

## 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 )  
 PRODUCTION COMPANY FOR AN ORDER )  
 AUTHORIZING THE DRILLING OF A WELL IN )  
 THE POTASH AREA, EDDY COUNTY, NEW MEXICO )

CASE NOS. 13,367

APPLICATION OF DEVON ENERGY PRODUCTION )  
 COMPANY, L.P., FOR AN ORDER AUTHORIZING )  
 THE DRILLING OF A WELL IN THE POTASH )  
 AREA, EDDY COUNTY, NEW MEXICO )

2004 DEC 16 PM 2 08  
 ,368

APPLICATION OF DEVON ENERGY PRODUCTION )  
 COMPANY, L.P., FOR APPROVAL OF AN )  
 UNORTHODOX WELL LOCATION AND )  
 AUTHORIZATION TO DRILL A WELL IN THE )  
 POTASH AREA, EDDY COUNTY, NEW MEXICO )

and 13,372

(Consolidated)

REPORTER'S TRANSCRIPT OF PROCEEDINGSEXAMINER HEARING

ORIGINAL

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

December 2nd, 2004  
 Santa Fe, New Mexico

These matters came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, December 2nd, 2004, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

\* \* \*

STEVEN T. BRENNER, CCR  
 (505) 989-9317

## I N D E X

December 2nd, 2004  
Examiner Hearing

CASE NOS. 13,367, 13,368 and 13,372 (Consolidated)

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\* \* \*

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

FOR THE DIVISION:

GAIL MacQUESTEN  
Deputy General Counsel  
Energy, Minerals and Natural Resources Department  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

FOR BASS ENTERPRISES PRODUCTION COMPANY  
and DEVON ENERGY PRODUCTION COMPANY, L.P.:

HOLLAND & HART, L.L.P., and CAMPBELL & CARR  
110 N. Guadalupe, Suite 1  
P.O. Box 2208  
Santa Fe, New Mexico 87504-2208  
By: WILLIAM F. CARR

FOR MOSAIC POTASH:

KEMP SMITH, P.C.  
221 North Kansas, Suite 1700  
El Paso, TX 79901-1441  
By: CHARLES C. HIGH, JR.  
and  
WALKER F. CROWSON

FOR KENNETH M. SMITH:

JAMES G. BRUCE  
Attorney at Law  
P.O. Box 1056  
Santa Fe, New Mexico 87504

\* \* \*

1 WHEREUPON, the following proceedings were had at  
2 9:49 a.m.:

3 EXAMINER STOGNER: This hearing will come to  
4 order. At this time I'll call Case Number 13,367, which is  
5 the Application of Bass Enterprises Production Company for  
6 an order authorizing the drilling of a well in the potash  
7 area, Order R-111, Eddy County, New Mexico.

8 At this time I'll call for appearances.

9 MR. CARR: May it please the Examiner, my name is  
10 William F. Carr with the Santa Fe office of Holland and  
11 Hart, L.L.P. We represent Bass Enterprises Production  
12 Company in this matter, and I have three witnesses.

13 Mr. Stogner, at this time I would request that  
14 for the purpose of hearing, that this case be consolidated  
15 with Case 13,368, which is an Application of Devon Energy  
16 Production Company, also for a well in the potash area, and  
17 Case 13,372, which is again an Application of Devon for a  
18 well in the potash area.

19 I would also request at this time that the  
20 Application of Devon in Case 13,369 be dismissed.

21 EXAMINER STOGNER: Are there any objections or  
22 comments with the consolidation of the two cases, 13,368  
23 and 13,372 with 13,367 at this time, or comments about the  
24 dismissal of 13,369?

25 MR. HIGH: Charles C. High, Jr., of Kemp Smith,

1 and Walker Crowson, for Mosaic Potash. We have no  
2 objection to the dismissal of Case 13,369 nor to the  
3 consolidation of the other cases for purposes of this  
4 hearing only.

5 EXAMINER STOGNER: Okay. With that, let me --  
6 Mr. Jim Bruce?

7 MR. BRUCE: Mr. Examiner, I'm entering an  
8 appearance today on behalf of Mr. Kenneth Smith, who's a  
9 mineral owner in the two Devon Energy cases. I will have  
10 one witness.

11 EXAMINER STOGNER: Any other appearances, before  
12 I make a statement on the consolidation and dismissal?

13 Okay, with that, at this time Case 13,369, which  
14 is the Application of Devon Energy Production Company,  
15 L.P., for approval of an unorthodox well location,  
16 directional drilling and authorization to drill a well in  
17 the potash area, Eddy County, New Mexico, is hereby  
18 dismissed.

19 At this time I'm going to call and consolidate  
20 Cases 13,368 and 13,372. 13,368 is the Application of  
21 Devon Energy Production Company, L.P., for an order  
22 authorizing the drilling of a well in the potash area, Eddy  
23 County, New Mexico; and Case 13,372 is the Application of  
24 Devon Energy Production Company, L.P., for approval of an  
25 unorthodox well location and authorization to drill a

1 well -- assume the same well -- in the potash area, Lea  
2 [sic] County, New Mexico.

3 Cases 13,367, Bass Enterprises, 13,368 and  
4 13,372, both of which are Devon's, are going to be  
5 consolidated at this time for purposes of testimony.

6 At this time, other than Mr. Bill Carr, Mr.  
7 Charles High and Jim Bruce, are there any other  
8 appearances?

9 Okay, let's see now, let's go back here.

10 Mr. Carr, you have three witnesses?

11 MR. CARR: I have three witnesses in the Bass  
12 case and two witnesses in the Devon cases.

13 EXAMINER STOGNER: Okay, and Mr. Bruce, you have  
14 Ken Smith?

15 MR. BRUCE: Yes.

16 EXAMINER STOGNER: And so that's one witness.

17 Mr. High, do you have any witnesses?

18 MR. HIGH: We'll have one witness for all the  
19 cases.

20 EXAMINER STOGNER: Okay. At this time let's have  
21 all five witnesses please stand to be sworn at this time.

22 (Thereupon, the witnesses were sworn.)

23 EXAMINER STOGNER: Okay, my math was a little  
24 different here. I had seven witnesses stand here. So, Mr.  
25 Carr, how many witnesses do you have?

1 MR. CARR: I have three in Bass and two in Devon.

2 EXAMINER STOGNER: Oh, I'm sorry, so that's a  
3 total of five.

4 MR. CARR: Total of five.

5 EXAMINER STOGNER: Okay, I'm sorry, I'm sorry.  
6 It was my misunderstanding, not my math. Okay. Let the  
7 record show that all seven witnesses have been sworn for  
8 these consolidated cases.

9 Okay, is there any need for remarks at this time?

10 MR. CARR: I have an opening.

11 EXAMINER STOGNER: Mr. Carr?

12 MR. CARR: May it please the Examiner, as we have  
13 already discussed, these three cases involve applications  
14 by oil and gas operators to drill wells within the  
15 oil/potash area as defined by Order R-111-P.

16 Bass owns the oil and gas lease on a 40-acre  
17 tract in the northeast northeast, in Section 7, Township 23  
18 South, Range 31 East, and on this tract they propose to  
19 drill a well to test the Morrow formation.

20 ~~Devon owns the oil and gas lease on a 40-acre~~  
21 ~~tract in the southwest quarter of the northwest quarter of~~  
22 ~~Section 24, Township 22 South, Range 30 East, and Devon~~  
23 ~~proposes to drill two wells on this 40-acre tract, one to~~  
24 ~~the Delaware and one to the Devonian formation.~~

25 ~~while both of these tracts are within the~~

1 oil/potash area, both are on fee lands, and the potash  
2 rights are not leased to a potash company. We appear here  
3 today with mineral owners in these tracts. These are the  
4 people who own the potash reserves under these 40-acre  
5 tracts, and these people reached an agreement with the  
6 respective oil and gas operators for the development of  
7 their minerals, and we're here today to ask you to  
8 authorize us to proceed.

9 The evidence is going to show that the potash  
10 mineral owners, the land owners, desire to have their oil  
11 and gas minerals developed first, in preference to any  
12 potash reserves underlying their fee property.

13 Our land evidence is going to show that both Bass  
14 and Devon followed the provisions of Order R-111-P. They  
15 first reached agreement with the owners of the potash  
16 rights on these 40-acre tracts. They filed their  
17 applications for permits to drill, and each of these  
18 applications, we believe, were -- well, two of them were  
19 approved by the OCD, one was never acted on and then  
20 rejected.

21 As required by Order R-111-P, all potash lessees  
22 within a mile were notified, that being IMC and now Mosaic  
23 Potash. And IMC objected to Bass's Application, citing  
24 R-111-P, noting that any application to drill in the LMR  
25 area, including buffer zones, may be approved only by

1 mutual agreement of the lessor and lessee of both potash  
2 and oil and gas interests. On receipt of this objection,  
3 the OCD rescinded Bass's APD.

4 IMC objected to the Devon Applications,  
5 referencing their five-year plan and noting that they may  
6 be mining within a quarter of a mile of these well  
7 locations, perhaps in 2007.

8 However, the evidence we will present shows that  
9 IMC/Mosaic owns no potash rights in either of these fee  
10 tracts, that they are here today asking you to deny their  
11 right to drill, to prevent them as owners of the potash in  
12 the area, as well as the owners of oil and gas rights, from  
13 developing their minerals.

14 We believe the facts of this case are very close  
15 to the facts that were presented to you in Case 10,409.  
16 That's what we call the Noranda case. And at the end of  
17 the presentation we're going to tell you that we believe it  
18 is good precedent and that the facts of this case, when you  
19 analyze those, are so close that the same result -- there  
20 should be the same result from this hearing.

21 We're also going to present a brief engineering  
22 presentation, but our evidence is going to be limited to  
23 showing that the proposed casing and cementing programs for  
24 each of these wells meets the criteria of Order R-111-P.

25 And finally, we will call ~~land owners and mineral~~

1 owners to confirm that they own the mineral estate,  
2 including the potash rights, to confirm that they have  
3 leased these rights, the oil and gas rights, to Bass and  
4 Devon, that they have reached mutual agreements for the  
5 development of their resources, and that they would like to  
6 have their oil and gas developed now, whereas we will show  
7 in the Bass case it has been leased to oil companies for  
8 over 20 years, and yet to date no minerals have been  
9 extracted, either oil or gas or potash, from the 40-acre  
10 tract.

11 We will then seek an order asking you to  
12 reinstate the APDs for each of the three wells at issue,  
13 because we submit on the facts of this case and the  
14 precedent established in the Noranda case, these wells are  
15 outside an LMR, and we're in a situation where the potash  
16 owner does not object but, in fact, is supporting our  
17 Application.

18 EXAMINER STOGNER: Thank you, Mr. Carr.

19 Mr. Bruce, do you have any follow-up, since  
20 you --

21 MR. BRUCE: I have no comment, other than to  
22 state that my witness is here in support of the Devon  
23 Applications.

24 EXAMINER STOGNER: Mr. High?

25 MR. HIGH: Our presence here, Mr. Examiner, is

1 quite simple. The Oil Conservation Division has a  
2 statutory obligation to regulate not only the drilling of  
3 oil and gas wells but also to protect potash deposits in  
4 the State of New Mexico. That regulatory authority extends  
5 to fee land as well as other lands, and I'm assuming that  
6 won't be disputed, otherwise we wouldn't even be here. So  
7 the fact that this is fee land does not give this  
8 Commission or Division the authority just to say they can  
9 willy-nilly waste any natural resource.

10 The proposed wells in these consolidated cases  
11 are in areas of commercial-grade potash that will be mined.  
12 We have no objection to the owners of the mineral rights to  
13 develop their resources, whether they be oil and gas and/or  
14 potash deposits.

15 We are concerned with the manner in which those  
16 resources are developed, and the manner being proposed in  
17 the APDs at issue here will result in an undue waste of  
18 potash while developing oil and gas resources.

19 It will be a very simple matter, at least in our  
20 judgment, to change locations and develop these resources  
21 by directional drilling from other locations in the area,  
22 and that way the potash resources can be protected, the oil  
23 and gas resources can be developed, and we will not waste  
24 potash resources that would otherwise be wasted. And we  
25 submit that this Division has the authority to do that,

1 even though Mr. Carr refers to the fact that this is fee  
2 land.

3 So we would ask that the APDs in their present  
4 form be denied.

5 EXAMINER STOGNER: Thank you. If there's nothing  
6 further, then we should continue at this point.

7 MR. CARR: May it please the Examiner, at this  
8 time we call Wayne Bailey.

9 EXAMINER STOGNER: Mr. Carr?

10 JERRY WAYNE BAILEY,  
11 the witness herein, after having been first duly sworn upon  
12 his oath, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. CARR:

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

16 A. Jerry Wayne Bailey.

17 Q. Mr. Bailey, where do you reside?

18 A. Forth Worth, Texas.

19 Q. By whom are you employed?

20 A. Bass Enterprises Production Company.

21 Q. And what is your current position with Bass  
22 Enterprises Production Company?

23 A. Division land manager.

24 Q. Have you previously testified before the New  
25 Mexico Oil Conservation Division?

1 A. Yes.

2 Q. At the time of that testimony, were your  
3 credentials as an expert in petroleum land matters accepted  
4 and made a matter of record?

5 A. Yes.

6 Q. Are you familiar with the Application filed in  
7 this case on behalf of Bass Enterprises Production Company?

8 A. Yes.

9 Q. Are you familiar with the status of the lands  
10 involved in this case?

11 A. Yes.

12 MR. CARR: We tender Mr. Bailey as an expert in  
13 petroleum land matters.

14 EXAMINER STOGNER: Any objections?

15 MR. HIGH: No objection.

16 EXAMINER STOGNER: So qualified.

17 Q. (By Mr. Carr) Mr. Bailey, would you briefly  
18 state what it is that Bass seeks in this case?

19 A. We seek approval for the permit to drill the  
20 James Ranch Number 93 to the Morrow formation in the  
21 northeast quarter of the northeast quarter of Section 7.

22 Q. And this well is within the area known as the  
23 oil/potash area as defined by Order R-111-P?

24 A. Correct.

25 Q. Let's go to what has been marked for

1 identification as Bass Exhibit Number 1, and I would ask  
2 you to identify this and review it for Mr. Stogner.

3 A. Okay, this is a map that shows many items in this  
4 area that's basically off the southwest corner of the WIPP  
5 site. It shows Bass leases in yellow. All the Bass leases  
6 are part of the James Ranch Federal Unit. Most of the  
7 leases are federal leases. There's very few state, very  
8 few fee leases. One of the fee leases is shown to be  
9 cross-hatched in red in the northeast quarter of the  
10 northeast quarter of Section 7.

11 It also shows the -- outlined in blue where IMC  
12 has potash leases, and outlined in green is where there are  
13 no potash leases, and then there's also some outlined in  
14 brown where Western Ag Minerals have leases, but they've  
15 been succeeded by IMC.

16 It shows barren areas for potash that are  
17 outlined in red and blue, and those barren areas are a  
18 duplication of the Bureau of Land Management map that was  
19 publicized several years ago.

20 Q. Mr. Bailey, the 40-acre tract that is cross-  
21 hatched in red in the northeast northeast of 7, that is the  
22 tract from which you propose to drill your Morrow well; is  
23 that correct?

24 A. Correct, and there's a location that says 93.  
25 It's James Ranch Number -- proposed location for James

1 Ranch Number 93.

2 Q. There is a red line that -- or I'm sorry, a green  
3 line that extends around that acreage and then off to a  
4 number of tracts north of it. What does that indicate?

5 A. That's the area that's -- where there are no  
6 potash leases. One thing that's not on the map is the  
7 existing potash mine.

8 Q. And do you know how close the subject acreage is  
9 to IMC's active mining area?

10 A. There's about a mile and a half between --

11 Q. And where did you get --

12 A. -- between the location for the James Ranch 93  
13 and the existing potash mine. The potash mine is to the  
14 east -- or, pardon me, to the west of the well location  
15 about a mile and a half, and it's mostly in Section 11 to  
16 the west and Section 14. And I know that from discussions  
17 with IMC, from earlier this year.

18 Q. Review for Mr. Stogner the current development  
19 status of Section 7.

20 A. Well, the north half of Section 7, as it's  
21 labeled on this map, is a 320-acre proration unit for the  
22 James Ranch 14, which was drilled in the early 1980s by  
23 Belco Petroleum, which was the operator of most of the  
24 wells in this area at that time. Belco was acquired by  
25 Enron, and Bass bought Enron's interest in this area in

1 1998.

2 And so the James Ranch 93 is scheduled to be  
3 drilled to the Morrow. The James Ranch 14 is also  
4 producing from the Morrow. So the proposed well will be  
5 the second well in the 320-acre proration unit for the  
6 Morrow.

7 Q. And you intend to communitize this 40-acre tract  
8 with 280 acres of federal lease that is also held by Bass  
9 in the north half of this section?

10 A. Right.

11 Q. Let's go to what has been marked for  
12 identification as Bass Enterprises Production Company  
13 Exhibit Number 2. Would you identify that, please?

14 A. These are the five leases that are owned -- that  
15 were granted, originally granted from the fee owners to  
16 Belco Petroleum in the northeast quarter, northeast quarter  
17 of Section 7, and they all cover undivided mineral  
18 interest. If you add up the mineral interests that are  
19 covered by these five leases, they total 100 percent, and  
20 Bass is the only oil and gas lessee of those five leases.

21 Q. Let's move now to what has been marked for  
22 identification as Bass Exhibit Number 3, various -- it  
23 consists of correspondence and an APD for the James Ranch  
24 Well Number 93. Referring to this, would you review for  
25 the Examiner what Bass is proposing to do in regard to this

1 well?

2 A. We propose to drill a vertical well to the Morrow  
3 formation. Its proposed total depth is 14,800 feet. The  
4 location is 660-660 out of the northeast line -- or  
5 northeast corner, and it's a regular location. There are  
6 prospective zones in this well. The Delaware is  
7 prospective, and everything between the Delaware and the  
8 Morrow is prospective, beginning with the Delaware, the  
9 Bone Spring, the Wolfcamp, Strawn, Atoka, Morrow, are all  
10 prospective in this wellbore.

11 And the permit package that's Exhibit Number 3  
12 contains information on how the well and the casing and the  
13 cement program will comply with R-111-P, and the details of  
14 that will be reviewed by our engineering witness.

15 Q. You're proposing to drill this well to the Morrow  
16 formation?

17 A. Correct.

18 Q. What is the Morrow pool that will be applicable?

19 A. Los Medanos-Morrow Gas Pool. There are no  
20 special field rules, so it's on 320-acre spacing.

21 Q. And the location requirements would be 660 back  
22 from the outer boundary of the quarter section?

23 A. Correct.

24 Q. And so the well is at a standard location?

25 A. Yes.

1 Q. Does IMC/Mosaic own any mineral rights, to your  
2 knowledge, under this 40-acre tract?

3 A. No.

4 Q. You may want to continue to refer to Exhibit 3,  
5 but I'd like for you to review for Mr. Stogner the history  
6 of the approval process before the Oil Conservation  
7 Division -- once this APD was filed. It was approved, was  
8 it not?

9 A. Yes, it was -- Bass sent the APD package  
10 simultaneously to the OCD, to the Artesia office, and also  
11 to the potash lessee that was in the area, which is IMC,  
12 and that's all according to R-111-P and the requirements of  
13 R-111-P.

14 Bass had no response from IMC, we had no response  
15 from the OCD, so on September -- well, let's see, we sent  
16 the letter out August 16th to IMC. It was delivered on  
17 August 19th.

18 On September 15th we called the OCD office, Bryan  
19 Arrant, to ask about the status of the permit, and Mr.  
20 Arrant said that they had done -- it was basically on his  
21 desk, they had received no comment from the potash lessee.

22 And I asked him if they would approve the APD if  
23 they had received no protest from the potash company at  
24 that time.

25 He said that if I would write him a letter

1 stating that there had been no protest or no response from  
2 IMC, that they would approve the permit.

3 So I wrote the letter on September 15th to  
4 confirm that, and IMC still had no reply. And on that same  
5 day, on September 15th, the Artesia office of the OCD  
6 approved the permit.

7 Q. Is Bass Exhibit Number 4 a copy of the APD  
8 showing that, in fact, it was approved by Tim W. Gum on  
9 September the 15th?

10 A. Correct.

11 Q. What response did Bass ultimately receive from  
12 IMC?

13 A. We never received any response from IMC.

14 Q. Did IMC object to the Oil Conservation Division?

15 A. Yes, IMC wrote the OCD on September 17th,  
16 objecting to the permit.

17 Q. And is a copy of that letter of objection what is  
18 marked as Bass Exhibit Number 5?

19 A. Yes.

20 Q. And what is the reason stated for the objection?

21 A. It says any application to drill in an LMR or  
22 buffer zones must be approved by mutual agreement of the  
23 lessor and lessee of both potash and oil and gas interests.

24 Q. Mr. Bailey, when the OCD received this letter,  
25 how did it respond?

1 MR. HIGH: Objection, no foundation. He can't  
2 answer for the OCD.

3 EXAMINER STOGNER: Do you want to restate your  
4 question, Mr. Carr?

5 Q. (By Mr. Carr) Mr. Bailey, would you refer to  
6 what has been marked for identification as Exhibit Number  
7 6?

8 A. Exhibit 6 is a letter from the OCD rescinding the  
9 permit.

10 Q. Is this letter addressed to you?

11 A. Yes.

12 Q. And is this a letter that is kept in the files of  
13 Bass Enterprises Production Company?

14 A. Yes.

15 Q. And is it customary for Bass Enterprises  
16 Production Company to keep documents of this nature in  
17 their file?

18 A. Yes.

19 Q. And this is a true and correct copy of that  
20 document?

21 A. Yes.

22 Q. Would you tell us what this document is?

23 A. It's a letter from Bryan Arrant that just states  
24 that they rescind immediately the APD according to R-111-P  
25 and asks Bass to review R-111-P, and it quotes the same

1 language from R-111-P that the IMC letter quoted.

2 Q. Did the OCD contact you to determine whether or  
3 not there were any potash leases covering the acreage that  
4 you were proposing to drill on?

5 A. No.

6 Q. Did the OCD ask you if you had reached an  
7 agreement with any potash owner for the development of  
8 these minerals?

9 A. No.

10 Q. In its prehearing statement and this morning in  
11 his opening statement, Mr. High indicated that they believe  
12 that the problem here was how we were proposing to develop  
13 these minerals, and suggested that this well could be  
14 drilled from another location. Are you aware of that?

15 A. Yes.

16 Q. Have you had experience with trying to drill --  
17 directionally drill other wells in this area?

18 A. We've had experience with directional drilling,  
19 and we've had experience with vertical drilling in this  
20 area.

21 Q. Has it fallen to you as the landman to attempt to  
22 reach agreements for the drilling of vertical wells in the  
23 area?

24 A. Yes, vertical and directional --

25 Q. And have you been able --

1 A. -- is my responsibility.

2 Q. -- on occasion to reach agreements with the  
3 potash operator for drilling vertical wells from certain  
4 locations on federal lands?

5 A. Yes, we have.

6 Q. What has been your experience in that regard?

7 A. Well, there's been instances in the past where  
8 Bass and IMC agreed to drilling locations on federal land,  
9 and we were rejected by the BLM.

10 Q. So even --

11 A. Well, the BLM really didn't care whether the  
12 potash company and the oil company were in agreement. They  
13 rejected the permit anyway. And the -- all the land  
14 surrounding this 40-acre tract is federal land.

15 Q. Are you involved in discussions with your company  
16 as to -- when trying to determine how to develop your oil  
17 and gas rights in the R-111 area?

18 A. Yes.

19 Q. What are the concerns that you face when dealing  
20 with a horizontal or a directional well?

21 A. Well, the concerns about directional drilling are  
22 fairly simple. A directional well, number one, or a  
23 horizontal well, will not test all the formations that are  
24 prospective under a given tract.

25 MR. HIGH: Excuse me, may I object? I don't know

1 the full extent of Mr. Bailey's expert qualifications, but  
2 as a landman I would object to, without further testimony,  
3 any expert testimony from him with respect to the  
4 technological and economic feasibility of either horizontal  
5 or directional drilling. He may have it, but I just don't  
6 know about it.

7 MR. CARR: Mr. Examiner, we're not tendering Mr.  
8 Bailey as an expert on what those costs would be.

9 I've asked him if he's involved in those  
10 discussions and what the issues are that are raised in  
11 those meetings at Bass, and that's the extent of what I'm  
12 asking him to address.

13 EXAMINER STOGNER: I will allow this questioning.

14 THE WITNESS: Okay, besides not being able to  
15 test all the zones under a particular tract, a directional  
16 or horizontal well, it has a -- it is substantially more  
17 expensive to drill, it's more high-risk, and the Morrow  
18 formation drilling is already high-risk, even with a  
19 vertical well, and there are complications with drilling a  
20 vertical or -- excuse me, complications with drilling  
21 directional and horizontal wells, both with the drilling  
22 and completions and producing the wells.

23 Q. (By Mr. Carr) Mr. Bailey, in terms of the well  
24 that's the subject of this hearing, the James Ranch Unit  
25 Well Number 93, Bass has proposed this as a vertical well,

1 have you not?

2 A. Correct.

3 Q. And you've proposed it as a vertical well for  
4 what reason?

5 A. Well, a vertical well, there's -- two main  
6 reasons is -- one reason is our ability to get a well  
7 drilled at all, because if we tried to get a permit on  
8 federal acreage on here, we would be immediately denied by  
9 the Bureau of Land Management.

10 And a vertical well is the only way to drill in  
11 an efficient manner to encounter all the zones that are  
12 productive, or possibly productive, under that 40-acre  
13 tract.

14 Q. Mr. Bailey, as the Bass landman responsible for  
15 this project, did you contact the mineral owners under this  
16 acreage concerning Bass's plan to drill the well?

17 A. Yes.

18 Q. I'd like to go out of order and ask you if you  
19 could identify what has been marked as Bass Exhibits 9 and  
20 10?

21 A. Let's see, Exhibit 9. Okay, Exhibit 9 is an  
22 affidavit that's been signed by a trust officer of Wells  
23 Fargo Bank, who is responsible for the management of  
24 mineral interests under the 40-acre tract that's our drill  
25 site.

1           And Exhibit 10 is the same thing. So we have  
2 those two affidavits to present --

3           Q. Did you also --

4           A. -- as evidence in -- also, there's another land  
5 owner that owns a mineral interest, that's Stacey Mills,  
6 who is here to testify today.

7           Q. If we look at the interests that are covered by  
8 the affidavits, Exhibits 9 and 10, and the interests that  
9 Mr. Mills represents, what percent of the owners of the  
10 potash rights under this 40-acre tract have formally  
11 indicated their support for Bass?

12          A. That group would own approximately 53 percent of  
13 the mineral interest, and the remaining owners have told  
14 Bass that they would also sign affidavits if it's necessary  
15 for permitting purposes.

16          Q. Could you identify Bass Exhibit Number 7, please?

17          A. Yes, it's a map that shows a one-mile radius  
18 around the proposed location and the IMC potash leases that  
19 are located within that radius.

20          Q. Was IMC the only potash operator within that  
21 area?

22          A. Yes.

23          Q. Is Bass Exhibit Number 10 an affidavit confirming  
24 that notice of this Application has been provided to Bass  
25 as -- I mean to IMC/Mosaic as the potash lessee?

1 A. Which exhibit was it?

2 Q. Is Exhibit Number 8 an affidavit confirming that  
3 we've provided notice to IMC/Mosaic?

4 A. Yes.

5 Q. And is attached to that affidavit a copy of the  
6 legal advertisement that was run for this case?

7 A. Yes.

8 Q. Did we also provide notice to the State Land  
9 Office and the BLM?

10 A. Yes.

11 Q. Will Bass call a drilling engineer to review that  
12 portion of the drilling portion of this case?

13 A. That's correct.

14 Q. Were Bass Exhibits 1 through 10 either prepared  
15 by you or compiled under your direction and supervision?

16 A. Yes.

17 MR. CARR: We move the admission into evidence of  
18 Bass Exhibits 1 through 10.

19 EXAMINER STOGNER: Any objections?

20 MR. HIGH: No objection.

21 EXAMINER STOGNER: Exhibits 1 through 10 will be  
22 admitted into evidence.

23 MR. CARR: And that concludes my direct  
24 examination of Mr. Bailey.

25 EXAMINER STOGNER: Mr. High, your witness.

## CROSS-EXAMINATION

BY MR. HIGH:

Q. Good morning, Mr. Bailey.

A. Good morning.

Q. Did you file an APD with the BLM at any time to drill this proposed well at any location other than where it's currently proposed?

A. No, we filed other locations in the area, not for this particular well at this particular location, and we haven't filed one in an adjacent 40-acre tract, if that's a more direct answer to your question, but we had numerous attempts to permit wells in this area and on this map through the BLM.

Q. But my question is limited to this well.

A. This well was not required to be provided to the BLM.

Q. My question is, did you at any time file an APD to drill this well from any location other than its current location?

A. This well at its current location is the only location it's ever been. If you'd like to -- I don't know what you're trying to ask me --

Q. Did you ever file an APD with the BLM to drill this well from a location, for example, in Section 6?

A. No, that's what I just -- that's part of what I

1 just said. We have not filed an APD with the BLM on an  
2 immediately adjacent tract to this --

3 Q. Did you ever ask them --

4 A. -- if that's what you're trying to ask me.

5 Q. Did you ever ask the BLM to create a drilling  
6 island from which this well could be developed through  
7 directional drilling?

8 A. It was not necessary.

9 Q. My question is, did you?

10 A. No.

11 Q. Did you at any time look to see whether or not  
12 the proposed location of this well would be in an area of  
13 potash considered by the Bureau of Land Management to be  
14 measured reserves?

15 A. We did not conduct a technical potash  
16 investigation.

17 Q. Do you care whether or not in drilling a well you  
18 may destroy other natural resources?

19 A. Yes.

20 Q. And yet you're in the potash area and you didn't  
21 look to see whether or not this proposed location would be  
22 an area considered to be measured ore?

23 A. Well, in my experience it's been -- what Bass has  
24 been told and what other oil and gas operators have been  
25 told about measured potash and potential potash mining has

1     been -- has changed from day to day, it's been a hit or a  
2     miss, and it's not something that we felt like we needed to  
3     do before we proposed this well.

4           Q.     You didn't care if it was in measured ore or not,  
5     did you, Mr. Bailey?

6           A.     We always care.

7           Q.     Well, doesn't your Exhibit Number 1 -- I believe  
8     this map is Number 1, it doesn't have a sticker on it --  
9     whatever number this map is, doesn't that show this  
10    proposed well to be in measured ore?

11          A.     According to this map, it's in measured ore. We  
12    have drilled wells in measured ore before.

13                EXAMINER STOGNER:   Okay, let me make sure that we  
14    get this on the record. The map that you're referring to,  
15    Mr. High --

16                MR. HIGH:   Yes.

17                EXAMINER STOGNER:   -- and I am looking at Exhibit  
18    Number 1, and yours must not have a sticker on it, but it  
19    is entitled James Ranch Unit, Eddy County, New Mexico, in  
20    the lower right-hand corner, and it has several color  
21    codes; is that correct?

22                MR. HIGH:   Yes, I'm sorry, I did find a sticker.  
23    It is Exhibit Number 1.

24                EXAMINER STOGNER:   Okay, so we are talking about  
25    Exhibit Number 1?

1 MR. HIGH: Yes.

2 EXAMINER STOGNER: Okay, I'm sorry, please  
3 continue.

4 Q. (By Mr. High) So you do know, Mr. Bailey, that  
5 this proposed well is in ore considered by the BLM to be  
6 measured ore?

7 A. According to the BLM map from 1994, it shows to  
8 be in measured ore.

9 Q. And that is even shown on your Exhibit Number 1,  
10 isn't it?

11 A. Yes.

12 Q. Okay. Now, are you familiar with the 1986  
13 Secretarial Order issued by the BLM regulating the drilling  
14 of oil and gas wells on federal lands in the potash area?

15 A. I have looked at it in the past. I can't recite  
16 -- I'm not sure I can recite any parts of it, but I'm  
17 familiar with it, yes.

18 Q. Do you have responsibility for the drilling of  
19 oil and gas wells in the potash area on federal land?

20 A. Do I personally?

21 Q. Yes.

22 A. I'm involved in it with my company, yes. I'm  
23 not --

24 Q. Well, don't you think it would be --

25 A. -- a primary authority, but yes.

1 Q. Do you understand that the 1986 Secretarial Order  
2 is the governing authority for the drilling of oil and gas  
3 wells on federal lands in the potash area?

4 A. Sure.

5 Q. Don't you think that in carrying out your duty  
6 you ought to be familiar with that?

7 A. I am familiar with it.

8 Q. Do you know what it provides with respect to  
9 proposed APDs in areas considered by the BLM to be measured  
10 ore?

11 A. Yes, and we --

12 Q. What does it say?

13 A. Well, in what respect -- You have to ask me a  
14 specific question about the 1986 Order.

15 Q. What does the 1986 Secretarial Order say with  
16 respect to drilling of wells in areas considered to be  
17 enclave by the BLM?

18 A. That the BLM is to establish drilling islands,  
19 which they have never done. That's a short answer. You  
20 may be -- I mean, there's a -- it says a lot about what is  
21 supposed to happen with drilling in the potash area. It's  
22 impossible for me to tell you everything the 1986 Order  
23 says. That's one thing it says. It says -- It's page  
24 after page.

25 Q. And I take it you never investigated what that

1 1986 Secretarial Order said for the possibility of drilling  
2 outside of Section 7 to this bottomhole location, did you?

3 A. Yes, and I know that we have never been granted a  
4 drilling island by the Bureau of Land Management in this  
5 area or any other area where Bass has federal leases.

6 Q. Has Bass ever drilled any directional wells in  
7 the potash area?

8 A. Yes.

9 Q. Does it have any directional wells in the area of  
10 Section 7?

11 A. Yes, there's some on the map.

12 Q. And are the shown on your map?

13 A. There's two of them on the map that have a  
14 bottomhole location in Section 7.

15 Q. All right, and if we look at your Exhibit Number  
16 1, I can't read that well number, but the well that appears  
17 to be in the south end of Section 6, is that a directional  
18 well into Section 7?

19 A. Correct.

20 Q. Is that a Bass well?

21 A. It was drilled by Belco in 1984 --

22 Q. Is that what --

23 A. -- and Bass was not involved in the drilling of  
24 it, but we bought the well in 1998.

25 Q. All right, I don't see any indication here, but

1 is that what we would know as the James Ranch Number 14?

2 A. Correct.

3 Q. Okay. So the James Ranch 14 is drilled in the  
4 south end of Section 6 with a bottomhole location in  
5 Section 7?

6 A. Correct.

7 Q. And what is the bottomhole location? What  
8 formation is that producing from?

9 A. In the Morrow.

10 Q. The same formation you want to test here, right?

11 A. Correct.

12 Q. Did you look at the possibility of using that  
13 surface location in Section 6 as a drilling island from  
14 which to develop the oil and gas resources under the  
15 proposed location of this APD?

16 A. It would not be possible to do what you just  
17 said.

18 Q. Why?

19 A. Well, for the reasons I stated in my -- in the  
20 direct questioning, is because it's impossible to reach all  
21 the formations under that 40-acre tract with a well from  
22 the James Ranch 14 surface location. That's the primary  
23 reason.

24 The other reason would be that we would have to  
25 get a BLM permit. Assuming they gave us a permit, which is

1 a bold assumption in itself, we would have to spend a  
2 substantial additional investment, we'd have a risk in the  
3 drilling technique, a risk in the completion technique and  
4 a risk in the production technique.

5 Q. So you would rather not spend your money and  
6 waste potash; you'd like to shift that loss of potash to  
7 the potash company so you can save money?

8 A. We've attempted to work around potash issues,  
9 federal issues, state issues, every chance we get.

10 Q. Well, do you agree with me that James Ranch  
11 Number 14 was apparently approved by the BLM?

12 A. I don't know.

13 Q. Well, it's on federal land, isn't it?

14 A. I assume that it was, I've never --

15 Q. It's in measured ore on federal land, isn't it,  
16 Mr. Bailey?

17 A. Correct.

18 Q. As shown by your own map?

19 A. Yes.

20 Q. So if the BLM approved that directional well in  
21 measured ore on federal land, is there any reason for you  
22 to believe they wouldn't do the same thing for a  
23 directional well to this proposed location?

24 A. I have every reason to believe that they would  
25 not approve of another well on BLM leases, even if the

1 potash company was in cooperation with it.

2 Q. And have you asked them that question with  
3 respect to this well?

4 A. No.

5 Q. You're guessing, aren't you?

6 A. I have a very educated guess, yes.

7 Q. Do you know of other directional wells the BLM  
8 has approved in the potash area?

9 A. There's no recent ones, but a long time ago the  
10 BLM would approve wells of that nature. They don't  
11 anymore.

12 Q. They don't anymore do what?

13 A. They don't approve of any wells in federal land  
14 on the potash enclave.

15 Q. And upon what do you make that bold statement,  
16 Mr. Bailey?

17 A. I can't recite from memory, but we have made many  
18 attempts to acquire permits on BLM acreage in the potash  
19 enclave, in this area and in several thousand other acres  
20 that Bass owns in the potash enclave --

21 Q. When's the last time you --

22 A. -- there are many -- there are many attempts that  
23 we have made, and they have all been rejected by the BLM --

24 Q. And when's the last --

25 A. -- we have had no approvals -- I can't even

1 remember the last well in the potash enclave that was  
2 approved by the BLM. And like other operators, we have had  
3 absolutely no cooperation from the BLM in drilling in the  
4 potash enclave.

5 Q. Mr. Bailey, are you guessing at a lot of stuff?

6 A. Absolutely not.

7 Q. Do you know how many wells there are in measured  
8 ore in the potash area?

9 A. That's impossible for me to recite that number.

10 Q. Well, how can you sit here and say with that --  
11 under oath, that the BLM won't allow wells in measured ore  
12 if you don't know one way or the other.

13 MR. CARR: I object -- am going to object to the  
14 form of the question. We're becoming argumentative here.  
15 If he would like to ask Mr. Bailey what he knows and what  
16 he understands, he can do that. But to sit here and argue  
17 with him is inappropriate.

18 Q. (By Mr. High) Do you know, Mr. Bailey, how many  
19 wells --

20 MR. CARR: Make a ruling on that, Mr. Stogner.

21 EXAMINER STOGNER: Mr. High --

22 MR. HIGH: Yes.

23 EXAMINER STOGNER: -- I do agree with Mr. Carr  
24 that this seems to be somewhat argumentative, and this is  
25 more of an informal type of a deal. Perhaps if you would

1 just limit your questioning to questions and be a little  
2 less argumentative, I think we could probably get away with  
3 this today.

4 MR. HIGH: I will do that.

5 EXAMINER STOGNER: Thank you, Mr. High.

6 Q. (By Mr. High) One more time, Mr. Bailey, you  
7 don't know how many wells the BLM has allowed in measured  
8 ore in the potash area?

9 A. No.

10 Q. When is the last time you asked them to let you  
11 drill in the measured ore?

12 A. I don't recall.

13 Q. In the last five years?

14 A. Definitely.

15 Q. If -- Would you be surprised to know that there's  
16 over a thousand wells that's been allowed by the BLM in the  
17 measured ore in the potash area? Would that surprise you?

18 A. Since when?

19 Q. If I held up a map, which I won't offer into  
20 evidence, which is the BLM map that shows the red dots  
21 being wells in the measured ore, does that number of wells  
22 surprise you, sir?

23 A. I don't know, I can't see the map, I don't know  
24 the information that you're asking me about. I only know  
25 that whenever we ask the BLM to drill on federal leases in

1 the potash enclave, we are denied. We appeal to the IBLA,  
2 we appeal to the highest authority possible, and we  
3 continue to be denied.

4 There are locations on my map that Bass proposed  
5 to the potash company before we went to the BLM. The  
6 potash company said okay, and the BLM denied the  
7 applications.

8 Q. Do you know when the James Ranch 14 well was  
9 drilled?

10 A. 1984 --

11 Q. Do you know what --

12 A. -- I think.

13 Q. -- the price of oil was at the time James Ranch  
14 14 was drilled?

15 A. No.

16 Q. Would you agree with me it was substantially less  
17 than what it is today?

18 A. I don't recall.

19 Q. Do you recall in the 1980s oil ever being  
20 anywhere near \$45 to \$50 a barrel?

21 A. I have no idea what the price of oil was in the  
22 early 1980s.

23 Q. Do you think that the price of oil today is  
24 higher than it was when James Ranch 14 was drilled?

25 A. I don't know.

1 Q. How long have you been in the oil and gas  
2 business?

3 A. Since 1981.

4 Q. And yet you don't remember what the price of oil  
5 was back in the 1980s?

6 A. I can only guess.

7 MR. HIGH: That's all I have.

8 EXAMINER STOGNER: Okay, Mr. Bruce?

9 MR. BRUCE: I have a couple of questions, Mr.  
10 Examiner.

11 CROSS-EXAMINATION

12 BY MR. BRUCE:

13 Q. I just want to clarify something, Mr. Bailey.  
14 Mr. High asked you about waste of potash on your drill  
15 site. Is that quarter-quarter section leased to a potash  
16 company?

17 A. No.

18 Q. So the potash company has no right to mine that  
19 acreage?

20 A. That's correct.

21 Q. Then how can drilling of this well impair the  
22 potash company's right to mine in that quarter-quarter  
23 section?

24 A. No reason that I know of.

25 Q. So there won't be any waste of potash because

1 it's not going to be mined anyway?

2 A. Correct.

3 Q. Now, you said you sat in on discussions with  
4 other Bass representatives regarding difficulties involved  
5 in drilling directional wells, and there's what, either  
6 inability or limited ability to test or produce all zones  
7 adequately; is that one of the reasons?

8 A. Correct.

9 Q. And when you have directional wells, has Bass  
10 also experienced some difficulty in getting unorthodox  
11 location approval if you complete uphole and a wellbore,  
12 say, in the Delaware zone is crossing a quarter-quarter  
13 section line?

14 A. Yes, there is that difficulty.

15 MR. BRUCE: Thank you.

16 EXAMINER STOGNER: Mr. Carr, redirect, please?

17 MR. CARR: No redirect.

18 EXAMINER STOGNER: No redirect.

19 EXAMINATION

20 BY EXAMINER STOGNER:

21 Q. Mr. Bailey, I'm going to refer to Exhibit Number  
22 1 --

23 A. Okay.

24 Q. -- and first of all, let's talk about the green  
25 area. And you have it designated as open. Is that

1 designated open potash or oil and gas? What does that  
2 denote?

3 A. That's just potash.

4 Q. That's open, unleased potash, is what you're  
5 saying?

6 A. Correct. And that's from a review of the county  
7 records and federal records and based on our conversations  
8 with the mineral owners under the drill site tract. So  
9 it's open of record -- it's unleased potash of record and  
10 according to conversations that would seek to find a potash  
11 lease that was not recorded. So we did everything we could  
12 to find any existing potash leases, whether they were  
13 recorded or not.

14 Q. Okay. And now, still on Exhibit Number 1, please  
15 you clarify to me what this means, and I look at Section  
16 7 --

17 A. Uh-huh.

18 Q. -- and then on the western boundary, in that blue  
19 area, there's something called the JRU boundary. What is  
20 that?

21 A. Well, the boundary of the James Ranch Federal  
22 Unit is the black stippled line that goes down the west  
23 line of Section 7 to the middle of Section 18, and then  
24 goes east and back up to the north.

25 Q. Okay, so that's essentially the James Ranch Unit

1 boundary lines, is that stippled area, because that's not  
2 marked on here, but that's what you're showing?

3 A. Correct.

4 Q. Correct? Okay, let's take ourself out of the  
5 potash area. I'm going to use your knowledge on filing an  
6 APD on federal land into a fee acreage. What would that  
7 entail, or what difference would that entail, to get  
8 something like that approved through the BLM? Like I said,  
9 this is out of the potash area, and this is just looking at  
10 a directionally drilled well --

11 A. Uh-huh.

12 Q. -- applied on federal land for fee acreage -- or  
13 fee minerals, I should say -- what would that entail?

14 A. Are you talking about a surface location on  
15 federal and a bottomhole location --

16 Q. Yes, I'm talking about a surface location on  
17 federal land --

18 A. Uh-huh.

19 Q. -- directionally drilled --

20 A. Uh-huh.

21 Q. -- into a piece of fee minerals, and fee surface  
22 owner for that matter.

23 A. Uh-huh.

24 Q. What would that entail?

25 A. It would take permits from both agencies to cover

1 the entire wellbore, to permit the entire wellbore.

2 Q. What would the payout -- how -- When I say  
3 payout, who would get the royalty interest in this  
4 particular instance, that that well was drilled and was  
5 producing?

6 A. It depends on what zone was being produced.

7 Q. Okay, I'm being hypothetical, it's all a hundred  
8 percent --

9 A. I understand.

10 Q. -- fee minerals.

11 A. Well, the gas zones would be spaced on 320 acres,  
12 so everybody in the 320-acre unit would get their  
13 proportionate share on an acreage basis on the royalty from  
14 the gas zones.

15 Q. Okay, let me rephrase it. Would the surface  
16 location, regardless -- and in this instance it's not  
17 within a lease -- would the surface location be obligated  
18 to share any of the mineral rights?

19 A. Well, let me say one thing, and maybe that will  
20 answer your question.

21 Q. Okay.

22 A. If the wellbore intersects the Delaware or  
23 another zone that's spaced on 40 acres, then the owner of  
24 that 40 acres, wherever the wellbore intersects it, will  
25 receive all the royalty. So the oil zones would be paid

1 royalty on a 40-acre basis, depending on the 40-acre tract  
2 that's encountered in that portion of the wellbore.

3 So if the Delaware zone was encountered in the 40  
4 acres to the west of the 93 location, then the BLM would  
5 get all the royalty from the Delaware. Is that --

6 Q. Okay, like I said, I took myself out of the  
7 potash area here. I know you're bringing it back to this.

8 A. Yeah.

9 Q. Would the BLM require a commercial lease for use  
10 of their surface to obtain fee minerals?

11 A. Yes.

12 Q. Okay. Have you ever been under an obligation  
13 where you had to do that before, with either state lands or  
14 federal lands, to get fee acreage and taking a commercial  
15 lease out from either of those two agencies, State Land  
16 Office or the BLM?

17 A. In my experience we've always had existing leases  
18 for that purpose. I mean, we had the leases before the  
19 well was drilled, so we didn't have to propose the well and  
20 then go buy the leases for the purpose of that well. The  
21 leases were in place.

22 Q. And in our growing day of no surface occupancy,  
23 even on fee acreage we're seeing more and more of this --

24 A. Uh-huh.

25 Q. -- would you agree?

1 A. Yes.

2 Q. Okay. Now, let's refer back to Exhibit Number 1  
3 and this particular location of your well that you have  
4 chosen, 660-660. Would that be the maximum distance that  
5 you could be from a leased potash boundary?

6 A. Well, if we're on this, at the current -- at the  
7 location that's proposed, is the optimal location.

8 Q. Optimal for what?

9 A. Optimal for recovery of oil and gas resources  
10 under that 40-acre tract. There may be another location on  
11 that 40-acre lease. I'm not prepared to designate any  
12 other alternate location on that lease, but on the 40-acre  
13 lease, at a legal location, would not go far. I can assume  
14 that it would be acceptable for the recovery of the oil and  
15 gas resources.

16 Q. Okay. Well, I'm -- work with me here.

17 A. Okay.

18 Q. This location, is that the furthestest distance  
19 you can be from any of the IMC potash Carlsbad lease with  
20 that well? No matter where you put it on that particular  
21 40 acres, you can only be 660 from any of the blue  
22 designated area; is that correct?

23 A. Correct.

24 Q. Even if you move straight north, you still can  
25 only be 660 from that blue line; is that correct?

1 A. We still would be 660 from the blue line.

2 Q. That's what I was getting at, okay.

3 Okay, let's go back to your APD, and this was  
4 filed in April; is that correct?

5 A. August --

6 Q. Okay, refer to Exhibit Number 3, second page.

7 A. Well, the -- I see that there is an April date.  
8 Is that the bottom of page 1 of the permit?

9 Q. Yes.

10 A. It wasn't sent to the OCD until August.

11 Q. Until August, okay. And who else got notice of  
12 this proposed APD? You sent copies to the potash; is that  
13 correct, as I understand it?

14 A. Yes, it's required under R-111-P.

15 Q. And they have -- under that R-111-P, do you  
16 recollect what the time period that a potash company had to  
17 object, or anybody had to object?

18 A. I was told by the OCD office in Artesia, Mr.  
19 Arrant, that they had -- that R-111-P has a time period of,  
20 I believe, 21 days.

21 Q. But regardless, it was not approved until  
22 September 15th, I believe?

23 A. Correct.

24 Q. Yes, September 15th, referring to Exhibit Number  
25 4.

1           And on September 17th was when -- the objection  
2 from the potash company. But regardless, the APD, as I  
3 understand, was dismissed. What did the Artesia office do  
4 then?

5           A. Well, they sent me a signed APD. And then after  
6 they received the potash company's letter, the OCD wrote me  
7 a letter that said they rescinded the permit.

8           Q. So that's why we're here today; is that correct?

9           A. Correct.

10          Q. Mr. Bailey, when did Bass Enterprises obtain the  
11 James Ranch Unit?

12          A. I don't know the exact date, but it was -- the  
13 unit was probably formed -- I don't know when the leases  
14 were acquired, exactly.

15                 I don't know the exact date of the unit, the  
16 effective date of the unit. I believe it was in the late  
17 1950s.

18          Q. Okay, but when did Bass Enterprises become  
19 operator of the James Ranch --

20          A. At that -- when it was made effective.

21          Q. When it was made effective.

22          A. Uh-huh.

23          Q. So Bass Enterprises had control in the early  
24 1980s when Belco drilled the Number 14 well; is that  
25 correct?

1           A.    Right. Well, Belco operated several wells in  
2 this area under a farmout agreement from Bass.

3           EXAMINER STOGNER: Okay. I have no other  
4 questions.

5           Any other redirect, Mr. Carr?

6           MR. CARR: No, sir, Mr. Stogner.

7           EXAMINER STOGNER: Any other questions of Mr.  
8 Bailey?

9           MR. HIGH: Just a couple.

10                           FURTHER EXAMINATION

11          BY MR. HIGH:

12           Q.    Mr. Bailey, referring back to your map, Number 1,  
13 Bass does own the oil and gas leases covering the entire  
14 Section 6, does it not?

15           A.    Yes.

16           Q.    And with respect to the correspondence that you  
17 testified about with the OCD, did you ever see any  
18 correspondence where the OCD had asked the State Land  
19 Office whether or not this proposed location was in any  
20 LMR? Did you see any of that correspondence?

21           A.    No.

22           Q.    Do you know whether any correspondence like that  
23 even exists?

24           A.    I don't know.

25           Q.    Did you see any correspondence between the OCD

1 and the BLM inquiring as to whether or not, according to  
2 the BLM records, this proposed location was in any potash-  
3 operated LMR?

4 A. Not that I know of.

5 Q. And if those documents show that this proposed  
6 location is, in fact, in an LMR, do you know what R-111-P  
7 says?

8 A. I would have to see the exact -- to refer back to  
9 it, to get the exact language.

10 Q. Okay, you don't know that R-111-P says that no  
11 oil and gas well can be drilled in any potash LMR without  
12 its approval?

13 You don't know that it says that?

14 A. It says several things. I can't recite  
15 everything that it says. It says many things.

16 MR. HIGH: All right, that's all I have.

17 MR. CARR: Well, maybe one follow-up.

18 EXAMINER STOGNER: Mr. Carr?

19 FURTHER EXAMINATION

20 BY MR. CARR:

21 Q. If we look at this correspondence, the  
22 correspondence from IMC, the objection letter, which was  
23 Bass Exhibit Number 5, do you have that, Mr. Bailey?

24 A. The OCD letter --

25 Q. Yes -- no, I'm sorry --

1 A. -- or the IMC letter?

2 Q. -- the IMC letter.

3 A. Yes, I have that.

4 Q. If we look at that letter, IMC objected because  
5 it said the APD was within an LMR.

6 Do you see that?

7 A. Yes.

8 Q. It also then goes on and quotes R-111-P, which  
9 states, "Any application to drill in the LMR area,  
10 including buffer zones, may be approved only by mutual  
11 agreement of the lessor and lessees of both potash and oil  
12 and gas interests."

13 Do you see that?

14 A. Yes.

15 Q. In this case, do you have a mutual agreement  
16 between the owner of both the oil and gas and the potash?

17 A. Yes.

18 MR. CARR: Thank you.

19 EXAMINER STOGNER: Any other questions of Mr.  
20 Bailey?

21 MR. HIGH: No, we have nothing.

22 EXAMINER STOGNER: Mr. Bailey, you may be excused  
23 at this time.

24 MR. CARR: May it please the Examiner, at this  
25 time I call William Dannels.

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WILLIAM R. DANNELS,

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

DIRECT EXAMINATION

BY MR. CARR:

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

A. William Ray Dannels.

Q. Mr. Dannels, spell your last name.

A. D-a-n-n-e-l-s.

Q. By whom are you employed?

A. Bass Enterprises Production Company.

Q. And what is your current position with Bass  
Enterprises Production Company?

A. I'm the division drilling superintendent for  
Bass's west Texas division, located in Midland, Texas.

Q. Does your area of responsibility also include the  
drilling of wells within the James Ranch unit area?

A. Yes.

Q. Have you previously testified before the New  
Mexico Oil Conservation Division?

A. No.

Q. Could you summarize your educational background  
for Mr. Stogner?

A. I have a natural gas engineering degree from

1 Texas A&I University, now called Texas A&M, at Kingsville,  
2 Texas.

3 Q. Following graduation from --

4 A. I graduated in May 1973.

5 Q. And for whom have you worked?

6 A. I worked for -- out of school, I went to work in  
7 June of 1973 for Texaco. I worked in New Iberia,  
8 Louisiana, for six and a half years before I moved on and  
9 began my work with Bass.

10 Q. Would you review the nature of the work you've  
11 been called on to do --

12 A. With Texaco I worked with the -- as an engineer  
13 in the production, the drilling and the reservoir  
14 department those six and a half years.

15 While on the -- with Bass, I worked from 1979  
16 until 1993 in Bass's Gulf Coast division out of New  
17 Orleans, working the Gulf Coast areas, and then I have --  
18 got transferred in 1993 to Midland, in which they  
19 transferred me as the west Texas drilling superintendent.

20 Q. In this role are you responsible for the design  
21 and development of drilling programs on an individual well  
22 basis?

23 A. Yes.

24 Q. Have you designed drilling programs for other  
25 wells that Bass has drilled in the oil/potash area?

1 A. Yes.

2 Q. Are you familiar with the Application filed on  
3 behalf of Bass in this case?

4 A. Yes.

5 Q. And are you familiar with Bass's plans for the  
6 drilling of the James Ranch Unit Well Number 93?

7 A. Yes.

8 MR. CARR: May it please the Examiner, I tender  
9 Mr. Dannels as an expert drilling engineer.

10 EXAMINER STOGNER: Any objection?

11 MR. HIGH: I didn't hear any experience with  
12 respect to directional drilling. May I ask some questions  
13 about that --

14 MR. CARR: Sure, go ahead.

15 MR. HIGH: -- please? I assume that's the  
16 purpose of the offer, isn't it?

17 MR. CARR: Well, we're going to have him review  
18 the drilling program as proposed for this well, but he has  
19 experience --

20 MR. HIGH: Ask him about directional drilling.

21 Q. (By Mr. Carr) Mr. Dannels, do you have  
22 experience with directional drilling?

23 A. Yes, both in the Gulf Coast and in west Texas.

24 MR. HIGH: All right, if it's only for this --  
25 the well as proposed, I have no questions.

1 MR. CARR: I would like him also qualified if  
2 there are any questions concerning the issues that relate  
3 to directional drilling, because he --

4 EXAMINER STOGNER: I'll tell you what, ask him if  
5 he has any experience with directional drilling since he's  
6 been in Midland and after 1993.

7 Q. (By Mr. Carr) Do you have any experience with  
8 directional drilling since being in Midland in 1993?

9 A. Yes, sir.

10 MR. CARR: I tender him as an expert, Mr.  
11 Stogner, as an expert drilling engineer, both for vertical  
12 wells and directional drilling, if anybody has a question  
13 on that.

14 EXAMINER STOGNER: With that, since 1993 --  
15 (Laughter)

16 MR. CARR: With that, since 1993 --

17 EXAMINER STOGNER: -- so qualified.

18 Q. (By Mr. Carr) Mr. Dannels, are you familiar with  
19 the cementing and casing provisions of Order Number  
20 R-111-P?

21 A. Yes.

22 Q. Let's go to what has been marked for  
23 identification as Bass Exhibit Number 11. Identify this,  
24 please.

25 A. This is the drilling schematic that was not

1 prepared by me, but I -- since I've been on vacation, but  
2 anyway --

3 Q. Have you reviewed this?

4 A. I have reviewed it.

5 Q. And --

6 A. -- and it is correct --

7 Q. All right.

8 A. -- essentially correct.

9 Q. Would you review the proposed -- Bass's proposal  
10 for drilling the James Ranch Unit Well Number 93 as a  
11 vertical well?

12 A. We'll start off drilling a surface hole, being  
13 17 1/2 inches, to 600 feet where we'll set 13-3/8 casing.  
14 At 600 feet we'll be into the Rustler, and we'll protect  
15 all water-bearing zones, surface water-bearing zones, and  
16 we will cement to surface.

17 From then we will drill a 12-1/4 hole, which is  
18 called our salt-protection string, to 4040 feet, which is  
19 below the salt section and below the potash section. We'll  
20 set 9-5/8 and cement to surface.

21 From that point we'll drill down with an 8-3/4  
22 hole where we propose to set our 7-inch protection  
23 production string at 12,000 feet, and we need this for  
24 pressure purposes. And we will also cement it to surface  
25 using a DV tool at 8000 feet.

1           A DV tool is used for two-stage cementing. I  
2 don't know if I need to go into that.

3           And then to get to 14,900 feet we'll drill a  
4 6-1/8-inch hole and set a 4-1/2-inch production liner, and  
5 that will be cemented with a 300-foot overlap into our  
6 7-inch.

7           Q. Mr. Dannels, does this well, as proposed, in your  
8 opinion, comply with the cementing and casing provisions of  
9 Order Number R-111-P?

10          A. Yes.

11          Q. Will Bass provide notice of any work on this well  
12 so it can be witnessed by IMC or Mosaic representatives to  
13 assure that it is drilled and completed in accordance with  
14 the provisions of this order?

15          A. Yes, we can do that. Normally, the NMOCD is our  
16 contact, but if that's necessary we can call in to --

17          Q. Do you have anything further to add to your  
18 testimony?

19          A. No.

20               MR. CARR: At this time, Mr. Stogner, we move the  
21 admission into evidence of Bass Exhibit Number 11.

22               EXAMINER STOGNER: Any objection?

23               MR. HIGH: No objection.

24               EXAMINER STOGNER: Exhibit Number 11 is admitted  
25 into evidence at this time.

1 MR. CARR: And that concludes my direct  
2 examination of this witness.

3 EXAMINER STOGNER: Mr. High, your witness.

4 MR. HIGH: No cross.

5 EXAMINER STOGNER: Okay, Mr. Bruce?

6 MR. BRUCE: No questions, Mr. Examiner.

7 EXAMINER STOGNER: I don't have any questions of  
8 Mr. Dannels at this time. Any questions? You may be  
9 excused.

10 MR. CARR: Mr. Examiner, at this time we'd call  
11 Mr. Stacey Mills.

12 EXAMINER STOGNER: Are we going into the Devon --

13 MR. CARR: No, this is a mineral owner under the  
14 40 acres on which Bass proposes to drill.

15 STACEY C. MILLS,  
16 the witness herein, after having been first duly sworn upon  
17 his oath, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. CARR:

20 Q. Would you state your full name for the record,  
21 please?

22 A. Stacey Carroll Mills.

23 Q. Mr. Mills, where do you reside?

24 A. Southeast of Carlsbad, Eddy County, New Mexico.

25 Q. Do you own a mineral interest in the 40 acres on

1     which Bass is proposing to drill?

2             A.    Yes, sir.

3             Q.    Is your mineral interest confined to that 40  
4     acres, being the northeast quarter of the northeast quarter  
5     of Section 7?

6             A.    No.

7             Q.    Do you own other mineral interests under the  
8     north half of the section?

9             A.    No.

10            Q.    So we're talking about your interest under this  
11    40-acre tract; is that correct?

12            A.    Yes, sir.

13            Q.    Tell us how you acquired that interest.

14            A.    How I acquired the interest, well, the surface.  
15    I own the ranch.  It's leased to Bass Enterprises.  It was  
16    leased to Belco in 1981.

17            Q.    And who actually leased the property?

18            A.    My grandfather.

19            Q.    And how do you hold it now?  As a partnership in  
20    your family?

21            A.    Family partnership.

22            Q.    You own the surface.

23                    Do you also own the mineral rights under that  
24    tract?

25            A.    Yes, sir.

1 Q. Would you be the owner, then, of potash rights  
2 under that acreage?

3 A. Yes, sir.

4 Q. Are you here speaking for not only yourself but  
5 other members of your family?

6 A. That's correct.

7 Q. It was leased in 1981 to Belco, now Bass. Since  
8 that time, have any of the minerals on this acreage been  
9 developed?

10 A. No, sir.

11 Q. No gas wells have been drilled?

12 A. No.

13 Q. Has IMC attempted to lease your potash interests?

14 A. No, sir.

15 Q. You're aware that Bass is proposing to drill a  
16 Morrow well on this acreage, or well to the Morrow and  
17 other formations on your acreage?

18 A. Yes.

19 Q. Have you agreed or reached an agreement with Bass  
20 concerning how your minerals on this acreage should be  
21 developed?

22 A. Yes, sir.

23 Q. And what is that agreement?

24 A. They're going to drill a well, vertical well, off  
25 that 40 down to the Morrow.

1 Q. And do you prefer for them to do this as opposed  
2 to developing the potash under the acreage?

3 A. Yes, sir.

4 Q. What has been your experience with the potash  
5 development under this land?

6 A. No experience at all.

7 Q. Has anyone ever proposed that they lease your  
8 property?

9 A. No.

10 Q. That they go in and mine this potash?

11 A. No, sir.

12 Q. If you're not -- if this well isn't drilled on  
13 this acreage, are you going to be able to recover any of  
14 the minerals under this 40-acre tract?

15 A. I don't expect so.

16 Q. Is it your desire that as the owner of potash  
17 rights and the lessor of the oil and gas leases under this  
18 tract, that the oil and gas minerals be developed first and  
19 in preference to the potash reserves?

20 A. Yes, sir.

21 Q. Do you support Bass in its Application to drill  
22 this well?

23 A. Yes, I do.

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

25 EXAMINER STOGNER: Mr. High?

## CROSS-EXAMINATION

BY MR. HIGH:

Q. Mr. Mills, how large is your ranch?

A. About 75,000 acres --

Q. And --

A. -- mostly federal land.

Q. -- a lot of that's BLM grazing rights?

A. Yes, sir.

Q. Okay. And how much of that 75,000 acres is fee land?

A. Three percent.

Q. Three percent?

A. Yes, sir.

Q. And is that -- is it all contiguous, the three percent?

A. No, sir.

Q. There's other parts, other than this 40 acres we're talking about in this case?

A. That's correct.

Q. The piece that we're talking about here, is it just a -- one 40-acre section, or piece, I mean?

A. Yes.

Q. And how long have you owned that one, that piece of land?

A. Since 1976.

1 Q. Do you know how far away from your ranch it is to  
2 where potash mining is taking place now?

3 A. I've recently been told, yes.

4 Q. Before that time --

5 A. Before that time, I had no idea.

6 Q. You never looked around to see --

7 A. I know there's mine shafts, yes. The nearest  
8 shaft to this piece of property is five or six miles.

9 Q. Can you see it from your property?

10 A. No.

11 Q. So there's mining taking place now, how far from  
12 your ranch?

13 A. That's the extent of my knowledge, is where the  
14 shaft is. I don't know how far the tunnels extend.

15 Q. Okay. Do you know whether or not there's any  
16 potash on your ranch?

17 A. No, sir, no idea.

18 Q. To your knowledge, has there been any core holes  
19 drilled on your ranch to see if there's any potash down  
20 there?

21 A. I know there have been core holes drilled a long  
22 time ago, yes.

23 Q. All right, but you've never --

24 A. You can see the stakes.

25 Q. You never looked at the results of those to see

1 if there's any potash ore down there?

2 A. No, sir.

3 Q. Do you know what the value of that potash might  
4 be under your ranch?

5 A. No, sir.

6 Q. Would you like to know?

7 A. Sure.

8 MR. HIGH: Okay, thank you very much. That's  
9 all.

10 EXAMINER STOGNER: Mr. Bruce?

11 MR. BRUCE: No questions.

12 MR. CARR: No questions.

13 EXAMINATION

14 BY EXAMINER STOGNER:

15 Q. Okay, you said that this little 40-acre portion  
16 became part of your ranch in 1976; is that correct?

17 A. Yes, sir.

18 Q. Okay. Has any of the potash companies or anybody  
19 approached you on leasing the potash since 1976?

20 A. Not to my knowledge, never, no.

21 Q. Okay. Now, have you always had an oil and gas  
22 lease since you've owned it?

23 A. The first oil and gas lease that I'm aware of was  
24 to Belco in 1981.

25 Q. 1981.

1 A. Yes, sir.

2 Q. And -- that you were aware of?

3 A. Yes, sir.

4 Q. Okay. Has any company like Belco or Bass  
5 approached you -- Let me rephrase this.

6 Is this the first time that you have been  
7 approached by an oil and gas company to actually drill on  
8 this 40-acre tract?

9 A. Yes.

10 Q. So nobody has ever addressed or approached you to  
11 form a -- or having this little 40-acre tract be a drilling  
12 island?

13 A. No, sir.

14 EXAMINER STOGNER: Okay, I have no other  
15 questions of Mr. Mills.

16 Do you have any questions?

17 MS. MacQUESTEN: No questions, thank you.

18 EXAMINER STOGNER: You may be excused.

19 MR. CARR: May it please the Examiner, this  
20 concludes the Bass portion of the case, and I'm prepared to  
21 move into Devon's presentation.

22 EXAMINER STOGNER: Okay. Mr. High, is this  
23 efficient to you, to go on to the Devon, or would you like  
24 to call a witness with respect to just the Bass  
25 Enterprises?

1 MR. HIGH: We can do all at one time, can't we?

2 EXAMINER STOGNER: Okay.

3 MR. HIGH: I think it would be probably easier,  
4 we'll just --

5 MR. CARR: Okay.

6 MR. HIGH: -- them go on to the next one, and  
7 we'll put all ours on at one time.

8 EXAMINER STOGNER: Okay, I'd like to take a 10-  
9 minute recess at this time, before we get on to Devon.

10 (Thereupon, a recess was taken at 11:10 a.m.)

11 (The following proceedings had at 11:25 a.m.)

12 EXAMINER STOGNER: This hearing will come to  
13 order.

14 Mr. Carr?

15 MR. CARR: Mr. Stogner, at this time we would  
16 call Ken Gray.

17 KENNETH H. GRAY,

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

20 DIRECT EXAMINATION

21 BY MR. CARR:

22 Q. Would you state your full name for the record?

23 A. Yes, my name is Ken Gray.

24 Q. Spell your last name, please.

25 A. G-r-a-y.

1 Q. Where do you reside?

2 A. I reside in Oklahoma City, Oklahoma.

3 Q. By whom are you employed?

4 A. I'm employed as a landman by Devon Energy  
5 Production Company.

6 Q. Mr. Gray, have you previously testified before  
7 this Division?

8 A. Yes, I have.

9 Q. At the time of that testimony, were your  
10 credentials as an expert in petroleum land matters accepted  
11 and made a matter of record?

12 A. Yes, they were.

13 Q. Are you familiar with the Applications filed in  
14 each of these cases on behalf of Devon Energy Production  
15 Company?

16 A. Yes, I am.

17 Q. Are you familiar with the status of the lands  
18 involved in this matter?

19 A. Yes, I am.

20 Q. And are you knowledgeable and have participated  
21 in Devon's discussions and the development of plans for the  
22 drilling of the two wells that are the subject of these  
23 cases?

24 A. Yes, I am.

25 MR. CARR: Are the witness's qualifications

1 acceptable?

2 EXAMINER STOGNER: Any objection?

3 MR. HIGH: No objection.

4 EXAMINER STOGNER: So qualified.

5 Q. (By Mr. Carr) Mr. Gray, would you briefly state  
6 what Devon seeks in these cases?

7 A. We're seeking authorization to drill two wells in  
8 the potash area, as defined by the Division Order R-111-P,  
9 and we are also seeking approval of an -- well, it's not  
10 unorthodox anymore.

11 MR. CARR: Actually, Mr. Stogner, we ought to  
12 probably dismiss a portion of Case 13,372 as it relates to  
13 an unorthodox well location. This is only for a deep gas  
14 well, and that location is standard for a Devonian gas  
15 well, so that portion of the case could also be dismissed.

16 EXAMINER STOGNER: I'll take notice of that and  
17 issue an order accordingly.

18 Q. (By Mr. Carr) Mr. Gray, both of the wells you're  
19 talking about, you're proposing to drill from locations in  
20 the southwest quarter of the northwest quarter of Section  
21 24, 22 South, 30 East; is that correct?

22 A. That's correct.

23 Q. One is to the Delaware?

24 A. Correct.

25 Q. And one is to the Devonian?

1 A. Yes.

2 Q. Would you identify what has been marked as Devon  
3 Exhibit Number 1?

4 A. Yeah, Devon Exhibit Number 1 is basically a  
5 snapshot of the 1993 or 1994 BLM map identifying the  
6 distribution of potash resources in the potash area. Also  
7 shown on that plat are Devon's leases in yellow, the WIPP  
8 site is outlined in green, and then the various potash  
9 mines also indicated first and second mined areas in  
10 different shades of yellow.

11 Q. And the 40-acre tract on which you propose to  
12 drill these wells is in Section 24, immediately -- the  
13 section immediately west of the WIPP site; is that correct?

14 A. Yes, it is.

15 Q. This acreage is kind of shaded yellow and striped  
16 yellow and blue. What does that mean? It's not shown in  
17 the key.

18 A. The cross-hatched on the Devon acreage, it was an  
19 internal thing that we did at one time, and my recollection  
20 is that we were trying to identify certain leases in the  
21 potash area that did not contain potash stipulations. I  
22 think that the cross-hatch on Devon's acreage really doesn't  
23 have any bearing to these cases, but --

24 Q. And on this map you've shown areas where there's  
25 inferred potash, indicated potash, barren potash,

1 information of that nature. What is the source of that?

2 A. The source of this is from the BLM, the latest  
3 version of the BLM map that I had, which was 1993 or -4.

4 Q. All right, Mr. Gray, let's go to Exhibit 2.

5 EXAMINER STOGNER: I'll tell you what, before we  
6 do, I want to go back -- I want to stay on Exhibit Number 1  
7 here.

8 MR. CARR: Okay.

9 EXAMINER STOGNER: See, with today's imaging, and  
10 even with my eyeballs, I want to make sure that we get  
11 things straight here.

12 I'm looking in 22 South, 30 East.

13 THE WITNESS: Uh-huh.

14 EXAMINER STOGNER: In particular, Sections 13, 24  
15 and 26, the cross-hatched area, as he was talking. That is  
16 a deep yellow hachured mark; is that correct? Is that what  
17 you're showing?

18 THE WITNESS: Well, what we're intending to show  
19 in Sections 13, 24 and 25 were Devon leases in yellow.

20 EXAMINER STOGNER: Okay.

21 THE WITNESS: The cross-hatched on those leases,  
22 as I said before, was a process that we went through a year  
23 or so ago trying to identify --

24 EXAMINER STOGNER: Well, you're making too much  
25 of a complicated -- Let's talk about colors.

1 THE WITNESS: They really don't have any bearing,  
2 the cross-hach --

3 EXAMINER STOGNER: Well, yeah, they do, and  
4 you'll see where I'm getting.

5 THE WITNESS: Okay.

6 EXAMINER STOGNER: I'm talking about Sections 13,  
7 24 and 26. That yellow coloring is leases; is that  
8 correct?

9 THE WITNESS: Those are Devon leases, right.

10 EXAMINER STOGNER: Okay. Also, now, if I go down  
11 to Section 33 and 35, which appear also to be yellow --

12 THE WITNESS: Yeah.

13 EXAMINER STOGNER: -- those are actual mine?

14 THE WITNESS: Those are -- That's right.

15 EXAMINER STOGNER: Okay, so these -- You see  
16 where the confusion could come into play, especially where  
17 we have imaging.

18 THE WITNESS: Right.

19 EXAMINER STOGNER: Okay, Sections thirteen,  
20 twenty-four and twenty- --

21 THE WITNESS: Twenty-five.

22 EXAMINER STOGNER: -- you're not depicting as  
23 any --

24 THE WITNESS: No --

25 EXAMINER STOGNER: -- mined area?

1 THE WITNESS: -- those are Devon leases, and I  
2 think that will be a little bit more clear on our next  
3 exhibit.

4 EXAMINER STOGNER: Okay, I'm -- You see where I  
5 just want to get things clear.

6 THE WITNESS: Right.

7 Q. (By Mr. Carr) The cross-hatched area, that shows  
8 Devon leases, correct?

9 A. Well, and some --

10 Q. And they're shown in the key?

11 A. Right.

12 MR. CARR: I didn't see that before.

13 EXAMINER STOGNER: In the key.

14 THE WITNESS: Right.

15 Q. (By Mr. Carr) Second one down shows the diagonal  
16 lines, and that indicates Devon leases as depicted on this  
17 map; is that right, Mr. Gray?

18 A. Yes.

19 Q. And then if you go down in the index, down in the  
20 lower left of the exhibit, it shows first and second mined  
21 areas also in yellow, but those are solid yellow?

22 A. Right.

23 MR. CARR: Okay.

24 EXAMINER STOGNER: And even a different shade of  
25 yellow, it looks like too.

1           So if any- -- for future reference, if anybody  
2 refers to this map or looks at it, make sure you look at  
3 the key, because it can get a little confusing with the  
4 pastel colors being similar to what you might be looking  
5 at.

6           MR. HIGH: Well, Mr. Examiner, I think it's more  
7 than confusing, it's just dead wrong. This is not a  
8 representation of the BLM map unless Devon's willing to  
9 stipulate that the hached mark here that they're saying is,  
10 in fact, shown as blue on the BLM map --

11           EXAMINER STOGNER: I didn't mean to make this as  
12 complicated as it was. I understood this would be a  
13 photographic invention of the 1986 --

14           MR. CARR: Correct, and it's being offered only  
15 to give general orientation as to the Devon leases in 13,  
16 24 and 25, in regard to the WIPP site --

17           EXAMINER STOGNER: Okay.

18           MR. CARR: -- and it shows mining in the area as  
19 we understand it to be.

20           EXAMINER STOGNER: Okay, so understanding that  
21 it's a generalized map for references only, just pay  
22 attention to the coloring codes, is what I was getting at.

23           MR. HIGH: Only if they're willing to stipulate  
24 that with respect to Sections 13 and 24 shown on their  
25 Exhibit Number 1, that the areas of the hach marks, if they

1 will stipulate that is shown as blue measured ore on the  
2 BLM map, then I'll --

3 MR. CARR: Mr. Stogner, if you look at the code  
4 at the bottom, the last block is blue? It says "Measured  
5 Potash Reserves". We agree with that.

6 MR. HIGH: Okay.

7 MR. CARR: We just put our leases over that with  
8 the yellow lines.

9 MR. HIGH: With that stipulation, I don't have  
10 any problem with it.

11 EXAMINER STOGNER: Okay, so stipulated, and let's  
12 move on.

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

15 A. Yeah, Exhibit Number 2 is basically a nine-  
16 section plat indicating Devon's acreage in yellow. The  
17 yellow acreage are basically covered by three federal  
18 leases owned 100 percent by Devon. There's a red tract,  
19 pink, I guess you'd call it, in the southwest of the  
20 northwest, which is a Devon-owned oil and gas lease, 100-  
21 percent, on private land.

22 The WIPP site is -- it's obvious the WIPP site  
23 begins right there where it says "W.I.P.P. SITE." It's to  
24 the east. The James Ranch Unit outline is in green dashes.  
25 There's the location of all the wells that have been

1 drilled to date on the federal leases, the location of the  
2 two wells that's the subject of this hearing today, on the  
3 fee lease.

4 And then last but not least, the blue cross-  
5 hatched lines represent potash leases as far as the federal  
6 abstract records are concerned, and the red cross-hatching  
7 are lands that are not leased for potash per the federal  
8 abstract records.

9 Q. Mr. Gray, do you have any information on where  
10 IMC is mining at this time in regard to this acreage?

11 A. I don't have specific, but it's about a mile and  
12 a half or two miles to the south and west, I believe.

13 Q. Would you identify what is marked as Devon  
14 Exhibit 3?

15 A. Yeah, Exhibit Number 3 are the four fee oil and  
16 gas leases that Devon owns, has acquired, covering the  
17 southwest quarter of the northwest quarter of Section 24,  
18 22 South, 30 East.

19 Q. The lessee was originally Verne Dwyer on each of  
20 these leases?

21 A. He bought those on our behalf, and we've since  
22 been assigned those leases.

23 Q. Do these four leases together represent 100  
24 percent of the oil and gas rights on this 40-acre tract?

25 A. Yes, they do.

1 Q. And what Devon is proposing to do here today is  
2 use this 40-acre tract and drill at least two wells from  
3 this acreage?

4 A. That's correct.

5 Q. I'd like to take a minute and ask you to review  
6 with us the status of each of the two wells, and I'd like  
7 you to first identify what is contained in Devon Exhibit  
8 Number 4.

9 A. Yeah, Exhibit Number 4 is the cover page for the  
10 State application for permit to drill, identifying the  
11 lease type being a private lease, the proposed total depth,  
12 the formation, surface location, which is a regular  
13 location, and then some casing- and cementing-type --

14 Q. The first page is the application for permit to  
15 drill the Number 6 well?

16 A. Correct.

17 Q. And that's the Delaware well that you propose to  
18 drill as a straight well?

19 A. That's correct.

20 Q. Attached to this page from the APD are there  
21 other documents from Devon's file concerning this well?

22 A. Yes, there are.

23 Q. Forms and correspondence?

24 A. Yes.

25 Q. Are these files that are kept by you?

1 A. Yes.

2 Q. Do you keep these for Devon?

3 A. Well, either in my files or the engineer's or --

4 Q. But are these records that are ordinarily kept in  
5 the files at Devon?

6 A. Yes.

7 Q. And it's Devon's ordinary course of business to  
8 keep these documents?

9 A. Yes, it is.

10 Q. And you're going to refer to these and simply  
11 review the status of the APD and the events that ensued; is  
12 that correct?

13 A. That's correct.

14 Q. All right, the well is drilled at what location?

15 A. The well has been --

16 Q. Proposed?

17 A. Yeah, 1980 from the south -- or, excuse me, from  
18 the north line of Section 24 and 660 from the west line.

19 Q. This is the center of the 40-acre tract?

20 A. Correct.

21 Q. How deep do you propose to drill this well?

22 A. It would be approximately 7900 feet.

23 Q. And you are proposing to test what formation?

24 A. The Delaware formation.

25 Q. What is the spacing in the Delaware formation?

1 A. It's on statewide 40-acre spacing.

2 Q. And what are the well-location requirements on  
3 the 40-acre spacing unit?

4 A. Not closer than 330 feet from the outer boundary  
5 of the spacing unit.

6 Q. So this is a standard location?

7 A. Yes, it is.

8 Q. To your knowledge, does IMC or Mosaic Potash own  
9 any mineral rights under this 40-acre tract?

10 A. Not to my knowledge.

11 Q. Did the Oil Conservation Division approve this  
12 Application?

13 A. Yes, they did.

14 Q. If you refer to the second page of the  
15 Application, at the top does it show that the Application  
16 was, in fact, approved?

17 A. It was approved on February the 19th of this  
18 year.

19 Q. In terms of your getting this Application  
20 approved, I'd like you to turn to the next page -- go back  
21 a couple of pages. There is a letter in this file from the  
22 Oil Conservation Division dated January 21st, 2004. Do you  
23 see that?

24 A. Yes, I do.

25 Q. Is that a document from the files of Devon?

1 A. Yes.

2 Q. And what did the Oil Conservation Division advise  
3 in that letter?

4 A. I believe that they advised that they would  
5 withhold our -- approval of our Application until we had  
6 given notice to the appropriate potash lessees.

7 Q. And then the follow-up letter in this file is a  
8 letter signed by Karen Cottom?

9 A. Uh-huh.

10 Q. And who is she?

11 A. She is an operations -- she was, she doesn't work  
12 for us anymore -- she was an operations engineering tech  
13 for us, responsible for filing permits.

14 Q. And what does this letter indicate?

15 A. It indicates that she gave notice to IMC of our  
16 Application to drill the well on January the 23rd, 2004.

17 Q. And behind that are there copies of the return  
18 receipts showing that, in fact, it was delivered?

19 A. That's delivered.

20 Q. We then have a Devon letter, again from Ms.  
21 Cottom, dated January the 30th, 2004. What does this show?

22 A. It shows that she has notified IMC of our intent  
23 to apply for this location.

24 Q. Is she confirming that to the OCD?

25 A. Yes.

1 Q. And then it was, as we indicated, correct?

2 A. Correct.

3 Q. What is the next letter in this file?

4 A. The next letter is dated April the 12th, 2004,  
5 from Dan Morehouse, objecting to the location of the Apache  
6 24 Fee Number 6, which had already been approved by the  
7 State.

8 Q. In that letter, Mr. Morehouse indicated that it  
9 was in an area designated as measured ore; is that right?

10 A. Correct.

11 Q. And also indicated that their five-year mine plan  
12 showed they might be mining within a quarter of a mile in  
13 the year 2007?

14 A. That's right.

15 Q. What response did Devon actually receive to its  
16 application for permit to drill, from IMC? Is this letter  
17 it?

18 A. Yes.

19 Q. Did you respond to the letter from Mr. Morehouse?

20 A. Yes, I did.

21 Q. And is that letter also contained in this exhibit  
22 packet?

23 A. Yes, it's a letter dated April the 20th, 2004.  
24 We acknowledged his objection letter of April the 12 and  
25 advised him that it was our determination that the 40 acres

1 in question and the location regarding the permit was under  
2 private lands, is not currently leased for potash to IMC  
3 and therefore not subject to their LMR designation, any  
4 designation by the BLM or any five-year mine plan.

5 Q. And that was your understanding?

6 A. Yes, it was.

7 Q. Did you receive a letter from the Oil  
8 Conservation Division in response to the IMC objection?

9 A. Not until September the 20th.

10 Q. And is that letter also in this information  
11 packet?

12 A. Yes, it is.

13 Q. And what did the Oil Conservation Division do to  
14 the APD?

15 A. It basically rescinded the Application per the  
16 letter of objection from IMC, which Devon Energy received  
17 on April the 12th, 2004. And he apologized.

18 Q. Mr. Gray, let's now go to what has been marked as  
19 Devon Exhibit Number 5. This is again forms and  
20 correspondence from the files of Devon, is it not?

21 A. Yes.

22 Q. Would you refer to the first page of this exhibit  
23 and tell us what it is and what it shows?

24 A. This is the first page of yet another application  
25 for permit to drill. In this case, it was for the Apache

1 24 Fee 7A, to be located 1460 from the north line and 1150  
2 from the west line of Section 24, proposed depth of 15,500  
3 feet to test the Devonian formation.

4 Q. Can you tell us what rules govern the development  
5 of the Devonian formation in this area?

6 A. What rules?

7 Q. Yes.

8 A. Statewide rules.

9 Q. Yes.

10 A. Uh-huh.

11 Q. And what do they provide?

12 A. They provide for 320-acre spacing.

13 Q. And wells are to be located --

14 A. -- no closer than 660 feet to the outer boundary  
15 of the spacing unit.

16 Q. So this location is, in fact, a standard location  
17 under these rules for a Devonian well?

18 A. That's correct.

19 Q. To your knowledge, does Mosaic or IMC own  
20 anything under this -- the north half of Section 24?

21 A. Not to my knowledge.

22 Q. Your application for permit to drill was filed on  
23 what date?

24 A. Let's see, it looks like September 16th.

25 Q. And what response to this application did Devon

1 receive from IMC?

2 A. We didn't receive anything from IMC. We received  
3 an e-mail from the State, the Artesia office, that they had  
4 rejected our permit per some objection from IMC.

5 Q. The e-mail to Linda Guthrie from the OCD dated  
6 September the 20th, is included in this packet, is it not?

7 A. Right.

8 Q. And it states that the OCD has rejected your  
9 permit?

10 A. That's correct.

11 Q. It also below that says you can review the  
12 comments for this permit at the OCD Online; is that right?

13 A. Yes, sir.

14 Q. The next letter in the packet of exhibits is a  
15 letter dated August the 30th from IMC. Do you see that?

16 A. No. Okay.

17 Q. Do you have a copy of that letter before you?

18 A. Yes, I do.

19 Q. This is an objection letter from IMC to which  
20 well?

21 A. This is an objection to the Apache 24 Fee Number  
22 7, which was the well that was the subject of the case  
23 which we've already dismissed previously.

24 Q. Just to be sure we don't create some confusion  
25 here, Devon was proposing two wells on this 40-acre tract,

1 the 7 and the 7A, correct?

2 A. Yes.

3 Q. They were originally proposed at the same  
4 location; isn't that correct?

5 A. That's correct.

6 Q. And that the objection letter you received from  
7 IMC addressed only the Number 7 well?

8 A. That's correct.

9 Q. If you then go to the online comments from the  
10 OCD for the 7A well, it says the permit was denied because  
11 of an objection from IMC?

12 A. Correct.

13 MR. CARR: We are assuming, because that's all we  
14 have in our files, that there was one objection since the  
15 wells were at the same location, and we're talking about  
16 this objection letter that's included in this packet; it's  
17 the best we can do with the records we have. Just want to  
18 be sure there's not confusion there as to the objections.

19 MR. HIGH: We have no argument.

20 Q. (By Mr. Carr) Okay. Are Devon Exhibits 6 and 7  
21 notice affidavits confirming that notice of this  
22 Application has been provided in accordance with Division  
23 Rules?

24 A. Yes, they are.

25 Q. Was notice provided to the Land Office and the

1 BLM, as well as to IMC/Mosaic?

2 A. Yes, they were.

3 Q. Were Devon Exhibits 1 through 7 either prepared  
4 by you or compiled under your direction and supervision?

5 A. Yes, they were.

6 Q. And have you reviewed them?

7 A. Yes, I have.

8 Q. And are they accurate copies of documents from  
9 the files of Devon?

10 A. Yes, they are.

11 MR. CARR: May it please the Examiner, at this  
12 time we'd move the admission into evidence of Devon  
13 Exhibits 1 through 7.

14 EXAMINER STOGNER: Any objection?

15 MR. HIGH: I have no objection on 2 through 7.

16 I have the same objection on Number 1, but  
17 subject to the stipulation that those sections as indicated  
18 are shown as measured ore on the map, we have no objection  
19 to that.

20 EXAMINER STOGNER: So noted. Exhibits 1 through  
21 7 will be admitted into evidence.

22 MR. CARR: And that concludes my direct  
23 examination of Mr. Gray.

24 EXAMINER STOGNER: Thank you.

25 Mr. High, your witness.

## CROSS-EXAMINATION

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BY MR. HIGH:

Q. Mr. Gray, you will agree with me that the area of this proposed well, at least as far as the BLM is concerned, is in measured ore?

A. As far as the latest BLM map is concerned, yes.

Q. And you understand -- or do you have an understanding of what that means, what measured ore is?

A. That means that either the BLM or the potash industry seems to think that it's economic, there's some economic potash there, yeah.

Q. Do you know what LMR is?

A. Yeah.

Q. Do you know whether or not there's an LMR in or around the area of this proposed location?

A. Mr. Morehouse has shown us some of his maps before in the area, yeah.

Q. In fact, you went by IMC mine and met with Mr. Morehouse, didn't you?

A. We sure did.

Q. And you talked about a well -- I don't know if it was 7 or 7A or ever how you guys designate them -- you talked about a well at this particular location, though, didn't you?

A. We probably did. I mean, we were talking to him

1 about some other things too, and I -- yeah, we probably  
2 did. I don't know if we talked about that specific  
3 location, but -- we probably -- we may have, I just don't  
4 remember. We talked about a lot of other locations on the  
5 federal lands right in here too.

6 Q. Okay.

7 A. So it's possible we could have talked about this  
8 specific one, yeah.

9 Q. And do you recall any discussion about where  
10 IMC's LMR was with respect to this Section 24?

11 A. I only can remember what he showed me on this  
12 map, yeah.

13 Q. All right, do you know whether or not IMC has a  
14 lease in the area close to Section 24?

15 A. Yeah, I think Exhibit 2 indicates that they do.

16 Q. Okay, and IMC -- and by IMC, they're currently  
17 known as Mosaic Potash; you understand that, don't you?

18 A. Right.

19 Q. So at the time you were talking to him they were  
20 known as IMC, right?

21 A. Right.

22 Q. As long as you and I understand it refers to the  
23 same company, we're okay.

24 Looking at your Exhibit Number 2, would you agree  
25 with me that that shows that there is a potash lease

1 immediately adjacent to the west of this proposed location?

2 A. The BLM records show that there's a potash lease  
3 issued to Western Ag. I presume that is IMC.

4 Q. All right. And you understand IMC owns Western  
5 AG?

6 A. (Nods)

7 Q. So do you know whether or not the area going up  
8 to the edge of this proposed 40-acre spacing is also  
9 designated by IMC as its LMR?

10 A. I'm sorry, up to -- right up to the --

11 Q. Yes.

12 A. Again, he showed me his map months ago, if not a  
13 year ago or more, but my recollection was that there was a  
14 quarter-mile line coming somewhere in here close, yeah.

15 Q. How far from the edge of the potash lease shown  
16 on Exhibit Number 2 is your proposed Apache Number 6?

17 A. From the --

18 Q. -- edge of the potash lease?

19 A. -- the closest of the potash --

20 Q. Yes.

21 A. -- edge of -- 660 feet.

22 Q. That's less than a quarter of a mile, isn't it?

23 A. Yeah.

24 Q. And the proposed deep gas well, which I think you  
25 call that Apache 7A --

1 A. Uh-huh.

2 Q. -- how many feet from the edge of the IMC potash  
3 lease is that proposed location?

4 A. Well, I don't have it memorized. Let me go back  
5 here and look.

6 Q. Well, let me ask you like this: Is it less than  
7 a half of a mile?

8 A. Yes.

9 Q. Okay. So both of these proposed locations would  
10 be within either a quarter of a mile for the Delaware well  
11 or within a half mile of the deep gas well to IMC's potash  
12 lease?

13 A. Correct.

14 Q. And you understand -- or you have some  
15 understanding of R-111-P, don't you, Mr. Gray?

16 A. Yes.

17 Q. And do you understand that under R-111-P an APD  
18 will not be approved by the OCD if it's within an LMR or a  
19 buffer zone of an LMR without the potash lessee's consent?

20 A. Well --

21 Q. Do you understand that, sir?

22 A. What I believe and what I understand is that the  
23 unleased tract in question is not part of an LMR.

24 Q. IMC's potash lease goes up to the edge of this  
25 40-acre part, doesn't it?

1 A. Uh-huh.

2 Q. Is that correct?

3 A. Uh-huh.

4 Q. Is that a yes?

5 A. Yes.

6 Q. The court reporter has to take it down, I'm  
7 sorry.

8 A. Yes.

9 Q. Okay. And there's a buffer zone -- assuming  
10 that's LMR, there's a buffer zone through that, isn't  
11 there?

12 A. Yes, it is.

13 Q. And both of these wells are within those buffer  
14 zones, are they not?

15 A. If they are subject to -- if this lease is  
16 subject to an LMR, that's correct. But it is my belief  
17 that it is not subject to an LMR.

18 Q. Do you know where the LMR is in this area?

19 A. I only know what Mr. Morehouse showed me.

20 Q. Let's assume for a minute that the potash lease  
21 to the immediate west part of this 40-acre tract is not  
22 only leased by IMC but is also designated LMR.

23 A. Okay.

24 Q. Fair enough?

25 A. Fair enough.

1 Q. Do you understand under R-111-P that there's  
2 buffer zones to those LMRs, right?

3 A. That's correct.

4 Q. And those buffer zones are a quarter mile for  
5 shallow wells to the Delaware, right?

6 A. Correct.

7 Q. And half a mile for deep gas wells like your  
8 Apache 7A?

9 A. Correct.

10 Q. Would you agree with me that these two proposed  
11 wells are within the buffer zone to IMC's designated LMR on  
12 lands it has leased for potash?

13 A. I would agree that they're in what IMC has  
14 designated as their buffer zones, quarter mile, half mile,  
15 whatever. My belief is that the 40-acre tract in question  
16 is not subject to the LMR.

17 Q. Would you agree with me that R-111-P says, quote,  
18 any Application to drill in the LMR area, including buffer  
19 zone, may be approved only by mutual agreement of lessor  
20 and lessees of both potash and oil and gas interests,  
21 period, close quote. Do you agree with that?

22 A. I agree with that.

23 Q. And will you agree with me that the 20-day issue  
24 you referred to a moment ago applies to wells outside of  
25 LMRs? Or do you want me to read that portion to you?

1           A.    Well, you can read it to me.

2                   We were following the instructions of the OCD and  
3 their interpretation of what R-111-P said when we noticed  
4 IMC.

5           Q.    R-111-P goes on to say, quote, Applications to  
6 drill outside the LMR will be approved as indicated below,  
7 provided there is no protest from potash lessees within 20  
8 days of his receipt of a copy of the notice, then it goes  
9 to the quarter mile for the Delaware and a half mile.

10                   Have you looked at whether or not these proposed  
11 wells can be drilled from any locations other than those  
12 being proposed?

13           A.    No.

14           Q.    Do you know whether or not there are any  
15 directional wells drilled from any location in Section 24?

16           A.    There's -- a horizontal well drilled in the south  
17 half of Section 24 is on our Exhibit Number 2.

18           Q.    And do you know if that is a production unit or a  
19 pooling arrangement of some sort? Do you have any idea?

20           A.    I'm not sure what you mean.

21           Q.    Well, doesn't --

22           A.    We own the lease 100 percent --

23           Q.    Okay, and how many -- That's a horizontal well,  
24 is it not?

25           A.    It is.

1           Q.    I guess in all fairness, we would call it both a  
2           directional well and a horizontal well, right, because it's  
3           offset what, some 600 feet, and then horizontal from the  
4           east to the west side of Section 24?

5           A.    I don't know about the displacements.  You're  
6           welcome to ask our operations witness when he comes up  
7           here, but it is basically shown on our map almost the  
8           length of the south half of Section 24.

9           Q.    And is that well to develop -- how many units in  
10          Section 24?

11          A.    Spacing units?

12          Q.    Yes.

13          A.    It would be four.

14          Q.    So the one -- Do you know the well designation  
15          number?

16          A.    The name of the well?

17          Q.    Yeah.

18          A.    The Apache 24 Number 9.

19          Q.    Okay.  So that is shown on your Exhibit Number 2,  
20          is it not?

21          A.    Yes.

22          Q.    Is that the little black hatched-looking mark  
23          across that Section 24?

24          A.    Yes, sir.

25          Q.    Okay.  So that's the horizontal well that's

1 drilled from the east side of Section 24, and it -- does it  
2 have production from all four spacing units?

3 A. Presumably. I mean, the well was treated and  
4 frac'd a various intervals. The presumption is, it's  
5 producing from all four.

6 Q. Do you know when that well was drilled?

7 A. October --

8 Q. Of --

9 A. -- this year.

10 Q. -- '03 or '04?

11 A. Just two months ago.

12 Q. Okay. As far as you know, is it an economic  
13 well?

14 A. I don't know that we know that yet. Today it is,  
15 but we don't know, you know, what's going to happen in the  
16 future.

17 Q. All right. Do you know if there was any  
18 technological problems in drilling that well?

19 A. Not that I know of, but I think that's probably  
20 better asked of our engineering witness.

21 Q. All right. Why did you drill that well  
22 horizontally?

23 A. Because that's the only way we could develop  
24 those reserves on those federal leases?

25 Q. And I take it you filed an APD for that well, did

1 you not?

2 A. Yes.

3 Q. And you filed that with the BLM?

4 A. Uh-huh.

5 Q. Is that a yes?

6 A. Yes, sir.

7 Q. Okay. And the BLM obviously told you that that  
8 APD is in measured ore, correct?

9 A. I don't know what they told us.

10 Q. You weren't involved in that?

11 A. Not in the APD process, no.

12 Q. All right. Do you know whether or not there's  
13 any drilling islands established by the BLM in Section 24?

14 A. I do know that they have allowed Devon and the  
15 previous owner of these leases to drill along the east side  
16 here, up through -- well, in 24 and 13, yeah.

17 Q. Do you know whether or not the BLM treats as a  
18 drilling island the entire eastern -- I'm sorry, the entire  
19 western side of the WIPP site?

20 A. No, I don't know that.

21 Q. And you don't know whether or not all those dots  
22 shown on your Exhibit Number 2 are drilled in what the BLM  
23 called the drilling island?

24 A. Your question was into the WIPP site. I don't  
25 know about the WIPP site. I do know they've referred to

1 this as a drilling island along the east side of Sections  
2 13 and --

3 Q. Okay.

4 A. -- 24.

5 Q. So this Apache 24 Number 9, I think you called  
6 it, is drilled from a drilling island into Section 24?

7 A. Correct.

8 Q. Now, why couldn't this 40-acre piece be developed  
9 the same way?

10 A. Well, we only drilled horizontally for one  
11 Delaware zone, and there are multiple Delaware zones to be  
12 developed.

13 Q. Could this 40-acre tract, Delaware, be developed  
14 the same way as Apache 24 Number 9?

15 A. Are you asking me if it's physically possible?

16 Q. Yes.

17 A. Yes, it's physically possible.

18 Q. And do you have any reason to believe the BLM  
19 would deny that, given the fact that it approved a similar  
20 development process on Apache 24 Number 9?

21 A. I don't have any reason to think they would.

22 MR. HIGH: Okay, that's all I have, Mr. Gray.  
23 Thank you very much.

24 THE WITNESS: You bet.

25 EXAMINER STOGNER: Mr. Bruce, your witness.

## CROSS-EXAMINATION

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BY MR. BRUCE:

Q. Mr. Gray, with respect to that 40-acre fee tract, did Devon have a landman, Mr. Dwyer, go out and check mineral title to this property?

A. Yes.

Q. And that was done under your request?

A. Yes.

Q. With respect to the minerals, the mineral owners who granted Mr. Dwyer the oil and gas leases, to the best of your knowledge, do they also own the potash under that --

A. Yes, they do.

MR. BRUCE: Thank you.

EXAMINER STOGNER: Redirect?

## REDIRECT EXAMINATION

BY MR. CARR:

Q. Mr. Gray, in response to some questions from Mr. High you testified it would be physically impossible to drill and produce the Delaware reserves at the proposed Federal or Fee 6 well location with a horizontal well, correct?

A. Well, you can develop that portion under the fee land, but you'd also develop the federal along with it, and that --

1 Q. Let me ask you this. Would it also be possible  
2 to horizontally drill and complete a well in the Devonian  
3 at the location proposed for the Number 7A well?

4 A. From the, quote, unquote, drilling island?

5 Q. Yes, sir.

6 A. It's possible.

7 Q. If you drill this well to the Devonian, is the  
8 Devonian the only possible target in that wellbore?

9 A. No.

10 Q. If you directionally or horizontally drill to  
11 reach the Devonian under that property, could you access  
12 the shallower horizons under that 40 with that wellbore?

13 A. You might be able to access some, but not all.

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

15 EXAMINER STOGNER: Any other questions?

16 RE CROSS-EXAMINATION

17 BY MR. HIGH:

18 Q. Mr. Gray, do you know how many formations are  
19 being developed currently in Section 24? How many  
20 formations are in actual production now?

21 A. I don't know -- We've got several different  
22 Delaware formations, and I couldn't tell you from well to  
23 well which ones are open and are commingled and so on, so  
24 forth, no.

25 MR. HIGH: That's all I have.

## EXAMINATION

BY EXAMINER STOGNER:

Q. With regards to the deep gas well, is this the first -- is this the initial well within that north-half, proposed dedicated tract?

A. As far as a deep well?

Q. Yes.

A. Yes, sir.

Q. Is there anything preventing the drilling of that well over in that -- over to the edge, toward the WIPP site, to develop the north half?

A. With a bottomhole location under the -- where we would prefer to drill it; is that what you're --

Q. I'm still talking about the Apache 24 Fee Number 7A. That's a --

A. That's the deep one.

Q. -- vertical well, right?

A. Uh-huh.

Q. Okay. Why can't that well be drilled over on the eastern side of the spacing unit, up against the WIPP site?

A. Directionally?

Q. No, vertically.

A. Oh, I'm sorry. Well, we had seismic data that indicates that optimum location is within the 40 acres where we -- the southwest of the northwest.

1 EXAMINER STOGNER: Okay. I have no other  
2 questions of this witness.

3 MR. CARR: No further questions.

4 MR. HIGH: We have nothing else.

5 MR. CARR: Mr. Examiner, it's slightly after  
6 12:00. I do have an operations engineer. It will not take  
7 very long. We can either break for lunch now, or whatever  
8 your pleasure --

9 EXAMINER STOGNER: I would prefer to go ahead and  
10 finish with your side, and then we will break for lunch and  
11 then come back with --

12 MR. CARR: That would be fine.

13 EXAMINER STOGNER: -- IMC's, Mosaic's interest at  
14 that point, so let's go ahead.

15 MR. CARR: Mr. Examiner, at this time we call our  
16 operations engineer, Jim Blount, B-l-o-u-n-t.

17 JAMES BLOUNT,  
18 the witness herein, after having been first duly sworn upon  
19 his oath, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. CARR:

22 Q. Would you state your full name for the record?

23 A. James Blount, B-l-o-u-n-t.

24 Q. And where do you reside?

25 A. In Edmond, Oklahoma.

1 Q. By whom are you employed?

2 A. Devon Energy.

3 Q. And what is your current position with Devon?

4 A. I'm a senior operations engineer/advisor.

5 Q. Have you previously testified before the New  
6 Mexico Oil Conservation Division?

7 A. Yes, I have.

8 Q. At the time of that testimony, were your  
9 credentials as an expert in operational engineering  
10 accepted and made a matter of record before this Division?

11 A. Yes, they were.

12 Q. Are you familiar with the Applications filed in  
13 each of the Devon cases that are the subject of this  
14 hearing?

15 A. Yes, I am.

16 Q. Are you familiar with Devon's plans for the  
17 drilling of the Apache 24 Wells 6 and 7A?

18 A. Yes, I am.

19 Q. Have you been involved in the decisions by Devon  
20 to -- and the drilling programs developed by Devon for each  
21 of these wells?

22 A. Yes, I have.

23 MR. CARR: We tender Mr. Blount as an expert in  
24 operational engineering.

25 EXAMINER STOGNER: Any objection?

1 MR. HIGH: No objection.

2 EXAMINER STOGNER: So qualified.

3 Q. (By Mr. Carr) Mr. Blount, since you went to work  
4 for Devon have you also been involved in horizontal  
5 drilling of wells in southeastern New Mexico?

6 A. I was involved with the 24 Federal Number 9.

7 Q. Which is the well in the southern portion of this  
8 section?

9 A. That's correct.

10 Q. Are you familiar with the cementing and casing  
11 provisions of Order Number R-111-P?

12 A. Yes, I am.

13 Q. I'd like you to refer to what's been marked Devon  
14 Exhibit 8, the schematic for the Apache 24 Fee Well Number  
15 6, and review the information on that exhibit for the  
16 Examiner.

17 A. Okay, we propose to drill a hole down to 600 feet  
18 and set 13-3/8 at that point, cementing it to the surface,  
19 and we'll drill through the salt section and down to 3800  
20 feet, set 8-5/8 at that point and cement it, also to the  
21 surface. And then we'll drill to TD and cement in a two-  
22 stage the long string to the surface and complete in the  
23 Delaware.

24 Q. Let's go to Exhibit Number 9. What is this?

25 A. That's the proposal for the deep well, for the

1 Devonian well. There we're looking at drilling 13 -- or  
2 setting 13-3/8 at 600 feet, once again to protect the  
3 freshwater, drilling 10-3/4 at 3800 feet through the salt  
4 section, cementing it to the surface, setting a long  
5 intermediate string of 7-5/8 at 12,050 and cementing it,  
6 two-stage, to the surface, and then setting a liner,  
7 completion liner, down to right above the Devonian at  
8 approximately 15,300, and then open-hole finishing it into  
9 the Devonian.

10 Q. In your opinion, do these drilling programs  
11 comply with the provisions of Oil Conservation Division  
12 Order Number R-111-P?

13 A. Yes, they do.

14 Q. Will Devon provide notice to Mosaic Potash when  
15 you go out to actually drill these wells, so they can  
16 witness the work and assure themselves that you're  
17 complying with all provisions of this order?

18 A. We can.

19 Q. Were Exhibits 8 and 9 prepared by you?

20 A. Yes, they were.

21 MR. CARR: May it please the Examiner, I'd move  
22 the admission into evidence of Devon Exhibits 8 and 9.

23 EXAMINER STOGNER: Well, let's start reviewing  
24 here. I've got two Exhibit 8's.

25 MR. CARR: Okay.

1 EXAMINER STOGNER: Okay, take a look at your  
2 affidavit. I've got two affidavits, one marked Exhibit 7  
3 -- that's for 13,372 -- and another Exhibit 8 for affidavit  
4 on 13,369. You got that?

5 MR. CARR: No, sir, you've got it incorrect.  
6 You've got an earlier set of exhibits. I have got an  
7 affidavit marked Exhibit Number 6 for 13,368, and Exhibit  
8 Number 7 is the affidavit for 13,372.

9 EXAMINER STOGNER: Okay.

10 MR. CARR: And then the two schematics, Exhibit  
11 Number 8 is for the Fee Number 6, and Exhibit Number 9 is  
12 for the 7A, and I can provide copies --

13 EXAMINER STOGNER: Well, I'll tell you what, I  
14 think what would be simpler is, since 13,369 was  
15 dismissed --

16 MR. CARR: Yeah.

17 EXAMINER STOGNER: -- this probably is not needed  
18 anymore.

19 MR. CARR: These are correct from our copies, and  
20 so we've just renumbered them, we dismissed --

21 EXAMINER STOGNER: Actually, the ones I have are  
22 correct, so let me give you these back. It was just --  
23 that was what was confusing.

24 MR. CARR: Well, what we did was, we renumbered  
25 exhibits quickly when we decided to dismiss the second of

1 the three cases.

2 EXAMINER STOGNER: Okay, well, we've got that  
3 straightened up.

4 Exhibits 1 through 7, which was admitted earlier,  
5 as for your land testimony, and Exhibits 8 and 9 that has  
6 been presented by you, are there any objections?

7 MR. HIGH: No objection.

8 EXAMINER STOGNER: Those will be admitted at this  
9 time.

10 Thank you, Mr. Carr.

11 Mr. High?

12 MR. HIGH: I have no questions, thank you.

13 EXAMINER STOGNER: Mr. Bruce?

14 MR. BRUCE: No questions.

15 EXAMINER STOGNER: I have no questions of this  
16 witness.

17 You may be excused.

18 MR. CARR: Thank you. That concludes Devon's  
19 presentation in this case.

20 We have a landowner in the Devon properties who  
21 is here to testify, if you'd like to take him now or after  
22 lunch.

23 EXAMINER STOGNER: Let's go ahead and bring him  
24 in here now, so he can enjoy his lunch without worrying  
25 about coming back and testifying.

1                   KENNETH M. SMITH,  
2   the witness herein, after having been first duly sworn upon  
3   his oath, was examined and testified as follows:

4                   DIRECT EXAMINATION

5   BY MR. BRUCE:

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

7           A.    Kenneth Mark Smith.

8           Q.    Where do you live?

9           A.    I live in Lea County, which is right off the  
10   Hobbs-Carlsbad highway, about 30 miles from Hobbs, two  
11   miles north.

12          Q.    In the middle of nowhere?

13          A.    Yes, sir, where nobody else has lived.

14                   (Laughter)

15          Q.    (By Mr. Bruce) The two Devon cases involve a  
16   tract of land, 40-acre tract, the southwest quarter,  
17   northwest quarter of Section 24. Do you personally own a  
18   mineral interest in that tract?

19          A.    Yes, I do.

20          Q.    Okay, are you the full owner of the surface  
21   estate in that tract?

22          A.    Yes, I am.

23          Q.    And you engage in ranching in this area?

24          A.    That's right.

25          Q.    Now, when Mr. Gray was testifying he submitted

1 some -- four oil and gas leases, and one of them is signed  
2 by you and Patsy Lou Smith. I presume that's your wife?

3 A. That's right.

4 Q. One of them was signed by William C. Smith and  
5 his wife. Who is that?

6 A. That's my brother.

7 Q. And then another one signed by -- I'm not sure of  
8 the names. Was one of them signed by your sister?

9 A. Right, Lornell Blehm.

10 Q. Okay, Lornell Blehm. And together, what amount  
11 of the minerals do you and your brother and sister own in  
12 this --

13 A. Three-fourths.

14 Q. Three fourths. There's another lease, Georgia L.  
15 Birdston. She is unrelated to your family?

16 A. That's right.

17 Q. Okay. And are you here today authorized to speak  
18 on behalf of your brother and sister besides yourself?

19 A. That's right.

20 Q. Have any wells ever been drilled on your 40-acre  
21 tract?

22 A. No.

23 Q. Has this 40 acres ever been leased for potash?

24 A. Not since we've been there.

25 Q. And how long have you and your family been there?

1 A. 1958.

2 Q. Has IMC or Mosaic Potash ever tried to lease your  
3 mineral interest for potash?

4 A. No, not really. After this came up, well, they  
5 tried to lease it, and I told them I'd already leased it to  
6 Devon.

7 Q. Okay. So after this arose, they did contact you  
8 by phone or verbally?

9 A. By phone.

10 Q. By phone, okay. And did they also talk about  
11 when in the future your area could possibly be mined?

12 A. Five years.

13 Q. Five years.

14 A. For a projection.

15 Q. Okay, they didn't guarantee it, they said it was  
16 a projection?

17 A. Right.

18 Q. And are you aware of Devon's plan to drill two  
19 wells on your property?

20 A. Yes, I am.

21 Q. And you have no objection to that?

22 A. No, I don't.

23 Q. And you have reached -- through your lease you've  
24 reached agreement with Devon for the development of the oil  
25 and gas under this acreage?

1 A. That's right.

2 Q. And is it your understanding that Devon is ready  
3 to drill in the near future, if it gets approval?

4 A. Yes.

5 Q. And is it your desire as the owner of the potash  
6 rights and as the lessor of an oil and gas interest to have  
7 the oil and gas developed in this tract?

8 A. That's right.

9 Q. One final thing. Mr. Smith, you're here today  
10 basically supporting Devon's case, but you don't have any  
11 animosity toward the potash company, do you?

12 A. I've lived neighbors to the IMC for 39 years, and  
13 I still own the rights there, and I've never had any better  
14 neighbor than IMC.

15 Q. And you've had good relationships with them?

16 A. Yes.

17 Q. And IMC has been a good neighbor to you?

18 A. Very good.

19 Q. I think you told me last night that they have  
20 assisted in supplies and water and stuff like that for your  
21 ranch?

22 A. That's right.

23 Q. So you're not here with the intent to harm IMC?

24 A. No, I'm here to represent my family.

25 Q. And if wells are drilled and they're successful,

1 it will be a benefit to your family?

2 A. Yes, sir.

3 MR. BRUCE: Thank you. I have no further  
4 questions.

5 EXAMINER STOGNER: Any questions?

6 MR. HIGH: Yes.

7 EXAMINATION

8 BY MR. HIGH:

9 Q. Mr. Smith, do you actually live on the ranch?

10 A. Not anymore. I moved off of it. I've got a  
11 daughter that lives on the ranch.

12 Q. And is it an active ranch?

13 A. Yes, it is.

14 Q. And how many acres -- or how big is the ranch?

15 A. Approximately 82 sections.

16 Q. And how many of those sections are actually fee  
17 land, as opposed to lease land?

18 A. I believe there's 900 acres.

19 Q. Okay, so 900 acres. Is that owned fee-simple by  
20 you or your family?

21 A. By me.

22 Q. By you, okay. Does that 900 acres include this  
23 40-acre tract we're talking about here?

24 A. Yes, it does.

25 Q. Is it all contiguous, the 900 acres?

1 A. No, it isn't, it's scattered around.

2 Q. Scattered around, all right. Does your ranch  
3 extend all the way up to the edge of the WIPP site?

4 A. It goes -- I'm on the east side of it and the  
5 north side of it and the west side of it.

6 Q. If we were looking -- well, let me just --

7 A. I mean, not to the sides, but to the withdrawal  
8 there, the 16 sections.

9 Q. Okay, if I'm -- I don't know if you have this in  
10 front of you or not, but I'm looking now at -- I believe  
11 this is Devon Exhibit Number 1. If you look in that block  
12 that says 22S-30 East, do you see that?

13 A. Yes, I do.

14 Q. Do you understand that in the box marked 24, that  
15 little bitty square there to be the 40-acre section we're  
16 talking about in this case?

17 A. Yes.

18 Q. Okay. Does your ranch include all of Section 24?

19 A. Yes, it does.

20 Q. So your ranch would go all the way up to this  
21 dark line on the east side of Section 24?

22 A. Yes.

23 Q. Okay. Are there any oil and gas wells now  
24 existing on your property, on your ranch?

25 A. Oh, yes, there's lots of oil wells on them.

1 Q. Okay, how many wells would you estimate is on  
2 your ranch?

3 A. It wouldn't be fair if I told you what it was,  
4 because I don't know.

5 Q. A bunch of them, though, huh?

6 A. Oh, there's lots of them.

7 MR. HIGH: Okay. I believe that's all I have,  
8 sir. Thank you very much.

9 EXAMINER STOGNER: Mr. Carr?

10 MR. CARR: Nothing.

11 EXAMINER STOGNER: I have no questions of Mr.  
12 Smith.

13 At this time we're going to take a lunch break.  
14 I've got 12:15 now. 1:30, would that be acceptable?

15 We will recess until 1:30.

16 Before we go off the record, I don't know if Mr.  
17 Gray and Mr. Smith will be here, I'd like to just take this  
18 opportunity --

19 MR. CARR: Mr. Mills.

20 EXAMINER STOGNER: -- to thank them for showing  
21 enough interest in the topic. It's a complicated issue,  
22 and I wanted to go on the record and just say thank you for  
23 coming out and taking an interest in what is a complicated  
24 and has been a -- historically conflicting viewpoints in a  
25 very complicated issue.

1 Thank you again.

2 We'll break until 1:30.

3 (Thereupon, a recess was taken at 12:16 a.m.)

4 (The following proceedings had at 1:45 p.m.)

5 EXAMINER STOGNER: Back on the hearing. Mr.  
6 Carr, I believe we've finished up.

7 MR. CARR: Yes, sir.

8 EXAMINER STOGNER: Anything --

9 MR. CARR: No, sir.

10 EXAMINER STOGNER: -- further? Okay.

11 Mr. High?

12 MR. HIGH: Mosaic will call Dan Morehouse.

13 DANIEL J. MOREHOUSE,

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

16 DIRECT EXAMINATION

17 BY MR. HIGH:

18 Q. Mr. Morehouse, would you state your full name,  
19 please, sir?

20 A. Daniel Jerome Morehouse.

21 Q. And where are you employed, Mr. Morehouse?

22 A. I'm employed with Mosaic in Carlsbad, New Mexico.

23 Q. And in what position?

24 A. I'm a mine engineering superintendent.

25 Q. How long have you been employed with Mosaic?

1 A. Twenty-six years.

2 Q. And tell us, if you will, your educational  
3 background, please, sir.

4 A. I graduated in 1978 with a bachelor of science  
5 degree in mine engineering and a master's of science degree  
6 of industrial engineering in 1987.

7 Q. And how long have you been in the mining  
8 industry?

9 A. Twenty- -- well, I worked summers, so I guess  
10 since 1975.

11 Q. And what are some of the job responsibilities you  
12 have at Mosaic?

13 A. Currently have?

14 Q. Yes. In fact, just tell us over the years the  
15 type jobs you've had in mining.

16 A. I came in as a junior mine engineer for about two  
17 and a half years, went underground as a face boss, became a  
18 general foreman, underground superintendent. I think  
19 there's another stint where I went back into engineering  
20 when we sank a shaft. I did that from an engineering point  
21 of view, then went back into production. I became a mine  
22 manager, and during recent takeovers went back to being the  
23 superintendent of mine engineering.

24 MR. HIGH: We would offer Mr. Morehouse as an  
25 expert in mine engineering.

1 EXAMINER STOGNER: Any objection?

2 MR. CARR: No objection.

3 EXAMINER STOGNER: Mr. Morehouse is so qualified.

4 Q. (By Mr. High) Mr. Morehouse, are you involved in  
5 keeping up with the potash leases that Mosaic has?

6 A. Yes, sir, I am.

7 Q. And are you familiar with the locations in which  
8 Mosaic currently has potash leases?

9 A. Yes, sir.

10 Q. Would you look at what I've placed in front of  
11 you -- I believe one of them is Bass Exhibit Number 1 --

12 A. One.

13 Q. -- and Devon Exhibit Number 2. Do you see those?

14 A. Yes.

15 Q. Do those, from your knowledge, accurately reflect  
16 where Mosaic has potash leases? And let me limit that to  
17 the areas of the APDs in question here.

18 A. Yes.

19 Q. Okay.

20 A. The Bass one is absolutely right. The Devon one,  
21 we don't hold that southwest corner of Section 24. I'm not  
22 sure that's leased for potash.

23 Q. Now, I think there's some other exceptions we'd  
24 probably take on the fringes, but let's limit ourselves to  
25 the areas of these APDs.

1 A. Right.

2 Q. With respect to the APDs at issue here, does  
3 Mosaic have potash leases that abut the 40-acre units that  
4 are proposed here?

5 A. Yes, for the Devon location we're on one side,  
6 abutted against it. For the Bass well, we're on three  
7 sides, against it.

8 Q. And within the Potash leases that Mosaic has that  
9 abut these proposed units, are any portions of those leases  
10 included in Mosaic's LMR?

11 A. Yes.

12 Q. Let me show you what I've marked as -- or will  
13 mark, or propose be marked as Exhibit M5. Can you explain  
14 what that exhibit is, please, sir?

15 A. It's a map showing this general area. You can  
16 see the two fee land areas of concern, one in Section 7  
17 near the lower right-hand corner, and one in Section 24 at  
18 the top.

19 Also on this map, shown in black outline, is the  
20 open mine workings as of last December, and the rest of it  
21 is -- the colored areas on this thing are the mine plan  
22 that was turned in to the State Land Office and the BLM in  
23 January of 2004.

24 Q. And indicate to us, Mr. Morehouse, which of these  
25 lines would indicate the outer portion of Mosaic's LMR.

1           A.    Okay, the LMR lines, if you go -- look in Section  
2   6 there, next to the vast fee land, the one that runs right  
3   onto the corner of that piece of fee land is the LMR line,  
4   LMR being to the south of that line.

5           Q.    So we went to the top of the exhibit -- I've got  
6   the larger exhibit. Is it the same for you?

7           A.    Yeah, it's the same.

8           Q.    Okay, if we go to the top of the exhibit, the  
9   inside line, which is --

10          A.    The left-hand line.

11          Q.    -- red or orange in color, I'm not sure what --  
12   or magenta. What would you call that?

13          A.    Red.

14          Q.    Okay, it comes right down by Corehole P-12?

15          A.    Yeah, the left-hand line is the LMR line.

16          Q.    Okay, and what's the middle line, which on mine  
17   is blue?

18          A.    Blue is a quarter mile, roughly.

19          Q.    And the outside right-hand line would be the  
20   what?

21          A.    That would be the half-mile buffer for deep gas.

22          Q.    So according to this exhibit, then, the proposed  
23   location of both the Bass-proposed APD and the Devon-  
24   proposed APD would be within what Mosaic has designated as  
25   its LMR?

1 A. That's correct.

2 Q. Now, the colored square portion, you said, was  
3 the mine plan?

4 A. Yes, sir.

5 Q. And are those required to be filed with anyone?

6 A. Yes, by both the State Land Office and the BLM.

7 Q. And looking at the proposed well in Section 24,  
8 the Devon well, Mosaic is projecting it will be mining in  
9 the area shown in Exhibit 23 by when?

10 A. By the end of 2007 it will be at its closest  
11 point.

12 Q. And that's within what distance to the proposed  
13 40-acre spacing unit?

14 A. Going by the scale of the map, it looks like  
15 about 500 feet from the edge of their fee land, and there's  
16 -- I remember our measurements was somewhere in the  
17 neighborhood of 1000, 1100 feet from their proposed wells.

18 Q. And looking down at the proposed Bass well in  
19 Section Number 7, there's considerably greater distance  
20 between Mosaic's proposed mining plan and the location of  
21 that well?

22 A. That's correct.

23 Q. Now, is Mosaic required to designate its LMRs on  
24 a periodic basis?

25 A. Every year.

1 Q. And is that reduced to a map?

2 A. Yes.

3 Q. And who is that filed with?

4 A. The State Land Office and the BLM.

5 Q. So both the BLM and the State Land Office -- New  
6 Mexico Land Office, correct?

7 A. Yes.

8 Q. -- would have on file Mosaic's current LMR?

9 A. Yes.

10 Q. Look at what I have placed in front of you as --  
11 and marked as Exhibit M1. Can you tell me what that is,  
12 please, sir?

13 A. It's a letter that I understand that the OCD sent  
14 to the BLM to receive from them a determination whether  
15 this location would be within an LMR.

16 Q. Do you know whose signature appears at the bottom  
17 of Exhibit M1?

18 A. Yes, that's Craig Cranston.

19 Q. And with who is he employed?

20 A. The BLM, Carlsbad.

21 Q. And down at the bottom there's a reference, it  
22 says "In LMR, In Buffer Zone", and this Exhibit M1 is  
23 marked as being where?

24 A. Craig indicated that this location is in the LMR.

25 Q. All right, and this location is in reference to

1 which APD?

2 A. This is the Devon Energy Production Company well,  
3 Apache 24 Fee Number 6.

4 Q. Do you know to whom this letter was sent, or  
5 received?

6 A. No, not really, I don't.

7 Q. Do you know who Bryan Arrant is?

8 A. Oh, there he is, yeah, I couldn't find it. Yeah,  
9 I know -- I've talked to him on the phone, I know who he  
10 is.

11 Q. Okay, and with whom is he employed?

12 A. He's with the OCD in Artesia.

13 Q. Would that suggest to you that the New Mexico OCD  
14 sent this letter to the BLM --

15 A. Yes.

16 Q. -- asked them whether or not this proposed  
17 location was within an LMR?

18 A. Yes.

19 Q. And according to this letter, the BLM informed  
20 the OCD yesterday it is in an LMR?

21 A. That's correct.

22 Q. Look at Exhibit M4 that you have in front of you.

23 A. Okay.

24 Q. Can you tell me whose signature is at the bottom  
25 of that, please?

1 A. Yes, that's, I believe, Jami Bailey.

2 Q. And with whom is she employed?

3 A. With the State Land Office.

4 Q. Can you tell from looking at this document who  
5 sent it and to whom they sent it?

6 A. Bryan Arrant sent this one also, just as he did  
7 the other one, and sent it to Joe Mraz. It says just Dear  
8 Joe -- No, it says up at the top Joe Mraz, okay.

9 Q. And you've already indicated the State Land  
10 Office is one place where Mosaic files its LMR?

11 A. Yes.

12 Q. And looking at this Exhibit M4, would you tell us  
13 what it appears that Jami Bailey informed the OCD with  
14 respect to the location of the proposed Apache 24 Number 6?

15 A. This is also marked that that same well is in the  
16 LMR.

17 Q. Now, look at Exhibit M2 in front of you, please,  
18 sir. In fact, look at M2 and M3 both, and would you look  
19 and tell me if those two letters are essentially the same  
20 that we just got through talking about, except they're  
21 referencing the Bass well in Section 7, instead of the  
22 Devon well in Section 24?

23 A. Yes, they appear to be identical, other than the  
24 dates.

25 Q. Okay, and they're both -- with respect to James

1 Ranch Unit Number 93, both the State Land Office and the  
2 BLM indicate that those APDs are in a potash operator's  
3 LMR?

4 A. That's correct.

5 Q. Now, if these proposed wells are allowed, Mr.  
6 Morehouse -- and let's start with the Devon well in Section  
7 24. If that well is allowed -- and by "that one", let's  
8 start with the deep gas well -- what impact, if any, would  
9 that have on the potash that Mosaic has under lease in  
10 Section 23?

11 A. The impact is that it poses a hazard to mining in  
12 the area, and through agreement and discussions with the  
13 oil and gas industry and then the development of the R-111-  
14 P, determined that no mining should -- not no mining should  
15 occur, but no well should be drilled in a place that would  
16 -- within a half of where you expect to mine.

17 Q. A deep gas well, right?

18 A. So a deep gas well would pose a hazard to mining  
19 in that area, to an area that's one mile in diameter, a  
20 circle that's one mile in diameter.

21 Q. And if Mosaic -- if this well, if this deep gas  
22 well is allowed at the proposed location, Section 24, and  
23 Mosaic was required to observe that half-mile spacing,  
24 would that preclude the mining of a large portion of  
25 Section 23?

1 A. Yes, it would.

2 Q. Has anyone offered to pay Mosaic for that potash?

3 A. No, sir.

4 Q. With respect to Section 7...

5 A. Same deep gas well, same one-mile-diameter  
6 circle, probably a little more valuable ore in that it's  
7 langbeinite instead of sylvite.

8 Q. In Section 7?

9 A. Yes.

10 Q. That's langbeinite?

11 A. Yes.

12 Q. Okay, and what is the difference in langbeinite  
13 and sylvite, Mr. Morehouse, in a general sense?

14 A. They're just --

15 Q. I don't mean chemically; in a general sense.

16 A. They're just two different minerals. The  
17 langbeinite has more -- is easier to refine and produce.  
18 The margin on it is better than the margin on sylvite; it's  
19 less of a commodity, it's a specialty item.

20 Q. Is there any other location in the northern  
21 hemisphere or the western hemisphere known to you that has  
22 a commercially minable deposit of langbeinite, other than  
23 in the potash basin here in New Mexico?

24 A. There are none in the world.

25 Q. So the only known resource on the whole planet of

1 langbeinite is here in Eddy and Lea County, New Mexico?

2 A. That's correct.

3 Q. Do you know if there's any artificial substitute  
4 for langbeinite?

5 A. Yes, it can be -- you can accomplish the same  
6 things by using other fertilizers. Sulfate of potash is  
7 one, mag chloride is another. They can make other  
8 combinations to get the same effect.

9 Q. But once this langbeinite is either mined and  
10 used or wasted, as far as you know, there is no more?

11 A. None that's of minable quality anymore, no.

12 Q. Now, during the course of the processing of these  
13 APDs, did you ever have occasion to talk with either a  
14 representative of Bass or Devon with respect to these  
15 proposed locations?

16 A. Yes, I did have discussions with Ken Gray of  
17 Devon.

18 Q. Okay, and with whom is he employed?

19 A. He's with Devon.

20 Q. And did you talk to him about the proposed  
21 location in Section 24?

22 A. Yes.

23 Q. And tell us about those discussions.

24 A. I believe it was about December of 2003, he  
25 called up and said they were interested in drilling this

1 area and he wanted to come by and discuss what would be  
2 acceptable to us and just kind of get a feel for what they  
3 could get done out in that area.

4 We tried to have meetings, they were scheduled  
5 and rescheduled. They put it off for a couple months and  
6 we put it off for a month. I think it wasn't until -- I  
7 wish he was still here, but I think it was somewhere around  
8 March, maybe April, when we had our meeting.

9 We talked about a lot of areas along this edge of  
10 WIPP over here, we did talk about the fee land, told him,  
11 you know, we really don't like the thought of that well  
12 being there. You know, I mean, we would object to it.  
13 It's not someplace we'd like to have a well located.

14 Q. And you told him during these discussions you  
15 were having with him that we would object to that well?

16 A. Yeah. Yes, I did.

17 Q. Have you dealt with the BLM in connection with  
18 the filing and processing of APDs?

19 A. Yes.

20 Q. Do you know what the BLM does with respect to  
21 wells that are proposed along the west side of the WIPP  
22 site?

23 A. Yeah, they have designated a narrow corridor  
24 along there -- I think it's 330 feet wide -- starting 330  
25 feet off the lease line, as a drilling island.

1 Q. And if we look at -- I believe it's Devon Exhibit  
2 Number 2 --

3 A. Okay.

4 Q. -- does that show that horizontal well?

5 A. Yes.

6 Q. Okay. Is that one of the wells that you  
7 understand the BLM has allowed to be drilled from that  
8 drilling island?

9 A. Yes.

10 Q. Do you have any reason to believe that the BLM  
11 would not allow a similar well to be drilled to reach the  
12 -- or develop the resources that are proposed in connection  
13 with this Devon well, or these wells?

14 A. No, I believe they'd be all for it.

15 MR. HIGH: Okay, we'll pass the witness.

16 EXAMINER STOGNER: Mr. Carr?

17 CROSS-EXAMINATION

18 BY MR. CARR:

19 Q. Mr. Morehouse, you would agree with me that Devon  
20 and Bass have a right to develop the oil and gas under  
21 those fee tracts?

22 A. I agree.

23 Q. The issue here is with how we do it?

24 A. When and how.

25 Q. And this is sort of a follow-up to some of the

1 questions Mr. high had this morning for our people, but  
2 when you're developing potash, do you really consider the  
3 impact on the oil and gas industry as you go forward with  
4 these plans?

5 A. No, the extent of the ore is so much smaller than  
6 the oil and gas area, you know, we don't consider the  
7 effect.

8 Q. You're aware that as you step out and expand an  
9 LMR, that it can have an impact on the individuals that  
10 offset your mining operations, that hold oil and gas  
11 leases?

12 A. It can have an effect and it could delay their  
13 drilling, yes.

14 Q. And you testified about your experience in the  
15 mining industry. Do you have experience in developing oil  
16 and gas properties?

17 A. No, I don't.

18 Q. Today we talked about -- or there was some  
19 testimony about maybe being able to access these reserves  
20 with directional wells. Have you ever been involved with  
21 the drilling of one of those wells?

22 A. Not with the drilling, no.

23 Q. Do you understand that if you drill a vertical  
24 well you can access all the formations that that wellbore  
25 penetrates?

1 A. Yes, I do.

2 Q. And if you're horizontally drilling, it may not  
3 be economic to try and evaluate and produce all of the  
4 zones that are stacked one above the other?

5 A. I believe that's correct, it may not be.

6 Q. And I mean, your industry is highly cost-  
7 sensitive; isn't that fair to say?

8 A. Yes.

9 Q. When costs of mining go up, it can jeopardize  
10 your ability to actually access certain quality ores; is  
11 that a fair statement?

12 A. The cost of mining goes up, the ability to access  
13 lower grade ores --

14 Q. -- goes away, perhaps?

15 A. Yes.

16 Q. And you understand that in the oil and gas  
17 industry costs are also a factor?

18 A. Yes.

19 Q. And that if you have to incur the costs of a  
20 directional well, it could even mean that certain reserves  
21 might not be developed for some period of time?

22 A. For some time, yes.

23 Q. And that even in certain circumstances, even  
24 though the reserves will be there, there are times when you  
25 can economically drill and develop properties, and if you

1 -- that those economic conditions just may not last  
2 forever?

3 A. I would think that would not be true. I would  
4 think if that oil stays there, and as history shows us, the  
5 value of oil continues to rise, the distant future would be  
6 distantly valuable.

7 Q. Wouldn't it be fair to say that the value of the  
8 potash would always be there, and that it would always be  
9 economic for somebody to go back and --

10 A. That's really the basic difference between the  
11 two industries, in that -- they're both extractive  
12 industries where that's the commonality. The difference  
13 is, in oil and gas you can go to a location and do it and  
14 move away, and it's not a huge investment. I mean, oil is  
15 expensive, but it's not a huge investment to move that one  
16 well.

17 To do any one mine is a huge investment, and it's  
18 got to be based on more than a 40-, 160-, 320-acre  
19 allotment.

20 Q. When you go out and you mine through this area,  
21 this morning Mr. High, I think, indicated there were maybe  
22 hundreds or thousands of wells drilled in the potash/oil  
23 area. There are a number of wells drilled there?

24 A. Yeah, there's a couple thousand wells drilled in  
25 the area.

1 Q. And when you're out there mining, have you ever  
2 mined within, say, a quarter of a mile of any wellbore?

3 A. Not since I -- Well, yes.

4 Q. And you feel like in those cases you've been able  
5 to do that safely?

6 A. The one that I was involved with was a dry and  
7 abandoned well drilled to the base of the salt. I couldn't  
8 tell you what the strata is. It produced only water. It  
9 was drilled in the 1920s. When we mined there, it had  
10 already been mined up to before, and we went back in that  
11 general area and kind of went around it, but we didn't get  
12 any closer than it was before, but...

13 Q. This morning Mr. High was talking about when an  
14 oil and gas company goes out and drills a well, that in  
15 effect what we're trying to do is shift the costs, or the  
16 burdens, perhaps, to the potash operator. Do you agree  
17 with that?

18 A. Yes, in a sense, it's -- if the same person -- if  
19 the land owner of the general area, not talking about the  
20 40-acre spot, owned both the potash and the oil and gas, he  
21 would be trying to develop some way to figure out, where  
22 can I do this, where can I do that?

23 Q. When you go out and mine the potash in an area,  
24 and if we're to develop what we have to go with horizontal  
25 wells or delay our plans for long periods of time, doesn't

1 that in effect also mean that what your activity is doing  
2 is in a sense trying to shift the cost to us?

3 A. It's either delaying it or -- yeah, I realize it  
4 could be more expensive to drill horizontally.

5 Q. Yes.

6 A. I also realize that horizontal wells can produce  
7 much more than a vertical well would have produced too.

8 Q. When we look at the exhibits M1 through -4, these  
9 were all determinations by the OCD that the acreage that  
10 was involved with each of the wells we were proposing, was  
11 actually in an LMR; isn't that right?

12 A. M1 through -11 was all --

13 Q. I'm sorry, M1 through -4, the letters that --

14 A. Oh, okay.

15 Q. Those were -- they were offered to show that, in  
16 fact, the wells that were being proposed were within an  
17 LMR?

18 A. Yes.

19 Q. If you look at each of the 40-acre tracts we've  
20 been talking about here today, both of those tracts are  
21 actually within what we classified, or you classify, or the  
22 BLM or someone does, as measured potash?

23 A. Yes.

24 Q. And you're concerned that the drilling as we've  
25 proposed is going to unduly reduce the commercial potash

1 that can be recovered; is that fair?

2 A. That and pose a significant hazard to mining in  
3 the area.

4 Q. And if we -- and the potash that you're concerned  
5 about, if we look at M5 and we look at your mining  
6 operations up around Section 24, the Devon tract --

7 A. Yes.

8 Q. -- I mean, you're going to be mining right up to  
9 that 40 acres; isn't that right?

10 A. And as we turn in a new plan this year we may  
11 even get closer, yes.

12 Q. And if we look at this and we look at where it  
13 lies in regard to measured potash, is it fair to assume  
14 that there's measured potash under that fee tract as well?

15 A. Yes.

16 Q. And is it also true that even though there's  
17 measured potash and you're moving right up to it, you  
18 haven't offered to lease that potash until this year?

19 A. We're still five years out. We have in the past,  
20 as we got nearer a big piece of fee land, contact the  
21 owners and have negotiated rights to mine on fee land.

22 Q. There's acreage north of both of these fee tracts  
23 that is also open at this time; isn't that right? Federal  
24 tracts?

25 A. Yes.

1 Q. Are you trying to lease that?

2 A. Yes, we're trying to lease 24, the one just above  
3 it -- 23? No, that would be -- I don't know my numbers --  
4 13, and the top of 14 and 15. So yeah, we're trying to  
5 lease a slug of that land.

6 Q. At this point in time, there's no real practical  
7 way for Mr. Mills or Mr. Smith, either one of them, to  
8 develop their potash on their own? I mean, it's  
9 economically unrealistic?

10 A. No, we would be mining it and paying them the  
11 royalties, just as if -- They can't go out and drill a well  
12 either.

13 Q. And so at this point in time they're really  
14 locked out on that 40 acres? You can't drill a well and  
15 you can't produce the potash alone; is that fair?

16 A. You can't produce the potash until you mine to  
17 it, that's correct.

18 Q. And in each of these 40s at this time you have no  
19 ownership?

20 A. That's correct.

21 Q. And you go out and talk to, say, Mr. Smith,  
22 Kenneth Smith --

23 A. Yeah.

24 Q. -- say we're five years out. I mean, is that a  
25 realistic number? Do you generally get into these areas on

1 time?

2 A. With any mine plan, you hit and miss with it.

3 Q. Uh-huh.

4 A. And yeah, it's realistic to get there. It might  
5 be we went five years in a different direction than what we  
6 showed on the map.

7 Q. Yeah.

8 A. But yeah, that much country is going to be  
9 covered in some direction.

10 Q. Okay. And you understand that Bass and Devon are  
11 proposing to drill these wells immediately?

12 A. Yeah.

13 Q. As it stands right now, do you have any plans to  
14 mine either of those tracts?

15 A. Actually expected we would mine the Smith one --

16 Q. And --

17 A. -- pretty quick, I mean the next few years.

18 Q. But at this time you have no right to do that?

19 A. That's correct.

20 Q. And until you get that right, you can't really  
21 mine one square foot of ore under that tract?

22 A. That's right.

23 Q. Now, when we look at these fee tracts, is it your  
24 understanding under R-111-P that these fee tracts are  
25 administered by the BLM or by the State of New Mexico?

1 A. State of New Mexico.

2 Q. And that's why we're here?

3 A. Yes.

4 Q. And you understand that when we're here, Mr.  
5 Stogner has to balance both our interests?

6 A. I know he tries.

7 MR. CARR: That's all I have. Thank you.

8 MR. HIGH: We would offer Exhibits M1 through M5.

9 EXAMINER STOGNER: Any objections?

10 MR. CARR: No objection.

11 EXAMINER STOGNER: M1 through M5 will be admitted  
12 into evidence at this time.

13 Mr. Carr, I also note that Mr. Kellahin is no  
14 longer in the audience, so Mr. Carr, I would offer at that  
15 point, any redirect, Mr. High?

16 MR. HIGH: Mr. Morehouse, is there anything else  
17 you want to add that perhaps I've missed? I don't think I  
18 have any further questions, but if Mr. Morehouse thinks I  
19 have, I'll let him --

20 THE WITNESS: I can't think on my feet that well,  
21 I'm concentrating right now.

22 MR. HIGH: Then we have no further questions.

23 EXAMINATION

24 BY EXAMINER STOGNER:

25 Q. Okay, Mr. Morehouse, I'm going to refer to

1 Exhibit Number M5, and let's take a look at the Bass  
2 well --

3 A. Okay.

4 Q. -- the bass acreage down there, that little 40-  
5 acre tract. Now, your scale - and I'm going to just look  
6 at -- what is that exhibit? I mean, Section 6 and 7, does  
7 that LMR actually run along that line, the section line --

8 A. Yes.

9 Q. -- or is it off like it's indicated?

10 A. It's off a little bit like indicated. It's based  
11 on those coreholes, I-384 and -449 --

12 Q. Uh-huh.

13 A. -- just south of there, so they run more or less  
14 parallel with those wells, those coreholes.

15 Q. So there is a little bit of an area in that  
16 quarter quarter section, that northeast quarter, northeast  
17 quarter, that would be outside of the LMR --

18 A. Yeah.

19 Q. -- in that fee acreage?

20 A. Yeah, 2000 or 3000 square feet, looks like.

21 Q. But it would still be within the buffer zone; is  
22 that correct?

23 A. Yes.

24 Q. Would that make a difference?

25 A. Not for a deep gas well, no, or it really

1 wouldn't make any difference for an oil well either.

2 Q. Okay. You're going to be looking at the LMR and  
3 the buffer zone as the same in this instance?

4 A. Well, not as the same, but as -- we really do try  
5 to keep oil and gas drilling more than a quarter -- say a  
6 shallow well, more than a quarter mile away. Yeah, that  
7 would be what we try to keep clear.

8 However, in this case -- I'm looking at the wrong  
9 map -- there is drilling in the south end of 6 that Bass  
10 has already drilled. That's that -- there's a JRU 87 and  
11 JRU 14. I'd say that the BLM has already considered --  
12 almost drill out, and they're putting two wells on the same  
13 location.

14 And so yeah, that type of drilling where we've  
15 already got something set up would be a prime candidate for  
16 us to say, Yeah, go ahead and drill there.

17 Q. Do you know how many wells are actually in  
18 Section 6, currently, oil and gas, or --

19 A. Well, I'm going by the Bass Enterprises map. It  
20 looks like there's -- in the whole section there's one,  
21 two, three, four, five, six, seven, eight, nine, eleven,  
22 twelve, thirteen, fourteen, if I counted well.

23 Q. Okay, I'm going to come right out and I'll say  
24 it. Is that a negotiable item, if a well was moved outside  
25 of that LMR but on that quarter quarter section, would that

1 be something that IM- -- I'm sorry, Mosaic would consider  
2 as a viable option, even though it's deep gas?

3 A. We've always talked to anybody that came by and  
4 talked about it. There's a possibility that with  
5 discussions, with my supervision that I have, that  
6 something could be worked out. I can't say it's  
7 impossible. Yeah, I'll stop there.

8 EXAMINER STOGNER: Subsequent to whatever happens  
9 today, Mr. Carr and Mr. High, I'd like to suggest that Bass  
10 and Mr. Morehouse and everybody concerned here take a look  
11 and see if there's another location within the quarter  
12 quarter section that would be viable and could be agreed  
13 upon.

14 Now, I understand that's contingent on a  
15 nonstandard location request, and I don't know what the  
16 ownership in Section 6 is, other than it being federal, or  
17 it could be state, I assume, too. I don't know if I have  
18 any --

19 MR. DANNELS: It's all federal.

20 THE WITNESS: It's all federal.

21 EXAMINER STOGNER: It is federal, that Section 6  
22 is --

23 THE WITNESS: And it's all --

24 EXAMINER STOGNER: -- that's unusual.

25 But if it's a 100-percent working interest

1 ownership, Bass, or if -- In other words, would there be a  
2 location within that quarter quarter section for this well,  
3 would that be a viable option?

4 I'd like for everybody to explore that issue,  
5 after whatever happens today, perhaps if there's something  
6 that could be worked out. It wouldn't necessarily have to  
7 be directional drilling. I'm not proposing that or  
8 suggesting that, but a very, very unorthodox location that  
9 would be acceptable. Something to explore and look at in  
10 that situation.

11 If there's something that could be negotiable, I  
12 always would like to see a dismissal for me and something  
13 that both parties could agree upon or at least look at.

14 I'm going to take administrative notice of Order  
15 Number R-111-P. I was talking to Ms. MacQuesten earlier  
16 today. There's a lot of things that could be covered in  
17 this Application, and that's the reason I'm taking this  
18 under notice, R-111-P, because the safety issues in the  
19 mining has been brought up and is of historical record  
20 within OCD.

21 Those people that are new may not necessarily --  
22 could look at this and see the safety issues involved, or a  
23 lot of the other issues about subsidence and -- what, the  
24 45-degree area of influence of that subsidence on a  
25 wellbore.

1           There's a lot of science that has not been  
2           presented here today that could be, but a lot of new people  
3           will take a look at this and not really actually understand  
4           many of the complex issues involved. I'll take  
5           administrative notice of that.

6           With that in mind, are there any other questions  
7           of Mr. Morehouse?

8           Is there anything further at this time then?

9           MR. HIGH: We have nothing further, Mr. Examiner.

10          MR. CARR: I have a closing statement I would  
11          like to make.

12          EXAMINER STOGNER: Mr. Morehouse, you may be  
13          excused at this time.

14          Do you by chance have another copy of these -- a  
15          clean copy of these exhibits, M1 through M5 that we can  
16          give to the reporter?

17          MR. HIGH: Yes.

18          MR. MOREHOUSE: I have this set right here, if  
19          you want.

20          EXAMINER STOGNER: Okay. Mr. Morehouse, you may  
21          be excused.

22          Let's see, since this was the Application of Bass  
23          and Devon I will allow them to have the last word.

24          With that, Mr. High, we'll start with the closing  
25          statement by you.

1 MR. HIGH: Mr. Examiner, we would ask that these  
2 APDs for the locations at least involved here be denied.  
3 We are not opposed, as Mr. Morehouse said, to the  
4 development of the resources under these particular leases.  
5 We believe that the State OCD can serve its statutory  
6 purpose of protecting potash and also developing oil and  
7 gas resources by developing these resources at alternative  
8 locations.

9 Either one of these proposed locations can be  
10 developed from other locations, one by directional  
11 drilling, one perhaps, even in Section 24, perhaps, even  
12 from another location by a vertical well. Since that's a  
13 deep gas well, that 320-acre could even be developed from  
14 the east side of Section 24 without a directional well.

15 But given the fact that these can be developed in  
16 a way to where the resources, the oil and gas resources can  
17 be recovered, and the loss of potash minimized, it's our  
18 position that the OCD has a statutory obligation to balance  
19 those two interests and allow the recovery of their oil and  
20 gas resources in a way that least wastes potash, and in  
21 this particular case it will be through denying these  
22 locations, with the instruction that they file a new APD  
23 for a directional well that will result in less of a waste  
24 of potash resources.

25 And for those reasons, we would ask that they be

1 denied.

2 EXAMINER STOGNER: Thank you, Mr. High.

3 Mr. Carr?

4 MR. CARR: May it please the Examiner, closing  
5 argument is my chance to argue to you both the facts and  
6 the law.

7 I think if we look back over the last 20 or 30  
8 years, there have been a number of hearings before the  
9 Division and the Commission where the issues concerning the  
10 waste of potash and mine safety have been discussed.

11 But when I start trying to look at what the law  
12 is, I go to the orders of the Oil Conservation Division and  
13 Commission, and there's one that I think is precedent and  
14 in this case is the law, and that's the case, the order  
15 entered in the Noranda case, the one I cited in my motion,  
16 Order Number R-9990. And I believe it's applicable here  
17 because the facts are very, very similar.

18 There, as here, the proposed well was in the  
19 buffer zone. There, as here, there was agreement between  
20 the people who held the potash rights and the oil and gas  
21 rights on a tract. There the well was proposed 330 feet  
22 from the potash lease, here we're farther away by twice  
23 that with these locations.

24 I think it's important when you look at that  
25 order to see that what you determine was that under Order

1 R-111-P there's no provision for an LMR determination when  
2 the proposed well is located on fee lands. That makes some  
3 sense when you look at the order. It was an agreement not  
4 between fee owners but between potash owners and the  
5 holders of oil and gas leases.

6 You also found in that order that Order R-111-P  
7 does not authorize a potash lessee to designate an LMR on  
8 lands unless it leases those lands. And we think those  
9 facts would stand today.

10 But the important thing in that case, and the  
11 ultimate finding in that case, was, and it reads, Many of  
12 the same technical issues, such as waste, safety and the  
13 methodology of determining LMRs brought out in this case,  
14 parallel those of said Commission Cases 10,446 and 10,447.  
15 And then this is the important statement: The fundamental  
16 difference still remains, however, that all parties owning  
17 potash and oil and gas interests underlying a particular  
18 lease reached an agreement on the extraction of their  
19 minerals. And you approved that location.

20 It seems to me that when you take this order and  
21 you compare it to the wording of Order R-111-P, one thing  
22 becomes quickly very clear. Order R-111-P was not  
23 something casually drafted or prepared. The words were  
24 very carefully developed. And in some places they talk  
25 about federal and state lands and who has authority to do

1 what, other places they talk about federal lands and state  
2 and patented lands.

3 But when you take the words of Order R-111-P and  
4 apply them to the Noranda order, I think you will see that  
5 the Noranda order is correct. And when we come before you  
6 on facts such as we have today, this is the law, and I  
7 would urge you to follow it.

8 And the key facts in this case are very simple,  
9 and we've talked about them at length. IMC/Mosaic owns  
10 nothing under either of these 40-acre tracts. And like in  
11 the Noranda case, whether or not it's in a buffer zone or  
12 not, the fundamental issue is that under Order R-111-P  
13 these locations can be approved, because you have mutual  
14 agreement between the owners of the potash and the oil and  
15 gas.

16 And we had people come in here today, the mineral  
17 owners, some who've been sitting for over 20 years with no  
18 well being drilled on their property and no one even  
19 offering to lease their potash, and they've been locked out  
20 all that time. And now somebody comes along and is willing  
21 to develop their lands, and they're supporting the oil and  
22 gas companies who are prepared to go out and drill these  
23 wells.

24 Mr. High correctly points out, you've got a job,  
25 you have to balance these interests. But when you do it,

1 you still operate under your general statutory directives  
2 to protect correlative rights, and that means that the  
3 owners of these mineral rights, oil and gas and potash, are  
4 to be afforded an opportunity to produce their just and  
5 fair share.

6 And it's not just Bass's correlative rights or  
7 Devon's, it's also Mr. Mills', and it's also Kenneth  
8 Smith's. And they stand before you, having agreed with  
9 these oil and gas companies that the time has come to drill  
10 wells on their property, we're prepared to do it, and we  
11 would ask you to reinstate both -- all three of the  
12 permits, or issued permits in the case of the 7A well,  
13 because we've complied with Order R-111-P, we are in  
14 compliance and consistent with the orders entered by this  
15 Division interpreting Order R-111-P, and under the law we  
16 believe we're entitled to those permits.

17 EXAMINER STOGNER: Thank you, Mr. Carr.

18 Does anybody else have anything further in these  
19 three consolidated cases?

20 If not --

21 MR. MOREHOUSE: Can I say -- I just thought of  
22 something while you was talking.

23 EXAMINER STOGNER: Mr. High, do you want to talk  
24 to Mr. Morehouse?

25 MR. HIGH: The only comment Mr. Morehouse would

1 have added is in the Snyder Ranch case, the case referred  
2 to by Mr. Carr, there was no alternate location from which  
3 that particular oil and gas resource could have been  
4 developed, and that distinguishes these two.

5 EXAMINER STOGNER: Thank you, Mr. -- Yeah, I've  
6 got to give Mr. Carr a chance for rebuttal. I shouldn't  
7 have probably done that, but --

8 MR. CARR: That's all right, I would just note --

9 EXAMINER STOGNER: -- it is somewhat --

10 MR. CARR: -- I would just note that a  
11 directional proposal to a Devonian zone with secondary  
12 Delaware objectives may not be an alternative location to  
13 develop the reserves as proposed by Devon.

14 EXAMINER STOGNER: Okay, with that, Mr. High, Mr.  
15 Carr, please study that possibility that I have brought  
16 up --

17 MR. CARR: I will.

18 EXAMINER STOGNER: -- and mutually keep me posted  
19 on it --

20 MR. CARR: Yes, sir.

21 EXAMINER STOGNER: -- if that's acceptable, and  
22 if it is, I will personally help get an administrative NSL  
23 through --

24 MR. CARR: Yes, sir.

25 EXAMINER STOGNER: -- provided it is a do-able.

1 With that, I'm going to take this matter under  
2 advisement.

3 And with that, I believe the hearing today is  
4 closed. Thank you.

5 MR. HIGH: Thank you very much.

6 (Thereupon, these proceedings were concluded at  
7 2:30 p.m.)

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14 I do hereby certify that the foregoing is  
15 a complete record of the proceedings in  
16 the Examiner hearing of Cases No. 13,367, 13368, 13372  
17 heard by me on 2 December 2004.  
18 Michael S. Hoff, Examiner  
19 Oil Conservation Division  
20  
21  
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## CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL December 10th, 2004.



STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 16th, 2006