

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING CALLED BY )  
 THE OIL CONSERVATION DIVISION FOR THE )  
 PURPOSE OF CONSIDERING: )  
 )  
 APPLICATION OF BASS ENTERPRISES ) CASE NOS. 11,602  
 PRODUCTION COMPANY FOR APPROVAL OF THE )  
 EXPANSION OF THE ATOKA PARTICIPATING )  
 AREA IN THE JAMES RANCH UNIT, EDDY )  
 COUNTY, NEW MEXICO )  
 )  
 APPLICATION OF BASS ENTERPRISES ) and 11,603  
 PRODUCTION COMPANY FOR APPROVAL OF THE )  
 EXPANSION OF THE ATOKA PARTICIPATING )  
 AREA IN THE JAMES RANCH UNIT, EDDY )  
 COUNTY, NEW MEXICO )  
 ) (Consolidated)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

ORIGINAL

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

November 17th, 1997

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Monday, November 17th, 1997, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

\* \* \*

I N D E X

November 17th, 1997  
Examiner Hearing  
CASE NOS. 11,603 and 11,603 (Consolidated)

	PAGE
STATEMENT BY MR. CARR	3
REPORTER'S CERTIFICATE	9

\* \* \*

A P P E A R A N C E S

FOR THE DIVISION:

RAND L. CARROLL  
Attorney at Law  
Legal Counsel to the Division  
2040 South Pacheco  
Santa Fe, New Mexico 87505

FOR ENRON OIL AND GAS:

CAMPBELL, CARR, BERGE and SHERIDAN, P.A.  
Suite 1 - 110 N. Guadalupe  
P.O. Box 2208  
Santa Fe, New Mexico 87504-2208  
By: WILLIAM F. CARR

ADDITIONAL APPEARANCE:

LOSEE, CARSON, HAAS & CARROLL, P.A.  
311 West Quay  
Post Office Box 1720  
Artesia, New Mexico 88210  
By: ERNEST L. CARROLL

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2 11:00 a.m.:

3           EXAMINER STOGNER: This hearing will come to  
4 order, special Examiner Hearing, Monday, November 17th,  
5 1997, Docket Number 35-97.

6           At this time I will call both Cases 11,602 and  
7 11,603.

8           MR. RAND CARROLL: Application of Bass  
9 Enterprises Production Company for approval of the  
10 expansion of the Atoka Participating Area in the James  
11 Ranch Unit, Eddy County, New Mexico. It's the same caption  
12 for both listed cases.

13           EXAMINER STOGNER: At this time I'll call for  
14 appearances.

15           MR. CARR: May it please the Examiner, my name is  
16 William F. Carr with the Santa Fe law firm Campbell, Carr,  
17 Berge and Sheridan. We represent Enron Oil and Gas in this  
18 matter.

19           We also, as I understand pursuant to a  
20 conversation between Ernest Carroll with the Losee firm in  
21 Artesia, have been asked at this time to advise the  
22 Division through me Mr. Carroll is also entering his  
23 appearance in this matter.

24           At this time, Mr. Examiner, I think it would be  
25 appropriate if I would advise the Division as to the status

1 of these cases.

2 As the Division is aware, Bass Enterprises  
3 Production Company is the operator of the James Ranch Unit,  
4 located in Eddy County, New Mexico.

5 Approximately two years ago, Bass proposed the  
6 expansion of the Atoka participating area in this unit, to  
7 include several tracts on the western and southern portion  
8 of the unit. Approval was obtained for this approval [sic]  
9 from the BLM and the Oil Conservation Division before Enron  
10 became aware of it.

11 Enron requested that the Applications of Bass be  
12 set aside -- that the approvals be set aside and that the  
13 matters be set for hearing before a Division Examiner so  
14 they could present testimony in support of their contention  
15 that these proposed expansions that would be retroactive  
16 for a number of years -- that they would be able to present  
17 testimony showing that their correlative rights were  
18 impaired.

19 A hearing was held in February of last year. The  
20 approval was set aside and the matter was set for hearing.

21 I can advise you that last week a settlement of  
22 this matter was reached in which most if not all of the  
23 properties held by Enron and Shell were conveyed to Bass.  
24 And so I have been asked by Enron and Shell to advise you  
25 that they now withdraw their objection to the Application,

1 since they no longer own an interest in the properties, and  
2 that you may now proceed to consider the Application of  
3 Bass.

4 On Friday of last week I received a statement  
5 from Mr. Carroll, and it is my understanding that he  
6 conferred with the Examiner, and I may now read a statement  
7 on behalf of Bass into the record. It goes as follows:

8  
9 A settlement has been reached between Bass  
10 Enterprises Production Company and Enron Oil and Gas  
11 Company and Shell Western, E&P, Inc., whereby the  
12 interests of those two companies in the James Ranch  
13 Unit has been bought out by Bass. Because Enron and  
14 Shell no longer own an interest in the James Ranch  
15 Unit, they no longer have standing to contest the  
16 expansion of the Atoka Participating Area and are  
17 withdrawing their formal objection hereto.

18 It is therefore requested by Bass that the Oil  
19 Conservation Division grant Enron and Shell's request  
20 to withdraw their objection to the expansion of the  
21 participating area. And further, Bass would ask that  
22 based on that withdrawal, that the original  
23 administrative approval of the expansion be  
24 reinstated.

25

1           That's Bass's statement.

2           I can advise you that Enron and Shell have no  
3 position on the reinstatement of the Bass Application, and  
4 the only reason is that they have, to this date, not seen  
5 the data supporting that Application. But we take no  
6 position on it.

7           And the request from Bass is as set forth in Mr.  
8 Carroll's letter, that the original administrative  
9 approvals be reinstated.

10           Based on earlier conversations today with you,  
11 Mr. Examiner, if it is your desire that Mr. Carroll and I  
12 prepare a proposed order we will be happy to do that and  
13 can submit it to you within ten days.

14           EXAMINER STOGNER: Yes, if you would, Mr. Carr,  
15 I'd like for you to prepare a rough draft.

16           Mr. Carroll, do you see anything further in this  
17 matter?

18           MR. RAND CARROLL: Mr. Carr, who is the attorney  
19 for Shell?

20           MR. CARR: I am the attorney for Shell.

21           MR. RAND CARROLL: Didn't somebody else enter an  
22 appearance, an earlier --

23           MR. CARR: Jim Bruce may earlier have appeared  
24 for Shell. Mr. Kellahin also earlier appeared, I believe,  
25 for Shell. They both withdrew from representation early in

1 the case.

2 MR. RAND CARROLL: Oh, that's right, a conflict  
3 arose or --

4 MR. CARR: Conflicts were asserted, conflicts  
5 were asserted, and ultimately both of those attorneys  
6 withdrew and I entered an appearance for Shell.

7 MR. RAND CARROLL: Mr. Carr, are you aware of any  
8 other interest owners in the James Ranch Unit?

9 MR. CARR: I'm not aware -- There are other  
10 interest owners in the James Ranch Unit, but I am not aware  
11 of other interests who were working interest owners who  
12 were affected by these proposed expansions.

13 MR. RAND CARROLL: So as far as you know, it's  
14 just Bass and Enron which was --

15 MR. CARR: Right.

16 MR. RAND CARROLL: -- the successor in  
17 interest --

18 MR. CARR: Right.

19 MR. RAND CARROLL: -- to Shell?

20 MR. CARR: And Shell's interest -- And there are  
21 some properties along -- that may be -- there may be still  
22 some collateral issues because they're within the area  
23 affected by WIPP. But it is my understanding that the  
24 agreement that they've reached disposes of all the issues  
25 that are raised in this case as to the expansion of this --

1 of the Atoka Participating Area.

2 (Off the record)

3 EXAMINER STOGNER: If there's nothing further in  
4 Cases 11,602 and 11,603, then this matter will be taken  
5 under advisement for the consideration of the reinstatement  
6 of the administrative approval. That will be addressed in  
7 the order that will be issued in this matter.

8 MR. CARR: And I will contact Mr. Carroll, and we  
9 will submit a proposed order pursuant to your request.

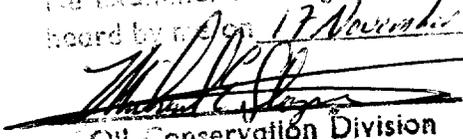
10 EXAMINER STOGNER: Thank you, Mr. Carr.

11 If there's nothing further, then this hearing is  
12 adjourned.

13 (Thereupon, these proceedings were concluded at  
14 11:00 a.m.)

15 \* \* \*

16  
17  
18 I do hereby certify that the foregoing is  
19 a complete record of the proceedings in  
the Examiner hearing of Case Nos. 11602 and 11603  
heard by me on 17 November 1997.

20   
21 Michael E. Stogner, Examiner  
Oil Conservation Division  
22  
23  
24  
25

## 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 November 22nd, 1997.




---

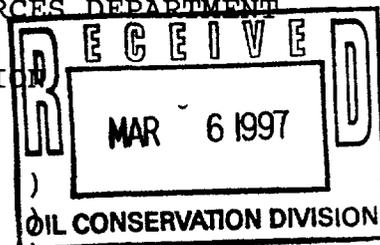
STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 14, 1998

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:

APPLICATIONS OF BASS ENTERPRISES  
 PRODUCTION COMPANY FOR APPROVAL OF THE  
 EXPANSION OF THE ATOKA PARTICIPATING  
 AREA IN THE JAMES RANCH UNIT, EDDY  
 COUNTY NEW MEXICO

)  
 )  
 ) CASE NOS. 11,602  
 ) and 11,603  
 ) (Consolidated)  
 )  
 )  
 )

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

February 19th, 1997

Santa Fe, New Mexico

This matter came on for prehearing conference  
 before the New Mexico Oil Conservation Division, MICHAEL E.  
 STOGNER, Hearing Examiner, on Wednesday, February 19th,  
 1997, at the New Mexico Energy, Minerals and Natural  
 Resources Department, Porter Hall, 2040 South Pacheco,  
 Santa Fe, New Mexico, Steven T. Brenner, Certified Court  
 Reporter No. 7 for the State of New Mexico.

\* \* \*

## I N D E X

February 19th, 1997  
 Prehearing Conference  
 CASE NOS. 11,602 and 11,603

	PAGE
APPEARANCES	3
STATEMENT BY MR. CARR	5
STATEMENT BY MR. LOSEE	19
RESPONSE BY MR. CARR	31
RESPONSE BY MR. LOSEE	38
REPORTER'S CERTIFICATE	70

\* \* \*

Submissions by Bass, not offered or admitted:

	identified
Article 25, Appearances (from unit agreement)	11
Order No. R-279	13

\* \* \*

## A P P E A R A N C E S

## FOR THE DIVISION:

RAND L. CARROLL  
Attorney at Law  
Legal Counsel to the Division  
2040 South Pacheco  
Santa Fe, New Mexico 87505

## FOR THE APPLICANT:

LOSEE, CARSON, HAAS & CARROLL, P.A.  
300 American Home Building  
Post Office Drawer 239  
Artesia, New Mexico 88211-0239  
By: A.J. LOSEE  
and  
ERNEST L. CARROLL

FOR ENRON OIL AND GAS COMPANY and  
SHELL WESTERN E&P, INC.,  
a subsidiary of Shell Oil Company:

CAMPBELL, CARR, BERGE and SHERIDAN, P.A.  
Suite 1 - 110 N. Guadalupe  
P.O. Box 2208  
Santa Fe, New Mexico 87504-2208  
By: WILLIAM F. CARR  
and  
PAUL R. OWEN

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2   3:00 p.m.:

3           EXAMINER STOGNER: I'll call this to order.  
4   Please note today's date, February 20th, 1997.

5           MR. CARROLL: It's the 19th.

6           EXAMINER STOGNER: 19th? Okay, what is it?  
7   19th?

8           MR. CARROLL: 19th.

9           EXAMINER STOGNER: 19th, okay. Please note  
10   today's date, February 19th, 1997, for the matter to  
11   consider motions -- this is a prehearing conference to  
12   consider motions brought forth in Case 11,602 and 11,603.

13           I guess at this time we'll call for appearances.

14           MR. CARR: May it please the Examiner, my name is  
15   William F. Carr with the Santa Fe law firm Campbell, Carr,  
16   Berge and Sheridan. We represent Enron Oil and Gas Company  
17   and Shell Western E&P, Inc., a subsidiary of Shell Oil  
18   Company.

19           MR. LOSEE: A.J. Losee, Mr. Examiner, with the  
20   law firm of Losee, Carson, Haas and Carroll in Artesia. We  
21   represent Bass Enterprises Production Company.

22           EXAMINER STOGNER: Any other appearances for the  
23   record?

24           Since this is somewhat of a loose meeting, since  
25   it's your case, Bass, Mr. Losee, I'll let you state -- Oh,

1 I'm sorry, Mr. Carr?

2 MR. CARR: I'm prepared to proceed if you desire,  
3 on our motion.

4 MR. LOSEE: Either one, it's fine. We've both  
5 got motions.

6 EXAMINER STOGNER: Okay. Well, we'll hear yours  
7 first, Mr. Carr.

8 MR. CARR: May it please the Examiner, we're here  
9 today seeking a hearing to enable Enron and Shell to show  
10 that their correlative rights are being impaired by the way  
11 Bass is operating the James Ranch Unit.

12 We're seeking a hearing before the Oil  
13 Conservation Division, because this is the only place where  
14 we can get a hearing before people with the technical  
15 expertise and competence to correctly evaluate the issues  
16 and, at the same time, get a hearing where our due-process  
17 rights will be afforded. You're the only agency, of all  
18 the agencies involved in this matter, charged by statute  
19 with protecting our rights.

20 You have been told in the *Uhdén* decision by our  
21 Supreme Court that in carrying out your statutory  
22 responsibility you are to afford us due process of law. I  
23 will tell you that in my opinion the *Uhdén* decision is the  
24 central and controlling decision in this proceeding here  
25 today. It's a decision which Bass has summarily dismissed

1 in a footnote in the memorandum we received this morning.

2 As you know, the James Ranch Unit Is a unit  
3 comprised of state and fee lands located in Eddy County,  
4 New Mexico. Prior to the formation of this unit, the  
5 agreement was submitted to the Oil Conservation Commission,  
6 and an order entered in 1953 approving the agreement and  
7 designating Bass operator thereof.

8 Since that time, on occasion, Bass has proposed  
9 PAs and revised those PAs. And this has been done, in our  
10 experience, after, at a very minimum, when proposing the  
11 expansion, providing to the other working interest owners  
12 in the unit copies of the proposal and the supporting data.

13 In fact, Mr. Stogner, in the past when we  
14 received a proposal and supporting data, Enron has objected  
15 to that proposal to the Commissioner of Public Lands. And  
16 after review of Enron's data and Bass's data, the  
17 Commissioner said, Bass, you're wrong; Enron, you're  
18 correct. And they sent the proposal back to Bass. That's  
19 the way it is supposed to be done.

20 But today Bass has embarked on a new course, and  
21 denying us access to the data upon which they base their  
22 recommendations, they have proposed PAs which we believe  
23 impair our correlative rights.

24 Today we stand before you, having not even seen  
25 the presentation to the BLM, because Bass has instructed

1 the BLM to keep that information confidential. And  
2 although they are supposed to be operating the unit in  
3 utmost good faith for other interest owners like us, they,  
4 a year after they have proposed the expansion of the PA,  
5 still will not permit the BLM to disclose the data they  
6 submitted to them, to us.

7 In February of last year, they proposed to you  
8 and to the BLM and the Commissioner of Public Lands,  
9 revisions to the Atoka PA. No notice was given, as we  
10 require -- as we believe is required by the unit agreement.  
11 And without this notice we have, of course, no opportunity  
12 to present evidence, to make our position known before the  
13 decision was entered.

14 And the data that Bass relied on goes back to  
15 December of 1982. Based on that data, and that data alone,  
16 in February of last year, almost exactly a year ago, the  
17 OCD approved the revised PAs and made that revision  
18 retroactive 14 years, until 1982.

19 And it was only after we learned that you had  
20 approved these revisions, we discovered the applications  
21 were even pending. And we wrote to you and we protested,  
22 and we asked you to rescind the approval. And we requested  
23 in April of last year a hearing that was set, initially,  
24 for August the 22nd, but two days before Bass filed for a  
25 stay pending review by the State Director, and the action

1 was stayed.

2 And in December the State Director reviewed, and  
3 the State Director upheld the district office of the BLM.  
4 But that approval noted that a hearing on this matter was  
5 pending here before you, something that Bass believes is of  
6 no consequence.

7 But now the State Director has acted, and now  
8 we're here seeking a setting, because we believe we are  
9 entitled to a hearing if our due-process rights are to be  
10 affected.

11 This action involves Constitutional protective  
12 rights in oil and gas interest, it involves correlative  
13 rights. And I think you need to know the magnitude of the  
14 issue before you.

15 In December of this year, Bass wrote Enron and  
16 demanded payment for 3.1 BCF of gas, approximately \$6  
17 million, and an additional \$339,000 for condensate.

18 Shell's position is a little different than  
19 Enron's. They, in the past, owned interest, working  
20 interest, in the James Ranch Unit. But several years ago  
21 they sold the interest to Enron.

22 But because of the retroactive nature of these PA  
23 expansions, if they are upheld they will be required to pay  
24 approximately \$2 million reimbursement for production  
25 properly allocated under the unit agreement as it then was,

1 years ago.

2 And it isn't just between the parties because, as  
3 Bass pointed out in the memo we received this morning,  
4 there are also questions concerning the impact this has on  
5 royalty that's previously been paid to the federal  
6 government, and I suspect perhaps to the State.

7 But I can tell you with the approval of the Oil  
8 Conservation Division there would have been no revision,  
9 that with no revision there would have been no demand for  
10 Bass. And what we are dealing with here is the impact on  
11 the property rights of Enron and Shell that spring from an  
12 action of the Oil Conservation Division.

13 The memo I received this morning from Bass does,  
14 however, put, I think, one issue at rest. They stated that  
15 this case involves correlative rights, your jurisdictional  
16 basis for acting. Maybe it's Bass's correlative rights,  
17 maybe it's Enron's, but we have agreed that a correlative-  
18 rights issue is presented to you here today.

19 Before you can act to affect those correlative  
20 rights, whoever may be coming out on the short end of this  
21 deal, we are entitled as owners of interest to due process.

22 Now, Mr. Stogner, this agency has been instructed  
23 by the Supreme Court on what that means in the *Uhdén*  
24 decision. It isn't an abstract due-process case. It looks  
25 at an Oil Conservation Division Proceeding and it tells you

1 what you must do.

2 And when you look at the facts of this situation  
3 and you hold them up and you compare them to *Udden*, clearly  
4 interest owners in the James Ranch Unit are entitled to all  
5 protections afforded by the New Mexico and the federal  
6 constitution. Clearly they are entitled to due process of  
7 law.

8 And what does that mean? They're entitled to  
9 notice, they're entitled to an opportunity to be heard, to  
10 present evidence. Today in their memo Bass says, Oh,  
11 presenting evidence may be the cross-examination. There's  
12 no benefit there. I believe the Supreme Court has found  
13 otherwise.

14 The due process also requires a hearing before an  
15 impartial hearing officer, something that Bass totally  
16 ignores in its memo. So let's look at these elements.  
17 Let's look at notice. Here, none was given.

18 Bass says, Oh, yes, we told them we were going to  
19 expand the PA. But I can tell you that there was never any  
20 evidence or information provided to Enron that would show  
21 they were going to pick an interest west of the unit,  
22 Section 35, that in this very room, under oath, they had  
23 told you was beyond the productive limit of the reservoir,  
24 that was fault-separated, and yet they're going to now  
25 contend that is being drained.

1 I can tell you that, in terms of notice, what  
2 they did not give us was any information at all concerning  
3 what they were up to until after decisions had been  
4 rendered by the appropriate agencies, and this is contrary  
5 to their prior conduct, and I think that it is also  
6 contrary to the unit agreement.

7 I've got a couple of pages, one from the unit  
8 agreement and the original order. The first page, Mr.  
9 Stogner, is a page from the unit agreement, and I'm looking  
10 at Article 25, Appearances.

11 And if you read that it says the "Unit Operator  
12 shall, after notice to other parties affected, have the  
13 right to appear for or on behalf of any and all interests  
14 affected hereby before the Department of the Interior, the  
15 Commissioner of Public Lands and the New Mexico Oil  
16 Conservation Commission..."

17 And then it wraps up by saying other interested  
18 parties -- in that case, Enron and Shell -- "shall also  
19 have the right at his own expense to be heard" at such  
20 proceedings.

21 We submit what they've done violates the unit  
22 contract.

23 But due process requires more, Mr. Stogner, than  
24 just notice. That notice must be given prior to the time  
25 the agency acts. We have to be able to be heard by you

1 before you decide. We have to be able to present evidence  
2 before you decide. We have to be able to cross-examine,  
3 whether it is of benefit or not, before you decide. And we  
4 have to be able to show you before you rule how we believe  
5 our correlative rights will be violated. And on that point  
6 alone, the proceedings approving the PA by the OCD must  
7 fail.

8           Furthermore, the hearing must be fair. Mr.  
9 Stogner, that means you cannot be predisposed against  
10 either party before you hear the case.

11           And what does that mean in this case? Well, I  
12 submit it means if after this agency has approved the PAs  
13 it has, you then tell Enron and Shell they must now prove  
14 that the revisions are wrong and that your action, that  
15 your approval, is wrong, that if you now put the burden on  
16 Enron and Shell to disprove what you have done, then you  
17 don't remain neutral but you stay predisposed against Enron  
18 and Shell, and that even if you get us a hearing, that  
19 hearing will still violate due process. You simply cannot  
20 let the prior OCD approval stand.

21           And when due process is an issue, as it is here,  
22 and you look at *Uhden*, you see what you must do is set  
23 aside the approval, set the Bass Applications for hearing.  
24 Let Bass come in and prove their case, let them show that  
25 drainage has occurred. Let them show that the PA should be

1 expanded because of this drainage and that you should set  
2 the clock back 14 years, and we will respond with our  
3 evidence.

4 And then if you believe they're right, you  
5 approve the PA, you have protected correlative rights, and  
6 you have afforded the parties due process of law.

7 And so we're before you today seeking a hearing.  
8 We want to come in and show you that Bass has violated the  
9 unit agreement which this agency approved. We want to show  
10 you they've breached their duties of utmost good faith to  
11 us. We want to show you that their presentation is  
12 technically wrong, inconsistent with what they've  
13 previously said to you, and that the result of it is  
14 impairment of correlative rights.

15 Now, why should you hear the case? Well, clearly  
16 it's within your statutory jurisdiction. You're given by  
17 statute the duty of protecting correlative rights. This is  
18 a specific role, it's imposed by statute.

19 But more than that, it was agreed to by the  
20 parties to the unit agreement. We all agreed that before  
21 PAs could be expanded, this agency would have to approve  
22 the recommended revision. And it is a role that was  
23 accepted by you.

24 The second document I have given you is a copy of  
25 the order approving this unit. And I would direct your

1 attention to Finding Number 3, and that finding provides,  
2 and I will read it:

3  
4 "That the James Ranch Unit agreement plan shall  
5 be, and hereby is, approved in principle as a proper  
6 conservation measure; provided, however, that  
7 notwithstanding any of the provisions contained in  
8 said unit agreement this approval shall not be  
9 considered as waiving or relinquishing in any manner  
10 any right, duties or obligations which are now, or may  
11 hereafter, be vested in the New Mexico Oil  
12 Conservation Commission by law relative to the  
13 supervision and control of operations for exploration  
14 and development of any lands committed to said James  
15 Ranch" unit, "or relative to the production of oil or  
16 gas therefrom."

17  
18 I cannot remember ever seeing a statement where  
19 an agency more clearly asserted its continuing  
20 jurisdiction.

21 And by asking you to assert that continuing  
22 jurisdiction and to hear this matter, we're not asking you  
23 to engage in a meaningless act. We're not suggesting, as  
24 Bass is, that this is a federal matter or a contract  
25 question and you should stay out, because, Mr. Stogner, you

1 are the only one charged with protecting individual rights.

2           The BLM in its jurisdiction, it looks after the  
3 public interest. The State Land Office is trustee for  
4 certain beneficiary institutions, and their review simply  
5 will not suffice. It is not a substitute for a review by  
6 this agency, charged by statute with protecting individual  
7 rights.

8           Correlative rights defined as the opportunity to  
9 produce, and it is extended to the owner of each property  
10 in the pool, to assure that they are able to produce  
11 without waste their just and equitable share.

12           And so what this means is that when parties  
13 believe their correlative rights are being impaired by  
14 the -- because of the way a unit is operated, they come  
15 here. And you have a significant role, and Bass agrees you  
16 have a significant role.

17           In the memo they filed this morning, they admit  
18 that the Division has a significant voice in the creation  
19 and the revision of PAs, and they cite Article 11 of the  
20 unit agreement.

21           And the BLM recognizes you have a significant  
22 role, for in their approval letter dated March 4, 1996,  
23 approving the expansion, and again in their letter in  
24 response to the protest lodged by Enron, they state, This  
25 approval is conditioned on concurrent approval from the New

1 Mexico Oil Conservation Division.

2 So we're here asking you to exercise your  
3 continuing jurisdiction. The Legislature has directed you  
4 to protect correlative rights, the Supreme Court has told  
5 us that you will afford us due process while you carry out  
6 your statutory duty. You told us in the approval order  
7 that you would exercise continuing supervision over the way  
8 this unit is operated.

9 And today we ask you to do what you said you  
10 would do: Set this matter for hearing, supervise the  
11 operations and determine if correlative rights are  
12 impaired. And it's important for you to do this, because I  
13 can tell you, as sure as I'm sitting here, if you do not  
14 clarify what is expected of operators in this situation,  
15 either in the context of additional PA expansions in this  
16 unit or in other units, these same questions will be  
17 brought back before you.

18 Now, what are Shell and Enron asking you to do?

19 First of all, I need to tell you that I do not  
20 believe, and Shell and Enron do not believe that you erred  
21 with your initial approval, because we believe you had a  
22 right to rely on Bass bringing something to you that at  
23 least, if it didn't have the concurrence of the other  
24 working interest owners, they knew about it and could have  
25 expressed an objection. And when they did not, we think

1 you did what was logical; you approved it.

2 But now we know they didn't do that, and so we  
3 have to ask you to start over and set aside that approval.  
4 We ask you to level the field, to now let Bass come in with  
5 their prior approval set aside and prove their case, let us  
6 respond, and then you can decide.

7 Mr. Stogner, in the memo we received today from  
8 Bass, they pointed out that the boundaries of the PAs are  
9 not set by the agencies but they're set pursuant to the  
10 unit agreement, and we agree with that.

11 And so what this means is, you're not asked to  
12 redraw the boundaries; you're simply asked to look at what  
13 is presented to you, and if it protects correlative rights  
14 you say yes, and if it does not you say no and you return  
15 it. And this is a proper role for you, an agency with  
16 engineers and geologists who can look at the data and  
17 evaluate it based on their expertise and knowledge.

18 And Mr. Stogner, you can determine if  
19 nonproductive lands are being included in the unit, you can  
20 determine if drainage has occurred from lands within or  
21 without the existing PA that require adjustments in that  
22 boundary. You can determine if correlative rights are  
23 being protected by the proposed revision. And if you  
24 conclude they are not, you just say no and you return it to  
25 Bass with instructions to do it right.

1           Now, Mr. Stogner, you're going to hear in a few  
2 minutes a lot of "why nots" from Bass. Oh, this is a  
3 federal unit, this is a matter of contract. I urge you not  
4 to be confused by all of this, because what they're trying  
5 to do is cause you to lose sight of the one issue that is  
6 before you today, and that issue is Enron and Shell's  
7 Constitutional right to due process, our right to a  
8 hearing, a hearing before an impartial Hearing Examiner  
9 before an action is taken by this agency which affects our  
10 rights.

11           That's the only issue before you. It's about as  
12 simple and about as fundamental as the law gets. Are we  
13 entitled to a hearing? The courts in *Udden* told us we are.  
14 You told us you were going to continue to supervise this  
15 unit.

16           And now we're simply asking you to do what we  
17 submit you're required to do, set aside prior approvals,  
18 give us a hearing, afford us due process and protect our  
19 correlative rights.

20           EXAMINER STOGNER: Thank you, Mr. Carr.

21           You mentioned today's memo.

22           MR. CARR: Yes.

23           EXAMINER STOGNER: I do not know what you're  
24 talking about.

25           MR. CARR: This morning -- and it may not be a

1 today's memo for you -- I received a copy of a memorandum  
2 from Bass. I have had an opportunity to review it.

3 EXAMINER STOGNER: Does it show that it was cc'd  
4 to us?

5 MR. CARR: I don't know.

6 MR. LOSEE: You have -- The original was sent to  
7 you last week.

8 MR. CARROLL: Okay, by letter dated February  
9 11th?

10 MR. LOSEE: Yes, that's correct.

11 EXAMINER STOGNER: Okay, and that's the one you  
12 were referring to?

13 MR. CARR: And that was -- And I got it today.  
14 I've had time to review it; there is no problem.

15 EXAMINER STOGNER: Okay, sorry if I confused -- I  
16 do have it in front of me.

17 MR. CARR: And that's -- That's what I was  
18 referring to.

19 EXAMINER STOGNER: Okay.

20 (Off the record)

21 MR. LOSEE: Give me just a couple of minutes on  
22 some factual matters.

23 (Off the record)

24 MR. LOSEE: Thank you for allowing me the time.  
25 To the extent my argument doesn't address the

1 issues raised by Mr. Carr, I want to address them at this  
2 point.

3 I think the *Uhden* decision is clearly  
4 distinguishable. It was a hearing -- force pooling hearing  
5 before this Commission, and they moved to increase the  
6 spacing unit. Mr. Carr is well aware of the decision  
7 because I believe he represented one of the parties.

8 And it was an adjudicatory hearing, which is  
9 different than the question before the Division at this  
10 time. As we'll address later on, it's our position that  
11 it's the responsibility of the unit operator to propose the  
12 revisions in participating areas, submit the technical data  
13 to the three oversight agencies for their approval. If  
14 they all approve it, then it becomes a revised  
15 participating area. It does not require a hearing as such  
16 and as urged by Mr. Carr on behalf of Enron.

17 That decision, as he points out clearly, talks  
18 solely about protected property rights, which we don't have  
19 any problem with. An oil and gas right is a property right  
20 in New Mexico. But the hearing involved there was an  
21 adjudicatory hearing involving an increase in the spacing  
22 unit, force pooling. And that's clearly distinguishable  
23 from a request for a revision in the PA system, as I'll  
24 point out later.

25 As far as the reference to what the State Land

1 Office did with respect to a hearing of three or four years  
2 ago, the State Land Office and, as a matter of fact, the  
3 other requesting PAs of 640 rather 320, Bass presented  
4 these to all parties, presented these to the three  
5 oversight committees, oversight agencies, and each of them  
6 rejected the request for 320 and submitted it for 640.

7 MR. MCCREIGHT: No, just the opposite.

8 MR. LOSEE: Just the opposite. But it was  
9 returned to Bass and it was resubmitted, but the copies  
10 were not furnished Enron in that case.

11 We'll address -- I'll address later in my  
12 response this hearing question which I think is truly the  
13 question before the Examiner.

14 I think the real question in their motion to  
15 rescind and for a hearing, and in our motion to dismiss, is  
16 formed in their response. Paragraph 3, page 3 of their  
17 response, and I quote, the BLM procedures did not protect  
18 Enron's due process rights.

19 Interpreting that response in the simplest terms,  
20 we did not win before the BLM, and we would like another  
21 opportunity before the OCD.

22 Now, this -- As Mr. Carr pointed out, the James  
23 Ranch Unit was approved in 1953; 90 percent of the lands,  
24 approximately, are federal lands and 10 percent are state  
25 lands.

1           The unit agreement is on a form provided for and  
2 specified in the federal regulations. It's a contract  
3 between private parties, the oil and gas interest owners,  
4 working interest owners, with oversight by the three  
5 governmental agencies, the BLM, the Oil Conservation  
6 Division and the State Land Office.

7           Enron argues that the unit agreement requires a  
8 formal due-process hearing before the BLM, which it did not  
9 receive. And it also argues that it's entitled to a formal  
10 due-process hearing before this OCD.

11           We suspect that if the OCD grants Enron's request  
12 and holds a hearing, and if they lose before the OCD, they  
13 may well go to the State Land Office and also request a  
14 hearing.

15           In the litigation arena, this is called forum  
16 shopping or searching for a court that will agree with your  
17 position.

18           To interpret the unit agreement to permit  
19 separate hearings before each of the three oversight  
20 regulators is preposterous. Federal courts have appellate  
21 jurisdiction over the BLM in the IBLA decisions. State  
22 courts have appellate jurisdiction over the Oil  
23 Conservation Division and State Land Office decisions.

24           Different results by these agencies or by the BLM  
25 and the OCD could subject the parties to penalties and

1 interest for improper payment of royalties, overriding  
2 royalties, and working interest.

3 Our computerized review of the IBLA decisions for  
4 cases involving PAs, initial PAs, and revisions thereof,  
5 failed to reveal any reference to any separate hearings  
6 before the state agencies. Nor did we find any cases in  
7 the federal oil and gas lease -- in the large federal oil  
8 and gas lease states such as Wyoming, Utah, Colorado, New  
9 Mexico, arising in hearings before separate state and  
10 federal regulatory agencies.

11 We know of no incident where the OCD held a  
12 hearing on an initial participating hearing or revision of  
13 a participating area. There is no precedent for such a  
14 hearing.

15 Bass proceeded with its application for the third  
16 and fourth revisions of the James Ranch Unit participating  
17 area in exactly the same manner as it and other operators  
18 in New Mexico have done for 40-plus years. Bass followed  
19 the same procedure it has done as operator of three federal  
20 units, having 33 separate participating areas. Bass relied  
21 on this administrative procedure in the James Ranch  
22 revisions three and four.

23 In recent years, the OCD has been attempting to  
24 administratively handle more matters, thereby reducing the  
25 hearing case workload. And an OCD hearing in this case

1 will signal a change of that policy. Hereafter, any party  
2 dissatisfied with the initial participating area or any  
3 revision thereof will request a hearing before the OCD.

4 Now, Enron claims that it was denied due process  
5 in the BLM's approval proceedings. The claim is based on  
6 the erroneous assertions that first it did not receive  
7 notice of the applications, didn't know of them, prior to  
8 the approval of the three agencies. And second, it did not  
9 get an opportunity to present its technical evidence in  
10 opposition to the revisions.

11 Bass attended a meeting on November 2, 1995,  
12 almost a year and a half ago, at the BLM office in Roswell,  
13 on revisions to the PA unit agreement. Enron left some  
14 maps with the BLM. That fact is reflected in Mr.  
15 Ferguson's letter, I believe, of March the 4th.

16 The BLM required Bass in its March 4 letter to  
17 give notice to Enron, and Bass gave the notice of the  
18 Application.

19 On April the 16th, the BLM requested the State  
20 Land Office -- which at that time, April 16, 1996, the  
21 State Land Office had not approved the expansions -- they  
22 asked them to withhold approval, suspend proceedings until  
23 Enron made a presentation of its technical data.

24 On June 16th, last, Enron presented its technical  
25 evidence to the BLM in Santa Fe. We understand that the

1 State Land Office and OCD were invited to attend that  
2 presentation. We also understand that the State Land  
3 Office had a representative present.

4 After such presentation, the second for Enron, I  
5 might point out, the BLM affirmed its prior approval, and  
6 the State Land Office finally gave its approval to the  
7 third and fourth revisions.

8 Enron then requested State Director's review, and  
9 that review was held on October the 28th, 1996. Enron  
10 presented its technical evidence to the BLM in Santa Fe.  
11 We understand it took nearly a day. The BLM State Director  
12 affirmed the prior approval of the Roswell office to the  
13 BLM.

14 Enron cannot with a straight face claim that it  
15 did not have notice of the Bass application after  
16 presenting its evidence on three occasions to the BLM, two  
17 prior to the time all three agencies had consented or  
18 approved the revisions.

19 Enron asserts that the BLM procedure does not  
20 satisfy due process, and therefore the OCD should give  
21 Enron a hearing.

22 Before the OCD affords a hearing based on this  
23 assertion, the OCD must first determine that this contract,  
24 the unit agreement between private parties, somehow  
25 requires a hearing before the regulatory agent before it

1 approves any participating area revisions and, secondly,  
2 that due process was in effect denied in the BLM procedure.

3 All of these matters are matters of contract  
4 interpretation and, we do not believe, are properly subject  
5 to the decision-making process of the OCD.

6 Enron is attempting to create a right of hearing  
7 when one does not exist, nor has it ever previously  
8 existed. Enron claims that the approval by the Division of  
9 a proposed participating area requires notice to it and  
10 hearing. This is simply not correct. The Division has the  
11 right of affirmation or denial.

12 Let me read from paragraph 11 of the unit  
13 agreement, found on page 11. This is the first phrase.  
14 Upon completion of a well capable of -- This is entitled  
15 "Participation after discovery". Upon completion of a well  
16 capable of producing unitized substances in paying  
17 quantities, or as soon thereafter as required by the  
18 supervisor or the Commission, the unit operator shall  
19 submit for approval by the Director, the Commissioner and  
20 the Commission, a schedule showing all unitized land then  
21 regarded as reasonably proved to be productive of unitized  
22 substances in paying quantities.

23 What that clearly says in the English language is  
24 that it's the responsibility of the unit operator, and the  
25 unit operator alone, to submit proposed revisions of unit

1 areas, as well as the initial.

2 Neither the BLM nor the Division have the right  
3 to promulgate revised participating areas or to amend  
4 proposals which are submitted by the operator under the  
5 unit agreement. Neither the unit agreement nor the  
6 regulations of the BLM or the OCD, nor the long-established  
7 policies, allow or provide for hearings before the Division  
8 on participating areas of federal exploratory units.

9 A review of the decisions of various state  
10 jurisdictions finds no cases holding that revisions of  
11 participating areas in a federal unit require or even allow  
12 hearings before the state agency administering oil and gas  
13 conservation matters.

14 Enron spends a great deal of time setting out the  
15 procedures which should be afforded. However, Enron  
16 ignores the fact that the James Ranch Unit agreement is a  
17 contract between private parties. The actions performed by  
18 Bass as unit operator were pursuant to the contract between  
19 the parties. There's no due-process right owed between  
20 parties to a contract unless the contract so specifically  
21 provides.

22 Enron's rights under this contract were set forth  
23 upon its execution many years ago. They should not be  
24 allowed to attempt to rewrite the contract at this late  
25 date.

1           Whether or not Enron was denied due process by  
2 the BLM is not a proper matter for the OCD to determine.  
3 It is clearly outside of your statutorily limited  
4 jurisdiction. Whether it is a right created by the  
5 contract is a decision for the IBLA and the federal courts.

6           Now, Enron argues that the OCD is the only agency  
7 charged with protecting correlative rights, that the BLM is  
8 only interested in protecting -- and I quote -- the public  
9 interest. Therefore, they follow, an OCD hearing is  
10 necessary to guard Enron's correlative rights against  
11 injury.

12           This argument is a red herring. The parties were  
13 concerned about the correlative rights 40-plus years ago,  
14 when they entered into the James Ranch Unit.

15           Paragraph 11 of the agreement expressly provides  
16 the manner in which correlative rights are protected. And  
17 I quote from page 11, it's that opening phrase of the  
18 second paragraph at the bottom: It is the intent of this  
19 section that a participating area shall represent the area  
20 known or reasonably estimated to be productive in paying  
21 quantities.

22           And then following, over on paragraph 12 on page  
23 12, it simply says, All unitized substances from each  
24 participating area shall be deemed to be produced equally  
25 on an acreage basis from the several tracts of the unitized

1 land. Correlative rights under the unit agreement are  
2 protected by the requirement that the PAs shall include all  
3 lands capable of producing unitized substances in paying  
4 quantities and the allocation of production from the PA,  
5 based on a surface-acre basis.

6 The three oversight agencies are bound by this  
7 methodology in interpreting and protecting correlative  
8 rights. In the beginning, all parties agreed upon this  
9 method of protection when they signed the agreement. The  
10 three agencies also agreed upon this method when they  
11 approved the agreement. Notwithstanding any statute or  
12 regulation, the agencies must use this standard in  
13 determining the correlative rights of all parties. Neither  
14 the BLM nor OCD can rewrite the contract without the  
15 consent of all the private parties.

16 Now, Enron has gone to great efforts to paint  
17 this dispute as a justified effort to protect its  
18 correlative rights, which Enron claims have been  
19 unjustifiably impaired by the revisions. They're partially  
20 correct as to the focus of this dispute. It does, indeed,  
21 involve the impairment of correlative rights. However, the  
22 correlative rights which have been impaired are those of  
23 Bass. The revisions correct the impairment of Bass's  
24 correlative rights which has existed for over 20 years.

25 The first well in the James Ranch Unit, Atoka

1 participating area, was the James Ranch Unit Number 1 well,  
2 drilled in Section 36 in the late 1950s. The initial Atoka  
3 participating area for this well was 320 acres. As of late  
4 1996, this well had produced more than 25 billion cubic  
5 feet of gas. Engineering and geological data indicate that  
6 the greatest quantity of gas which could have underlain the  
7 original participating area for this well is 3.5 BCF of  
8 gas.

9 Enron has enjoyed the fruits of other owners'  
10 production without compensation to them for more than 20  
11 years, since the date of the second revision. The  
12 revisions remedy this injustice and protect the correlative  
13 rights of all parties to the Atoka participating area, not  
14 just those of Enron. As Enron has often stated, it is the  
15 duty of the Division to protect correlative  
16 rights.

17 In conclusion, whether or not Enron received due  
18 process in the BLM procedure is not grounds for the  
19 Division holding a hearing. The Division is not the proper  
20 forum for such a determination. It will be decided by the  
21 IBLA where Enron's present appeal is pending and, if  
22 necessary, by the federal courts.

23 The BLM decisions reflect that it followed --  
24 contracts were mandated, standard in protecting correlative  
25 rights of the parties. All tracts recently proven to have

1 oil and gas in paying quantities, including those which  
2 were drained by the 25-BCF James Ranch Number 1 well, were  
3 included in the revised participating area. Participation  
4 and production from these areas was contractually provided  
5 for on a surface-acre basis.

6 The OCD should avoid the pitfall of having two  
7 agencies decide -- oversight agencies, decide the same  
8 question. They should not ignore its 40-year-old precedent  
9 and start holding hearings on participating areas or  
10 revisions thereof.

11 The OCD decision should not be set aside, and  
12 they should not hold a hearing. Enron should be denied its  
13 forum-shopping, and Bass's motion to dismiss should be  
14 granted.

15 Thank you.

16 EXAMINER STOGNER: Thank you, Mr. Losee.

17 MR. CARR: Mr. Stogner, could I respond with a  
18 couple --

19 EXAMINER STOGNER: Mr. Carr?

20 MR. CARR: I think it needs to be clarified,  
21 first of all, that Enron and Shell are not before you today  
22 complaining about the lack of due process before the BLM.  
23 We're talking about the lack of due process here. And we  
24 submit that *Uhden* says you must afford us that.

25 Mr. Losee noted that I had a role in the *Uhden*

1 case. I lost that case. And *Uhden*, however, clearly  
2 applies to the facts here, and the Court notes in *Uhden*  
3 that due process applies because this was an adjudicatory,  
4 not a rule-making proceeding.

5 It then goes on and it tells you what they meant  
6 by an adjudicatory proceeding. It says, This order was not  
7 a general application but rather pertained to a limited  
8 area -- that's the first test -- the persons affected were  
9 limited in number and identifiable -- second test -- and  
10 the order had an immediate effect on *Uhden* -- third test.

11 Here, it's a limited area, the James Ranch Unit.  
12 You can identify the persons who are affected; they are in  
13 this room. And it has an immediate effect on Enron and  
14 Shell, or perhaps Bass. It falls squarely under *Uhden*.

15 *Uhden* is the controlling case, and it tells you  
16 what you must do. In that case they expanded a spacing  
17 unit and it diluted Mrs. Uhden's interest. Here they're  
18 expanding the PA, and we contend it is diluting our  
19 interest. It's as clear authority as there is.

20 I don't understand what Bass is so afraid of. If  
21 the data they have on the drainage, and if they can show  
22 the fault they've argued about before it disappeared, then  
23 they shouldn't be concerned about bringing that before you.

24 But they run in here and, Mr. Stogner, they say  
25 we're forum-shopping. That argument might apply if we had

1 ever had a forum where we were given notice before the  
2 agency acted, where we were given an opportunity to appear  
3 and to present evidence and to cross-examine, something we,  
4 unlike Bass, think is of some benefit.

5 But they sit here and they say, Oh, there's never  
6 been precedent for this, never done, suggest it's improper.  
7 Well, we have appealed to the IBLA. Yesterday I got a  
8 decision where the administrative law judge isn't going to  
9 rule right now on our request for a stay. And one of the  
10 things they noted was, there's an appeal pending here. If  
11 it's so odd, it's odd also that the administrative law  
12 judge referenced this without noting that.

13 But this is not the precedent-setting matter that  
14 Mr. Losee would have you believe. Yes, you can always draw  
15 your questions so narrowly that anything is a precedent-  
16 setting matter. But 40 years ago, Mr. Stogner, we signed a  
17 unit agreement, and now the issue is, are they following  
18 the provisions of that agreement in good faith and in a way  
19 that protects correlative rights?

20 The issue is the conduct of Bass. The issue is,  
21 are they acting in good faith, are they carrying out the  
22 duties as we had a right to expect them to do it?

23 And the precedent is Bravo Dome, where you called  
24 Amoco back at least four times, made Amoco give notice, and  
25 made them come in here to show not only was the agreement

1 fair, but were they operating under that agreement in a  
2 fashion that on a continuing basis would protect  
3 correlative rights? That, in fact, is the precedent for  
4 this action.

5 But the only precedent you may set here is by  
6 refusing to hear it and giving a green light to an  
7 operator, telling them that once we approve it, go for  
8 broke, we're not going to look at it again. And we think  
9 if you do that, you are breaching your duty and you are  
10 violating what you said you would in terms of supervising  
11 this unit when you initially approved it.

12 Bass says, Oh, yes, we've got conflicting  
13 problems, gosh, it's going to be terrible. Somebody may  
14 say we pay royalty, somebody else may say we don't. Had  
15 they given notice to us, I submit, they would be in this  
16 problem.

17 I will tell you right now, they're complaining  
18 about a problem they've created, for we have talked to the  
19 State Land Office about holding at a state level the  
20 royalty issue, and we have gone to the BLM and we have  
21 asked them to stay until this is resolved. But Bass  
22 opposes the stay. They'd rather have the problem and come  
23 here and complain to you.

24 They say, Oh, yes; Enron -- They had notice.  
25 Back in November of 1995, yes, there were meetings, they

1 talked about revisions. They did not tell anyone they were  
2 going to include acreage that they had previously in this  
3 room told you was beyond the limits of the reservoir and  
4 that they were going to go in and contend it was now being  
5 drained.

6 And then they say, Well, we gave them notice on  
7 March the 4th. That's after the BLM had ruled, that is  
8 after you had ruled. And I submit to you that is not  
9 sufficient notice.

10 They talk about other agency proceedings. I  
11 suggest if you read the Santa Fe Exploration decision  
12 you'll find that once you approve a unit, you can't pass  
13 responsibility for supervision to the operator, nor can you  
14 pass it to another agency. And we simply are asking you to  
15 do what I believe you have agreed to do and what the  
16 Supreme Court has told you to do.

17 In the memo I received this morning, Bass stated  
18 there is no due process right owed between parties to a  
19 contract unless a contract so specifically requires. And  
20 then they suggest that there is no requirement here.

21 I will tell you that you do not perform contracts  
22 in a vacuum, that when they stand before you here and point  
23 to a contract between private parties and say, It doesn't  
24 say we have a right to a hearing or due-process rights,  
25 they're ignoring the fact that the contract requires

1 approval of this agency before a PA can be expanded.

2 And the law within which that plays out requires  
3 that before you do something that affects our property  
4 rights, we have notice and an opportunity to be heard. And  
5 I submit to you that this contract must be played out in  
6 the framework of the Constitution and relevant law and  
7 applicable law, and we have a right to due process or right  
8 to a hearing.

9 And if you'll look at the provision I quoted you  
10 a while ago from Section 25 of the unit agreement where it  
11 first says you get notice before they come in and then in  
12 the last sentence it says we have a right to a hearing, I  
13 don't know how it sounds to you, but it sounds like due  
14 process to me.

15 The brief that they filed then goes on and says  
16 Enron's rights under this contract were set upon its  
17 execution many years ago. We agreed, and so were Bass's  
18 obligations to us.

19 They then go on to say, Enron should not be  
20 allowed to attempt to rewrite the contract at this late  
21 date, and we agree with that. And we say Bass should not  
22 be allowed at this late date to ignore the contract.

23 And then right before their conclusion they come  
24 in and they make an interesting statement. They say to us  
25 and to you, for this is who this is directed to, It should

1 be noted that the applications were not arbitrarily drawn  
2 to the benefit or detriment of any leasehold operator.

3 If you read that statement and compare it to the  
4 last sentence of the first paragraph of their introduction,  
5 they say, The revisions correct the impairment of Bass's  
6 correlative rights which has existed for over 20 years.

7 I submit to you when you read those together, it  
8 is fairly clear that they were drawn to benefit Bass, to  
9 correct their perceived correlative-rights problems.

10 And then they go on and they say right before  
11 their conclusion in the memo, The boundaries of the third  
12 and fourth revisions were drawn after an exhaustive study  
13 of geological and engineering data for the Atoka  
14 participating area.

15 Well, maybe they were, and maybe they weren't.  
16 But we can't tell, we don't know, because we have not been  
17 allowed to even look at the data. They've insisted they be  
18 kept confidential. We do know that what they're presenting  
19 is inconsistent with what they told you under oath two  
20 years ago, that what they're adding is beyond what they  
21 said were the productive limits of the reservoir, that what  
22 they are adding is beyond and away on the other side of a  
23 fault, and they now contend that's being drained. But they  
24 kept the data confidential.

25 And we submit to you, Mr. Stogner, that since we

1 have a correlative-rights issue, the correlative-rights  
2 issue is better decided by you following a full hearing,  
3 that it should not be decided by Bass's counsel in this  
4 memo, it should not be decided by me.

5 It should be decided by you after a full hearing.  
6 And in doing that, our correlative rights, whoever's rights  
7 may be impaired, can be protected, and we will have a  
8 decision based on a record, evidence and a Constitutionally  
9 sufficient hearing, and not based on words emanating from  
10 the lips of counsel, not based on *ex parte* communications  
11 with employees of the BLM.

12 EXAMINER STOGNER: Thank you, Mr. Carr.

13 Mr. Losee?

14 MR. LOSEE: I'll just address two or three things  
15 that Mr. Carr raised at the end.

16 He pointed out that Bass opposed the stay before  
17 the IBLA, and that's because the MMS is pretty obvious.  
18 MMS is requiring payment of royalty based on the revisions  
19 of the participating area. And Bass is in the awkward  
20 position of now determining whether to comply with the MMS  
21 or suffer penalties and interest.

22 Yes, we oppose the stay, and for that reason.

23 And we'll be in a bigger dilemma if we have a  
24 hearing before the OCD and the OCD for some reason should  
25 disagree with the opinion of the BLM on the data submitted,

1 and we'll have two separate hearings. That's something we  
2 would like to avoid, and I'm satisfied it was not in the  
3 contemplation of the drafters of this unit agreement, nor  
4 has it ever been determined in the 40-plus years of unit  
5 agreement application in New Mexico.

6 Now, Enron can complain that they have not been  
7 treated fairly. But I submit to you, the manner in which  
8 the revisions were submitted to the BLM and the other three  
9 agencies is exactly the same that they've done in their 33  
10 other participating areas, and it's exactly the same, to my  
11 knowledge, that other operators in New Mexico have done for  
12 40-plus years.

13 They're following exactly the same procedures and  
14 -- everyone's followed, and whether or not we're going to  
15 start a course of action, if one party to a unit agreement  
16 is dissatisfied with a determination by the BLM that it's a  
17 predominantly federal unit and he goes to the OCD and asks  
18 for a hearing, we're going to be in for a long period of  
19 confusion, where the parties do not know their rights under  
20 the -- that.

21 Enron has a perfect way of raising their  
22 questions of due process before the Interior Board of Land  
23 Appeals and before the federal courts and to see if the  
24 evidence sustains the determination by the BLM.

25 As a matter of fact, the BLM points out in its

1 decision that the data submitted by both Enron and Bass,  
2 Which Enron claims it hasn't seen, are substantially the  
3 same as the reservoir calculations, and it is the  
4 interpretation of this data that Enron and Bass disagree,  
5 and that the BLM confirms that it agrees with Bass's  
6 interpretation.

7 Thank you.

8 (Off the record)

9 EXAMINER STOGNER: Mr. Losee, I have a question.

10 MR. LOSEE: Okay.

11 EXAMINER STOGNER: On the February 8th document  
12 that was approved by the Division, if the Division at that  
13 time would have not approved it, what would have been  
14 Bass's course of action?

15 MR. LOSEE: If they submitted the data and Bass  
16 turned the data down, we might not have had a revised  
17 participating area. I think it requires approval of all  
18 three agencies.

19 EXAMINER STOGNER: So Bass would have dropped it  
20 at that time?

21 MR. LOSEE: I cannot respond to that because  
22 that's --

23 MR. McCREIGHT: May I can respond. I'm Frank  
24 McCreight here on behalf of Bass.

25 I think we would have gone back and tried to find

1 out why it was -- what the problem with the submittal was,  
2 had there not been concurrent approval.

3 And, you know, we did that once, as a matter of  
4 fact, in this proceeding. We went before the BLM once with  
5 a proposal that Enron objected to, and they sent us back to  
6 the drawing board.

7 EXAMINER STOGNER: Okay, but I'm talking about  
8 the approval down here at the bottom.

9 MR. MCCREIGHT: Yes, sir, I understand.

10 EXAMINER STOGNER: So I'm gathering from what  
11 your answer would have been, then, you would have sought  
12 reasons why, regardless if it would have been further  
13 administrative action or the Division would have set it to  
14 hearing?

15 MR. MCCREIGHT: Well, I think my understanding of  
16 that would have been that the BLM wouldn't have approved it  
17 either, had there not been all three parties approve the --  
18 I mean, historically, we haven't gotten approval back from  
19 all three agencies until they all three have communicated  
20 amongst themselves and decided they're going to approve  
21 this.

22 And had the BLM told us that, well, the OCD has a  
23 problem with this application, we would have said, Okay,  
24 where do we go from here, what do we need to do?

25 EXAMINER STOGNER: Mr. Losee, anything further?

1 MR. LOSEE: No, I think that's correct. If  
2 there's not an approval, then we have to go back and see  
3 what will satisfy all three agencies. And because it is a  
4 federal unit and 90-percent of the land is federal, you go  
5 back and start with the feds and let them make the  
6 submissions, or you make them, to the OCD and the State  
7 Land Office.

8 MR. McCREIGHT: Whether -- My understanding is  
9 that we submit it through the BLM, is the proper procedure,  
10 and with copies to the other two agencies. And then once  
11 we've gotten indication that it's concurrently been  
12 approved and that we know from communications with the BLM  
13 historically that they communicate with the other agencies  
14 as well -- But there would not have been approval without  
15 all three agencies approving it. We didn't have final  
16 approval until the Land Office and the BLM approved it.

17 MR. LOSEE: The Land Office waited until after  
18 the June hearing --

19 MR. McCREIGHT: Yeah.

20 MR. LOSEE: -- when they sent a representative  
21 there.

22 MR. McCREIGHT: And we have no choice but to  
23 assume that if there was a problem, that's where the  
24 problem lay. So that's -- And that was actually the  
25 purpose of the June hearing, to give all parties another

1 chance to reconsider the application, which is what we did,  
2 and that's when Enron put on their technical data.

3 MR. CARROLL: So you would have asked the OCD to  
4 either reconsider or set it for hearing so you could  
5 present your --

6 MR. McCREIGHT: No, I wouldn't have come for a  
7 hearing at all, no, sir. We would have gone to the BLM and  
8 asked them what was the problem, could they give us some  
9 guidance as to why it wasn't approved, and what could we do  
10 to get it approved?

11 That's what we've done on numerous occasions in  
12 the past.

13 MR. CARROLL: And in almost all situations, the  
14 OCD would approve an application like this without any  
15 conflicting evidence to the contrary. In this situation,  
16 the OCD had evidence to the contrary because apparently the  
17 parties weren't notified that this was being submitted to  
18 the OCD; is that correct?

19 MR. McCREIGHT: No, sir, I don't think so. I'm  
20 sorry, could you clarify the question?

21 MR. CARROLL: The OCD, when it only hears one  
22 side of the story, is inclined to approve an application.  
23 If parties that would object weren't receive notice of that  
24 application and we don't get the other side of the story,  
25 like I said at the beginning, we're inclined to approve the

1 application.

2 MR. McCREIGHT: I have no argument with that, but  
3 I have to assume that you all -- The OCD was aware of the  
4 June hearing, obviously, and had another opportunity to  
5 reconsider the technical data being presented, and I assume  
6 since you all again didn't object or didn't become involved  
7 in that hearing that, you know, there wasn't a problem with  
8 the application.

9 We went back -- We agreed to the June hearing at  
10 the request of the BLM. We said, Fine, let's have another  
11 technical hearing.

12 MR. CARROLL: Mr. Losee, you mentioned that  
13 there's never been a hearing on a revised PA in the history  
14 of the OCD?

15 MR. LOSEE: Not within my knowledge and not  
16 within the knowledge of --

17 MR. CARROLL: Have you been aware of any requests  
18 for a hearing on a revised PA?

19 MR. LOSEE: No, I have not. But I can't tell you  
20 that there have or haven't been any requests. All I'm  
21 saying is, I have no knowledge of any hearings on PAs,  
22 original PAs, or requests for revisions. I can't tell you  
23 whether anybody requested them.

24 I can suggest to you that the procedure that the  
25 operators have followed over the years has simply been to

1 submit them, and if one of the agencies disagreed they  
2 would try to determine -- was not willing to approve it,  
3 they would try to determine what the agency disliked or  
4 disapproved and see if they could revise the presentation  
5 to all three agencies again.

6           There just -- There haven't been any hearings,  
7 and --

8           MR. McCREIGHT: But that is, in fact, exactly the  
9 case that Mr. Carr made reference to, where we were  
10 involved in a separate matter, submitted it, the agencies  
11 -- in that particular case both the OCD and the BLM  
12 informed Bass that they didn't approve -- were not going to  
13 approve our submittal. So we went back to the drawing  
14 board and revised it and went back, and it was concurrently  
15 approved by all three agencies.

16           MR. CARROLL: Now, was that due to any objector  
17 or protester providing conflicting evidence?

18           MR. McCREIGHT: I know in that particular case  
19 Enron was not in agreement with our presentation. But we  
20 did not have an exchange of data. There was never a  
21 hearing contemplated. We submitted a plan, they submitted  
22 a plan.

23           The BLM and I presume the OCD as well both made  
24 their own separate determinations that they didn't like our  
25 plan. They said go back to the drawing board and resubmit

1 it, and that's what we did.

2 I can't speak for what prompted it, but it might  
3 very well come about as the result of a protest but --

4 EXAMINER STOGNER: What is the status of the  
5 federal approval at this time? Has it been approved?

6 MR. LOSEE: Federal approval is on appeal.  
7 They've approved the revisions. The State Director has  
8 approved it. In December Mr. Carr -- correct me on my  
9 dates -- filed a notice of appeal and statement of reasons.  
10 Just recently, he filed a supplement statement and  
11 requested permission to file another one in March --

12 EXAMINER STOGNER: And that has been granted?

13 MR. LOSEE: -- and supplemental -- filed a  
14 supplemental statement of reasons.

15 MR. CARR: And we have requested a stay --

16 MR. LOSEE: And they've requested a stay --

17 MR. CARR: -- and that's under consideration.

18 MR. LOSEE: -- and Bass has objected, for the  
19 reasons I mentioned.

20 MR. McCREIGHT: It's been approved on the local  
21 and through the State Director level.

22 MR. LOSEE: Yes.

23 MR. McCREIGHT: Okay, and it is pending appeal at  
24 the IBLA level.

25 EXAMINER STOGNER: And how about the process with

1 the State Land Office?

2 MR. McCREIGHT: It is approved, and I presume --  
3 Is there a separate procedure there or not?

4 MR. CARR: No.

5 MR. LOSEE: Well, they haven't -- If there is  
6 any, I don't know of any.

7 MR. McCREIGHT: I presume they're going to look  
8 to the IBLA matter.

9 MR. LOSEE: The State Land Office approved it  
10 after hearing the presentation of technical data in June.

11 MR. CARROLL: Mr. Carr, can you give us a little  
12 more information on the Case 11,019?

13 MR. CARR: And which is that?

14 MR. CARROLL: That's the case he referred to  
15 where Bass presented testimony or evidence that was in  
16 conflict with the evidence presented here.

17 MR. CARR: I can tell you that in that case a  
18 structure or isopach map was presented -- I was not a party  
19 to that case -- and that the structure map or the isopach,  
20 which I can produce, shows that on the eastern edge of the  
21 unit the contours stop and on the Bass exhibit it says,  
22 "end of productive reservoir".

23 And acreage that is now being included extends  
24 substantially west of the end of the productive reservoir.

25 MR. CARROLL: And what was the date of that

1 testimony?

2 MR. CARR: Well, it was approximately two years  
3 ago. And those exhibits should be in your file. And it's  
4 the Bass isopach that has labeled toward the top of a long,  
5 long map, "end of productive reservoir".

6 And what is now being included in the PA is  
7 acreage that they believe is being drained, or contend is  
8 being drained, is acreage beyond that and also beyond the  
9 fault that can be established with seismic data.

10 EXAMINER STOGNER: What was the call of that  
11 case? Do you remember?

12 MR. CARR: Mr. Stogner, I don't -- I did not  
13 bring that with me, but I could provide the whole thing.

14 MR. CARROLL: And was that testimony presented to  
15 the State Land Office and the BLM?

16 MR. CARR: No, it was presented to the Oil  
17 Conservation Division. It was an OCD hearing.

18 MR. CARROLL: I mean, was the conflicting  
19 evidence presented in that case presented to the State Land  
20 Office and the BLM --

21 MR. CARR: We have no idea. We've asked, and we  
22 have no idea, because Bass has refused to let us see what  
23 they presented to the BLM. We don't know.

24 MR. CARROLL: But the State Land Office and the  
25 BLM was aware of the conflicting testimony in this case --

1 MR. CARR: I have no idea, because we have not  
2 been allowed to see what they've presented, Mr. Carroll?

3 MR. CARROLL: Did Enron present that evidence to  
4 the --

5 MR. CARR: Yes, we did, we certainly did.

6 MR. CARROLL: How did Enron finally receive  
7 notice of the OCD approval --

8 MR. CARR: There was a telephone conversation  
9 between a landman at Enron and a BLM employee, and he was  
10 advised that it had been approved, and it was at that time  
11 that he contacted me and we discovered that the OCD had  
12 already approved it. That was March the 10th, something  
13 like that, last year, and it was a day or two later that we  
14 filed a written protest and requested the hearing.

15 MR. CARROLL: And when did Enron receive the  
16 notice that was required by the BLM?

17 MR. CARR: The BLM in April agreed -- and the  
18 State Director has since differed with this -- but agreed  
19 that notice was required under Section 25. And so Bass  
20 said, Okay, here's your notice, and sent us notice. But  
21 this was after the approvals of two of the three agencies  
22 had been obtained.

23 MR. CARROLL: Mr. Carr, are you aware of any  
24 hearings on revised PAs in the OCD history?

25 MR. CARR: I'm never aware of anyone having been

1 in this situation requesting one.

2 EXAMINER STOGNER: Mr. Carr, I have a question  
3 for you. The unit agreement, Section 11 --

4 MR. CARR: Yes, sir.

5 EXAMINER STOGNER: -- page 12, about midway  
6 down, it talks about whenever it is determined, subject  
7 to the approval of the Supervisor -- and that refers to  
8 the Supervisor of the United States agency -- as well as  
9 on federal lands, the Commissioner -- in this case, the  
10 Commissioner of Public Lands as to wells on state land  
11 -- and the Commission as to wells on private owned lands,  
12 that a well drilled under this agreement is not capable  
13 of production in paying quantities and inclusion of the  
14 land of which it is situated and participating areas  
15 unwarranted -- how does that fall in this argument today,  
16 this --

17 MR. CARR: Well, it talks about individual  
18 agencies and their individual areas of responsibility.

19 But I think you can't look just at this. You  
20 must look at Article 11 where you're given a significant  
21 role in the expansion of PAs.

22 You have to look at Section 25 where notice is  
23 required, and you also have to recognize that since you  
24 must approve a PA expansion before it can become effective,  
25 that those operators who have committed their interest to a

1 unit where you're going to exercise -- continuing to  
2 exercise your jurisdiction, they have a right to assume  
3 that you will do so and that in doing so you will protect  
4 correlative rights and do the exercise of that authority  
5 according to law, which requires that we have due process,  
6 which in turn requires a hearing.

7 MR. CARROLL: And Mr. Losee, did I understand you  
8 correctly that if a contract doesn't provide a right to a  
9 hearing, a party doesn't have a right to a hearing before  
10 the OCD? The OCD is bound by a contract entered into by  
11 the parties?

12 MR. LOSEE: It's bound -- it consented to the  
13 contract entered into with the parties. And as a result,  
14 as far as whether or not it is or isn't entitled to -- a  
15 party entitled to a hearing is dependent upon the terms of  
16 the contract.

17 MR. CARROLL: Didn't -- Mrs. Uhden signed a  
18 lease; she didn't get a right to a hearing under that lease  
19 agreement, but the Supreme Court still gave Mrs. Uhden a  
20 right to a hearing before the OCD.

21 MR. LOSEE: Well, the distinction between that  
22 case and this case is that the express rules of the  
23 Commission provide for a hearing in Mr. Carr's *Uhden* case.  
24 The express rules of the Commission, or the contract, do  
25 not provide for a hearing when the Commission is solely

1 called upon to consent, to approve or disapprove. They  
2 can't rewrite the unit operator's proposal for a  
3 participating area.

4 If they disapprove, then the unit operator has to  
5 look at his proposal, see what would satisfy, whether it  
6 would be the OCD, the BLM or the State Land Office.

7 MR. CARROLL: You're aware that --

8 MR. LOSEE: Until all three of them agree, there  
9 can't be a revision. No question about that

10 MR. CARROLL: Well, you're aware that if the OCD  
11 heard the case it would just be a thumbs-up or a thumbs-  
12 down. We wouldn't be drawing the line of a participating  
13 area.

14 MR. LOSEE: Well, I think that's -- Well, I don't  
15 know what the OCD would be doing. They've not had a  
16 hearing, Mr. Carroll, in 40-plus years on the participating  
17 areas. And I extend to you that the reason they haven't is  
18 because no one has thought it made any sense to have two  
19 regulatory agencies, or maybe three, all have separate  
20 hearings to determine whether or not a PA should be  
21 approved.

22 The idea behind this federal unit agreement,  
23 which has been in existence for 40-plus years, is, the  
24 operator has the responsibility of gathering their data and  
25 submitting a proposal for revision of the participating

1 areas.

2 MR. CARROLL: Are you aware of the BLM having any  
3 problem with the OCD holding a hearing?

4 MR. LOSEE: I haven't asked the BLM one single  
5 thing. All I'm simply saying is that if the OCD held a  
6 hearing and arrived at a different conclusion, with the MMS  
7 asking for royalty based upon the third and fourth  
8 revisions, what position is the unit operator going to be  
9 in? Or, for that matter, any working interest owner who  
10 has obligations to its override owners?

11 There's been an order, there's been a third and  
12 fourth revision of the James Ranch participating area,  
13 approved by all three governmental oversight agencies.  
14 There's no stay of the order, there's no stay of the BLM  
15 order. They are required by law to compensate for royalty  
16 and over ride.

17 As a matter of fact, if you will look back there  
18 at the paragraph, the working interest owners can do what  
19 they want to, but --

20 MR. CARROLL: Well, Mr. Losee, it appears to me  
21 an accounting mess any way we go. I mean whether you ask  
22 royalty owners for refunds or whether you're asking Enron  
23 for refunds, there's going to be a recalculation of who  
24 gets what.

25 MR. LOSEE: Well, the distinction is that,

1 dealing with the federal government, they have penalties  
2 they enforce, and it's no excuse that you're holding a  
3 hearing before the OCD or that the OCD has arrived at a  
4 different conclusion. MMS is still going to seek the  
5 penalties for failure to pay.

6 MR. CARROLL: You know, I called the BLM and they  
7 agree it's a three-headed monster, but they agree that all  
8 three agencies, you know, have a say in it, and if any  
9 agency decides to disapprove then it's disapproved.

10 MR. LOSEE: I don't disagree with that at all.  
11 I've been trying to say that, Mr. Carroll, all along.

12 MR. CARROLL: But the hearings have been held  
13 regarding the State Land Office and BLM decisions, but the  
14 OCD hasn't held a hearing. So why shouldn't the OCD also  
15 hold a hearing, since the other two agencies held a hearing  
16 regarding their earlier decision?

17 MR. LOSEE: Mr. Carroll, I don't believe the  
18 State Land Office has held a hearing. I believe the State  
19 Land Office attended the technical presentation of evidence  
20 by Enron before the BLM in Santa Fe on June the 19th, or  
21 some day in June, and also on October the 28th. They did  
22 not hold a separate hearing. They simply attended the  
23 hearing where Enron -- and at the same time, separate time,  
24 Bass presented its technical evidence.

25 MR. CARROLL: Uh-huh.

1 MR. LOSEE: And as I understand, and I obviously  
2 can't tell that, Mr. Ferguson with the BLM advised that he  
3 had notified the OCD that they were going to have this  
4 hearing.

5 The BLM stopped the process when they got Enron's  
6 protest. And the way they stopped it, they had already  
7 approved it, as had the OCD. They wrote and told the State  
8 Land Office to suspend their procedures until Enron had a  
9 chance to present its technical evidence, which was done in  
10 June.

11 And after that technical evidence was presented  
12 -- and as I understand, the OCD was given an opportunity to  
13 be present, but I can't agree or -- you know, that's  
14 completely hearsay with me here. But after that hearing,  
15 the State Land Office approved the revisions. And what the  
16 BLM did was simply affirm their prior approval.

17 MR. CARROLL: I guess, getting back to Mr.  
18 Stogner's question, Mr. Carr, on that section in -- that  
19 paragraph in Section 11 --

20 MR. CARR: Uh-huh.

21 MR. CARROLL: -- where it seems, you know, the  
22 OCD approved this agreement and it seemed that we'd defer  
23 our determination as to wells on federal land to the BLM  
24 and defer to the State Land Commissioner on wells on state  
25 land, what's there left for the OCD to look at then?

1 There's no wells on private land.

2 MR. CARR: I don't think that's the issue. I  
3 mean, I think you have a definite role if there is a tract,  
4 a fee tract, and a well on it. But there never was.

5 And you approved this because of your  
6 jurisdictional mandate to protect the rights of all  
7 interest owners, and it's a unique jurisdictional basis.  
8 And you agreed in your order to continue to supervise.

9 And if I'm Bass or Enron or a predecessor, or  
10 just Bill Carr, and I have a unit agreement that says  
11 you're going to continue to supervise this to assure me  
12 that correlative rights are protected, whether the well is  
13 on fee land and if there are no fee tracts and I just have  
14 interest in state tracts, it still is a situation where I  
15 have an extra level of protection, and it's part of the  
16 agreement that I would want.

17 And I think you need to keep in mind here that  
18 the right to the hearing in these cases doesn't spring from  
19 OCD rules under *Uhdén*; it springs from the nature of the  
20 property interest. And the property interest is an oil and  
21 gas interest that's Constitutionally protected.

22 That doesn't say from a state tract or a federal  
23 tract; it says an oil and gas interest. And a contract  
24 that -- Maybe we shouldn't have had three agencies  
25 involved, but we do. And each one must approve.

1           And your role isn't meaningless. The BLM doesn't  
2 think so. No one does. Don't just -- You're not just to  
3 be cast aside, because you have specific duties, and  
4 whether it's a state tract or a federal tract or a fee  
5 tract, I have an oil and gas interest and I have  
6 correlative rights, and the contract which we entered and  
7 which you approve says you'll protect those things.

8           EXAMINER STOGNER: I thought this was 100-percent  
9 federal land?

10          MR. CARR: No, state. And in fact, even --

11          MR. CARROLL: This is a hypothetical.

12          EXAMINER STOGNER: I'm talking -- I'm being  
13 hypothetical at this point.

14          MR. CARR: All right.

15          EXAMINER STOGNER: If it was 100-percent federal  
16 land involved?

17          MR. CARR: I don't believe you'd be involved.

18          EXAMINER STOGNER: How about if one party  
19 perceived a correlative-rights violation somewhere?

20          MR. CARR: I don't -- I think the distinction is,  
21 federal units that are all federal don't come here, I don't  
22 believe.

23          EXAMINER STOGNER: But is it the federal's  
24 mandate to protect correlative rights? Is there anything  
25 in --

1 MR. CARR: They protect the public interest.

2 EXAMINER STOGNER: Does that include correlative  
3 rights?

4 MR. CARR: I think that they're different,  
5 because public interest is one thing; correlative rights is  
6 defined as the interest of each individual property owner.  
7 We can speculate on what another agreement might provide,  
8 but we're talking about what the James Ranch Unit does  
9 provide, what was approved by you and what you agreed to do  
10 and what the Supreme Court has said, when you commit these,  
11 you're required to do.

12 MR. CARROLL: Mr. Losee, did I hear you right,  
13 you don't think this case is adjudicatory in nature?

14 MR. LOSEE: Not at this stage in the proceeding,  
15 no.

16 MR. CARROLL: And why is that?

17 MR. LOSEE: Simply because it's -- The agencies  
18 are oversight agencies. They merely approve or disapprove.  
19 There is no procedure set up for adjudication. There has  
20 been no adjudication over all these years. I'm basing it  
21 on precedent as much as anything else, Mr. Carroll.

22 But it is clearly designed that you're not going  
23 to have separate hearings of all three oversight agencies.  
24 That just -- you know --

25 MR. CARROLL: Where is that set forth, that

1 there's no hearing?

2 MR. LOSEE: Well, I don't think it's set forth,  
3 but it doesn't make any sense to do so, because then you  
4 have three separate proceedings going up. It wastes  
5 administrative time, it wastes -- it's an expensive  
6 procedure, and it would create chaos.

7 MR. CARROLL: Hence the term three-headed  
8 monster.

9 MR. LOSEE: Well, you're correct, that's a good  
10 definition.

11 But you can't let forum shopping go along. We're  
12 dealing with a case in which the three agencies were asked  
13 to consent, and after some presentation by Enron, objecting  
14 to it, Bass's, they have consented.

15 If they had not consented, then Enron -- Bass  
16 would have gone back to the BLM -- as a matter of fact, the  
17 OCD that they've requested and the State Land Office, and  
18 with a different proposal, or at least to try to find out  
19 what didn't satisfy the agency or agencies that didn't  
20 approve, just like they did in the example Mr. Carr gave  
21 with the 320 acres or the 640.

22 EXAMINER STOGNER: Mr. Losee --

23 MR. LOSEE: Yes.

24 EXAMINER STOGNER: -- are you saying that we do  
25 or we do not have jurisdiction in this matter?

1 MR. LOSEE: Well, my statement about jurisdiction  
2 was to determine whether due process was granted by the  
3 BLM.

4 I think you do not have jurisdiction to make that  
5 determination. I don't think it's within the statutory  
6 mandate of the OCD to determine whether a federal agency  
7 did or did not --

8 MR. CARROLL: We're not going to determine  
9 whether the procedures followed by the feds followed due  
10 process.

11 MR. LOSEE: Okay.

12 MR. CARROLL: We're going to determine whether  
13 due process is followed before the OCD.

14 MR. LOSEE: Well, I guess really the question,  
15 are you going to say that you haven't followed due process  
16 for 40 years and that your precedent is wrong?

17 MR. CARROLL: Follow up with that. What do you  
18 mean by that?

19 MR. LOSEE: Well, I mean simply that Bass in this  
20 case did the same thing, Mr. Carroll, gave this  
21 presentation the same way that operators have done it for  
22 40-plus years.

23 MR. CARROLL: If we've never had a request for a  
24 hearing in 40 years, how are we supposed to hold a hearing?

25 MR. LOSEE: Well, maybe there have been

1 disagreements, just like there was a disagreement in the  
2 Enron case that Mr. Carr raised. And that got solved.  
3 There wasn't any request for a hearing, the parties --  
4 Somebody just said there was some disagreement. And the  
5 oversight agencies agreed, agreed, as a matter of fact,  
6 with Enron's position, and Bass went back and redrew its  
7 proposal.

8 But they didn't have a hearing to arrive at that  
9 conclusion. That was a resubmission before any approval  
10 had been...

11 In this case, the IBLA and the federal courts are  
12 the watchdog. This appeal has reached Washington. They've  
13 got all three regulatory agencies' oversight approving it,  
14 and they're going to make these determinations, whether the  
15 data submitted supported the methodology of correlative  
16 rights set forth in this private contract, and in all other  
17 federal units, I might add; the standard is exactly the  
18 same.

19 EXAMINER STOGNER: Do you know if back when Case  
20 Number 472 was heard in 1953, whether the matter of the  
21 Conservation Commission at that time's jurisdiction was in  
22 question?

23 MR. LOSEE: I don't even know what case 472 was,  
24 Mr. --

25 EXAMINER STOGNER: Okay, Case Number 472 in which

1 Order Number R-279 authorized the James Ranch Unit  
2 agreement by the New Mexico Oil Conservation Commission --

3 MR. LOSEE: Sure I'm aware of that case, sure.  
4 I'm aware of the decision. They approved the unit.

5 EXAMINER STOGNER: And one of the findings in  
6 there -- and this is a finding -- that the Commission, now  
7 henceforth known as Division, has jurisdiction over this  
8 case and the subject matter thereof.

9 MR. LOSEE: I don't think there's any question  
10 you've got oversight jurisdiction. But as far -- That  
11 jurisdiction is limited to compliance with the terms of the  
12 private contract between parties, which I don't think the  
13 agencies are authorized to do or should rewrite.

14 MR. CARROLL: But isn't the OCD supposed to  
15 approve any revised participating areas?

16 MR. LOSEE: Oh, no. No, I'm not saying -- The  
17 OCD, if they didn't like the data that was submitted, they  
18 should have expressed that opinion at the time. They could  
19 have gone to the -- Enron's presentation and see if they  
20 agreed with that in June. They could also have gone to  
21 that presentation in October.

22 MR. CARROLL: But Mr. Losee, the approval that  
23 was granted on February 22nd was after just listening to  
24 one side of the story.

25 I mean, if two little boys are having a fight and

1 I just hear one side of the story, I'm going to agree with  
2 him. If I hear both sides of the fight, argument, then I  
3 might decide differently. And in this case, the February  
4 22nd approval was after just listening to one side.

5 MR. LOSEE: Well, I do not know what presentation  
6 was made to the Division. I'm satisfied what you're saying  
7 is correct. The same presentation -- The same submittal  
8 was made to the State Land Office, and the OCD could have  
9 simply said, Well, we'll wait till it's approved by the  
10 BLM, and we'll -- and the State Land Office.

11 And then if it developed there was a question,  
12 the same presentation that was made by Enron in the June  
13 hearing, and OCD could have made the determination of  
14 whether they should approve it or not.

15 MR. MCCREIGHT: I have a theoretical question,  
16 for whatever it's worth.

17 If the policy is that we should entertain  
18 hearings, I mean, is that the new adopted procedure, that  
19 we should concurrently submit -- The unit operator is  
20 charged by the operating agreement to submit the data to  
21 the BLM and the accompanying agencies. Should we just  
22 automatically docket a hearing? Because I mean, think  
23 that's where we're headed, if that's what we're going to  
24 do.

25 MR. CARROLL: Well, it seems to me it could have

1 been cured in this instance by notice. And if you didn't  
2 get notice -- I mean, if you didn't get an objection in  
3 response to your notice, then there would be no hearing,  
4 you wouldn't have to docket it for a hearing.

5 MR. McCREIGHT: The notice issue is a matter of  
6 some debate. As a matter of fact, the BLM has informed us  
7 that the only notice that was required was to simply inform  
8 them that a PA application had been filed, which they were  
9 already aware of.

10 But they asked us as a matter of record to  
11 resubmit a letter of notice, which we did to basically  
12 accommodate all parties involved that, okay, fine, here's  
13 your formal letter that says an application has been filed.

14 MR. CARROLL: Well, getting back to the *Uhden*  
15 case, if Amoco would have approached the OCD and asked the  
16 OCD what notice was required, we would have said you don't  
17 have to notify Mrs. Uhden.

18 MR. LOSEE: I don't think that's the *Uhden* case,  
19 is it? Yeah, I guess it is. Mr. Bruce is still here.

20 (Off the record)

21 MR. McCREIGHT: I guess what I was saying, Mr.  
22 Carroll, is, the State Director tells us that no notice is  
23 required. So we're --

24 MR. CARROLL: State Director of the BLM.

25 MR. McCREIGHT: Yeah. So we're in a little bit

1 of a quandary --

2 MR. CARROLL: For BLM purposes?

3 MR. McCREIGHT: I guess that's correct. We're a  
4 little bit at a loss as to how to proceed, though, I guess  
5 is what I'm trying to say. We're bound by the agreement in  
6 one respect.

7 MR. CARROLL: Well, were you aware that Enron  
8 would object to it if they did receive notice?

9 MR. McCREIGHT: Not necessarily, no. I mean, we  
10 were already in a debate about the pending formation of a  
11 PA in the Atoka, so I knew we were going to be at odds,  
12 they knew we were going to be at odds.

13 MR. CARROLL: But you didn't send them a copy of  
14 the applications?

15 MR. McCREIGHT: No, because we weren't required  
16 to do so. The State Director has told us that, so...

17 Our intention was to simply follow the rules as  
18 best we could, and then the State Director's opinion, he  
19 says that -- He says, and I quote, Bass is not required by  
20 the unit agreement to notify interested parties in  
21 fulfilling their obligation to revise participating areas.

22 I don't know -- We don't know what else to do but  
23 to try to --

24 MR. CARROLL: But you're telling me you were in  
25 negotiations with Enron regarding this revised

1 participating area --

2 MR. McCREIGHT: No, there was no negotiation.

3 MR. CARROLL: But you were --

4 MR. McCREIGHT: The factual background, Enron --  
5 A well was drilled, Enron wrote us a letter and informed us  
6 that they intended to -- or they were anticipating an  
7 expansion of the PA that would include this new well, which  
8 happened to be a Bass-operated well.

9 We submitted a PA around that single individual  
10 well. We didn't feel like Enron should have participation  
11 in that well. It was four miles from the existing PA  
12 boundary. In other words, the original PA was four miles  
13 removed from the location of this well.

14 We submitted a PA around that individual well,  
15 which was rejected by the BLM, and they sent us back to the  
16 drawing board and said, No, there's going to be a larger PA  
17 created. And that's where we proceeded on into the  
18 situation that got us here today.

19 So yes, I was aware there was a difference of  
20 opinion about what the PAs were going to look like, but our  
21 intent was to simply follow the letter of the law with what  
22 we thought was the unit agreement and the proper procedure.  
23 And we were counseled along the way by the BLM and  
24 obviously assumed we were doing things right by all  
25 parties' rules when we got the concurrent approval of the

1     OCD and ultimately the Land Office.

2             MR. CARROLL: Well, apart from the strict letter  
3 of the law, as a matter of courtesy, you didn't provide any  
4 notice.

5             MR. McCREIGHT: Yes, we did. When the BLM came  
6 back and asked us to provide them notice, that's exactly  
7 what we did.

8             MR. CARR: And that was months after the approval  
9 had been obtained.

10            EXAMINER STOGNER: I think it was in March.

11            MR. McCREIGHT: One month, actually.

12            MR. CARR: One -- After the approval had been  
13 obtained.

14            MR. LOSEE: But the State Land Office --

15            MR. McCREIGHT: Not the State Land approval, not  
16 the State Land approval. And four months prior to the  
17 technical hearing in June.

18            MR. LOSEE: If the OCD at that time had said,  
19 Well, gee, we've got a protest here, we might just hear  
20 what's going to happen -- The BLM was saying, We're going  
21 to let Enron have its day, Land Office, you wait.

22            MR. McCREIGHT: I'd like to point out that we  
23 certainly didn't get any notice of Enron's appearances  
24 before the BLM when they pitched their original ideas about  
25 what the PA should look like either, and that's reflected

1 in the correspondence and the records that go back with the  
2 BLM and that went into the original decision.

3 So I mean, it is a three-headed monster, there's  
4 no doubt about it.

5 EXAMINER STOGNER: Okay. After hearing all this,  
6 I'm going to grant the motion to dismiss the approval of  
7 the BLM -- I mean, I'm sorry -- yes, of the OCD approval on  
8 February 11th -- Okay, I'm sorry, grant the motion to  
9 rescind that order, so that order is now rescinded, and to  
10 continue this process at a Division Examiner's hearing at  
11 this time scheduled before me on October -- I'm sorry,  
12 April -- March 6th, March 6th. I believe that's right.

13 With that, then, this prehearing --

14 MR. LOSEE: I have a problem with the March 6th  
15 order -- March 6th date. I'm not going to be in the office  
16 for the month of March. Mr. Carroll is tied up with the  
17 IBLA. There may be a week in which he isn't tied up,  
18 because -- I don't know whether they're still going to --  
19 Ernest, are they still going to alternate weeks?

20 MR. ERNEST CARROLL: We're going to alternate  
21 weeks, but the week I have in March has already probably  
22 been -- and I've got so many courts after my hide right  
23 now.

24 I think the only way I -- The first available  
25 time would probably be in the month of April, before I

1 would be able -- one, also preparation times. The case  
 2 that I'm in is drawing to a close and is going to take a  
 3 lot of my time.

4 MR. CARR: Mr. Stogner, as long as the order is  
 5 rescinded, we can accommodate the Losee firm schedule. I  
 6 mean, we would prefer --

7 EXAMINER STOGNER: Okay, with that --

8 MR. CARR: -- we would prefer to be heard in  
 9 March, but we're not trying to create a problem in Bass  
 10 having the counsel they desire.

11 EXAMINER STOGNER: Okay. With that, then, I want  
 12 to have Mr. Carr and Mr. Losee tell us what date is  
 13 appropriate.

14 MR. CARR: Yes, sir.

15 EXAMINER STOGNER: You can even work with me on a  
 16 special date; I'm amenable to that.

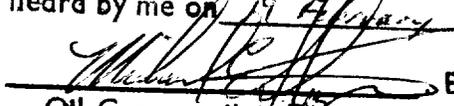
17 MR. CARR: Thank you.

18 EXAMINER STOGNER: April is pretty well tied up  
 19 for me also. So we'll work together on that.

20 With that, this hearing is adjourned.

21 (Thereupon, these proceedings were concluded at  
 22 4:52 p.m.)

23 \* \* \*

24 I do hereby certify that the foregoing is  
 a complete record of the proceedings in  
 the Examiner hearing of Case Nos. 11602,  
 heard by me on 19 February 1997.  
 25  Examiner  
 Oil Conservation Division

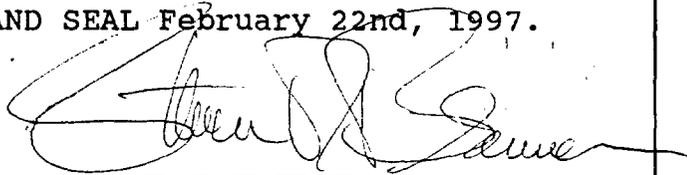
## CERTIFICATE OF REPORTER

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 February 22nd, 1997.



STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 14, 1998