- I think  
7 Exhibit 14 is the Mesaverde breakout of the costs  
8 associated with a 320-acre spacing unit on the east half  
9 for the development.

10 I've tried to summarize that on Exhibit Number  
11 32, because there may be -- McElvain has indicated that  
12 there's been some confusion. To be honest, the first time  
13 I looked at the numbers I was confused from a consulting  
14 standpoint, and I went through them and clarified what the  
15 dollar amounts were.

16 So relating to Exhibit Number 32, if a Mesaverde  
17 completion is attempted by D.J. Simmons in either of the  
18 new-drill wells, the cost is estimated to be the same. And  
19 the reason it's the same is because that deviated section  
20 or incremental cost to complete the Gallup-Dakota is not  
21 going to factor into the Mesaverde, you know the Mesaverde  
22 owner.

23 The estimated cost that D.J. Simmons has to  
24 complete in a commingled well is a total of \$461,706. What  
25 was not very clear in D.J. Simmons' proposal is, the

1     \$225,306 would be credited to the Dakota-Gallup owners for  
2     the use of their wellbore, and the actual cost associated  
3     with perforating and pumping the frac job and completing  
4     the Mesaverde would be \$236,400.

5             That \$236,400 is a lower total economic  
6     expenditure than the McElvain re-entry proposal of  
7     \$364,000. It is higher, though, than the entire cost of  
8     \$461,706.

9             Q.     In your opinion, is the proposal of allocating  
10    costs in this way reasonable?

11            A.     Yes, it is.

12            Q.     And are the costs that are shown on Exhibits 32  
13    and 11 and 14 in line with what's being charged by other  
14    operators in the area for similar wells?

15            A.     Yes, it is.

16            Q.     Now, have you or Simmons made an estimate of the  
17    overhead and administrative costs while drilling and  
18    producing the well?

19            A.     Yes, I've summarized the -- I guess the  
20    difference between the two competing operatorship proposals  
21    regarding the Mesaverde ownership in this particular  
22    southeast quarter. McElvain is proposing a monthly  
23    overhead rate of \$545, D.J. Simmons is proposing a monthly  
24    overhead rate of \$350 per month. That difference is \$245  
25    per month.

1           From D.J. Simmons' standpoint, it is more cost-  
2 effective for them to operate. And from any working  
3 interest owners' standpoint, they would be charged less  
4 overhead and monthly fees by having D.J. Simmons do the  
5 work.

6           Q. And those overhead costs are reflected on page 2  
7 of Exhibit 11, which is the Simmons well proposal; is that  
8 correct?

9           A. That's correct.

10          Q. And are these costs in line or cheaper than  
11 what's being charged by other operators in the area?

12          A. They're in line with other operators in the area.

13          Q. All right. Are you recommending that these  
14 drilling and producing overhead rates be incorporated into  
15 any order that results from this matter of Simmons'  
16 Application?

17          A. Yes, I do.

18          Q. You understand Simmons is requesting the 200-  
19 percent penalty here?

20          A. Yes.

21          Q. Is that request appropriate?

22          A. Yes, it is appropriate with regard to the  
23 Mesaverde in the east half, as has been testified by  
24 everyone here, and so -- I hate to use the word "wildcat"  
25 because Mr. Stogner had me almost executed here in this

1 chair for using that term. It is an undesignated Mesaverde  
2 completion. If you'll reference that map that had the  
3 Chacra outline, this subject acreage is not currently  
4 within the Blanco-Mesaverde Pool. Please keep that in mind  
5 in relation to an ultimate solution in this.

6 I forgot what I was going to say.

7 Q. Well, is there a risk that the well may not be  
8 commercially successful, and is that a justification for  
9 the request?

10 A. Yes, the 200-percent risk penalty for an east-  
11 half development would be appropriate.

12 Q. All right. If McElvain's Application is granted,  
13 do you believe that their request for a 200-percent risk  
14 penalty is appropriate?

15 A. No, I do not.

16 Q. And why not?

17 A. They are re-entering a well that they actually  
18 went and plugged and abandoned that had that opportunity  
19 behind pipe. They have the well logs on the particular  
20 zone, unlike D.J. Simmons, and the -- I guess the  
21 expenditure and risk is less by re-entering that old well  
22 and hence the penalty should be less to participate, and I  
23 think -- that number, I think, was 100 percent in the  
24 original order that written was -- well, it was a  
25 reasonable number for a re-entry.

1           Q.    All right. Does Simmons seek an order that  
2 provides for an adjustment of the drilling and producing  
3 overhead rates in accordance with the current COPAS  
4 bulletin for such?

5           A.    Yes.

6           Q.    Let's refer to Exhibit 33, your cross-section,  
7 briefly. Let's identify that for the record and tell us  
8 what that reflects.

9           A.    I'll give a minute for everybody to pull this  
10 out, or I'll do my best to hold it up.

11                   This Exhibit Number 33 is a two-well cross-  
12 section with the Ora Number 2 well that was located in  
13 Section 21 of 25 North, 3 West, which is the closest  
14 producing well that's on depositional trend with the Wynona  
15 Number 1 well, this listing on the right-hand side.

16                   The perforations that are present are listed in  
17 the depth column on the Ora Number 2 well. And as you can  
18 see, it's completed in the Point Lookout interval.

19                   The Wynona Number 1 well has proposed  
20 perforations in the Mesaverde listed, and the Point Lookout  
21 and the Menefee interval on the that particular cross-  
22 section.

23                   The mapping, the -- McElvain's mapping regarding  
24 the development trend, includes in some of their maps the  
25 entire Cliff House interval, which is wet in that

1 particular area.

2 I was the production engineer for the McCroden  
3 Lease for Union, Texas, which is in the northwest section  
4 of 25 North, 3 West, and spent a great deal of time  
5 squeezing cement into wells that had been completed in the  
6 Menefee and the Cliff House and tested water, and then  
7 coming back to re-squeeze the wells once the water had  
8 actually corroded through the cement and then through the  
9 production tubing.

10 We ended up getting exemptions from the State to  
11 allow us to run production packers and put in packer fluid  
12 that would help us eliminate the Menefee and Cliff House  
13 water production.

14 The Point Lookout referenced on the logs has the  
15 best potential in this particular area, and it's not very  
16 good, as has been referenced. But this is the log to  
17 review. And I haven't seen McElvain represent anything in  
18 relation to the Mesaverde information, specifically on a  
19 type log on their proposal. You know, they just sent a  
20 letter and said, We're going to do these perforations and,  
21 you know, participate.

22 Q. In fact, Simmons hasn't even presented a well log  
23 for the Mesaverde to the Commission here today; isn't that  
24 right?

25 A. Simmons has presented the Mesaverde log --

1 Q. I'm sorry --

2 A. -- on the Wynona Number 1 well. It has not  
3 presented a log on the new drill wells because, of course,  
4 they don't exist.

5 Q. Let me just say, McElvain has not presented a  
6 well log on the Mesaverde?

7 A. That's correct.

8 Q. In your opinion, Mr. Mullins, would granting  
9 Simmons' Application be in the best interest of  
10 conservation, the prevention of waste, protection of  
11 correlative rights?

12 A. Yes, granting Simmons' Application for Section 25  
13 on an east-half/west-half standup basis for the formations  
14 being asked for would be the appropriate development  
15 mechanism in this area.

16 Q. Now, were Exhibits 26 through 33 prepared by you  
17 or at your direction?

18 A. Yes.

19 MR. HALL: That concludes our direct of this  
20 witness. We'd move the admission of Exhibits 26 through  
21 33.

22 MR. FELDEWERT: No objection.

23 CHAIRMAN WROTENBERY: Simmons Exhibits 26 through  
24 33 are admitted into evidence.

25 Mr. Feldewert?



## CROSS-EXAMINATION

BY MR. FELDEWERT:

Q. Mr. Mullins, do you think McElvain's re-entry project is risky or not risky?

A. Risky.

Q. Risky, okay. That's because there's not any production within three miles; would you agree with that?

A. That's correct.

Q. Very risky re-entry project?

A. Yes.

Q. Okay. You testified to \$350 overhead rates?

A. Yes, per month, that's correct.

Q. Per month. Is that for the Dakota production, or is that for the Mesaverde?

A. It's for the Dakota-Gallup production zone that D.J. Simmons -- and that's their standard overhead rate that they charge.

Q. And it's for the northeast-quarter well?

A. That's correct.

Q. They're going to charge \$350 for the Dakota?

A. For the Dakota-Gallup, that's correct.

Q. They're the only interest owner in the northeast quarter; isn't that right?

A. That's correct, it would be the same for the southeast quarter.

1 Q. Who are they going to charge the \$350 overhead  
2 rate to?

3 A. Themselves in that instance.

4 Q. Okay. And do you know what the overhead rate  
5 would be if they recompleted at the same time in the  
6 Mesaverde?

7 A. I want to back up one second. I will be happy to  
8 answer that question.

9 If you had a west-half unit, McElvain's overhead  
10 rate would be \$545 to themselves also.

11 Q. My question to you is, if they recomplete that  
12 northeast-quarter well in the Mesaverde formation, what is  
13 the overhead rate that they are going to charge?

14 A. To charge the Mesaverde owner?

15 Q. Uh-huh.

16 A. It would be \$350.

17 Q. And it -- Period?

18 A. Per month.

19 Q. Okay. So D.J. Simmons is committing that if they  
20 recomplete in the Mesaverde they're going to charge \$350  
21 overhead a month?

22 A. That is my understanding.

23 Q. Okay. Do you know, Mr. Mullins, what McElvain  
24 wanted to participate in an east-half spacing unit for this  
25 northeast-quarter well that you intend to drill to the

1 Dakota? How much are they supposed to commit to? How much  
2 are they supposed to pay?

3 A. How much are they supposed to pay?

4 Q. Yeah.

5 A. Absolutely nothing at this point in time.

6 Q. When are they supposed to elect to participate  
7 or not participate in that well?

8 A. Based upon D.J. Simmons' evaluation of the well  
9 in the northeast quarter, their determination would be, is  
10 it appropriate to develop the Mesaverde at this time? At  
11 which time they would send out an AFE again that details  
12 the specific costs with a ballot election form. You'll  
13 notice that the election form was not sent with regard to  
14 the Mesaverde development.

15 Q. So they have not -- D.J. Simmons has not made a  
16 proposal for a Mesaverde well yet to the working interest  
17 owners, have they?

18 A. They have not. Excuse me, correct it. They have  
19 made a proposal with regard to what the cost share and  
20 breakout would be with regard to the Mesaverde. D.J.  
21 Simmons is --

22 Q. My question to you is, they have --

23 MR. HALL: Well, let him answer, let him answer.

24 CHAIRMAN WROTENBERY: You may finish, Mr.

25 Mullins.

1           THE WITNESS: You know, we've discussed a number  
2 of pooling applications that are here today, and the time  
3 of the Commission -- and I appreciate the Commission's time  
4 here today, running very late.

5           The development patterns that are available here  
6 in the area, the west half is available for McElvain to  
7 begin their work and do it at any point in time and avoid  
8 all the time spent here.

9           It would be very interesting for the Commission  
10 to -- and the Division, to investigate the prior pooling  
11 orders to see if this is continued in regard to the time  
12 frame on the other applications.

13          What D.J. Simmons is asking here today is for the  
14 opportunity to prevent waste by having an appropriate  
15 spacing mechanism in the subject area, and east-half/west-  
16 half is the appropriate spacing mechanism for the  
17 development of the Mesaverde reserves.

18          Something that I pointed out at the last hearing,  
19 which wasn't very popular, is that the Dakota formation is  
20 based upon 160-acre spacing in the subject area. That's  
21 different than a lot of the other areas in the Basin.

22          What would simplify this matter would allow, and  
23 as D.J. Simmons has offered, is to go to 160-acre  
24 nonstandard proration units for the subject acreage, clear  
25 all this up and --

1 CHAIRMAN WROTENBERY: Thank you, Mr. Mullins.

2 THE WITNESS: -- you know, you can go do that.

3 CHAIRMAN WROTENBERY: Mr. Feldewert?

4 Q. (By Mr. Feldewert) Thank you. D.J. Simmons has  
5 not proposed a Mesaverde well to the working interest  
6 owners, have they?

7 A. They've proposed what the cost would be in the  
8 Bishop Federal 25 Number 1 well and the 25 Number 2 well,  
9 for what the Mesaverde completion. They have not given  
10 what time they are going to do that.

11 Q. And they haven't committed to doing that either,  
12 have they?

13 A. They have not committed to doing that.

14 Q. Okay. Have you read the pooling statute?

15 A. I have read the pooling statute, but I would  
16 probably need to be refreshed.

17 Q. Do you have a copy? I have a copy. Paragraph C,  
18 about halfway down, do you see it says "where"?

19 A. I do.

20 Q. It says, Where, however, such owner or owners,  
21 1), have not agreed to pool their interests and, 2), where  
22 one such separate owner or owners who has the right to  
23 drill, has drilled or proposes to drill a well on said unit  
24 to a common source of supply...

25 Do you see that?

1 A. I do.

2 Q. That hasn't happened yet here for D.J. Simmons  
3 with respect to a Mesaverde well; isn't that correct?

4 A. That's correct.

5 Q. All right. Now, are you telling the Commission  
6 with your testimony here that all Mesaverde wells in the  
7 Lindrith area of the San Juan Basin should be spaced on  
8 standup spacing units and that operators and interest  
9 owners should have no flexibility or direction as to the  
10 orientation of the spacing units?

11 A. No, I'm not saying that.

12 Q. Okay, what is unique about this area that leads  
13 you to the conclusion that in Section 25 we should mandate  
14 the standup spacing units?

15 A. In regard to the information that I've discussed  
16 and presented today relative to Section 25 and the spacing  
17 units in question here today, standup units would be the  
18 appropriate mechanism.

19 Q. Well, I'm trying to figure out what information  
20 that is unique to Section 25 you are referring to?

21 A. Section 25 unique?

22 Q. Yes.

23 A. First of all, the well location of the Naomi Com  
24 Number 1 being 450 feet, or 410, from the west line.  
25 Second would be the information on the exhibits presented

1 for a north-south orientation in the subject area relative  
2 to the preferred drainage pattern for the completion in the  
3 Mesaverde. That information has not been, in my opinion,  
4 proven otherwise in regard to the development.

5 That's why I believe the west-half/east half  
6 would be the appropriate --

7 Q. And then you mentioned --

8 A. -- mechanism in this area.

9 Q. -- the location of the well, and then you also  
10 mentioned your theory about drainage. Now, your theory  
11 about drainage would apply across the San Juan Basin,  
12 including the Lindrith area, are you not?

13 A. You are trying to get me to say that, and I'm not  
14 going to say that, because my information that I'm  
15 presenting and testifying to you today is specifically in  
16 regard to this Section 25.

17 Q. Okay, my question to you -- I know you reference  
18 confidential Burlington information, which you haven't  
19 provided to us, have you?

20 A. I don't think I referenced confidential  
21 Burlington information. I have confidential Conoco  
22 information with regard to the Lindrith B Unit --

23 Q. Okay.

24 A. -- specifically.

25 The information that Burlington has, you know,

1 you can call them up and ask them for their map with regard  
2 to their drainage-pattern ellipses, and, you know, they  
3 gave me the information.

4 Q. What I'm trying to find out, Mr. Mullins, is,  
5 what specific study are you relying upon that is unique to  
6 Section 25 to support your testimony here today that you  
7 should do standup spacing units in Section 25?

8 A. I do not have a specific study that has been  
9 performed in Section 25 that gives evidence of that.

10 Q. Now, you also use a three-to-one ellipsis  
11 pattern?

12 A. That's correct.

13 Q. And is that based on what?

14 A. The three-to-one elliptical pattern is based upon  
15 the Burlington fracture information presented in the order  
16 for infill drilling on the Blanco-Mesaverde Pool. That  
17 extended that boundary to within one mile of the subject  
18 acreage.

19 Q. Okay, so you're taking that study and applying it  
20 here, and you're basing your three-to-one theory on that  
21 information that was provided by Burlington?

22 A. Yes.

23 Q. Okay, and you don't have that information here  
24 today?

25 A. I do not have first-hand information here today



1 to show that. It's in the Commission records and in their  
2 Division order.

3 Q. And you haven't provided that to McElvain?

4 A. Am I under an obligation to provide that to  
5 McElvain?

6 Q. No.

7 A. Who's proposing the well?

8 Q. And your theory that you used is, you use, as you  
9 call, your 160-acre draining -- drainage area, that was the  
10 maximum area you thought it would drain?

11 A. Based upon the information I have, that's  
12 correct.

13 Q. Okay, if it's less than that 160-acre maximum  
14 that you chose to use, would you agree with me that the  
15 drainage from the well in the southeast quarter would be  
16 limited to the southwest -- I'm sorry, the well in the  
17 southeast quarter would be limited to the southwest  
18 quarter?

19 A. You said a lot of numbers real fast, I'm going to  
20 try to repeat your --

21 Q. Let me slow down.

22 A. -- you can either --

23 Q. Let me slow down.

24 A. -- repeat the question or I can paraphrase it.

25 Q. Would you agree with me that if you use less than

1 your 160-acre maximum drainage area for the well in the  
2 southwest quarter --

3 A. Southwest quarter.

4 Q. Yes. -- would you agree with me that that well  
5 would drill [sic] only reserves from the southwest quarter?

6 A. Possibly, yes.

7 Q. And it would not be draining reserves from either  
8 the northwest quarter or the southeast quarter?

9 A. I believe that it would predominantly drain from  
10 the northwest quarter on a three-to-one basis.

11 Q. Your 160-acre maximum?

12 A. Correct, you can see that that extends well into  
13 the northwest --

14 Q. And it's your --

15 A. -- quarter.

16 Q. -- testimony that predominantly drain from the  
17 northwest quarter?

18 A. That's correct.

19 Q. Okay. But correct me if I'm wrong. You don't  
20 have any hard evidence of the drainage pattern in this  
21 area? This is your theory?

22 A. It's not my theory, it's based upon the  
23 information presented here today and prior cases that the  
24 Division and Commission have approved.

25 Q. You've taken a look at those and extracted a

1 theory that this well is going to drill 160 acres, and it's  
2 going to predominantly drain from the northwest quarter?

3 A. I have, unlike McElvain, made my best attempt to  
4 determine what the maximum drainage area would be from  
5 their well -- from McElvain's well proposal. I have yet to  
6 see an economic summary.

7 The standard information supplied in the  
8 thousands of non-operated working-interest proposals that  
9 I've reviewed is, I pick up the phone and I call, and I  
10 say, How much is the well going to make and how many  
11 reserves do you think you're going to have?

12 Q. Did D.J. Simmons do that here?

13 A. Did D.J. Simmons do that here?

14 Q. Yeah.

15 A. Yes, they called.

16 Q. And did they get the information?

17 A. They did not get the information.

18 Q. They got the well logs, did they not?

19 A. They got the well logs supplied, that is correct.

20 Q. You're telling me that D.J. Simmons called  
21 McElvain and asked for the reserve figures?

22 A. I'm telling you that standard industry practice,  
23 in my experience, has been, I pick up the phone and make a  
24 phone call and say, How much gas is this well going to make  
25 and how many reserves is it going to make to participate?

1 Q. Did you do that?

2 A. I don't just send a file, a force-pooling  
3 application, you know, to do the well.

4 Q. Did you do that in this case?

5 A. Did who do that?

6 Q. Did D.J. Simmons do that in this case?

7 A. D.J. Simmons has not supplied this information  
8 other than here in the testimony at both of the hearings  
9 with regard to the Dakota-Gallup and the Mesaverde.

10 Q. Okay, you mentioned waste and a refusal by  
11 McElvain to develop reserves in the area. What is your  
12 theory of waste? How is there going to be waste here if  
13 McElvain's south-half spacing unit is granted?

14 A. McElvain has not indicated that they will drill  
15 in the southeast quarter to develop Dakota-Gallup reserves,  
16 number one, for waste.

17 Number two, waste will occur in the southeast  
18 quarter by D.J. Simmons not having the opportunity to  
19 complete, commingle and operate the well on their interest  
20 position, where the opportunity is present for McElvain to  
21 complete and dedicate a west-half unit and be done with  
22 this.

23 Q. Is D.J. -- Are you saying D.J. Simmons is not  
24 going to drill a Dakota well in the southeast quarter?

25 A. I'm saying, based upon both of the economic

1 summaries that I've provided at both of the hearings, that  
2 as gas prices drop it will be less likely that the  
3 southeast quarter will be drilled without having the  
4 additional reserves from the Mesaverde available for D.J.  
5 Simmons to complete, that's correct, that's the waste.

6 Q. How is Dugan supposed to develop its Mesaverde  
7 reserves in the southeast quarter?

8 A. Boy, I'm going to speculate, and I know I'm  
9 wasting everybody's time here.

10 Dugan is going to sit there, in my experience  
11 with working with Dugan on several projects, they're going  
12 to watch what happens --

13 Q. So --

14 A. -- and they're going to see, you know, see what's  
15 occurred. I mean, I've read the letter and, you know, it  
16 says, Hey, we decided to go with McElvain. That's what it  
17 says.

18 Q. So in your opinion, the Division should deny a  
19 south-half spacing unit in this case and deny Dugan and  
20 Forcenergy the opportunity to participate in a Mesaverde  
21 well so that D.J. Simmons has the ability to keep that  
22 Mesaverde formation in their back pocket for a southeast-  
23 quarter Gallup well?

24 A. I would counter that and say that the interest  
25 owners, all of which in the southeast quarter would benefit

1 from the spacing on an east-half basis for the Mesaverde in  
2 D.J. Simmons' request.

3 Q. And they're supposed to sit around and wait for  
4 you to recomplete the well when you decide that its time to  
5 recomplete the well?

6 A. Again, reading the fine details of some of this  
7 material, McElvain is re-entering a plugged well. D.J.  
8 Simmons is drilling a brand-new well. Distinct differences  
9 on the timing.

10 D.J. Simmons -- and the evidence has been  
11 presented here and is in the record -- has proceeded  
12 diligently, and it has some additional hurdles to overcome  
13 in order to get their well drilled in the northeast  
14 quarter, the first well.

15 McElvain can very easily go right to their well,  
16 petition for the Division and Commission for a west-half  
17 320 and go do their work. They could have done that in  
18 November when they had the rig waiting there.

19 Q. Are you employed by D.J. Simmons?

20 A. No, I am not.

21 Thank goodness, thank goodness, let me put that  
22 on the --

23 Q. All right, do you advise your clients that when  
24 they receive a well proposal for the development of  
25 property that they should sit around and wait until after

1 the compulsory pooling hearing to propose a competing  
2 development -- or -- proposal?

3 A. I don't usually advise my clients with regard to  
4 when to file their applications.

5 Q. It wouldn't be diligent to do that, would it?

6 A. I believe --

7 MR. HALL: Object, calls for speculation.

8 MR. FELDEWERT: That's all I have.

9 CHAIRMAN WROTENBERY: Thank you.

10 Commissioner Bailey?

11 COMMISSIONER BAILEY: No questions.

12 COMMISSIONER LEE: No questions.

13 CHAIRMAN WROTENBERY: I have no further  
14 questions.

15 Any redirect?

16 MR. HALL: One brief question, one.

17 COMMISSIONER LEE: That's going to cost you.

18 (Laughter)

19 REDIRECT EXAMINATION

20 BY MR. HALL:

21 Q. So the record is clear on this, D.J. Simmons has  
22 tried to obtain the voluntary agreement of the other  
23 working interest owners for the evaluation of the Mesaverde  
24 reserves in the east half of Section 25 in conjunction with  
25 its Gallup-Dakota drill in the northeast quarter, correct?

1           A.     That's correct.

2           MR. HALL:   That's all I have.

3           CHAIRMAN WROTENBERY:   Thank you.

4           Anything else for Mr. Mullins?  I don't believe  
5   so, so thank you very much for your testimony.

6           Let me ask, I don't know whether you would like  
7   to make a closing statement or not.  It's getting late, and  
8   the Commission still has several cases to deliberate today,  
9   and so I would request that if you do wish to make a  
10   closing statement that you submit that in writing.  What's  
11   the sense?

12          MR. HALL:  I've already indicated I'm going to  
13   waive closing.

14          I've given you a brief.

15          CHAIRMAN WROTENBERY:  Mr. Feldewert?

16          MR. FELDEWERT:  If you are requesting that we  
17   submit any closing in writing, I would be happy to do that.

18          CHAIRMAN WROTENBERY:  Okay.

19          MR. FELDEWERT:  Otherwise, I had a short closing,  
20   but I understand --

21          CHAIRMAN WROTENBERY:  Yes, if you would, submit  
22   it in writing and keep it brief --

23          MR. FELDEWERT:  Certainly.

24          CHAIRMAN WROTENBERY:  -- and then I think we've  
25   -- I did want to ask about the exhibits that were prefiled



1 by McElvain --

2 MR. FELDEWERT: Yes.

3 CHAIRMAN WROTENBERY: -- 23 and 24. Those we  
4 should set aside.

5 MR. FELDEWERT: We don't -- Correct.

6 CHAIRMAN WROTENBERY: Correct, okay.

7 MR. FELDEWERT: Okay.

8 CHAIRMAN WROTENBERY: Those are not part of the  
9 record.

10 MR. MULLINS: My D.J. Simmons 23 and 24?

11 CHAIRMAN WROTENBERY: No, the --

12 MR. HALL: -- McElvain.

13 CHAIRMAN WROTENBERY: -- McElvain.

14 Did I say D.J. Simmons? I'm sorry. McElvain  
15 Exhibits 23 and 24.

16 And I believe that will take care of us for  
17 today.

18 Thank you all very much for your testimony, we  
19 appreciate it.

20 We'll take this case under advisement, and we  
21 anticipate that we will make a decision on this case at the  
22 Commission's meeting in December, and we're not exactly  
23 sure what the date of that meeting will be at this point.  
24 It was scheduled for December 14th, I believe, but we've  
25 determined that a conflict has arisen, so we will probably

1 be scheduling it a little bit earlier in December. We will  
2 certainly give everybody notice.

3 Thank you very much.

4 MR. FELDEWERT: Thank you.

5 MR. HALL: Thank you.

6 (Thereupon, these proceedings were concluded at  
7 6:00 p.m.)

8 \* \* \*

## CERTIFICATE OF REPORTER

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

I, Steven T. Brenner, Certified Court Reporter  
and Notary Public, HEREBY CERTIFY that the foregoing  
transcript of proceedings before the Oil Conservation  
Commission was reported by me; that I transcribed my notes;  
and that the foregoing is a true and accurate record of the  
proceedings.

I FURTHER CERTIFY that I am not a relative or  
employee of any of the parties or attorneys involved in  
this matter and that I have no personal interest in the  
final disposition of this matter.

WITNESS MY HAND AND SEAL November 16th, 2001.



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STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 14, 2002