

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

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

CASE NO. 12,635

APPLICATION OF McELVAIN OIL AND)
 GAS PROPERTIES, INC., FOR COMPULSORY)
 POOLING, RIO ARRIBA COUNTY, NEW MEXICO)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

May 17th, 2001

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, May 17th, 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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I N D E X

May 17th, 2001
 Examiner Hearing
 CASE NO. 12,635

	PAGE
EXHIBITS	4
APPEARANCES	5
APPLICANT'S WITNESSES:	
<u>MONA L. BINION</u> (Landman)	
Direct Examination by Mr. Feldewert	7
Cross-Examination by Mr. Hall	15
Examination by Examiner Stogner	21
Further Examination by Mr. Hall	25
<u>JANE ESTES-JACKSON</u> (Geologist)	
Direct Examination by Mr. Feldewert	26
Cross-Examination by Mr. Hall	30
Examination by Examiner Stogner	33
<u>JOHN D. STEUBLE</u> (Engineer)	
Direct Examination by Mr. Feldewert	34
Cross-Examination by Mr. Hall	42
Redirect Examination by Mr. Feldewert	49
Examination by Examiner Stogner	50
SIMMONS WITNESSES:	
<u>EDWARD B. DUNN</u> (Landman)	
Direct Examination by Mr. Hall	54
Voir Dire Examination by Mr. Feldewert	56
Direct Examination (Resumed) by Mr. Hall	57
Cross-Examination by Mr. Feldewert	64
Redirect Examination by Mr. Hall	74
Examination by Examiner Stogner	75

(Continued...)

SIMMONS WITNESSES (Continued):

LISA GUSEK (Geologist)

Direct Examination by Mr. Hall	77
Cross-Examination by Mr. Feldewert	92
Redirect Examination by Mr. Hall	96
Examination by Examiner Stogner	96

THOMAS E. MULLINS (Engineer)

Direct Examination by Mr. Hall	98
Cross-Examination by Mr. Feldewert	119
Examination by Examiner Stogner	120

REPORTER'S CERTIFICATE	139
------------------------	-----

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E X H I B I T S

Applicant's	Identified	Admitted
Exhibit 1	9	15
Exhibit 2	9	15
Exhibit 3	10	15
Exhibit 4	11, 39	15
Exhibit 5	11	15
Exhibit 6	12	15
Exhibit 7	12	15
Exhibit 8	14	15
Exhibit 9	14	15
Exhibit 10	28	29
Exhibit 11	36	41
Exhibit 12	38	41
Exhibit 13	38	41

* * *

Simmons	Identified	Admitted
Exhibit 1	57	64, 77
Exhibit 2	57, 63	64, 77
Exhibit 5	81, 89	91
Exhibit 6	84	91
Exhibit 7	85, 100	91, 118
Exhibit 8	89	91
Exhibit 9	102	118
Exhibit 10	103	118
Exhibit 11	105	118
Exhibit 12	106	118
Exhibit 13	106	118
Exhibit 14	107	118
Exhibit 15	110	118

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A P P E A R A N C E S

FOR THE APPLICANT:

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Santa Fe, New Mexico 87504-2208
By: MICHAEL H. FELDEWERT

FOR D.J. SIMMONS, INC.:

MILLER, STRATVERT and TORGERSON, P.A.
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Suite 300
Santa Fe, New Mexico 87501
By: J. SCOTT HALL

* * *

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

3 EXAMINER STOGNER: This hearing will come to
4 order. Call Case Number 12,635, which is the Application
5 of McElvain Oil and Gas Properties, Inc., for compulsory
6 pooling, Rio Arriba County, New Mexico.

7 At this time I'll call for appearances.

8 MR. FELDEWERT: May it please the Examiner, my
9 name is Michael Feldewert. I'm with the Santa Fe office of
10 Holland and Hart and Campbell and Carr, appearing on behalf
11 of the Applicant, McElvain Oil and Gas Properties, Inc.,
12 and I have three witnesses today.

13 MR. HALL: Mr. Examiner, I'm Scott Hall with
14 Miller Stratvert Torgerson, P.A., Santa Fe, appearing on
15 behalf of D.J. Simmons, Incorporated, and I have three
16 witnesses this afternoon.

17 EXAMINER STOGNER: Are there any other
18 appearances?

19 I'd like to have all six witnesses please stand
20 to be sworn at this time.

21 (Thereupon, the witnesses were sworn.)

22 EXAMINER STOGNER: Is there any need for opening
23 statements at this time?

24 MR. HALL: No, sir.

25 MR. FELDEWERT: No, sir.

1 EXAMINER STOGNER: Mr. Feldewert?

2 MR. FELDEWERT: Call Mona Binion.

3 MONA L. BINION,

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

6 DIRECT EXAMINATION

7 BY MR. FELDEWERT:

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

10 A. Mona L. Binion, 4824 Prospect Street, Littleton,
11 Colorado, 80123.

12 Q. And by whom are you employed and in what
13 capacity?

14 A. I'm employed by McElvain Oil and Gas Properties,
15 Inc., and I'm land manager.

16 Q. And have you previously testified before this
17 Division?

18 A. Yes, I have.

19 Q. And have your credentials as an expert in
20 petroleum land matters been accepted and made a matter of
21 public record?

22 A. Yes, they have.

23 Q. Are you familiar with the Application that has
24 been filed in this case?

25 A. Yes, I am.

1 Q. And are you familiar with the status of the lands
2 in the subject area?

3 A. Yes.

4 MR. FELDEWERT: I would tender Ms. Binion as an
5 expert in petroleum land matters.

6 EXAMINER STOGNER: Ms. Binion, how long have you
7 been working with McElvain?

8 THE WITNESS: A year.

9 EXAMINER STOGNER: A year. Okay, so qualified.

10 Q. (By Mr. Feldewert) Would you please state for
11 the Examiner what McElvain seeks with this Application?

12 A. McElvain seeks an order pooling all the mineral
13 interests from the base of the Pictured Cliffs to the base
14 of the Mesaverde formation under the south half of Section
15 25, Township 23 North, Range 3 West, for all formations and
16 pools developed on 320-acre spacing, which includes the
17 Blanco-Mesaverde Gas Pool, to be dedicated to our Naomi
18 Number 1 well, located at 1650 feet from the south line,
19 450 feet from the west line, as a re-entry of the
20 previously known Wynona Number 1 well, which was previously
21 drilled as an oil well in the West Lindrith-Gallup-Dakota
22 Oil Pool as a standard location but was not commercial.

23 Q. Is the present location of the well standard for
24 a Mesaverde gas well?

25 A. No, it is not a standard location for a Mesaverde

1 gas well. In December this Division administratively
2 approved the unorthodox location for this re-entry and
3 recompletion of the Mesaverde formation.

4 Q. Is that what has been marked as McElvain Exhibit
5 Number 1?

6 A. Yes.

7 Q. Is that Order Number ~~NO. 1538~~?

8 A. That's correct.

9 Q. Does it reference a spacing unit for the proposed
10 well?

11 A. The referenced order reflects a spacing unit
12 known as the south half, approved for the Mesaverde
13 completion.

14 Q. South half of Section 25?

15 A. South half of Section 25, 23 North, 3 West.

16 Q. Okay. ~~So the only issue before the Division~~
17 ~~today in the pooling application, is that correct?~~

18 A. That's correct.

19 Q. Okay. Would you then identify and review for the
20 Examiner McElvain Exhibit Number 2?

21 A. McElvain Exhibit Number 2 is a plat of the
22 Application area which represents the ownership on a tract
23 basis of the formations that are subject to this
24 Application. It shows the status of the acreage in the
25 south half as fee and federal, and it identifies the

1 ownership breakdown showing McElvain with 100-percent
2 ownership in the southwest quarter and partial ownership in
3 the southeast quarter.

4 Q. How many interest owners are subject to this
5 pooling Application today?

6 A. There are two owners subject to this pooling
7 Application.

8 Q. Would you turn to McElvain Exhibit Number 3,
9 identify it and explain it to the Examiner, please?

10 A. McElvain Exhibit Number 3 is a combination of the
11 working interest owners under the south half in the
12 formations that are the subject of this Application,
13 combined on a tract basis to form 100-percent working
14 interest in the south half, and it shows that two parties
15 have voluntarily committed their interest and two parties
16 have not. The two parties voluntarily committing interest are
17 McElvain Oil and Gas Limited Partnership and Dugan
18 Production Corporation, and the uncommitted parties are
19 D.J. Simmons and Forcenergy Onshore, Inc.

20 Q. Has McElvain been able to locate all the interest
21 owners in this proposed spacing unit?

22 A. Yes.

23 Q. Why don't you summarize your efforts to obtain
24 voluntary joinder of the two interest owners that are
25 subject to this pooling Application?

1 A. The first letter that was sent out was dated
2 November 10th, 2000. The proposal letter was sent to D.J.
3 Simmons and to two other parties whom we later determined
4 did not hold an interest in this tract.

5 Q. Has that been marked McElvain Exhibit Number 4?

6 A. That's Number 4.

7 Q. Okay, and why don't you turn now to, then,
8 McElvain Exhibit Number 5? Identify that and explain it to
9 the Examiner.

10 A. McElvain Exhibit Number 5 is a letter that was
11 sent to the same parties that the November 10th letter was
12 sent to, and it was sent out at the request of 3TEC Energy.
13 It was a letter that transmitted the completion procedure,
14 which was a detailed description of the procedure for the
15 proposed operation.

16 Q. And were both McElvain Exhibit Number 4 and
17 McElvain Exhibit Number 5 -- these November, 2000, letters
18 -- sent to D.J. Simmons?

19 A. Yes, they were.

20 Q. And were you at that time proposing a
21 recompletion with a south-half spacing unit?

22 A. Both letters proposed the south-half spacing unit
23 dedication for the recompletion.

24 Q. Okay. Would you then turn to McElvain Exhibit
25 Number 6, identify that and review that for the Examiner,

1 please?

2 A. McElvain Exhibit Number 6 is a letter dated
3 December 7th, 2000. There was a proposal letter sent to
4 the other parties pursuant to the corrected title report,
5 which included Dugan Production Company, which has an
6 interest in the southeast quarter. It included GWR
7 Operating, which is a predecessor to Forcenergy, Inc., and
8 Herbert Kai, whose interest McElvain has since purchased.

9 Q. This was the same proposal letter that you had
10 sent to D.J. Simmons back in November of 2000; is that
11 right?

12 A. That's correct.

13 Q. Okay. Then would you then turn to McElvain
14 Exhibit Number 7, identify that and review that for the
15 Examiner, please?

16 A. McElvain Exhibit Number 7 is a letter sent
17 February 27th, 2001, which was sent after an exhaustive
18 research, telephone calls, to determine the proper
19 successor to the GWR interest in the southeast quarter.

20 Pursuant to telephone conversations that I've had
21 with Chuck Rasey at Forest Oil, we were advised to send the
22 proposal down to Forest Oil for the account of Forcenergy
23 Onshore, Inc.

24 Q. So you have the letter now to Forcenergy Onshore,
25 who owns an interest in the southeast quarter, and we have

1 the letter, then, that you sent to Dugan Production
2 Company, who owns an interest in the southeast quarter --

3 A. That's correct.

4 Q. -- and we have the letters that you sent to D.J.
5 Simmons, who also own an interest in the southeast quarter;
6 is that correct?

7 A. Yes, that's right.

8 Q. Okay. Why don't you then explain to the Examiner
9 what the current status of your discussions with Forcenergy
10 Onshore, Inc., are?

11 A. Currently Forcenergy has advised us that they are
12 interested in participating in our proposed operation, but
13 they have not completed their review, and we have not
14 received any final paperwork from them.

15 Q. Okay, and I know D.J. Simmons is represented here
16 today, but what's your understanding of D.J. Simmons'
17 position with respect to this Application?

18 A. It's our understanding that they object to the
19 south-half spacing unit, that they are in favor of an east-
20 half spacing unit.

21 Q. Now, McElvain has an interest in the southeast
22 quarter; is that correct?

23 A. That's correct.

24 Q. Okay. Has any of the other interest owners in
25 the southeast quarter taken the same position as D.J.

1 Simmons?

2 A. No, they have not.

3 Q. Would you turn to McElvain Exhibit Number 8,
4 identify that and review that for the Examiner, please?

5 A. McElvain Exhibit Number 8 is the letter from
6 Dugan Production Company dated April 2nd, which was sent to
7 this Division, indicating that they have elected to join in
8 the project proposed originally by McElvain in the south-
9 half spacing unit. Dugan agrees that it makes sense to
10 reduce the cost of the Mesaverde test by using an existing
11 wellbore. Dugan agrees that it makes sense to share the
12 risk of a Mesaverde test among the interest owners in
13 Section 25.

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

17 A. Yes, we do.

18 Q. Is McElvain Exhibit Number 9 an affidavit
19 prepared by my office indicating that notice of this
20 hearing was provided to the parties that are subject to the
21 pooling Application?

22 A. Yes.

23 Q. Were McElvain Exhibits 1 through 9 prepared by
24 you or compiled under your direction and supervision?

25 A. Yes, they were.

1 MR. FELDEWERT: Mr. Examiner, I would move the
2 admission into evidence of McElvain Exhibits 1 through 9.

3 EXAMINER STOGNER: Exhibits 1 through 9, if
4 there's no objection, will be admitted into evidence.

5 MR. HALL: No objection.

6 MR. FELDEWERT: That concludes my examination of
7 this witness.

8 EXAMINER STOGNER: Thank you, Mr. Feldewert.

9 Mr. Hall, your witness.

10 CROSS-EXAMINATION

11 BY MR. HALL:

12 Q. Ms. Binion, let me ask you about your efforts to
13 communicate with D.J. Simmons in this case. If you would
14 look at your Exhibit 4, that's your letter of November
15 10th, 2000. That was your initial contact proposing the
16 well to Simmons; is that correct?

17 A. That's correct.

18 Q. And the only other letter addressed to Simmons
19 was your November 20th letter, Exhibit 5, correct?

20 A. The November 20th letter was sent, which included
21 the completion procedure. There was another letter that
22 was not entered as an exhibit, but there was another letter
23 that submitted an operating agreement, which was in
24 February or March of this year. That was an additional
25 correspondence that was sent down to them, but that's not

1 submitted as an exhibit.

2 Q. Now, when you initially proposed the well to
3 Simmons on November 10th, isn't it true that McElvain had
4 not assembled its drilling and completion procedures yet at
5 that time?

6 A. I can't speak to that because I do not prepare
7 the drilling and completion procedures, so I can't tell you
8 exactly when they were put in writing. But yes, we had
9 prepared the plan for what we wanted to do.

10 Q. So to your knowledge -- or maybe you do not have
11 knowledge whether the AFE that was transmitted by the
12 November 10th letter was based on a final drilling and
13 completion procedure?

14 A. I really can't speak to that, that is not --

15 Q. Do you have another witness here that can --

16 A. Yes.

17 Q. -- answer that today? Who would that be?

18 A. That would be John Steuble.

19 Q. Okay. The November 20th letter, that was sent in
20 response to an inquiry from Simmons to you; is that
21 correct?

22 A. Excuse me, the November 20th?

23 Q. Yes.

24 A. My understanding -- I had personally been
25 requested, the completion procedure from 3TEC Energy, which

1 was one of the original parties who had received the
2 proposal.

3 Q. That was in response to an inquiry from someone
4 else --

5 A. That's correct.

6 Q. -- otherwise it would not have been sent; is that
7 right?

8 A. That's correct.

9 Q. Ms. Binion, what acreage was dedicated to the
10 Wynona well?

11 A. The southwest quarter.

12 Q. Do you know what spacing was available for that
13 well?

14 A. It's my understanding it was the southwest
15 quarter. I was not around when that well was drilled. It
16 was plugged and abandoned before I came to work for
17 McElvain. My understanding, it was 160-acre spacing for
18 the Gallup.

19 Q. And does McElvain own 100 percent of the
20 southwest quarter?

21 A. Yes, McElvain owns 100 percent of the southwest
22 quarter.

23 Q. And what is McElvain's ownership in the northwest
24 quarter of that same section?

25 A. 100 percent.

1 Q. Couldn't McElvain have dedicated a west-half unit
2 to the Naomi?

3 A. That's certainly a possibility, yes, we could
4 have dedicated the west half.

5 Q. And why didn't it do so?

6 A. Its choice was based on the fact that it wanted
7 to share the risk of the test, as well as closely identify
8 a drainage pattern for a geologic position as we could. So
9 for those combination of reasons we chose the south half.

10 Q. Would you agree that by dedicating a west-half
11 unit to the well, which McElvain owns 100 percent of,
12 McElvain could have avoided the administrative, overhead
13 and legal expense associated with this compulsory pooling
14 proceeding?

15 A. I assume that would have been the case, yes.

16 Q. As a landman familiar with compulsory pooling
17 proceedings before the New Mexico Oil Conservation
18 Division, can you point to any provision in the compulsory
19 pooling statute that allows risk as a basis for pooling
20 another interest party? In other words, where is it in the
21 compulsory pooling statute that authorizes an operator to
22 seek to mitigate its risk in drilling a well by pooling
23 another interest owner?

24 A. I would have to defer to our attorney to give me
25 better advice on that. I couldn't tell you specifically.

1 Q. So you don't know of any such provision in the
2 compulsory pooling statute?

3 A. I can't tell you that there is or there isn't.
4 I'm not familiar enough with the actual wording within the
5 provision to be able to tell you that, so no.

6 Q. So the record is clear, you do agree with me that
7 the primary motivation for dedicating a south-half unit to
8 the Naomi well was risk mitigation?

9 A. Primary could be, yes. Yes.

10 Q. What is the prevailing spacing pattern for the
11 Blanco-Mesaverde in the area, if you know?

12 A. I am not aware that there is a prevailing spacing
13 pattern for the Blanco-Mesaverde. I'm not aware that
14 there's much production right here in this specific area,
15 this general vicinity --

16 Q. Does -- I'm sorry?

17 A. -- for this particular zone, for Blanco-
18 Mesaverde, I don't think that there has been a pattern
19 established in this immediate vicinity.

20 Q. Does McElvain offer another Blanco-Mesaverde well
21 scenario?

22 A. Yes, we do.

23 Q. And can you tell us, if you know, how those
24 spacing units are oriented to those --

25 A. I can tell you that some are north-south and some

1 are east-west. I can tell you they go both ways --

2 Q. So -- I'm sorry.

3 A. -- 320-acre north-south in some cases, and 320-
4 acre east west. So there's laydown and standup both.

5 Q. All right, so geology wasn't necessarily the
6 prime consideration in orienting --

7 A. Geology is a consideration in each one of them.
8 Geology, land, ability, surface restrictions. There's a
9 lot of different factors that are taken into account in
10 forming the spacing patterns.

11 Q. Including mitigation of risk?

12 A. Certainly.

13 Q. When did McElvain acquire the Kai interest?

14 A. Recently, in the last week.

15 Q. All right.

16 A. We had been negotiating for the purchase of that
17 interest for several months.

18 Q. Did McElvain acquire the Kai interest for its
19 Gallup-Dakota potential?

20 A. No.

21 Q. Did it evaluate the Gallup-Dakota potential in
22 the southeast quarter?

23 A. That I'm not qualified to answer. I can tell you
24 that we previously had Gallup-Dakota production in the
25 Wynona Number 1 well and it was uneconomic and it was

1 plugged. I can say that. I can't tell you whether or not,
2 you know, from a technical standpoint, if that can make or
3 break the southeast quarter. I'm not qualified to answer
4 that.

5 MR. HALL: Nothing further, Mr. Examiner.

6 EXAMINER STOGNER: Any redirect?

7 MR. FELDEWERT: No, Mr. Examiner.

8 EXAMINATION

9 BY EXAMINER STOGNER:

10 Q. This Forcenergy Onshore, Inc., okay, I'm losing
11 track on that. When did you first find out that they had
12 interest in this acreage?

13 A. It was December 7th, we received an updated title
14 report. We submitted a proposal to the corrected owners,
15 one of which was GWR Operating, Inc. And GWR Operating,
16 Inc., corporately eventually became Forcenergy Onshore,
17 Inc., through various mergers down a chain of events, and
18 it was a considerable amount of effort to find out that
19 that was the end result of that corporate chain of title.

20 And when we identified it was Forcenergy Onshore,
21 Inc., my knowledge of industry events took me to Forest Oil
22 who I was aware had purchased Forcenergy, Inc. I inquired
23 to see if Forcenergy Onshore, Inc., was acquired along with
24 the Forcenergy, Inc., acquisition, and at that point, which
25 wasn't until at that point February that Forest Oil

1 themselves, who is the custodian of that interest, was
2 contacted -- But GWR, who was the title owner, who is, you
3 know, shown in the county records as owning that title, was
4 contacted back in December. Well, attempts were made to
5 contact them. Our letters continued to come back.

6 Q. The GWR letter and then the --

7 A. Right. And that initial contact was never
8 successful because the letters kept coming back to us
9 unaccepted because the address for GWR no longer existed at
10 that location in Houston, Texas. So we continued to, you
11 know, attempt to locate who was the custodian of that
12 interest, which led us to Forest.

13 Q. Just down the street.

14 A. Correct. Small world.

15 Q. Now, have you talked to anybody at Forcenergy?

16 A. Yes, I've been in contact with them since that
17 point, and they've been quite interested in the operation
18 that we proposed.

19 They said they were considering joining in the
20 proposal, and one way or another they would support us if
21 they wouldn't join, but they had not made a decision at the
22 point that we found ourselves at this hearing.

23 Q. And who have you been discussing this with at
24 Forcenergy?

25 A. There is a gentleman by the name of Chuck Rasey

1 who is the land manager with Forest Oil, and then there is
2 a gentleman -- and his name escapes me at this point -- who
3 works for Chuck, who is the landman that is responsible for
4 this area.

5 Q. Okay.

6 A. And I've talked to that landman and Chuck Rasey
7 approximately six or seven times in the last three months,
8 or however many months that has been since February.

9 Q. Okay, when I look at your Exhibit Number 2, the
10 fee acreage that comprises the southwest, who is the
11 royalty interest in this 160-acre tract?

12 A. There's Don Parsons, James Fullerton and Hunt
13 Walker.

14 Q. They all own an undivided interest, these
15 three --

16 A. They're each a third, a third, and a third. I
17 believe. I did not bring that ownership record with me. I
18 could --

19 Q. Okay, now there was mention about McElvain having
20 100 percent of the working interest in the northwest. Who
21 is the royalty interest owner in the northwest?

22 A. The same royalty owners. The lease covers the
23 west half.

24 Q. The west half. How about the northeast quarter?
25 Do you know anything about it?

1 A. The northeast quarter is owned by D.J. Simmons.
2 It is the same oil and gas -- the same federal lease that
3 covers the north half of the southeast.

4 Q. Who is the fee owner for the south half of the
5 southeast quarter?

6 A. A family, Edwards. The first name escapes me,
7 but it's an Edwards family.

8 Q. Edwards family. Who has the lease with the
9 Edwards family?

10 A. Forcenergy Onshore, Inc., has 50 percent,
11 McElvain has 37.5 and Dugan has 12.5.

12 Q. Do you know who drilled the Naomi Com Well Number
13 1?

14 A. Well, the Naomi Com is the new well name. The
15 Wynona Number 1 was drilled by McElvain. That was the
16 original well name, if that's your question.

17 Q. Yeah, who --

18 A. Yes.

19 Q. -- who drilled the well?

20 A. McElvain drilled the well.

21 Q. Okay, when did McElvain drill the well? I'll ask
22 somebody else --

23 A. In 1988.

24 Q. -- if you don't know, that's fine.

25 EXAMINER STOGNER: Okay, I have no other

1 questions of this witness.

2 Are there any other questions?

3 MR. HALL: One briefly, Mr. Examiner.

4 FURTHER EXAMINATION

5 BY MR. HALL:

6 Q. Ms. Binion, as a landman do you know of any
7 reason why McElvain could not apply a 160-acre nonstandard
8 spacing and proration unit for a Blanco-Mesaverde well
9 dedicated to the southwest quarter?

10 A. It would be in violation of the existing spacing
11 ruling right now.

12 Q. I guess my question was, do you know any reason
13 why you could not apply for a nonstandard unit?

14 A. I guess I really don't know. I don't know of any
15 reason because I'm not familiar enough with the process,
16 but I know of no reason why we could not.

17 Q. As far as you know, McElvain has no plans to
18 develop the Gallup-Dakota in the southeast quarter under
19 its lease acreage there?

20 A. As of this point, McElvain has no plans to
21 develop the Gallup, no.

22 MR. HALL: Nothing further, Mr. Examiner.

23 EXAMINER STOGNER: Thank you, you may be excused.

24 MR. FELDEWERT: Mr. Examiner, we would call Jane
25 Estes-Jackson.

1 JANE ESTES-JACKSON,
2 the witness herein, after having been first duly sworn upon
3 her oath, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. FELDEWERT:

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

8 A. Jane Estes-Jackson, 5265 Beach Street, Arvada,
9 Colorado, 80002.

10 Q. And by whom are you employed and in what
11 capacity?

12 A. I'm currently employed by McElvain Oil and Gas as
13 a geologist.

14 Q. Have you had the opportunity to previously
15 testify before this Division?

16 A. No, I have not.

17 Q. Okay. Why don't you please summarize for the
18 Examiner your educational background?

19 A. I received a master of science in geology from
20 Colorado School of Mines in 1992 and a bachelor of science
21 in geology from the University of Southwestern Louisiana in
22 1987.

23 Q. And would you please then summarize for the
24 Examiner your work experience since graduation in 1992?

25 A. I've spent the past two years working for

1 McElvain Oil and Gas.

2 Prior to that I spent about four and a half years
3 working for Snyder Oil Corporation. I also worked for
4 about eight months on a contract basis at Whiting Petroleum
5 Corporation, and I started my career at Garrity Oil and
6 Gas.

7 Q. In each of those job opportunities you just
8 described, were you employed as a geologist?

9 A. Yes.

10 Q. Okay. And have your duties and responsibilities
11 over that time included the San Juan Basin of New Mexico?

12 A. Yes, they have.

13 Q. And are you familiar with the Application that
14 has been filed in this case?

15 A. Yes.

16 Q. Have you conducted for the Examiner a geologic
17 study of the area that is the subject of this Application?

18 A. Yes, I have.

19 Q. And are you prepared to share the results of that
20 work with the Examiner?

21 A. Yes, I am.

22 MR. FELDEWERT: Mr. Examiner, I would tender Ms.
23 Jackson as an expert witness in petroleum geology.

24 EXAMINER STOGNER: Any objection?

25 MR. HALL: Stipulate to her qualifications.

1 EXAMINER STOGNER: As a geologist?

2 MR. HALL: That's how she's tendered.

3 EXAMINER STOGNER: That's as she's tendered, and
4 that's what I'm accepting as her being an expert.

5 Q. (By Mr. Feldewert) Would you then identify for
6 the Examiner the target of McElvain's proposed
7 recompletion?

8 A. The target of McElvain's proposed recompletion is
9 the Mesaverde formation in the Blanco-Mesaverde Gas Pool.

10 Q. And have you prepared an exhibit?

11 A. Yes, I have.

12 Q. Would you then turn to McElvain Exhibit Number
13 10, identify that and review that for the Examiner, please?

14 A. McElvain Exhibit Number 10 is an isopach map that
15 shows net sand greater than 8 percent for the Mesaverde
16 formation in the area of the Naomi Number 1 well.

17 Q. Okay, and what does your geologic study of this
18 area show with respect to the Mesaverde formation?

19 A. It shows a general east-to-west trend, a
20 thickness of sand in the area of the Naomi. It thins to
21 both the north and the south.

22 Q. Is there a good thick reservoir-quality sand
23 throughout most of Section 25?

24 A. Yes, there is.

25 Q. What does your study show with respect to the

1 existing wellbore in Section 25, which is identified as the
2 Naomi Number 1?

3 A. It shows that there is as good a chance of
4 successful completion in the Mesaverde in this wellbore as
5 there is anywhere else in Section 25.

6 Q. In your opinion, will the granting of this
7 Application afford the interest owners in the south half of
8 Section 25 the opportunity to recover and receive without
9 unnecessary expense their just and fair share of the gas
10 underlying their property?

11 A. Yes.

12 Q. In your opinion, will the granting of this
13 Application be in the best interests of the prevention of
14 waste and the protection of correlative rights?

15 A. Yes.

16 Q. Was McElvain Exhibit Number 10 prepared by you
17 and compiled under your direction?

18 A. Yes, it was.

19 MR. FELDEWERT: Mr. Examiner, I would move the
20 admission into evidence of McElvain Exhibit Number 10.

21 EXAMINER STOGNER: Exhibit Number 10 will be
22 admitted into evidence.

23 MR. FELDEWERT: And that concludes my examination
24 of this witness.

25 EXAMINER STOGNER: Mr. Hall, your witness.

CROSS-EXAMINATION

BY MR. HALL:

Q. Ms. Jackson, in your opinion is there any potential for Gallup-Dakota production in the southeast quarter of Section 25?

A. In my opinion there is limited potential for Gallup-Dakota production in the southeast quarter.

Q. But you agree, then, that there is some potential?

A. There is some potential.

Q. And I believe you were present when you heard the testimony of Ms. Binion that McElvain had no plans to develop the Gallup-Dakota in the southeast?

A. That is correct.

Q. In your opinion as a geologist, would the failure to recover those potential Gallup-Dakota reserves result in waste?

A. No.

Q. Explain that answer.

A. It is our opinion that if there are Gallup-Dakota reserves in the southeast quarter of Section 25, they are not economic.

Q. Would they be economic if they were produced in conjunction with the Mesaverde reserves?

A. I can't speak to that.

1 Q. If you can say, Ms. Jackson, does formational
2 fracturing in the area affect Mesaverde production?

3 A. In all likelihood, yes.

4 Q. Are you familiar with the existence or extent of
5 formational fracturing?

6 A. In the Mesaverde?

7 Q. In the Mesaverde.

8 A. Not in this particular area.

9 Q. Are you familiar with the typical permeability,
10 say, in the Mesaverde in this area?

11 A. I can't speak to that. Our engineer could speak
12 to that better than I could.

13 Q. All right. Based on what you do know, which
14 would have more important bearing on the drainage pattern
15 from the Mesaverde, from the Naomi well? Would it be
16 permeability or fracture orientation?

17 A. In my opinion, it would be a combination of both.

18 Q. Which would be more important?

19 A. In the Mesaverde?

20 Q. Yes.

21 A. Strictly? You can argue that fractures enhance
22 permeability, so they're not two entirely separate
23 arguments, in my opinion.

24 Q. Would fracturing in the formation, in the
25 Mesaverde, result in elliptical drainage patterns?

1 A. It could.

2 Q. Have you undertaken a study of any of the
3 literature done evaluating formational fracturing in the
4 Blanco-Mesaverde formation in this area?

5 A. Not in the Mesaverde. I've looked at in other
6 formations, but not in the Mesaverde.

7 Q. All right. Do you know that it exists for --

8 A. Yes, I do.

9 Q. The Naomi Number 1 in its unorthodox location, in
10 your view, is it better situated to drain reserves from the
11 south half or the west half of Section 25?

12 A. In my opinion, I would say the south half.

13 Q. And what's the basis of your opinion?

14 A. The trend goes east-west on the isopach.

15 Q. What other data or information would you evaluate
16 to make a determination whether that well would drill west-
17 half as opposed to south-half reserves?

18 A. I would think that that would -- I would talk to
19 the engineer about it, because I think that's an
20 engineering issue.

21 Q. All right. You don't feel that you're qualified
22 to answer?

23 A. That's correct.

24 Q. Is it your understanding from your employment as
25 a geologist at McElvain that geology was not the primary

1 consideration for dedicating a south-half unit to this
2 well?

3 A. Yes.

4 MR. HALL: Nothing further.

5 EXAMINER STOGNER: Any redirect?

6 MR. FELDEWERT: No.

7 EXAMINATION

8 BY EXAMINER STOGNER:

9 Q. If the Naomi Number 1 turns out to be a
10 commercial producer in the Blanco-Mesaverde, where do you
11 feel would be the best place for the infill well, or for a
12 second well in that section to be placed?

13 A. In the southeast quarter.

14 Q. And why is that?

15 A. Because I think the trend goes east-west, based
16 on the limited subsurface data that we have.

17 Q. On Exhibit Number 10, how was the information
18 obtained? Was this -- any 3-D seismic involved --

19 A. No --

20 Q. -- or was this just the well?

21 A. -- it's strictly from log data, porosity logs.

22 Q. Now, is this the only well control you have, is
23 what's shown on the map? Or are there any other wells out
24 there that --

25 A. The wells that are shown on this map are all

1 Mesaverde penetrations in the area. So the Pictured Cliffs
2 wells and things like that are not shown.

3 Q. Okay, are there some Pictured Cliffs in shallower
4 zones -- wells out there?

5 A. Not so much in this nine-section area, but in
6 adjacent areas.

7 EXAMINER STOGNER: You may be excused, if there's
8 no other questions.

9 MR. FELDEWERT: No, Mr. Examiner.

10 EXAMINER STOGNER: Thank you.

11 MR. FELDEWERT: We would then call John Steuble.

12 JOHN D. STEUBLE,

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

15 DIRECT EXAMINATION

16 BY MR. FELDEWERT:

17 Q. Mr. Steuble, could you please state your name and
18 address for the record?

19 A. My name is John Steuble, address is 6522 South
20 Hoyt Way, Littleton, Colorado 80123.

21 Q. By whom are you employed and what capacity?

22 A. McElvain Oil and Gas Properties, Incorporated,
23 and their engineering manager.

24 Q. Mr. Steuble, have you previously testified before
25 this Division and had your credentials as a petroleum

1 engineer --

2 A. Yes, I have.

3 Q. -- accepted and made a matter of record?

4 A. Yes, I have.

5 Q. Are you familiar with the Application filed in
6 this case?

7 A. Yes, I am.

8 Q. Have you studied the area which is the subject of
9 this Application?

10 A. Yes, sir.

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

13 A. Yes, I am.

14 MR. FELDEWERT: Mr. Examiner, are the witness's
15 qualifications acceptable?

16 EXAMINER STOGNER: Any objection?

17 MR. HALL: No objection.

18 EXAMINER STOGNER: So qualified.

19 Q. (By Mr. Feldewert) Mr. Steuble, are you prepared
20 to make a recommendation to the Examiner as to the risk
21 penalty that should be assessed against the nonconsenting
22 interest owners for McElvain's proposed recompletion in the
23 Mesaverde formation?

24 A. Yes, I am.

25 Q. And what would that recommendation be?

1 A. That recommendation would be 200 percent.

2 Q. And briefly, on what do you base this
3 recommendation?

4 A. Briefly, I feel that completing the Mesaverde,
5 there's no real bailout zones uphole that we could go
6 after. The Pictured Cliff in the area hasn't been that
7 productive, and the sparse Mesaverde production in the area
8 makes this well virtually a wildcat.

9 Q. Okay, why don't you just briefly explain for the
10 Examiner the history of this well?

11 A. ~~It was drilled by McElvain in the late~~
12 ~~1980s.~~ It was completed as a Gallup producer. They
13 were ~~planning~~ the wells in Section 35, which showed
14 fractured Gallup production, some of them, and McElvain had
15 the lease here so they went ahead and completed it as a
16 Gallup producer.

17 ~~The well~~ proved to be not an economic success and
18 has ~~subsequently~~ been plugged. ~~It was plugged~~ about two or
19 three years ~~ago~~, I believe.

20 Q. ~~Would McElvain Exhibit Number 11 show the Gallup~~
21 ~~production in the area?~~

22 A. Yes, what Exhibit 11 shows is a nine-section area
23 around the Naomi well with the perforations for the
24 individual wells shown and the cumulative productions, gas
25 being in the red numbers and oil being in the green

1 numbers.

2 Q. You had some irregular sections shown on there;
3 is that right?

4 A. Yes, to the east the row of sections in the next
5 township are irregular and are smaller than normal.

6 Q. Okay, now you show the plugged well that you
7 intend to re-enter, which is marked Naomi Number 1. It has
8 Gallup production of what, 6760 to 7056; is that right?

9 A. Yes, those were the perforations.

10 Q. Is that production commercial?

11 A. No, it was not.

12 Q. Was there any other noncommercial producers in
13 the area?

14 A. In Section 30 to the east, it could be argued
15 that 377,000 MCF would not be a commercial well. I'm sure
16 there's some that can argue that it would be, but
17 throughout the area you can see that the cumulative gas
18 production and cumulative oil production is marginal in
19 many wells.

20 Q. So as you found out, is the Gallup risky in this
21 area?

22 A. Very risky.

23 Q. All right. Now, your primary target is the -- Or
24 your recompletion target is the Mesaverde; is that right?

25 A. Yes, sir.

1 Q. Why don't you turn to McElvain Exhibit Number 12,
2 identify that for the Examiner and review it, please?

3 A. Exhibit 12 is again a nine-section area showing
4 the proposed location of the Naomi Number 1 and the other
5 Mesaverde completions in the area. There's been one
6 attempt, it recovered 19,000 MCF, and I believe that well
7 is not an active well anymore.

8 Q. Would you consider that well a successful or a
9 marginal well?

10 A. That would be very marginal.

11 Q. Would you then identify and review McElvain
12 Exhibit Number 13?

13 A. Exhibit Number 13 is again a well showing the
14 Mesaverde wells in the area. This one shows initial IPs
15 and cumulative gas production on a larger scale, and what
16 it does show is the sparseness of the wells in relation to
17 the Naomi Number 1.

18 Q. Would you consider your effort somewhat of a
19 wildcat effort here?

20 A. Very much so.

21 Q. Do you believe that there is a chance that
22 McElvain's proposed re-entry and recompletion in this well
23 in the Mesaverde formation will not be a commercial
24 success?

25 A. Yes, I do.

1 Q. Would you then pull out McElvain Exhibit Number
2 4, which would be the November 10th, 2000, letter? I
3 believe there's an AFE that's attached to that exhibit?

4 A. Yes.

5 Q. Okay, looking at McElvain Exhibit Number 4, would
6 you just review the recompletion costs?

7 A. The total recompletion cost, both tangible and
8 intangible, is estimated to be \$364,150.

9 Q. Has McElvain recompleted other wells in the
10 Mesaverde formation in the San Juan Basin?

11 A. Yes, we have.

12 Q. Are these costs that's reflected on this AFE, are
13 they in line with what has been charged by McElvain and
14 other operators in the area for similar recompletion?

15 A. Yes, they are. I might add, though, that I feel
16 that the costs as of today, because they were done last
17 September, are probably low, and I would expect a 15- to
18 20-percent increase over these estimates.

19 Q. Okay. Have you made an estimate of the overhead
20 and administrative cost while recompleting this well and
21 also while producing this well if your recompletion efforts
22 are successful?

23 A. Yes, sir.

24 Q. And what are those figures?

25 A. It's \$5455.67 a month for drilling and \$545.55

1 per month for producing.

2 Q. Is there a joint operating agreement for this
3 well?

4 A. Yes, there is.

5 Q. Has it been accepted by, I believe, Dugan, who
6 has also agreed to participate in this project?

7 A. Yes, sir.

8 Q. Are these costs in line with the rates that are
9 in the JOA?

10 A. Yes, they are.

11 Q. And do you recommend that these same drilling and
12 producing overhead and administrative rates be approved for
13 this well?

14 A. Yes, I do.

15 Q. Are there COPAS guidelines that are attached to
16 the JOA that's been signed by other working interest owners
17 in this well?

18 A. Yes.

19 Q. And does McElvain request that the overhead
20 figures approved by the Division be subject to adjustment
21 in accordance with those COPAS guidelines?

22 A. Yes, we do.

23 Q. Does McElvain seek to be designated operator of
24 the proposed well?

25 A. We do.

1 Q. And it would be McElvain Oil and Gas Properties,
2 Inc., correct?

3 A. Yes, sir.

4 Q. And in your opinion will the granting of this
5 Application prevent waste and protect correlative rights?

6 A. Yes.

7 Q. Were McElvain Exhibits 11, 12 and 13 prepared by
8 you or compiled under your direction?

9 A. Yes, they were.

10 MR. FELDEWERT: Mr. Examiner, I would then move
11 the admission into evidence of McElvain Exhibits 11, 12 ad
12 13.

13 EXAMINER STOGNER: Any objections?

14 MR. HALL: No objection.

15 EXAMINER STOGNER: Exhibits 11, 12 and 13 will be
16 admitted into evidence at this time.

17 MR. FELDEWERT: And that concludes my examination
18 of this witness.

19 EXAMINER STOGNER: Let me make sure I get these
20 overhead figures. \$5455.67; is that correct?

21 THE WITNESS: Yes.

22 EXAMINER STOGNER: Five thousand, four hundred
23 and fifty-five dollars and sixty-seven cents. On the
24 producing is \$545.55?

25 THE WITNESS: Correct.

1 EXAMINER STOGNER: Thank you.

2 MR. FELDEWERT: To the penny.

3 EXAMINER STOGNER: Mr. Hall, your witness.

4 MR. HALL: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. HALL:

7 Q. Mr. Steuble, if I could refer you to your Exhibit
8 4 and the AFE that's attached to that, I wanted to ask you
9 about the \$135,000 line item for the stimulation acid and
10 frac job there.

11 A. Yes, sir.

12 Q. In your view, is that in line with what's being
13 charged in the area for similar stimulation jobs on other
14 Mesaverde wells?

15 A. Well, sir, in the last three years we've probably
16 done about 35 or 40 of these, and I can honestly say that's
17 probably cheap right now.

18 Q. Okay, can you give us some detail about the frac-
19 stimulation plan?

20 A. Some --

21 Q. What do you plan to do? Volume, rates, weights,
22 anything like that.

23 A. What we do is, we perforate limited entry. I
24 usually pick the -- Because there's different frac
25 gradients within the Mesaverde itself, we usually stimulate

1 the Point Lookout, the Menefee and the Cliff House
2 individually. We perforate them with a limited-entry-type
3 gun, and depending on the net feet of pay we have, we
4 calculate our holes to be proportionate, given the net for
5 the individual sand lobes.

6 We then take -- We try to hold our perforation
7 density to somewhere around 30, and we then take and
8 multiply the number of net feet of pay -- not the
9 perforation holes but the net feet of pay -- by 1500 to
10 2000 pounds of sand per net feet of pay, and then we
11 multiply the number of holes by one and a half to two
12 barrels per minute per hole, in order to make sure we're
13 entering all of the holes. And prior to that we do an acid
14 breakdown with a ball sealer to make sure we're open.

15 Q. What do you anticipate the directional
16 orientation of the fracture wings to be?

17 A. Well, I would anticipate the directional
18 orientation to be wherever the stresses are. To my
19 knowledge, no work has been done as far as stress or -- I
20 know what you're getting at, and the work that you're
21 quoting has been more so up on the -- or the work I think
22 you're going to quote -- How's that for anticipation?

23 Q. You never know.

24 A. I never know.

25 The work I'm familiar with concerning fracture

1 orientation has been done in other parts of the Basin.

2 We're on the southeast side of the Basin, and I'm not sure
3 that those same conclusions can be drawn. Have we done any
4 of that type of work? No, we have not.

5 Q. With the size of frac job you anticipate applying
6 to the Naomi, what fracture length do you anticipate will
7 result?

8 A. We hope to get somewhere in the 400- to 500-foot
9 range. But again, I have definite views on fracture
10 simulators. They have proven in the literature to be quite
11 erroneous, so I think -- I don't know long we get -- We've
12 found the more water we've pumped, the better the wells
13 are.

14 Q. Do you anticipate that you fracture tip will
15 extend well into Section 26? Because you have an
16 unorthodox location, by the way.

17 A. Will it extend into Section 25 -- 26? It's
18 possible, I don't know.

19 Q. Do you anticipate that the directional
20 orientation of the fracture will be north-south or east-
21 west, or do you know?

22 A. Down here I don't know. I know conventionally in
23 the other basins, on the papers that have been written, the
24 orientation is either due north and south to north 5 to 15
25 degrees east.

1 Q. Do you have any reason to doubt that those
2 studies would not apply in this area?

3 A. Yes, I do.

4 Q. You're not presenting any evidence to refute
5 those studies today, are you?

6 MR. FELDEWERT: What studies?

7 THE WITNESS: There's been no studies entered
8 that I have to refute. I mean, this is an engineering
9 opinion. You could set another engineer and have a
10 different opinion.

11 Q. (By Mr. Hall) Are you aware of the Burlington
12 Resources studies of fracture orientation in the Blanco-
13 Mesaverde?

14 A. Yes, I am.

15 Q. And is it your opinion that those studies have no
16 validity here?

17 A. No, that's not what I'm saying, sir.

18 Q. What are you saying?

19 A. I'm saying those studies are conducted in the
20 north and -- northern part of the Basin. We are on the
21 very southeast corner of the Basin.

22 Is the Blanco-Mesaverde the same depth at the
23 northern part of the Basin as it is here? No.

24 Is the depositional environment the same? No,
25 sir.

1 Can you make extrapolations across boundaries
2 like that? I don't believe so. That's not good
3 engineering practice.

4 Q. All right. In view of the fact that you have
5 little information to go on, in your opinion is the Naomi
6 well in its unorthodox location better situated to recover
7 work reserves from a west-half unit or a south-half unit?

8 A. In my opinion is it better -- I don't think it
9 matters. I mean, I don't -- I don't know the answer to
10 that. If the fractures are oriented north and south, of
11 course it would be better, you know, west half -- But if
12 the fractures go east and west, then it's the south half.

13 Q. Well in your opinion, which is going to be more
14 determinative of a drainage pattern for the Naomi? Will it
15 be fracture orientation or sandbody orientation?

16 A. I think fracture orientation contributes to the
17 initial production in the pseudo-steady-state portion of
18 the curve, and that usually lasts about five years. When
19 the wells hit their normal decline of five to seven percent
20 across the Basin, then I think it's controlled by matrix
21 porosity.

22 Q. In your experience with other Blanco-Mesaverde
23 wells in the area that McElvain has drilled, do you
24 typically see a circular drainage pattern or an elliptical
25 drainage pattern?

1 A. I don't -- I don't think we've -- First, we don't
2 have any wells that are that old, so are we seeing
3 interference between our wells? The answer is no. So from
4 that I can't really conclude, you know, the drainage
5 pattern. Now, we just -- Being a small operator, we don't
6 spend the money to do all of the tests, so I don't know.

7 Q. In your opinion, is there any potential for
8 Gallup-Dakota reserves in the southeast of 25?

9 A. In my opinion, no, sir.

10 Q. In your opinion, would it be feasible to recover
11 Gallup-Dakota reserves in conjunction with production from
12 another zone?

13 A. No, sir.

14 Q. Can you explain to us why it was McElvain plugged
15 the Wynona well and then just two years later came back and
16 proposed a re-entry at that well? Why was that done?

17 A. I believe we received a request from the State.
18 The Wynona had been shut in for a number of months or
19 years, and I believe we had request a request from the
20 State or some working interest owners, I'm not sure which,
21 to plug the well. So we went ahead and plugged the well.

22 At the same time, to the east of this, about a
23 township away, we were in the starting phases of our
24 drilling program in some sections to the east in which we
25 were pursuing the Mesaverde.

1 As we drilled and completed Mesaverde wells, part
2 of my job or part of what I like to do is go back and look
3 at old wells in the area to see if there's any missed
4 potential. And lo and behold, I drew some correlations
5 between this well and some of the producing wells to the
6 east. But by that time the well had already been plugged.

7 Q. At the time the well was plugged, can you recall
8 what the gas prices and reservoir pressures were?

9 A. Reservoir pressures for --

10 Q. -- Gallup-Dakota?

11 A. -- Gallup-Dakota? I know they were very low,
12 because I don't think we could circulate the well. Gas
13 prices were probably in the dollar to two-dollar range, I
14 would say.

15 Q. All right. Does McElvain have any plans to
16 recover Dakota reserves under its lease in the southeast
17 section of 25?

18 A. No, sir, no plans right now. But again, we are
19 drilling some Dakota wells to the east. As we can draw
20 correlations, there may be a possibility at some point in
21 the future, but today --

22 Q. Do you do know of any reason why McElvain cannot
23 apply to dedicate a nonstandard 160-acre unit to the Naomi
24 well?

25 A. No, I do not.

1 Q. Do you agree with the testimony of the other two
2 McElvain witnesses here that mitigation of risk is a
3 primary consideration in dedicating a south-half unit to
4 the well?

5 A. I don't think mitigation of risk is the exact
6 term. I like to call it sharing of the risk. But more to
7 the point, proving up your neighbor's reserves, that is a
8 consideration, yes.

9 Q. Proving up your neighbor's reserves in the
10 southeast quarter?

11 A. Yes, sir.

12 Q. And you would be proving up McElvain's reserves
13 in the southeast quarter as well, correct?

14 A. To some extent, yes.

15 MR. HALL: I have nothing further, Mr. Examiner.

16 EXAMINER STOGNER: Any redirect?

17 MR. FELDEWERT: Just one question.

18 REDIRECT EXAMINATION

19 BY MR. FELDEWERT:

20 Q. Mr. Steuble, looking at McElvain Exhibit Number
21 11, given the information that you have today, is it your
22 opinion that there are commercially recoverable Gallup-
23 Dakota reserves anywhere in Section 25?

24 A. In my opinion, no.

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

EXAMINATION

BY EXAMINER STOGNER:

Q. What's the current condition of this well?

A. It's plugged and abandoned.

Q. How was it plugged and abandoned, and when?

A. I believe -- I don't have the exact dates, but I believe we plugged it about two years ago, and we plugged it according to state regulations.

Q. And how is that?

A. Well, we put plugs across the Dakota and across the tops of each of the producing formations. And we have inside and outside casing plugs.

Q. Was any casing pulled?

A. No, sir. I believe they had circulated cement to surface, so that wasn't...

Q. What, the intermediate string or production string and surface string? Is this only two strings --

A. Two strings of pipe.

Q. What's the production string? What depth is it?

A. If you'll bear with me, I can get that for you.

We've got 5-1/2, 17-pound set at 8120, and an 8-3/4-inch hole. We had DV tools at 5910 and 3569.

Q. Okay, what depth is the Mesaverde in this well?

A. The interval we want to complete is from 5325 to 5802.

1 Q. How many cement plugs would you have to go
2 through to get to that depth in this well?

3 A. Eight plugs, sir.

4 Q. Eight plugs. Do you have those depths?

5 A. Yes, I do.

6 Q. Can you give them to me?

7 A. Plug one is from the surface to 50 feet.

8 Plug two is 220 feet to 370 feet.

9 Plug three is from 1640 to 1794.

10 Plug four is from 2950 to 3126.

11 Plug five is from 3280 to 3349.

12 Plug six is from 5010 to 5180.

13 Plug seven is from 5970 to 6070, and there's a
14 retainer there, so that would be the...

15 Q. Okay, but you would stop before you get to that
16 retainer?

17 A. Yes, we would.

18 Q. Is there a plug marker on the well?

19 A. Yes, sir. The wellhead was cut off and, you
20 know, just a standard P-and-A marker put on.

21 Q. What's going to have to be done on the surface to
22 put a rig on it to re-enter?

23 A. What we're going to do is, the location is still
24 there. We'll have to set anchors and dig a small pit to
25 circulate the plugs out. We don't know if we're going to

1 drill the pit in -- or drill a pit -- dig a pit, or not.
2 We may use just steel pits.

3 Q. In the old well, was the perforations -- Is that
4 the only perforation that was down in the Gallup-Dakota?
5 Was there any perforations up above in the Mesaverde or --

6 A. No, sir, it's all Gallup-Dakota.

7 Q. Were you around whenever that well was drilled in
8 1988?

9 A. No, I was not.

10 Q. Do you know if they had any problem in 1988?

11 A. The only thing I'm for sure of, because it gave
12 us problems producing it, it was a pumping well, and they
13 had some deviation problems that showed up on our rods and
14 tubing.

15 Q. Do you remember what depth those problems --

16 A. I don't, no.

17 Q. Okay, you request a 200-percent risk penalty.
18 What's the risk? The well's already down and you've
19 already got two strings of casing cemented back to the
20 surface. What's the drilling risk?

21 A. There's no drilling risk. The risk is that the
22 stimulation won't work and we're going to have somewhere
23 upwards of \$400,000 invested in the well, trying to get it
24 to complete and produce.

25 Q. Okay. Now, for the risk penalty that I have to

1 assess, isn't that for drilling a well? Isn't that for
2 drilling the well, the 200 percent? What portion --

3 A. I think that's the common terminology, yes.

4 Q. Yeah, for drilling a well. But you already have
5 a well that's down. What's the risk?

6 A. The risk is the completion is not going to work.

7 Q. Okay, how risky is this completion going to be?
8 I mean, are you going to lose the gun, what's --

9 A. No, if you'll refer to Exhibit 13, you can see
10 there's not a lot of Mesaverde production in the area.

11 Q. Okay.

12 A. The only thing we're going on is well logs. And
13 we know from experience that the well logs are not always a
14 good indicator of -- or an indicator that there's no risk
15 there.

16 Q. Indicator there's no what?

17 A. Risk.

18 Q. So you're asking for a 200-percent risk penalty
19 because that's what you feel is normal operating procedures
20 out here?

21 A. Yes, sir.

22 Q. Do you know what our normal standard is for an
23 existing wellbore, what we give? Do we give 200 percent
24 normally?

25 A. I don't know that I've ever come across that. I

1 don't know.

2 EXAMINER STOGNER: Any other questions?

3 MR. HALL: No, sir.

4 EXAMINER STOGNER: You may be excused.

5 MR. FELDEWERT: Mr. Examiner, I have no further
6 witnesses.

7 I do have a brief closing statement on the only
8 issue which is before you today, and that is McElvain's
9 pooling Application.

10 EXAMINER STOGNER: Okay, we'll hold all of that
11 until his presentation, and then you can both present your
12 closing arguments at that point.

13 Mr. Hall?

14 MR. HALL: I'm ready to proceed.

15 EXAMINER STOGNER: Please do.

16 MR. HALL: Mr. Examiner, at this time I would
17 call Mr. Ed Dunn to the stand.

18 EDWARD B. DUNN,
19 the witness herein, after having been first duly sworn upon
20 his oath, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. HALL:

23 Q. For the record, please state your name, sir.

24 A. My name is Edward B. Dunn.

25 Q. And where do you live and how are you employed?

1 A. 5204 St. Andrews Drive, Farmington, New Mexico.

2 I'm a landman for D.J. Simmons, Inc.

3 Q. All right. Mr. Dunn, have you previously
4 testified before the Division or one of its Examiners and
5 had your credentials accepted as a matter of record?

6 A. I have a been a witness, but it's been many, many
7 years ago, and I can't...

8 Q. Okay, why don't we re-establish your credentials,
9 then?

10 If you would please, give the Hearing Examiner a
11 brief summary of your educational background and your work
12 experience.

13 A. Okay, I have a number of years of college, I have
14 over 30 years in the oil and gas industry.

15 I've been with Simmons, now, a month and a half.
16 I have consulted with them for about four years.

17 Q. And your primary occupation has been as a
18 landman; is that correct?

19 A. Right.

20 Q. And what areas have you worked?

21 A. Wyoming, Montana, North and South Dakota,
22 Colorado, New Mexico, Kansas.

23 Q. Have you testified before the regulatory agencies
24 of any of those other states?

25 A. No, I have not.

1 Q. Are you familiar with the Application that's been
2 filed in this case?

3 A. Yes.

4 Q. And are you familiar with the particular lands
5 that are the subject of this Application?

6 A. Yes, I am.

7 MR. HALL: At this point, Mr. Examiner, we'd
8 offer Mr. Dunn as an expert petroleum landman.

9 EXAMINER STOGNER: Any objection?

10 MR. FELDEWERT: Just two questions, if I may.

11 EXAMINER STOGNER: Please.

12 VOIR DIRE EXAMINATION

13 BY MR. FELDEWERT:

14 Q. Mr. Dunn, you said you've been working with
15 Simmons for a year -- one and a half months; is that what
16 you said?

17 A. For a month and a half as an employee.

18 Q. Okay, and then you consulted for four years?

19 A. That's correct.

20 Q. Okay, my only -- You said New Mexico in terms of
21 your area of work. Did that include the San Juan Basin of
22 New Mexico?

23 A. Yes.

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

25 EXAMINER STOGNER: So qualified.

DIRECT EXAMINATION (Resumed)

BY MR. HALL:

Q. Mr. Dunn, if you would, please, let's turn to Exhibits 1 and 2 in the packet before you there, and if you would use those to explain to the Hearing Examiner the ownership situation in this area.

A. D.J. Simmons purchased last year a federal lease which covers the west half of 24, northeast of the north half of the southeast of 25. We own it 100 percent.

As far as my records show, we have Forest Oil in the south half of the southeast, we have -- It's a fee lease, Forest Oil 50 percent, Kai 37.5, Dugan 12.5.

The west half of Section 25 appears to be owned 100 percent by McElvain.

Q. And is it your understanding as well that the entirety of the west half of Section 25 is fee acreage?

A. That's correct.

Q. And so would it be the case that an operator would not be experiencing the permitting delays were this federal lease acreage?

A. That's right.

Q. If you would, please, Mr. Dunn, would you provide the Hearing Examiner with the sequence of events relating to McElvain's efforts to secure Simmons' voluntary participation in this well?

1 A. McElvain letter dated November 10th, 2000,
2 received first proposal. There was no AFE or procedure
3 included in this package.

4 Conversation dated November 10th, 2000, Lisa
5 Gusek contacted Mona Binion and requested AFE and procedure
6 and then talked with Jane Estes-Jackson to request copies
7 of logs.

8 Q. Let me ask you a question about that. Is it
9 customary in the industry to circulate an AFE before a
10 completion procedure has been established?

11 A. Generally it isn't.

12 Q. Do you know why McElvain didn't circulate a
13 completion procedure?

14 A. I have no idea.

15 Q. I'm sorry, go ahead with your testimony then.
16 What was the next contact?

17 A. The next contact was a McElvain fax, November
18 15th, 2000. Received the logs by fax. No procedure
19 furnished as of that date.

20 McElvain letter dated November 20th, 2000,
21 received AFE and procedure.

22 Conversation dated December 14th, 2000, I spoke
23 with Mona Binion. We talked about lease ownership in the
24 south half of Section 25 and if anyone had agreed to
25 participate in the proposed well.

1 Conversation during the first week of January,
2 2001, I spoke with Steve Shefte and asked if he could send
3 us some geology to support a laydown south half 25. He
4 said he had mapped the sands, and isopach indicated it is
5 more conducive for a laydown than a standup.

6 I then asked him if he could call Lisa Gusek and
7 talk to her about the geology.

8 Holland and Hart letter dated March 15th, 2001,
9 letter, an Application for compulsory pooling.

10 Q. All right, let me ask you about all the contacts
11 up to that point when you received the compulsory pooling
12 Application from McElvain's attorneys by that March 15th
13 letter. First contact was their initial well proposal,
14 November 10th, 2000, correct?

15 A. That's right.

16 Q. Any of the contacts subsequent to that date, were
17 any of those initiated by McElvain?

18 A. No.

19 Q. All of those contacts were at the instance of
20 D.J. Simmons; is that correct?

21 A. That's right.

22 Q. And that is because you weren't provided with a
23 full AFE, you didn't have a completion procedure --

24 A. Right.

25 Q. -- you had to request logs, and you had to

1 request some geology to justify the proposed south-half
2 unit; is that correct?

3 A. That's correct.

4 Q. In your opinion, without those materials was D.J.
5 Simmons able to properly evaluate the McElvain proposal?

6 A. Of course not.

7 Q. Has McElvain attempted to initiate any other
8 communications with Simmons since the compulsory pooling
9 Application was filed?

10 A. I spoke with Mona yesterday. Is that what you're
11 referring to?

12 Q. Yes, was that the first time?

13 A. Between the time that Holland and Hart issued
14 the --

15 Q. Yes, sir.

16 A. Yes.

17 Q. So if I understand your testimony, you heard
18 nothing from McElvain until yesterday, the day before the
19 hearing?

20 A. I have heard nothing until yesterday.

21 Q. All right. What is your understanding of
22 McElvain's justification for forming a south-half unit, as
23 opposed to a west-half unit, when they own 100-percent of
24 the west half?

25 A. Spread the risk.

1 Q. Can you tell the Hearing Examiner what are
2 Simmons' plans for developing its acreage in the east half?

3 A. We have staked two locations, one, the northeast
4 northeast of 25, and one in the northwest southeast of 25.
5 We want to drill, I believe it's my understanding, one
6 Gallup-Dakota.

7 Q. How far along in the permitting process are you?

8 A. We're in the process now of doing that.

9 Q. Yes, you're dealing with federal lease acreage in
10 the east half, correct?

11 A. That's correct.

12 Q. Has Simmons committed capital to its drilling
13 proposal?

14 A. Yes.

15 Q. And has Simmons proposed the well to other
16 interest owners in the east half?

17 A. Yes.

18 Q. Mr. Dunn, if the McElvain Application for
19 compulsory pooling is granted, making the south half
20 unavailable, would Simmons lose the opportunity to dedicate
21 the southeast quarter to a dual completion in the Blanco-
22 Mesaverde and Gallup-Dakota Pools?

23 A. Yes.

24 Q. And to your knowledge, does McElvain have any
25 plans to develop the Gallup-Dakota anywhere else in Section

1 25?

2 A. Not to my knowledge.

3 Q. To your knowledge, has McElvain attempted to
4 communitize the south half of Section 25?

5 A. Not to my knowledge.

6 Q. Mr. Dunn, are you aware of the prevailing customs
7 and practices in the industry, particularly in the San Juan
8 Basin, that operators utilize when proposing drilling
9 projects in soliciting the participation of other working
10 interest owners?

11 A. Well, you would more than likely send out a
12 letter.

13 Q. Well, my question is, are you familiar with those
14 standards?

15 A. Yes, yes.

16 Q. In your opinion as a professional landman, did
17 the efforts that McElvain made to secure Simmons' voluntary
18 participation in the well meet those prevailing standards
19 or fall short?

20 A. I think it probably fell short.

21 Q. So in your opinion, did McElvain make a good-
22 faith effort to secure the voluntary joinder of Simmons in
23 this well?

24 A. I would say probably not.

25 Q. Were Exhibits 1 and 2 prepared by you or at your

1 direction?

2 A. They were.

3 Q. All right, and we didn't discuss Exhibit Number 2
4 yet. Is that a title report you had commissioned on
5 ownership in the west half?

6 A. On the west half of Section 25, yes.

7 Q. And that was based on ownership based on
8 instruments of record at the time the report was prepared?

9 A. That's correct.

10 MR. HALL: We'd move the admission of Exhibits 1
11 and 2. We have nothing further of this witness, Mr.
12 Examiner.

13 EXAMINER STOGNER: Do you want to look that
14 Exhibit 2 over a little bit more closely and verify some
15 information for me, Mr. Hall? Is it a typo? How about the
16 land description up there on the top.

17 THE WITNESS: 25 North --

18 MR. HALL: Wrong county, that's correct.

19 EXAMINER STOGNER: Oh, well, that's one thing,
20 yeah.

21 MR. HALL: Why don't we clarify it?

22 Q. (By Mr. Hall) What lands are covered by Exhibit
23 2, Mr. Dunn? Good eyes, Mr. Examiner.

24 A. Township 25 North, Range 3 West, Section 25, west
25 half, Rio Arriba County, New Mexico.

1 EXAMINER STOGNER: Okay, so this was just a typo.
2 You did mention the NMPM, the New Mexico principal
3 meridian.

4 THE WITNESS: Right, that's correct.

5 MR. HALL: Rio Arriba County is referred to in
6 the body of the report as well.

7 EXAMINER STOGNER: Right, and where the search
8 was done at Tierra Amarilla?

9 THE WITNESS: That's right.

10 MR. HALL: Thanks for catching that, Mr.
11 Examiner.

12 EXAMINER STOGNER: Okay, so we need to go -- Are
13 there any objections?

14 MR. FELDEWERT: No, Mr. -- Well, I'm just
15 having -- There's no objections at this time, no.

16 EXAMINER STOGNER: Okay, Exhibits 1 and 2 will be
17 admitted into evidence at this time. Thank you, Mr. Hall.

18 Mr. Feldewert, your witness.

19 MR. FELDEWERT: Thank you, Mr. Examiner.

20 CROSS-EXAMINATION

21 BY MR. FELDEWERT:

22 Q. Mr. Dunn, I want to make sure I understand what
23 you're saying here. Are you saying that -- If I turn to
24 McElvain Exhibit Number 4, do you have that?

25 A. McElvain Exhibit Number 4?

1 Q. Yes.

2 A. I don't --

3 Q. Here, I have another set of exhibits here. If
4 you would turn, please to McElvain Exhibit Number 4.

5 That's the November 10th, 2000, letter. Do you have that?

6 A. Okay, the November 10th --

7 Q. Yes.

8 A. Yes.

9 Q. Have you looked at that letter?

10 A. Yes, I have.

11 Q. And do you see where that letter says that -- the
12 second paragraph, it gives the proposed cost of the well --

13 A. Estimated cost --

14 Q. -- do you see that?

15 A. -- yes.

16 Q. And it says, "which is detailed on the enclosed
17 McElvain Authority for Expenditure". Do you see that?

18 A. Yes.

19 Q. Is it your testimony that with your letter you
20 didn't get the AFE? Or are you not sure about that?

21 A. Let me get the original letter. According to the
22 letter I have here, which is an original, I don't have an
23 AFE attached to it. There's an election page --

24 Q. Uh-huh.

25 A. -- two copies.

1 Q. Okay, but it's your testimony that you're for
2 sure you didn't get the AFE that went with this letter,
3 even though it says that they sent you one?

4 A. At this time I didn't.

5 Q. Okay. Assuming that you didn't, you then, I
6 think, indicated you called McElvain, is that right, and
7 asked for an AFE --

8 A. Yes.

9 Q. -- immediately thereafter?

10 A. Yes.

11 Q. Is that right?

12 A. That's correct.

13 Q. And you also asked for a procedure that they were
14 going to use to complete the well?

15 A. Right.

16 Q. Did you receive that?

17 A. Yes.

18 Q. Okay, so there's no question that at least by
19 December you had an AFE and you had a completion procedure;
20 is that correct?

21 A. Right.

22 Q. And then you said you had subsequent
23 conversations with McElvain about their proposal; is that
24 right?

25 A. That's right.

1 Q. All right. But your complaint seems to be that
2 you have nothing -- that you received -- personally
3 received no communications with McElvain since the pooling
4 Application was filed; is that right?

5 A. Well, when I say communication, I mean -- I was
6 referring to verbal communication. I do have -- There is a
7 letter which I was going to continue, but I was stopped.

8 Q. Good, why don't you continue?

9 A. Okay. There was a conversation on March 30th,
10 2001, with Steve Shefte, and he spoke with Lisa and
11 discussed why Simmons opposed the unit. She mentioned that
12 she -- that we wanted to develop our acreage.

13 McElvain letter December -- I'm sorry, March
14 28th, 2001, election page to participate, AFE, recompletion
15 procedure, JOA with exhibits.

16 Conversation dated April 5th, 2001, Steve Shefte
17 spoke with Lisa Gusek. They discussed trying to work
18 something out agreeable to both parties. A remark was made
19 as to why McElvain should assume 100 percent of the risk
20 and prove up Simmons acreage.

21 And then the last conversation I had was March
22 15th, with Mona Binion, and we talked about some way we
23 could try to work this thing out before going to hearing.

24 Q. Okay, and then we had another meeting this
25 morning; is that correct?

1 A. That's right.

2 Q. Okay. Do you know if Mona Binion talked with
3 anybody else at D.J. Simmons besides yourself?

4 A. I think just me.

5 Q. And it's your contention that these efforts by
6 McElvain were not good-faith efforts to reach a compromise;
7 is that your testimony?

8 A. I think it was probably -- I think it was pretty
9 slow in coming.

10 Q. But there were good-faith efforts to reach a
11 compromise, was there not?

12 A. I think they probably were, yes.

13 Q. Okay. Now, has D.J. Simmons made any proposal to
14 any party for a Mesaverde completion, drilling of a well
15 and completing in the Mesaverde formation?

16 A. Yes.

17 Q. Who was that?

18 A. We talked to -- I didn't personally, but we
19 talked to the owners in the south half, southeast of
20 Section 25.

21 Q. Okay, let me rephrase it. Have you sent out any
22 formal proposal for a --

23 A. No.

24 Q. -- Mesaverde completion?

25 A. No, we have not.

1 Q. Have you sent out any proposal for a proposed
2 spacing unit for a Mesaverde completion?

3 A. Not to my knowledge.

4 Q. Have you filed any kind of application with the
5 Oil Conservation Division for a Mesaverde completion?

6 A. I don't think we have.

7 Q. Have you drafted any kind of a joint operating
8 agreement for a Mesaverde completion --

9 A. Not yet.

10 Q. -- or a proposed Mesaverde spacing unit?

11 A. Not yet.

12 Q. Have you put together any kind of an AFE for a
13 proposed Mesaverde completion?

14 A. No.

15 Q. Okay. Would you agree that McElvain's proposal
16 to re-enter an existing well is cheaper than drilling a
17 brand-new well into the Mesaverde formation?

18 A. I don't know.

19 Q. Okay. Has D.J. Simmons done anything with
20 respect to a Mesaverde completion except to inform McElvain
21 that it doesn't want its interests pooled in a south-half
22 unit? Have you done anything else?

23 A. Repeat that.

24 Q. Has D.J. Simmons done anything concerning a
25 Mesaverde completion except to inform McElvain that you

1 don't want your interest pooled in a south-half unit?

2 MR. HALL: I'm going to object to that question.
3 I think that misstates his prior testimony. He's testified
4 about the efforts they've made to propose a Blanco-
5 Mesaverde well, east half.

6 EXAMINER STOGNER: Can you re-word your question?

7 Q. (By Mr. Feldewert) Yes, does D.J. Simmons have
8 any definitive plan to drill a Mesaverde well in the
9 future, to your knowledge?

10 A. Yes.

11 Q. When?

12 A. I don't have a date.

13 Q. Okay. Have you looked at the pool rules for the
14 Blanco-Mesaverde Gas Pool, Mr. Dunn?

15 A. I haven't.

16 Q. You have not. You're aware, though, that it's
17 320-acre spacing; is that correct?

18 A. Yes, sir.

19 Q. Okay. Now, with a south-half Mesaverde 320
20 spacing unit, isn't it true that D.J. Simmons still has a
21 Mesaverde bailout for your northeast-quarter Gallup-Dakota
22 test well in the form of a north-half unit?

23 A. Yes.

24 Q. Okay, and isn't it true that with a south-half
25 Mesaverde 320 unit that you have a bailout even for your

1 southeast quarter Gallup-Dakota test well if you choose to
2 do that?

3 A. That's right.

4 Q. Okay. The only difference is that if you have a
5 south-half unit, McElvain would simply be the operator of
6 the well, instead of D.J. Simmons if it was recompleted in
7 the Mesaverde; is that correct?

8 A. That's correct.

9 Q. Okay. Do you agree with the proposition that the
10 best location for an infill well for a south-half spacing
11 unit would be in the southeast quarter?

12 A. What kind of well did you say?

13 Q. Well, an infill well for the Mesaverde. Would
14 the best location for that be in the southeast quarter?

15 A. I couldn't tell you.

16 Q. Okay. Would you take a look at McElvain Exhibit
17 Number 8 --

18 A. Number --

19 Q. Number 8. That's a letter from Dugan Production
20 Company -- Corporation.

21 A. Did you say it was from Dugan?

22 Q. Uh-huh, Exhibit Number 8.

23 A. Okay, I have it.

24 Q. Do you have a copy?

25 A. Yes, sir.

1 Q. Okay. In this letter, about halfway down on the
2 right-hand side, do you see the sentence that begins with
3 "a change..."?

4 A. Yes.

5 Q. It says, "A change of spacing to a west-half
6 dedication would take Dugan out of this well and require a
7 new well to be drilled in the east half in order for
8 Dugan...to share in production." Do you see that?

9 A. Yes, I do.

10 Q. Do you agree with that statement?

11 A. Yes, I do.

12 Q. Okay. Dugan has a similar acreage position as
13 D.J. Simmons does in the southeast quarter; isn't that
14 correct?

15 A. That's correct.

16 Q. All right. Dugan then says in the previous
17 sentence to that, "As an owner of a partial interest in
18 this well it is our belief that it is to Dugan's benefit to
19 have the financial risk reduced by the use of an existing
20 wellbore and to share the risk among several parties."

21 Do you think that is a reasonable position for
22 Dugan to take?

23 MR. HALL: I'm going to object to --

24 THE WITNESS: I can't --

25 MR. HALL: -- that. He can't testify to another

1 party's state of knowledge, particularly a nonpresent
2 witness.

3 Q. (By Mr. Feldewert) Well, you testified today
4 about the good-faith effort by McElvain to reach agreement
5 on this well.

6 Do you think Dugan's position here to share the
7 financial risk and reduce the financial cost by using an
8 existing wellbore is a reasonable position for any operator
9 to take?

10 A. I think that could go both ways.

11 Q. It sounds to me like it's a reasonable
12 position --

13 MR. HALL: Well, I'm going to object to --

14 MR. FELDEWERT: -- is that correct?

15 MR. HALL: -- Counsel's testifying on behalf of
16 the witness.

17 EXAMINER STOGNER: He didn't answer the question.
18 I'm going to agree with Mr. Hall on that.

19 THE WITNESS: Well, it would certainly spread the
20 risk, yes.

21 Q. (By Mr. Feldewert) Is that a reasonable
22 consideration for an operator to take?

23 A. Yes.

24 Q. Okay. I think you said you already have a well
25 staked in the northeast quarter?

1 A. Northeast quarter of Section 25.

2 Q. Okay. Is there anything about McElvain's
3 Application that prevents you from continuing with your
4 plans to drill a well in the northeast quarter?

5 A. No.

6 MR. FELDEWERT: That's all I have.

7 EXAMINER STOGNER: Any redirect?

8 REDIRECT EXAMINATION

9 BY MR. HALL:

10 Q. Let me ask you briefly, Mr. Dunn, about Exhibit
11 Number 8, the Dugan letter.

12 Isn't it the case that it was only until recently
13 that Mr. Dugan had the mistaken belief that he owned only
14 an overriding royalty interest in the southeast quarter?

15 A. That's what -- Yes.

16 Q. And so he wasn't expecting a well proposal from
17 anyone; isn't that right?

18 A. That would be corre- -- I would assume that would
19 be correct, yes.

20 Q. Well, Mr. Dunn, doesn't it remain the case, if
21 McElvain's Application is granted, D.J. Simmons will lose
22 the opportunity to develop the Gallup-Dakota reserves in
23 conjunction with the Blanco-Mesaverde reserves?

24 A. Yes.

25 MR. HALL: Nothing further, Mr. Examiner.

EXAMINATION

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BY EXAMINER STOGNER:

Q. Okay, I'm referring to your Exhibit Number 1 because I want to make sure I get everything correct on this. There are two D.J. Simmons proposed wells that have dots, one in the northeast and one in the southeast quarter; is that correct?

A. Yes, sir.

Q. Okay, what is the white circle with the gas-well indication on here, up in the northeast quarter?

A. I would have to -- That's an old Pictured Cliffs well that's been abandoned --

Q. Okay.

A. -- or temporarily abandoned.

Q. Okay, so that's an existing well, temporarily abandoned.

Is this one lease that west half of Section 24 and then that 280-acre portion over on the east half of 25, is that one single lease?

A. One single lease, yes.

Q. Do you know what the ownership on the east side of 24 is?

A. I think I know what it is. I think it's McElvain.

Q. Okay. Is there any other checkerboarded areas in

1 this map that's not indicated, that McElvain and D.J.
2 Simmons has in this similar situation?

3 A. We have a federal lease up in Section 12, which
4 is the northeast quarter -- I'm sorry, the southeast
5 quarter.

6 Q. Any other D.J. interests on here?

7 A. No, sir.

8 Q. Okay. Now, on your map, Exhibit Number 1, you
9 show Forest Oil Corporation's name on this map. When did
10 you become aware that Forest Oil Corporation had that
11 interest in that south half of the southeast quarter?

12 A. I had a record check run on that.

13 Q. When?

14 A. When?

15 Q. Yeah.

16 A. It was probably -- I'm just -- just off the top
17 of my head, late last year, late 2000.

18 Q. So you did not have any information that had that
19 GWR Operating Company's name on it like the landman, Ms.
20 Binion, with --

21 A. I'm sorry, repeat your --

22 Q. -- McElvain.

23 Well, it seems like there was some problems
24 trying to find out who owned that, Forest Oil Company. You
25 evidently knew about it before they did, so I was kind of

1 wondering how you found out or how you knew, when it seems
2 like it took her a while to get to that point.

3 A. I don't remember exactly what prompted me to
4 order a title report on that, other than we were at that
5 point seriously thinking about drilling -- or spacing that
6 for a Dakota test in the east half of Section 25.

7 Q. Do you know if there's been any APDs filed on
8 either one of the proposed wells on the east half?

9 A. I don't believe there has been, no, sir.

10 EXAMINER STOGNER: No other questions.

11 You may be excused, Mr. Dunn. Thank you.

12 Mr. Hall?

13 MR. HALL: We did get 1 and 2 into the record,
14 did we not?

15 EXAMINER STOGNER: If we didn't, we will.

16 Exhibits Number 1 and 2 will be admitted into evidence. I
17 believe we did, but it won't hurt to do it twice.

18 MR. HALL: All right. At this time, Mr.

19 Examiner, we would call Lisa Gusek to the stand.

20 LISA GUSEK,

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

23 DIRECT EXAMINATION

24 BY MR. HALL:

25 Q. For the record, please state your name.

1 A. Lisa Gusek.

2 Q. And why don't you spell that for the court
3 reporter, please?

4 A. It's G-u-s-e-k.

5 Q. And where do you live, Ms. Gusek?

6 A. Farmington, New Mexico.

7 Q. And by whom are you employed and in what
8 capacity?

9 A. I'm employed by D.J. Simmons, Inc., as a
10 geologist.

11 Q. Have you previously testified before this
12 Division or one of its examiners and had your credentials
13 established as a matter of record?

14 A. No, but I have testified before the Oil and Gas
15 Commission of Colorado on several occasions.

16 Q. Why don't we give the Hearing Examiner a brief
17 summary of your educational background and work experience?

18 A. I have a BS degree in geological oceanography
19 from Humboldt State University. I have over 21 years of
20 experience in the petroleum industry as a geologist,
21 primarily working the cretaceous reservoirs of the Rocky
22 Mountain region, including the San Juan Basin.

23 Q. And are you familiar with the Application
24 McElvain has filed in this case?

25 A. Yes.

1 Q. And are you familiar with the geology in the
2 affected lands?

3 A. Yes.

4 MR. HALL: Mr. Examiner, we'd offer Ms. Gusek as
5 a qualified petroleum geologist.

6 EXAMINER STOGNER: Any objection?

7 MR. FELDEWERT: No questions.

8 EXAMINER STOGNER: So qualified.

9 Q. (By Mr. Hall) Ms. Gusek, let me clear up one
10 thing with you briefly. In the examination of Mr. Dunn, he
11 was questioned about the efforts of McElvain to propose the
12 well and its failure to provide an AFE. You were present
13 for that testimony, were you not?

14 A. Yes, I was.

15 Q. Is it correct to say that there was no AFE
16 included with McElvain's November 10th proposal letter?

17 A. Yes, there -- I mean, there wasn't one in there,
18 it's correct to say that.

19 Q. Was not?

20 A. There was no AFE included with the proposal,
21 although the letter stated there was an AFE. So I called
22 Mona Binion and spoke with Mona about the fact that we had
23 not received the AFE with the November 10th letter. So she
24 informed me that it had been an oversight. And at that
25 time I asked her about the procedure, and she told me that

1 she didn't know if there had been a procedure completed as
2 yet.

3 At that point I then proceeded to call Jane
4 Estes-Jackson to request a set of logs on the Wynona or the
5 Naomi Com well so that we could look at what the Mesaverde
6 looked like in that well. She faxed me a copy of those
7 logs.

8 And I had also mentioned the recompletion
9 procedure to her as well, and she said she'd check with her
10 engineer. And when she faxed me the logs, the fax cover
11 sheet read there was no procedure as yet.

12 Q. All right. And if we look at -- You received
13 that later, on November 10th, anyway. If you look at
14 Exhibit 4, we note that the AFE is dated September 6th,
15 correct?

16 A. Right.

17 Q. And that predates the completion procedure?

18 A. Correct.

19 Q. And is it correct to say that all of these
20 contacts were initiated by Simmons, or initiated by you, in
21 fact?

22 A. Yes.

23 EXAMINER STOGNER: Okay, hang on just a second
24 here. I'm trying to find -- I do have Exhibits --

25 MR. HALL: I'm sorry, Mr. Examiner, I was.

1 referring to McElvain 4.

2 EXAMINER STOGNER: Okay. Well, while we're at
3 this, where is your Exhibit 3 and 4?

4 MR. HALL: I've removed those from the packet in
5 the interests of time.

6 EXAMINER STOGNER: Okay. Well, all right. I
7 wasn't sure, I just thought I was missing something there.
8 I'm sorry, go ahead. Where are we at, which exhibit are we
9 on?

10 THE WITNESS: He was asking me about Exhibit 4.

11 MR. HALL: McElvain 4.

12 EXAMINER STOGNER: McElvain Exhibit 4.

13 THE WITNESS: 4, yeah.

14 EXAMINER STOGNER: I'm on the right page, go
15 ahead.

16 MR. HALL: And now we will proceed to Simmons 6.

17 THE WITNESS: And did you catch --

18 EXAMINER STOGNER: Exhibit 6, let's see.

19 THE WITNESS: Exhibit 5.

20 MR. HALL: 5, I'm sorry.

21 THE WITNESS: Exhibit 5. Are we all on Exhibit
22 5?

23 THE WITNESS: Okay.

24 Q. (By Mr. Hall) Ms. Gusek, let's refer to Exhibit
25 5 and explain what this is intended to reflect to the

1 Hearing Examiner.

2 A. This map is an area that covers all of Township
3 25 North, 3 West and a portion or the west half of 25
4 North, 2 West. The acreage shown in yellow is D.J.
5 Simmons' BLM lease that covers the lands in the east half
6 of Section 25. The red outline on there is the proposed
7 south-half spacing unit by McElvain. I have also put on
8 the Wynona Number 1 well name so we can reference that.

9 The wells that you see that are in kind of a
10 purple-brownish color, those are Mesaverde-producing wells
11 in this township. The orange are Chacra producers.

12 As you can see from this, the acreage in the
13 proposed unit does lie on trend with proven Mesaverde
14 production in the area, although if you look around the
15 fringes -- and the sizes of those symbols denote the
16 cumulative production. The oil production is on top, the
17 gas is on the bottom. So the larger the symbol, the more
18 gas that has been produced from the Mesaverde in that
19 borehole.

20 As you look up to the northwest, you see that the
21 symbols are considerably larger than along the edges of
22 that production. Therefore, this is to illustrate that the
23 Mesaverde is a large stepout with, really, the nearest
24 economic production being probably four or five miles away.
25 In fact, if you look down to the southwest of the Wynona

1 Number 1, you'll notice two wells.

2 The well in the northeast northeast of Section
3 34, the Schalk 43-2 well, was initially drilled as a
4 Mesaverde test. It was perforated and frac'd in the
5 Mesaverde, in all three of the Mesaverde members, the Cliff
6 House, Menefee and Point Lookout.

7 On the completion report of that, and when they
8 asked to move uphole to the Chacra, they stated that they
9 had recovered only small amounts of gas and excessive
10 amounts of water.

11 The Myers Number 1 has also produced some limited
12 amounts of gas from the Mesaverde, however it has not
13 been -- you know, you wouldn't call it economic. However,
14 those two wells were also completed in the Chacra, and the
15 production from the Chacra is included on this map.

16 Q. All right, anything further with respect to
17 Exhibit 5?

18 A. No.

19 Q. You have seen the McElvain Application in this
20 case, correct?

21 A. Yes.

22 Q. And McElvain seeks to pool all formations spaced
23 on 320-acre units from the base of the Pictured Cliffs to
24 the base of the Mesaverde, correct?

25 A. Yes.

1 Q. Now, let's look at Exhibit 6. In this area would
2 the Chacra be available to McElvain under its Application?

3 A. Not according to the rules, the special -- I'm
4 going to read from here, the special rules and regulations
5 for the Blanco-Mesaverde Gas Pool. They've included it in
6 their Application.

7 However, if you look on Exhibit 6, you'll see a
8 black line, there's an arrow with a box pointing to it.
9 That black line is what is referred to as the Chacra line.
10 It runs north and east -- I mean, it runs generally from
11 the northwest quarter of Township 31 North, Range 13 West,
12 San Juan County, New Mexico, to the southwest corner of
13 Township 24 North, Range 1 East, Rio Arriba County, New
14 Mexico.

15 And the way this Chacra line works is that when
16 you are north and east of this line, the Blanco-Mesaverde
17 Pool includes all the way from the top -- The top of the
18 pool is a point contiguous with the Huerfanito bentonite
19 marker and goes down to 500 feet below the top of the Point
20 Lookout sandstone.

21 However, when you're south and west of this line,
22 as this proposed unit is, it is a point 750 feet below the
23 Huerfanito marker down to a point 500 feet below the top of
24 the Point Lookout. Therefore, McElvain has included 750
25 feet of Lewis section, as well as that section from the

1 base of the Pictured Cliffs to the top of the Huerfanito
2 marker in their Application.

3 MR. HALL: And Mr. Examiner, the pool rules for
4 the Blanco-Mesaverde identifying the Chacra line is our 109
5 exhibit.

6 Q. (By Mr. Hall) Any additional information that we
7 ought to know about on Exhibit 6?

8 A. If you'll notice, there's a couple of Chacra
9 pools that are indicated on this map, all of which are
10 spaced on 160. And the two Chacra wells that were shown on
11 the previous exhibit, those are -- their production is also
12 allocated to 160-acre units. And that's the Myers Number 1
13 and the Schalk 43-2, located in the northwest northwest of
14 35 and northeast northeast of 34, respectively, of 24
15 North, 3 West.

16 Q. All right. Let's look at Exhibit 7 now, if you
17 would please. Would you identify Exhibit 7 for the record?

18 A. Exhibit 7 is a fracture-orientation data montage
19 that was prepared by a compilation of data from various
20 sources. The references have been cited on the exhibit,
21 and they have also been included as exhibits today.

22 Q. Go ahead.

23 A. Exhibit 7, the first thing I want to point out is
24 in the sort of top portion of the exhibit, there is a land
25 grid of townships surrounding the 25 North, 3 West area.

1 Superimposed on that is a structure map and fracture
2 orientation data, the rose diagram, from Alan Emmendorfer's
3 study that he did in April, 1989.

4 Alan used dipmeter-type fracture logs to
5 understand the structural relationships of the fracture
6 patterns within the Mancos-Gallup reservoir. He plotted
7 all the fracture-orientation measurements on rose diagram
8 on top of his structure map.

9 I have also shown Simmons' acreage position on
10 here, as well as the south-half unit.

11 One thing to note as you look at this, although
12 there are some subtle variations in the orientation of the
13 fractures from those rose diagrams, the predominant
14 orientation is in a north-south direction.

15 This is also supported by Meridian Oil's two
16 wells, the Medio Canyon Number 7 and Cullins Federal Number
17 6 wells, which are located in 35, 24 North, 4 West and 4,
18 24 North, 3 West, respectively. I have included frac views
19 of their FMIs at the bottom of this exhibit.

20 In both cases, the samples that were taken from
21 fractures and breakouts show predominant fracture
22 orientation in a north-south direction.

23 Q. Ms. Gusek, in your opinion is the Blanco-
24 Mesaverde reservoir more appropriately developed on a
25 north-south spacing basis?

1 A. Yes, because all of the work that was done by
2 these various groups that I've referenced here, and also
3 including Burlington Resources' work for the downspacing
4 application in the Mesaverde, the fracture orientation of
5 the Mesaverde, Gallup, Mancos and Dakota throughout the San
6 Juan Basin have been shown to be in a north-south to a
7 maximum of north 40 degrees east, with a most likely of
8 about north 15 degrees east.

9 And therefore all of these things indicate that
10 we should think there would be nothing different on our
11 acreage, or in Section 25 of 25 North, 3 West.

12 Q. So in your opinion, the data evidenced on Exhibit
13 7 is equally applicable to Section 25 here?

14 A. Yes.

15 Q. If you would, please, Ms. Gusek, why don't you
16 give the Hearing Examiner a very brief overview of the
17 general characteristics of the Blanco-Mesaverde and Gallup-
18 Dakota reservoirs, immediate area of Section 25.

19 A. Okay. Well, the Dakota occurs as northwest-
20 southeast-trending stacked, coarsening upward shallow
21 marine sands throughout the Basin. The majority of the
22 production in this particular area is from the Dakota D or
23 Cubero member.

24 The Mesaverde also trends northwest-southeast
25 across the Basin. Both reservoirs are tight gas-sand

1 reservoirs.

2 The Mesaverde is composed of three members, the
3 Cliff House, Menefee and Point Lookout members, which occur
4 as a regressive-transgressive wedge that interfingers with
5 the marine Mancos and Lewis shales. The majority of
6 production in this area is from the marine regressive Point
7 Lookout member.

8 The Cliff House has been shown to be water wet up
9 in the northwest portion of this township. And production
10 from these tight reservoirs, I want to note, is highly
11 dependent on and greatly enhanced by natural fractures.

12 In fact, work that was done by Larry Teufel
13 showed that these fractures actually create permeability
14 anisotropic -- oh, I can't talk -- anisotropy, which
15 directly causes the drainage area of the well to be
16 elliptical. And this elliptical drainage orientation is
17 aligned with the local trend of regional fractures and
18 maximum horizontal stress direction.

19 Q. Now, the literature you just talked about, is
20 that referred to on Exhibit 7?

21 A. Yes, it's actually -- Teufel's work is the first
22 paper that's noted on there, and it will be the first in
23 the stack of references.

24 Q. All right. Now, what is the geologic basis for
25 Simmons' plans to develop its acreage in the east half of

1 Section 25?

2 A. Simmons leased this acreage and also the acreage
3 in the southeast quarter of 12, because it was located in
4 an area of multi-pay potential. The acreage lies on trend
5 or directly offsets proven production from multiple
6 reservoirs. This is illustrated by both Exhibits 5 and 8.

7 8 is a cumulative production map for the Gallup
8 or Mancos, Greenhorn and Dakota production in the area. As
9 you'll note from that exhibit, there is Dakota production
10 and Mancos-Gallup production somewhat surrounding the
11 acreage or close by. In addition, there is some Pictured
12 Cliffs production not far away.

13 It's Simmons' intent to drill two wells in the
14 east half of Section 25, one in the northeast quarter and
15 one in the southeast quarter. These wells will be drilled
16 to the base of the Dakota so that we can sufficiently test
17 and evaluate all potential reservoirs from the surface to
18 the base of the Dakota for production.

19 Q. All right. By the way, let me ask you, how long
20 has Simmons owned its acreage position in the east half of
21 25.

22 A. Oh, wow, we picked it up last -- I think it was
23 last summer or last spring. It's just going on a year.

24 Q. In your view, has Simmons proceeded expeditiously
25 to develop its acreage?

1 A. Yes.

2 Q. Ms. Gusek, in your opinion is there a greater
3 risk that Gallup-Dakota reserves will be abandoned or
4 remain undeveloped if the McElvain Application is granted
5 for a south-half unit?

6 A. Yes.

7 Q. And is the same true of Blanco-Mesaverde
8 reserves?

9 A. I believe -- Yes. potentially.

10 Q. All right. And in your opinion, will the
11 abandonment of those reserves result in waste?

12 A. Yes.

13 Q. Now, would you explain to the Hearing Examiner
14 who Steve Shefte is?

15 A. Steve Shefte is a geologist with McElvain in
16 Denver.

17 Q. And did you have conversations with Mr. Shefte
18 regarding McElvain's south-half unit proposal?

19 A. Yes, on two separate occasions I spoke with him.
20 He called me around March 30th or 31st, and we discussed it
21 at that time, and also in Socorro. I think it was April
22 5th or 6th -- I can't remember the exact date -- but it was
23 when the Socorro conference was.

24 Q. All right. From those conversations, was it your
25 understanding that the reason McElvain was assembling a

1 south-half unit rather than a west-half unit where it owns
2 100-percent of the interest was simply in order to bring in
3 additional partners and mitigate their risk?

4 A. Yes. I asked Steve, I said, Well, you own all of
5 the west-half unit, why not do a west half?

6 And he said, Well, why should McElvain assume 100
7 percent of the risk and 100 percent of the cost to prove up
8 your acreage -- or prove up Simmons' acreage.

9 Q. All right. Ms. Gusek, in your opinion will the
10 granting of McElvain's Application likely result in the
11 waste of Gallup-Dakota reserves in the southeast quarter of
12 25?

13 A. Yes.

14 Q. Were Exhibits 5 through 8 prepared by you or at
15 your direction?

16 A. Yes.

17 MR. HALL: That concludes our direct of this
18 witness, Mr. Examiner. We move the admission of Exhibits 5
19 through 8.

20 EXAMINER STOGNER: Any objections?

21 MR. FELDEWERT: No objection.

22 EXAMINER STOGNER: Exhibits 5 through 8 will be
23 admitted into evidence.

24 Thank you, Mr. Hall.

25 EXAMINER STOGNER: Mr. Feldewert, your witness.

CROSS-EXAMINATION

BY MR. FELDEWERT:

Q. Ms. Gusek, is that right?

A. Yes.

Q. Okay. Do you know Ms. Estes-Jackson?

A. Yes, I do.

Q. Do you consider her a competent geologist?

A. Yes.

Q. Do you think McElvain's Exhibit Number 10 is a reasonable interpretation of the data that they have about the Mesaverde sands?

A. I do, but I do have one objection to it. It includes the Cliff House member, the porosity in the Cliff House, and the Cliff House has been shown to be wet in the wells up to the northwest of that township, and in lots of other portions of the Basin. And my contention would be that that footage should not be included in their isopach.

Q. But do you consider her interpretation of an east-to-west sand to be a reasonable one?

A. As Ms. Jackson mentioned in her testimony, if you look at this map there is some limited well data in the area, therefore your log data is somewhat limited. And not all of the logs do have density or porosity logs available.

In addition to that, there are no wells, no deep wells, in Section 13. There's one in 14, there's one in

1 26, one in 25. There is a lot of leeway for the direction
2 in which you'd like to contour those data points, and I
3 think you could find geologists that might contour just
4 slightly differently.

5 However the other thing is, I think when we're
6 looking at the Mesaverde in this area, it is not the
7 orientation of the sandbodies themselves that is going to
8 determine the drainage orientation in that well once you
9 frac it. And from all of the studies that have been done
10 in the Basin on fracture orientation, and John Lorenz has
11 done a lot of work and has discussed how the Dakota, Gallup
12 and Mesaverde, all of the major fractures trend north-
13 south.

14 I would believe that it's that fracture
15 permeability that is going to control the drainage ellipse.
16 Therefore, a west-half unit would be more appropriate,
17 although the porosity or the reservoir sands may trend
18 east-west.

19 Q. My question was, do you consider her
20 interpretation to be a reasonable one, yes or no?

21 A. Sure.

22 Q. Okay. Now, I understand that D.J. Simmons
23 intends to drill their Gallup-Dakota wells; is that right?

24 A. Yes.

25 Q. In both the northeast quarter and the southeast

1 quarter?

2 A. Yes.

3 Q. Okay. Can you explain to me why there is going
4 to be waste if McElvain's Application is granted?

5 A. Well, basically in the northeast quarter, yes, we
6 can drill our well, we can complete the Gallup-Dakota, we
7 can commingle it with the Mesaverde. However, we may not
8 drill that Gallup-Dakota in the southeast quarter if we do
9 not have the rights to recomplete the Mesaverde and any
10 other zones within that wellbore. We will be drilling the
11 new well, there will be less risk, and therefore a
12 recompletion in the Mesaverde within that wellbore will be
13 less expensive than the re-entry of the Wynona.

14 Q. Are you familiar with the pool rules for the
15 Blanco-Mesaverde Gas Pool?

16 A. Yes.

17 Q. Are you familiar with the fact that you can have
18 an infill well in the southeast quarter?

19 A. Yes.

20 Q. Okay, would that not provide you with the ability
21 to produce the Mesaverde formation in the southeast --

22 A. We would not --

23 Q. -- quarter in the event that your Dakota test is
24 unsuccessful?

25 A. Simmons would not be able to produce it.

1 Q. McElvain could?

2 A. Simmons would not be able to produce it, is what
3 I said. Therefore, Simmons may not opt to take -- may not
4 opt to drill that test to the Gallup-Dakota.

5 Q. Okay. So you don't know whether you're going to
6 drill a well in the southeast quarter yet or not?

7 A. It will be contingent on things that happen. But
8 our intention is to drill there.

9 Q. And likewise you understand that McElvain may
10 drill a well in the southeast quarter which is contingent
11 upon their ability to recomplete the Mesaverde in the
12 southwest quarter; is that right?

13 A. That's right.

14 Q. Okay. Do you still consider the possibility of
15 waste here?

16 A. I do.

17 Q. Why?

18 A. Because as you're saying right now, McElvain
19 plains on re-entering the Wynona. If they were successful,
20 they would drill the southeast quarter for a Mesaverde.
21 Well, we may not drill the Gallup-Dakota if we don't have
22 the Mesaverde in that wellbore --

23 Q. Is that the only reason?

24 A. -- so there could be waste.

25 Q. Is that the only reason?

1 A. And it's not only the Mesaverde, it's also that
2 Lewis section that's included in the Application that
3 shouldn't be.

4 MR. FELDEWERT: That's all.

5 EXAMINER STOGNER: Any redirect?

6 REDIRECT EXAMINATION

7 BY MR. HALL:

8 Q. Briefly, Ms. Gusek, with respect to McElvain
9 Exhibit 10, in your opinion as a geologist, is the trending
10 shown on Exhibit 10 what would be considered highly
11 interpretive?

12 A. Yes.

13 MR. HALL: Nothing further.

14 EXAMINATION

15 BY EXAMINER STOGNER:

16 Q. In the D.J. Simmons organization, is it the
17 geologist that proposes a well first?

18 A. Yes.

19 Q. Had you proposed a well in this east half?

20 A. Yes.

21 Q. When?

22 A. We have -- we have actually -- oh, from the --
23 Well, when decided to lease the location, to take the
24 leases, it was our intention to develop the acreage on the
25 160s for the Lindrith deal.

1 Q. And that was -- Let's see, D.J. Simmons took that
2 over when?

3 A. We got the lease, it was either April or July
4 last year. I can't remember which date.

5 Q. Why didn't you make a formal application?

6 A. We -- Right now, we're in the process of getting
7 all of our locations out in 25 North, 3 West staked, okayed
8 with the surface owners. And upon doing that, and
9 simultaneously with filing an APD, we would make the formal
10 proposals. We have spoken, or John Byrom has spoken with
11 Forcenergy, Herbert Kai and Dugan to discuss our plans.

12 Q. How come you didn't put it on a fast track once
13 you got that letter back in October or November from
14 McElvain?

15 A. I don't know. I don't know why they didn't.

16 Q. Did you suggest that they do that? Or you were
17 aware of the --

18 A. There were -- Yes, there were discussions, we had
19 discussions over getting the location staked and getting
20 the APDs moving through, and we were working on APDs for
21 our Mesaverde infill wells in other parts of the Basin.

22 Q. Too much to do, too little time to do it, huh?

23 A. Possibly.

24 EXAMINER STOGNER: Other questions?

25 MR. HALL: Nothing further of this witness.

1 EXAMINER STOGNER: Okay. Mr. Hall?

2 MR. HALL: At this time, Mr. Examiner, we would
3 call Tom Mullins.

4 THOMAS E. MULLINS,

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

7 DIRECT EXAMINATION

8 BY MR. HALL:

9 Q. For the record, please state your name.

10 A. My name is Tom -- Thomas Edward Mullins. I live
11 at Number 22, Road 3777 in Farmington, New Mexico.

12 Q. And how are you employed, Mr. Mullins?

13 A. I am currently a consulting petroleum engineer.
14 I lived in Farmington almost my entire career since I
15 graduated from college, but I'm the president of that
16 company. I perform consulting engineering services for
17 numerous companies that operate in the San Juan Basin.

18 Q. I'm sorry, I'm not sure I heard you identify the
19 company. Is it Mullins Energy?

20 A. It's Mullins Energy, yes.

21 Q. All right.

22 A. Mullins Energy, Incorporated.

23 Q. And you previously --

24 A. It was formed in 1996, so I've been consulting
25 independently since that time.

1 Q. I see. And you have previously testified before
2 the Division and had your credentials accepted as a matter
3 of record in other cases?

4 A. Yes, I have.

5 Q. And you are familiar with the Application that's
6 filed in this case?

7 A. Yes.

8 Q. And you're familiar with the subject lands?

9 A. Yes, I am.

10 MR. HALL: Again, Mr. Examiner, are the witness's
11 credentials acceptable?

12 EXAMINER STOGNER: Any objection?

13 MR. FELDEWERT: No.

14 EXAMINER STOGNER: So qualified.

15 Q. (By Mr. Hall) Mr. Mullins, who are some of your
16 earlier employers?

17 A. Excuse me, I forgot to mention a little bit about
18 my career history since I graduated from school. I
19 graduated in 1991 from the Colorado School of Mines and
20 began work for Burlington Resources in the San Juan Basin.
21 I worked for them for five years on their numerous
22 positions from reservoir production, acquisitions,
23 operational work.

24 In 1996 I left Burlington Resources and started
25 Mullins Energy, a consulting company, and one of my first

1 projects was to perform an evaluation of the Lindrith B
2 Unit, which was recently purchased by Conoco, and Conoco
3 was the customer that I started working for. And the
4 Lindrith B Unit is immediately to the south of the subject
5 area in Township 24 North, Range 2 West, in Rio Arriba
6 County.

7 Q. All right.

8 A. That's the critical point and, I guess, the
9 important information. But I've also worked for numerous
10 other operators in the Basin.

11 Q. All right, so you're familiar with Blanco-
12 Mesaverde and Gallup-Dakota well development in the
13 immediate vicinity of these lands?

14 A. Yes, I am.

15 Q. And are you familiar with the reservoir
16 characteristics and primary fracture orientation of the
17 Blanco-Mesaverde and Gallup-Dakota formations in this
18 specific area?

19 A. Yes, I am, I'm very familiar with that.

20 Q. Let's look at Exhibit 7 again, the fracture
21 montage. What can you add about the fracture orientation
22 from this exhibit?

23 A. I might mention that I was the reservoir engineer
24 at Burlington Resources at the time that the Cullins
25 Federal Number 6 and the Medio Canyon Number 7 were drilled

1 to develop the Gallup-Dakota formation, primarily.

2 The Exhibit 7 lists references that are publicly
3 available in the public record and have been for several
4 years on the principal fracture orientation in the
5 immediate vicinity to the project area.

6 Alan Emmendorfer's information, which Lisa
7 presented here previously, is in the top portion of the
8 exhibit. And as you can see from that information, the
9 principal fracture direction from the rose diagrams was on
10 a north-south orientation.

11 The two well rose diagrams to the south that Lisa
12 referenced, I also have some private information that I was
13 unable to obtain permission to distribute, other than the
14 well names, and it was information obtained in the Mobil
15 Lindrith B Unit directly to the south on four wellbores in
16 the immediate area that have additional information. Those
17 wells are the Miller Com Number 1, the Lindrith B Unit
18 Number 84, the Lindrith B Unit Number 78, and the Lindrith
19 B Unit Number 79. So there are four additional wells that
20 have information pertaining to the orientation in this
21 area.

22 Exhibit 7 also indicates the paper that was
23 prepared by Mobil Oil personnel. And that particular paper
24 number --

25 Q. Is that --

1 A. -- is -- excuse me, is SPE Number 25466, that was
2 prepared by Mobil based upon data that they had prior to
3 the drilling of the four wells that had the proprietary
4 data. So that's public information. That information
5 indicates a primary north-south orientation on the fracture
6 direction, and also in detail explains the induced fracture
7 direction, should there be a hydraulic fracture done on a
8 well, and that orientation was directed to be at a maximum
9 of north 40 degrees east for that orientation.

10 Q. Let's refer to Exhibit 9.

11 A. Exhibit 9 is the stack of technical papers that
12 are also referenced on Exhibit Number 7; is that correct?

13 Q. Yes. Now, is Abstract SPE 25466 the Mobil
14 abstract you talked about on the Lindrith B Unit?

15 A. Yes, that's correct.

16 Q. And is Exhibit 9 also a compilation of the other
17 articles referenced in the title block in Exhibit 7?

18 A. Yes, that's correct.

19 Q. When you say that one of the papers indicated a
20 maximum declination of 40 degrees on the fracture direction
21 orientation, is that a mean or what you can expect to see,
22 or is that --

23 A. That was the maximum orientation observed on the
24 rose diagrams of the data available on all of this
25 information that is presented here today.

1 Q. What degree of deflection are you more likely to
2 see? What degree off of north-south?

3 A. It's going to be approximately north 15 degrees
4 east, as has been shown throughout the San Juan Basin in
5 all the formations.

6 Q. All right, anything further with respect to
7 Exhibit 9, the abstracts?

8 A. Nothing to add right at this moment. I'll refer
9 back to it here in a moment.

10 Q. All right. Let's refer to Exhibit 10. Could you
11 identify that and explain it to the Hearing Examiner?

12 A. Exhibit Number 10 is an acreage -- is a small
13 lease map that I prepared on the subject acreage that we're
14 discussing here today. There are two drainage ellipses
15 that are drawn on Exhibit Number 10. There is one located
16 in a north-south orientation, that is the blue ellipse.
17 And there is one located on a north-40-degrees-east
18 orientation, and that is the pink or the purple ellipse.

19 This exhibit demonstrates what a 160-acre
20 drainage pattern would develop from the existing wellbore
21 of the Wynona or the Naomi Com Number 1, and I just
22 realized here this morning that that was the Judd family --
23 Wynona -- yeah, while we were in here. I thought that was
24 interesting.

25 The information that I utilized to draw the

1 drainage pattern is consistent with the information
2 presented at public conferences presented by Mr. Larry
3 Teufel as well as Burlington Resources, and discussed
4 during the Basin operator meetings in the Farmington area,
5 as well as at some additional conferences in the oil and
6 gas industry.

7 The radius distance in the short axis direction
8 is 834 feet, and the radius distance in the long direction
9 is 2504 feet, but each ellipse is exactly 160 acres of
10 drainage.

11 Q. In your opinion, Mr. Mullins, will the Naomi Com
12 Number 1, where it's situated at its unorthodox location,
13 result in drainage along a north-south pattern or a west-
14 to-east-type drainage pattern?

15 A. As can be obviously demonstrated from Exhibit
16 Number 10, a north-south orientation and at a maximum
17 north-40-degrees-east orientation, it would be more
18 applicable to drain the west half of the unit from the
19 current wellbore.

20 Q. Now, again, the Naomi at its unorthodox location,
21 in your opinion, is it well situated to efficiently
22 recovery reserves from the southeast quarter of Section 25?

23 A. No, absolutely not.

24 Q. In your opinion, is the dedication of a west-half
25 unit more appropriate for this well?

1 A. Absolutely, yes, it would be.

2 Q. All right, let's refer to Exhibit 11, if you
3 would identify that and explain that to the Hearing
4 Examiner.

5 A. Exhibit Number 11 -- 14, excuse me. 12, 13, 11.
6 Thank you.

7 Q. Do you have that?

8 A. Yes, I do. I apologize. They were in a
9 different order up here at the table.

10 Exhibit Number 11 is the production curve for the
11 Wynona Number 1, or what was the existing Dakota-Gallup
12 producer, located in the southwest quarter, also known as
13 the Naomi Com. The production curve demonstrates the
14 production from the Dakota formation. I believe it was
15 testified earlier that the production may be from the
16 Gallup. Both of those zones are commingled, but I believe
17 the primary producing zone in the Wynona well was the
18 Dakota D formation, which is the principal producing sand
19 in the area.

20 Q. Were you able to estimate the recoverable
21 reserves from the Gallup-Dakota in the southeast of 25?

22 A. Yes, I evaluated all of the Gallup-Dakota
23 production in the general area, and I developed a
24 production and reserve profile. I ended up coming up with
25 388 million cubic feet of gas and 14,000 barrels of oil as

1 the economic reserve recovery for a well drilled in the
2 southeast quarter for the Gallup-Dakota, strictly.

3 Q. All right. Let's look at Exhibits 12, 13 and 14
4 together, if you like. What are these exhibits intended to
5 reflect?

6 A. Okay, Exhibit Number 12 is the Ora Number 2. It
7 is a Mesaverde producer located in the northeast quarter of
8 Section 21, Township 25 North, Range 3 West. This well I
9 will be showing in an exhibit here shortly with the log
10 characteristics in comparison with the Naomi Com
11 recompletion, but it is on trend, depositional trend, with
12 the Point Lookout development in the Mesaverde, and we
13 would expect similar production characteristics as
14 developed here in the Ora Number 2.

15 The Exhibit Number 13 is the Myers Number 1. The
16 Myers Number 1 well was originally approved as a wildcat
17 160-acre Mesaverde test location in the northwest quarter
18 of Section 35, 25 North, Range 3 West, which is just
19 adjacent to the subject acreage that we're discussing here
20 today. The production information from the Myers Number 1,
21 as listed in the *Dwight's* or publicly available
22 information, is incorrectly listed as being from the
23 Mesaverde formation. It is actually from the Chacra
24 sandstone production information.

25 But both the exhibits, Number 12 and Number 13,

1 indicate -- should give the information as to what to
2 expect for Mesaverde production in this specific area.

3 Q. And you utilized this information to come up with
4 your estimated recoveries for the southeast quarter of 25?

5 A. That's correct.

6 Q. Let's look at Exhibit 14. What does this exhibit
7 show?

8 A. Okay, I've got it out. I don't know if everybody
9 can fit that on their table. Exhibit Number 14 is a two-
10 well cross-section, if you will. It's actually a
11 comparison of the log characteristics between the Ora
12 Number 2 production curve that I just indicated a few
13 moments ago, which was Exhibit Number 12. The two-well
14 cross-section, the well on the left is the Ora Number 2,
15 the well on the right is the Wynona Number 1 or the Naomi
16 Com Number 1.

17 Each of the primary producing intervals in the
18 Mesaverde, whether prospective or not prospective in this
19 particular location, is detailed with the top of the
20 formations listed, with the Cliff House on top, the Menefee
21 section in the middle, and the Point Lookout interval at
22 the bottom of the curve.

23 The existing perforations in the Ora Number 2 are
24 detailed in the depth track. And as you can see, it was a
25 Point Lookout-only completion, as are the majority of the

1 wells up in the northwestern portion of Township 25 North,
2 Range 3 West.

3 While at Burlington Resources, I was the
4 production engineer for all of the Mesaverde producing
5 wells, Gallup-Dakota wells in the McCroden lease area,
6 which entails several of the sections in the northwest
7 portion of Township 25 North, Range 3 West, and we spent a
8 great deal of time and money trying to figure out whether
9 the Menefee was actually productive or not in that
10 particular area.

11 What we found was that the Menefee was actually
12 nonproductive and was producing a majority of the water.
13 We had several instances where the Menefee was completed,
14 production tested under an isolated situation and was
15 subsequently squeezed, and we did not run a production
16 packer at that time, but the water was of such a
17 characteristic that it actually ate through the cement job,
18 cement squeeze job that we had, and we had to end up moving
19 back on the well and requesting a specific exemption in
20 order to place a production packer where we could produce
21 just the Point Lookout member in that particular area.

22 The Wynona Number 1, the well that's specific to
23 the proposal here today, the proposed perforations are
24 detailed in the depth column. As you can see, there's a
25 proposed two-stage completion, with the Point Lookout stage

1 being listed as the initial completed zone and the Menefee
2 zone listed as the second zone for completion

3 If you look at the density characteristic of the
4 Cliff House interval, you can see that there's
5 approximately, looking at the log here at the moment,
6 approximately 25 to 30 feet of Cliff House sand that is
7 greater than 8 percent porosity.

8 Referencing the Applicant's exhibit in regard to
9 the Mesaverde production, and in my past experience working
10 in the Mesaverde formation, that exhibit is not an
11 appropriate method for determination of net pay from the
12 reservoir engineering standpoint for development of the
13 reserves, and specifically because it includes the Cliff
14 House pay interval and the Menefee pay interval, which had
15 been shown in the area to be nonproductive specifically.

16 I might add that cumulative production and the
17 estimated ultimate recoveries of the Ora Number 2 are
18 detailed at the bottom of the Exhibit Number 14. And as
19 you can see from their estimated ultimate recovery, those
20 are very marginal reserve recoveries.

21 Q. Now, Mr. Mullins, in your opinion, is the
22 availability of the Mesaverde reserves necessary to support
23 the economics for the development of the Gallup-Dakota?

24 A. The best way to answer that piece of information,
25 or that question, is to look at Exhibit Number 15.

1 Exhibit Number 15 is a summation of the economic
2 summary, for the economics for drilling a Gallup-Dakota and
3 hence Mesaverde zone also included in the southeast quarter
4 of Section 25, 25 North, Range 3 West.

5 The numbers from the slide indicate that a new-
6 drill Gallup-Dakota completion is approximately \$500,000 of
7 investment, with a reserve recovery, as I mentioned
8 earlier, of 388 million cubic feet of gas and 14,000
9 barrels of oil, the rate of return being 22 percent on that
10 project.

11 The detailed information in regard to the gas
12 pricing and operating costs are listed in the lower right-
13 hand corner of the exhibit, and those operating-cost
14 information are consistent with what has been discussed
15 here today as the proposed overhead operating cost.

16 The economic summary slide also indicates that
17 for an incremental investment of \$50,000 to add the Point
18 Lookout member of the Mesaverde in a new-drill well would
19 result in an improved economic result, increasing the rate
20 of return from 22-percent to 25-percent rate of return on
21 the information.

22 Incrementally, adding the Mesaverde through a new
23 drill is a much more economic proposal once you consider
24 the Gallup-Dakota reserves in this specific area.

25 So I don't know if I actually answered your

1 question with a yes or no, but you could ask that to me
2 again and I'll give you a yes or a no.

3 Q. Well, as you show in Exhibit 15, is the
4 availability of the Mesaverde reserves necessary to support
5 drilling the Gallup-Dakota?

6 A. Yes, in the southeast quarter it would be
7 imperative to -- just from an efficiency standpoint, to
8 allow the commingling and operation of the Mesaverde zone
9 in conjunction with the Gallup-Dakota for drilling in that
10 quarter-section, absolutely.

11 Q. All right. And again, referring to Exhibit 15,
12 if the Gallup and Mesaverde are not available to be
13 developed together, does the exhibit show the value and the
14 amount of Gallup-Dakota reserves that will be left in the
15 ground?

16 A. Yes, it does. It shows that there would be waste
17 of approximately 388 million cubic feet for the Gallup-
18 Dakota by not having it drilled in the southeast quarter.

19 I might mention that I utilized a natural gas
20 price forecast of \$4.50, and at the time, the last
21 scheduled point for the hearing, that was an appropriate
22 gas-price forecast, which is based upon these exhibits.

23 The prices have decreased since that point in
24 time to approximately \$3.60. So as the price goes down,
25 this project obviously becomes more marginal.

1 From my understanding of the D.J. Simmons
2 development plan for the acreage that was really fairly
3 recently acquired when you look at the acquisition, just
4 last year, the initial development in the northeast quarter
5 of Section 25 on the existing -- or adjacent to the
6 existing Pictured Cliffs well that was in the area, would
7 be the appropriate initial development for the east-half
8 development of Gallup-Dakota and Mesaverde reserves in the
9 area. And obviously from the fracture-orientation
10 direction, the north-south drainage elliptical pattern, the
11 west half would be a much more appropriate orientation for
12 the well we're discussing today.

13 Q. All right. Is it your understanding that if the
14 Mesaverde and Gallup-Dakota reserves are not both available
15 to D.J. Simmons, that Simmons will abandon its plans to
16 develop the southeast quarter?

17 A. That's correct. It's also my understanding,
18 listening today, that the Gallup-Dakota reserves are not
19 even being considered from McElvain's development
20 standpoint on either the west half or the east half of the
21 subject acreage, and that surprises me, based upon the
22 information that we've presented here today and the past
23 history for the area.

24 MR. HALL: All right. If I may approach the
25 witness, Mr. Examiner --

1 EXAMINER STOGNER: Please.

2 Q. (By Mr. Hall) -- If you would refer to a copy of
3 Order Number R-6496, could you tell me what that order --
4 what relevance that order has to this proceeding?

5 A. Order R-6496 was an order of the Division in
6 allocating a 160-acre nonstandard proration unit for the
7 development of the Mesaverde production within this
8 township. It is specifically located in the northeast
9 quarter of Section 8, Township 25 North, Range 3 West. So
10 this basically shows there's prior precedent for a 160-acre
11 Mesaverde spacing in this area.

12 Q. All right.

13 A. And this was in the northwestern portion of the
14 township.

15 Q. All right. So on a 160-acre basis, would
16 McElvain have another location available to it in the
17 northwest quarter, in addition to its southwest-quarter
18 location?

19 A. Yes, absolutely.

20 Q. Do you know of any reason why McElvain can't make
21 Application to the Division for nonstandard 160-acre units?

22 A. I know of no reason. I might add here that at
23 this point, the Gallup-Dakota reserves that are in the
24 existing well, the Wynona Number 1, under the current
25 proposal that was sent, there's no indication of restoring

1 that well to production.

2 There appear to be reserves from Exhibit Number
3 11 presented here, that the Wynona Number 1 had additional
4 reserves available for production from the Gallup-Dakota
5 zone. That formation is currently developed on 160-acre
6 spacing.

7 Re-entering the existing well, that I believe was
8 testified as just being shut in, should allow for recovery
9 on a 160-acre basis, which we just mentioned, from all
10 three zones, thereby recovering additional reserves and
11 preventing waste.

12 Q. All right. Let me direct your attention in Order
13 R-6496 to Finding Number 7, and it says -- I'll paraphrase
14 -- that by granting the application for 160s in that case,
15 the operator was able to save the administrative, overhead
16 and legal expense which would be required by the
17 communitization of the acreage to form 320-acre units or,
18 in this case, compulsory pooling proceeding.

19 In your opinion, could McElvain have avoided the
20 administrative, overhead and legal expense involved with
21 this pooling proceeding by applying for 160-acre units?

22 A. Yes, absolutely.

23 Q. Or same holds true for the dedication of a west-
24 half unit to its existing well?

25 A. That's exactly correct, we could have avoided all

1 of the -- taking the Division's time in this matter and
2 everything else --

3 Q. All right.

4 A. -- paying my bill, I guess, is one way.

5 Q. And mine, we hope.

6 Mr. Mullins, have you had an opportunity to
7 evaluate McElvain's AFE in this case?

8 A. Yes, I have. I do not have a copy. I know we
9 have some prepared. Maybe you could supply me with that.
10 It's also part of the Petitioner's exhibits.

11 Q. I'll get a copy for you.

12 A. Thank you.

13 Q. In your view, Mr. Mullins, are the costs being
14 proposed by McElvain under its AFE in line with what's
15 being charged by other operators in the area?

16 A. Yes, they are, for the most part. There are two
17 specific items, as I believe the prior witness testified
18 to: the rig-related costs and the stimulation costs in
19 particular, which are the two largest line items on the AFE
20 that, based upon recent price increases, as has been
21 testified, to previously -- are significantly higher, 15 to
22 20 percent higher.

23 So basically \$364,000 is the cost to re-enter and
24 set facilities on this well to attempt the Mesaverde
25 completion.

1 I guess the additional comments that I have is,
2 what might be the additional cost to, you know, restore the
3 additional zones to production, whether that's just
4 drilling a couple of bridge plugs out?

5 But specifically, as it relates to new drilling
6 from a penalty situation, the dryhole cost for drilling a
7 Gallup-Dakota penetration is significantly lower than that,
8 approximately \$200,000, in which case the Mesaverde zone
9 could be mudlogged or tested as it was drilled to see if it
10 has some commercial potential.

11 This is, I guess, my comments in regard to the
12 AFE, which was prepared in September of 2000.

13 Q. All right, did that predate the compilation of
14 the drilling and completion procedure, to your knowledge?

15 A. Yes, it sure did. The AFE as presented in the
16 testimony and in the evidence was prepared and signed and
17 approved by Mr. Larry Van Ryan on September 6th of 2000,
18 where the procedure appears to be dated November 20th of
19 2000.

20 It's very unusual to -- in my experience, to
21 prepare the AFE prior to the procedure. My view is that
22 they go hand in hand, and they are usually prepared and
23 submitted at exactly the same time.

24 Q. All right. Now, on the acid stimulation and frac
25 job line item, were you provided with sufficient

1 information on the proposed frac job to evaluate its
2 propriety?

3 A. No, the information that was presented in the
4 Petitioner's exhibits -- there's not enough information to
5 make any conclusion. It actually says, See attached
6 procedure, which is not attached also.

7 Q. All right. Mr. Mullins, in your opinion would
8 granting McElvain's compulsory pooling Application
9 dedicating a south-half proration unit result in waste in
10 this case?

11 A. Absolutely.

12 Q. Now, were Exhibits 7 and 9 through 15 prepared by
13 you or at your direction?

14 A. Yes.

15 MR. HALL: And we'd move the admission of
16 Exhibits 7 and 9 through 15.

17 And that concludes my direct of this witness.

18 We'd also ask the Examiner to take administrative
19 notice of Order R-6496.

20 EXAMINER STOGNER: Administrative Order R-6496.

21 And while we're at that, it also refers to other
22 rules and regulations applicable at the time. I'll take
23 administrative notice of those old rules, that being Order
24 Number R-1672, November the 14th, 1974.

25 EXAMINER STOGNER: What was the case in 6965 that

1 was alluded to in this order? That's Finding Number 7.

2 THE WITNESS: I believe 6965, if I could
3 interject, relates to the adjacent 160-acre development by
4 Supron, which became, I believe, Union Texas, which
5 subsequently became the Burlington area in adjacent to that
6 particular case.

7 EXAMINER STOGNER: Okay. Anything else you want
8 to say along those lines or hand me or anything?

9 THE WITNESS: The wildcat Mesaverdes that are
10 directly southwest of the subject acreage that we're
11 discussing were approved and permitted on a 160-acre basis
12 on a wildcat development, specifically, and I don't have
13 those order numbers, but they're related to those two
14 wells.

15 MR. HALL: We'd be glad to get those for you.

16 EXAMINER STOGNER: Sure.

17 Okay, what exhibits did we have?

18 MR. HALL: We had 7 and 9 through 15.

19 EXAMINER STOGNER: Exhibits 7 and 9 through 15
20 will be admitted into evidence.

21 Is that all you have?

22 MR. HALL: Yes, sir.

23 EXAMINER STOGNER: Okay, Mr. Hall [sic], your
24 witness.

25 MR. FELDEWERT: I just have one question.

CROSS-EXAMINATION

BY MR. FELDEWERT:

Q. Mr. Mullins, what rate of return does D.J. Simmons normally use for a drilling project?

A. They haven't given me that information on what their target return is, so I can't answer that question. Maybe someone else could answer that today.

Q. So you can't say whether the rate of return of 22.1 percent on your proposed Gallup-Dakota well in the southeast quarter is acceptable or unacceptable?

A. My information, from my experience in the area, in the San Juan Basin, that the target rate of return hurdle needs to be approximately 30 percent for the drilling of a well in all the formations. That's the ideal situation. And as the opportunities are reduced, you know, for capital, as you have fewer wells to drill, you will move further down that -- the economic ladder, so to speak, and drill your less marginal projects in order to maintain your reserve base.

Q. So it's your testimony here today that -- My exhibit doesn't have an exhibit number on it, but your economic summary showing a 22.1-percent rate of return for a new drill in the Gallup-Dakota formation is simply not acceptable to D.J. Simmons?

A. That would be Exhibit Number 15, and that is

1 correct, that on a stand-alone basis for a Gallup-Dakota
2 drilling well in the southeast quarter, the additional
3 benefit from developing the Mesaverde would be a
4 requirement for the development of the Gallup-Dakota.

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

6 EXAMINATION

7 BY EXAMINER STOGNER:

8 Q. Okay, Mr. Mullins, is Order Number R-1672 still
9 in effect for the Blanco-Mesaverde?

10 A. Which order, I'm sorry?

11 EXAMINER STOGNER: Order R-1670-T, dated November
12 the 14th, 1974. It's talked about in paragraph 5 of your
13 -- this is not an exhibit is it, Mr. Hall?

14 MR. HALL: No, sir.

15 EXAMINER STOGNER: But it was additional --

16 THE WITNESS: I do not know --

17 EXAMINER STOGNER: -- information that was
18 presented?

19 THE WITNESS: I do not know, but I believe it is
20 in effect, because when I researched all the wells in the
21 northwestern portion they were still producing, and I'm
22 assuming that, you know, based upon that, that that order
23 was not superseded by another order, which I wouldn't
24 anticipate from an ownership standpoint. So I believe it's
25 in effect, but I don't know that for a fact.

1 Q. (By Examiner Stogner) Do you know what the rules
2 and regulations for the Mesaverde are at this point in
3 time?

4 A. Yes, I sure do.

5 Q. What are they?

6 A. The rules and regulations right now, is my
7 understanding from the Mesaverde standpoint, are for 320-
8 acre development on a acreage basis with allowable infill
9 drilling on 160s as well as down to 80-acre infill
10 drilling. But I'm also aware that there are exception
11 locations allowed for reduced spacing that can be applied
12 for.

13 Q. And where are those talked about?

14 A. I do not know in that specific order.

15 Q. Okay, is it your intent to develop the D.J.
16 acreage in the east half on 280-acre proration unit in the
17 Mesaverde?

18 A. Excuse me, on a 280?

19 Q. Yes, sir, the northeast quarter, by combining it
20 with the north half of the southeast quarter? Is that what
21 you're proposing?

22 A. My recommendation would be to D.J. Simmons that
23 the development would be based upon west-half, east-half
24 orientation for all of the -- all the formations. I would
25 recommend that they pursue Gallup-Dakota and Mesaverde

1 development in that orientation from a commingled
2 standpoint.

3 I'm not sure if I'm -- answered your question.

4 Q. What you're proposing for a nonstandard proration
5 unit, is that your intent to develop your acreage only on
6 the 280 acres that you own?

7 A. No, that would not be what I would recommend. I
8 don't feel that that would be fair and equitable to all the
9 parties.

10 Q. Well, why?

11 A. In order to allow the development of multiple
12 zones, the current spacing patterns for all of the
13 formations would need to be investigated. And since the
14 Gallup-Dakota and the Mesaverde, in my analysis, go hand in
15 hand on the development proposal, it would make sense to
16 approach development on a north-half/south-half basis, with
17 160 Gallup-Dakota and 320 Mesaverde ownership, per the pool
18 rules, without, you know, requesting an exception.

19 Q. Then why are you bringing this up about forming a
20 nonstandard proration unit? What do you mean by doing
21 this?

22 A. I believe the information that we are trying to
23 represent is that there's a precedent set for a 160-acre
24 Mesaverde development within the township, in not only the
25 northwestern portion of the township but also in the

1 southeastern portion of the township, as it relates
2 specifically to the Mesaverde formation.

3 Q. Okay, and I'm talking about the Mesaverde
4 formation. Is it currently prorated?

5 A. The Mesaverde -- My understanding, it's currently
6 prorated on a 320-acre basis.

7 Q. What is the allowable, then?

8 A. I'm not sure if I understand the --

9 Q. You said you knew it was prorated. Then
10 therefore it has an allowable. What is the allowable,
11 then?

12 A. The allowables were removed, I'm not sure in
13 which year, on that acreage basis. I don't recall from
14 memory.

15 Q. Okay, so it's effectively not really being
16 allocated as far as production goes?

17 A. Correct, from production that's correct. I guess
18 I'm speaking from an ownership standpoint, as opposed to,
19 you know, a production-allocation standpoint.

20 Q. Was -- At the time that this order was written,
21 Order Number R-6496, was prorationing in effect? Was
22 allocation being --

23 A. My understanding is, yes, at that time, 320-acre
24 proration units were present from initial production in the
25 Mesaverde since 1955, I believe, 1951 or 1955, on the

1 initial development of the Mesaverde.

2 Q. So there were two parties in this instance that
3 came in and asked for -- at the same time, two 160-acre
4 nonstandard proration units?

5 A. I believe this order ended up resolving an issue
6 between the two parties.

7 Q. Are you proposing that 160 acres for the
8 southeast today?

9 A. I recommend that that -- and I've discussed this
10 with D.J. Simmons, that's an acceptable development for the
11 southwestern portion or the Naomi Com or Wynona well that
12 we're discussing here today, that a 160 designation would
13 be acceptable to D.J. Simmons.

14 Q. Well, also I'm trying to establish that because
15 you have presented something here that this has established
16 some sort of precedent, but what particular method, how is
17 yours similar to this one? So far I haven't seen anything.
18 These were two companies that come in and asked for two
19 nonstandard proration units. It was being allocated at the
20 time. It's not now.

21 A. Right.

22 Q. And you can -- It has four different wells. And,
23 oh, for your instance, Order R-1670-T has not been in
24 effect since 1987.

25 A. Okay.

1 Q. It's been passed over through 8170, and now it's
2 under current order -- well, under the General Rule and
3 Regulation 604. So I'm trying to find why this still
4 applies today in this instance, and so far I haven't seen
5 anything.

6 A. I guess I would have to agree with your answer as
7 it relates to today. I don't have a disagreement with
8 that.

9 Q. Why didn't you come in and make some applications
10 to drill once you found out that they wanted to do this?

11 A. From my understanding -- Again, I am not a D.J.
12 Simmons -- knowledgeable on all of their information. D.J.
13 Simmons acquired their acreage position in the spring of
14 last year and has been working towards the development and
15 has staked the locations and has had to move the locations
16 based upon the surface ownership, and based upon that is
17 planning to bring a rig down to the area to look at the
18 development drilling of -- I believe it's two locations in
19 relation to their subject acreage in this acreage at the
20 same time.

21 And what they're trying to do is get all their
22 ducks in a row, so to speak, since their acreage involves
23 some federal acreage, in order to get their APDs processed.
24 And I'm assuming that they're going to make a decision in-
25 house to D.J. Simmons as to what the appropriate

1 application will be for their acreage, and I'm not aware of
2 what that is.

3 Q. Well, while you were getting your ducks in a row,
4 it looks like to me somebody moved in a poultry factory,
5 because you didn't -- and that's what I'm trying to find
6 out, why didn't you? Is there any documentation, and what
7 precedence, other -- Well, we've eliminated this one.

8 A. I believe the wildcat Mesaverdes would still be
9 established in that portion --

10 Q. Okay, what is the pool boundaries for the
11 Mesaverde? You keep talking wildcat. What are the pool
12 boundaries for the Mesaverde?

13 A. Pool boundaries are 320 acres --

14 MS. GUSEK: No, the pool --

15 EXAMINER STOGNER: No, what are the --

16 THE WITNESS: Excuse me --

17 EXAMINER STOGNER: -- boundaries of the pool?

18 MS. GUSEK: I think that you --

19 EXAMINER STOGNER: Oh, do you want to come up and
20 testify again? Come on up. If you want to -- But there's
21 only going to be one at a time that talks.

22 MS. GUSEK: If this is a question for you, then
23 I'll have you back up here.

24 THE WITNESS: Okay.

25 EXAMINER STOGNER: Do you want to answer it, or

1 does she?

2 THE WITNESS: I will sure make my best attempt --

3 Q. (By Examiner Stogner) Okay, what is the
4 Mesaverde pool boundaries?

5 A. My -- from the prior exhibit -- and it's what is
6 listed as Exhibit 6 on the exhibits that we presented --
7 that's a representation of Hopkins Map Service, a pool-
8 boundary definition for the area. The Mesaverde pool, as
9 it's defined, is listed in the gray-shaded area associated
10 with the Blanco-Mesaverde development.

11 Q. Okay, so when I look at this, the gray-shaded
12 area is within the pool boundaries?

13 A. Yes, that's -- the currently defined pool
14 boundaries, that's correct.

15 Q. Okay, what is the definition of a wildcat well?

16 A. My understanding -- Again, I don't have the
17 information, or maybe I'm not qualify to testify to the
18 pool boundary, we need someone from a --

19 Q. Would you --

20 A. -- land situation.

21 Q. -- like to read it in Rule 104.A?

22 A. I'd be happy to read it into the record.

23 Q. Oh, you betcha.

24 A. Thank you. Rule 104.A in the Order Number

25 R-11,231 indicates the information required for wildcat and

1 development well spacing, I'm assuming, in Rio Arriba,
2 Sandoval and McKinley Counties.

3 A wildcat well is any well to be drilled -- the
4 spacing unit, which is a distance of two miles or more from
5 the outer boundary of a defined pool.

6 Q. Okay, does this fit that description?

7 A. According to -- I does not in relation to this,
8 it's probably only a mile away, that's correct.

9 Q. Okay, so it's not a wildcat well?

10 A. That's correct.

11 Q. So we can get rid of that notion that you keep
12 saying wildcat.

13 A. Okay.

14 Q. Okay. Now, you keep talking about some validity
15 here about downhole commingling should establish the
16 orientation of a spacing unit. Where does that say from
17 the rules or the statutes, or do you have any precedents
18 set on that?

19 A. I don't know of any precedent in regard to that,
20 and I may have presented a misunderstanding in regard to
21 that statement.

22 EXAMINER STOGNER: Do you know of any, Mr. Hall?

23 MR. HALL: I think the thrust of the testimony
24 was that the availability of the Gallup-Dakota reserves or
25 the Blanco-Mesaverde reserves was necessary to support

1 development in the Gallup-Dakota in a commingling case.

2 EXAMINER STOGNER: Well, you'll have the
3 opportunity to brief me that, on that.

4 MR. HALL: Let me make sure I understand the
5 question you want me to brief.

6 EXAMINER STOGNER: The orientation of a spacing
7 unit in an instance like this. I've been involved in those
8 instances where you have had dual applications for
9 compulsory pooling in which the orientations was questioned
10 and one was taken over the other or they were reoriented
11 because one necessarily -- but I don't have that in this
12 instance.

13 We've had dismissals and applications where
14 somebody had tried to force pool an acreage that took into
15 somebody, but then somebody had already drilled a well on a
16 proration unit that they had 100-percent working interest.
17 I know that precedence. But that doesn't fit here.

18 You're wanting them to form a standard standup
19 proration unit, but there hasn't been any like application
20 filed by D.J. Simmons or, for that matter, any due
21 diligence to drill a well. They say they have, but there
22 hasn't been anything written. They haven't talked to -- or
23 put anything in writing.

24 So yeah, I understand on the downhole commingling
25 we've made it easier. Yes, there could be some precedent

1 set on that. But where are we at now, and why should I
2 reorient or deny this and force them to form a standard
3 standup 320-acre proration unit simply because D.J. Simmons
4 decided to drag their feet on something?

5 MR. HALL: Well, I think the testimony has been
6 that they have exercised some diligence in prosecuting
7 their development in the area, including in the acreage to
8 the north.

9 And bear in mind, Mr. Examiner, they have only
10 recently acquired their acreage, where Simmons has had
11 theirs for years. I don't know how they perpetuated the
12 lease, which they -- after they plugged the well two years
13 ago.

14 But I think the primary reason that the
15 Application ought to be denied is not necessarily that
16 commingling may determine the orientation of a spacing
17 unit, but where an operator and owner has 100 percent of a
18 pre-existing spacing unit available to it, where it comes
19 in and seeks to invoke the Division's compulsory pooling
20 authority under Section 7 of the Oil and Gas Act, simply
21 for the purpose of mitigating its risk, is, one, not
22 allowed by the statute anywhere -- there's no provision
23 that authorizes that -- and, two, it's an abuse of the
24 statute.

25 The result of that, if their Application is

1 granted, is that it will make Gallup-Dakota reserves
2 unavailable to D.J. Simmons, and it's a waste case, Mr.
3 Examiner.

4 EXAMINER STOGNER: Why wasn't a compulsory
5 pooling application formed for that formation in this area,
6 then?

7 MR. HALL: Say again, Mr. Examiner?

8 EXAMINER STOGNER: Obviously, they can't get
9 together on 320, they couldn't get together on 160, and
10 McElvain does have some legitimate properties in the south
11 half of the southeast quarter, do they not?

12 MR. HALL: They do, but the testimony has been
13 that they will not develop Gallup-Dakota reserves down
14 there. Those --

15 EXAMINER STOGNER: Based on the dryhole they've
16 already drilled.

17 Mr. Feldewert --

18 MR. FELDEWERT: Yes, sir.

19 EXAMINER STOGNER: -- your comments on this?

20 MR. FELDEWERT: Well, I think --

21 EXAMINER STOGNER: We can't leave you out. I
22 mean --

23 MR. FELDEWERT: I'm glad you asked, because I had
24 sat here all day for this 3-1/2-hour hearing wondering why
25 we're going into these issues, because I look -- and I

1 think what the Division has to do is look at Section 72-17,
2 which is our compulsory pooling statute, and the question
3 is, has McElvain complied with the requirements set forth
4 in that statute?

5 And as I look at Subsection C of that statute,
6 Mr. Examiner, I see in there that it states, Where,
7 however, such owner or owners, one, have not agreed to pool
8 their interest -- that's what we have here -- and, two,
9 where one such separate owner or owners who has the right
10 to drill, has drilled or proposes to drill a well on said
11 unit to a common source of supply. We have that here with
12 McElvain's Application.

13 The statute then goes on to read, When those two
14 preconditions are met, the Division shall pool the
15 interest.

16 This is not a case of competing pooling
17 applications. This is a case where -- which we have
18 periodically -- where we have parties who are not agreeing
19 to pool their interests, we have a procedure in place to
20 deal with that issue -- and I really question whether D.J.
21 Simmons had any standing in the first place to contest this
22 hearing, because they don't have a competing pooling
23 application before you, but I understand the Division's
24 desire to hear what they had to say.

25 McElvain has met all the statutory requirements,

1 they're ready to go. There's been no abuse here.

2 Dugan Production Company, who has the same type
3 of acreage position as D.J. Simmons, is ready to go here on
4 a south-half unit.

5 One of the reasons we have this pooling procedure
6 in our state is so that we can get these pooling
7 applications done, and we don't have a three-and-a-half-
8 hour hearing on what the orientation of the spacing unit
9 should be or when just one party has made a proposal.

10 Dugan is ready to go forward on 320 spacing.
11 McElvain is ready to go forward on a south-half 320-acre
12 spacing.

13 D.J. Simmons is simply not very serious about
14 drilling a Mesaverde well. They just want a bailout zone
15 for their Dakota test efforts. They have every right and
16 every opportunity to drill their Dakota wells. They will
17 have a bailout zone in the Mesaverde in the form of an
18 infill well if they are successful. The only issue there
19 is who's going to operate the well, and once a spacing unit
20 is established it will be McElvain. But they will have a
21 bailout zone for that Gallup-Dakota test.

22 We respectfully submit to you, Mr. Examiner, that
23 we have met all the criteria, we have worked with D.J.
24 Simmons, we have a situation that the statute calls for, we
25 have met all the criteria of the statute. This issue is

1 ripe for decision, and there's really no question here that
2 the Division is required by the statute to pool these
3 interests.

4 MR. HALL: Mr. Examiner, if I might briefly
5 respond to that.

6 If we were to limit our consideration to Section
7 17 of the Oil and Gas Act, that may be correct. But bear
8 in mind what's been established in this case. The
9 overwhelming preponderance -- and I would say unrebutted
10 preponderance -- of evidence establishes that waste Gallup-
11 Dakota reserves will result if McElvain's Application is
12 granted. You cannot limit your consideration of their
13 Application to the compulsory pooling statute alone.

14 I think there's a collateral issue whether they
15 have properly invoked the compulsory pooling statute when
16 they say it's being used to mitigate their risk. That's a
17 collateral issue.

18 You must also construe your authority consistent
19 with the other statutes in the Oil and Gas Act. And of
20 primary importance, I say, in addition to the compulsory
21 pooling statute, is that the Division must act, do whatever
22 is necessary to prevent waste. That would be a denial of
23 McElvain's Application, because we have established
24 reserves will remain in the ground, McElvain has not
25 rebutted that, period.

1 EXAMINER STOGNER: Okay, let's get back to the
2 procedures at hand here.

3 Is there any other questions of this witness. I
4 don't believe there is.

5 MR. FELDEWERT: No.

6 EXAMINER STOGNER: Okay. Well, we're probably
7 pretty muchly started down the road of the closing
8 statements, but I'm going to let Mr. Feldewert have the
9 last word on this instance today.

10 MR. FELDEWERT: There is one point that I want to
11 make before we get there.

12 EXAMINER STOGNER: Before you do, is there
13 anything else you want to say?

14 MR. HALL: I think I've covered it, Mr. Examiner.

15 EXAMINER STOGNER: Okay, Mr. Feldewert --

16 MR. FELDEWERT: There was an issue --

17 EXAMINER STOGNER: -- the last word.

18 MR. FELDEWERT: There was an issue brought up
19 about the risk penalty associated with this project, and
20 you point out -- you asked whether it could only involve a
21 risk in drilling such a well, and we have a recompletion
22 effort here.

23 And I've looked at the statute and, you know,
24 quite honestly, while I was sitting here I looked at it,
25 and it does say involved in the drilling of such well, and

1 then it also later on talks about a *pro rata* share of the
2 cost of drilling and completing the well. So I'm not sure
3 how -- You know, I think the statute could be read either
4 way.

5 I do know, Mr. Examiner -- I'll be happy to get
6 for you -- that we have had a similar situation in a nearby
7 property where there was a recompletion effort and a 200-
8 percent risk penalty was awarded, and I'd be happy to find
9 that order and get that to you, to give you some precedent
10 for that risk penalty.

11 I do disagree with the characterization that --
12 Mr. Hall's characterization, that it has clearly been
13 established beyond any reasonable doubt that there is going
14 to be waste here in the event that this Application is
15 granted.

16 I would submit it's just the opposite. I mean,
17 we have an opportunity here to use an existing wellbore to
18 test the Mesaverde formation in an area -- a test -- it's,
19 you know, no sure bet. I mean, their own exhibits
20 demonstrate the risk that's involved with that. But we
21 have an opportunity to here use an existing wellbore.

22 The only basis for their risk is their
23 proposition that if you grant the south-half spacing unit,
24 there's no way in heck they're going to drill a Dakota well
25 in the southeast quarter.

1 Well, you know, I looked at the rate of returns.
2 That's pretty high. I mean, I've seen companies deal with
3 15-, 16-percent rates of return. D.J. Simmons is not the
4 only interest owner down there. McElvain is an interest
5 owner, Dugan's an interest owner down there. If they
6 thought there was commercial production, Mr. Examiner, you
7 betcha they'd be out there drilling a Dakota well. So I
8 don't think it has been established at all that waste will
9 occur here in the event that there's a granting of this
10 Application.

11 And I also -- like I pointed out earlier, I think
12 the statute is very clear about what criteria are in place
13 when you have a pooling application. And we've met the
14 criteria of the statute, that's all the statute sets forth.
15 The Division at that point, once those criteria are met,
16 the statute says that they shall pool the interest, period.
17 And that's where we are today.

18 EXAMINER STOGNER: Thank you, Mr. Feldewert.

19 If there's nothing further in Case Number 12,635,
20 I'm prepared to take this under advisement. I will not
21 stop either one of you if you want to submit a rough draft
22 in this matter, but I will move forward on issuing it
23 because I'm going to be on a time schedule for the next
24 week myself.

25 So with that, I'm prepared to take Case Number

1 12,635 under advisement.

2 And with that, the hearing is adjourned.

3 MR. FELDEWERT: Thank you, Mr. Examiner.

4 MR. HALL: Thank you, Mr. Examiner.

5 EXAMINER STOGNER: Thank you.

6 (Thereupon, these proceedings were concluded at

7 4:30 p.m.)

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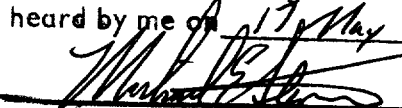
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I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. 12635,
heard by me on 17 May 2009.
 , Examiner
Off Conservation Division

CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL May 28th, 2001.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 2002