STATE OF NEW MEXICO COUNTY OF TAOS

IN THE DISTRICT COURT

ROBERT CASADOS, et al.,

Plaintiffs,

vs. No. 81-176

OIL CONSERVATION COMMISSION, et al.,

Defendants.

BE IT REMEMBERED that on Monday, December 7, 1981, at 10:20 A.M., this matter came on for the taking of a Hearing before the HONORABLE JUDGE JOSEPH CALDWELL at the Santa Fe District Court, Santa Fe, New Mexico, before ANGELA M. ALBAREZ, a Certified Shorthand Reporter and Notary Public.

A P P E A R A N C E S

FOR THE PLAINTIFFS:
KERR, FITZ-GERALD & KERR
Attorneys at Law
111 Midland Tower Building
Midland, Texas 79701
BY MR. WILLIAM MONROE KERR

EARLE M. CRAIG, JR. CORPORATION
1400 Midland National Bank Tower
Midland, Texas 79702
BY MR. ERNEST L. CARROLL

FOR THE DEFENDANT NEW MEXICO OIL CONSERVATION COMMISSION:
MR. W. PERRY PEARCE
General Counsel
Oil Conservation Division
Post Office Box 2088
Land Office Building
Santa Fe, New Mexico 87501

APPEARANCES: (Continued)

FOR THE DEFENDANT AMOCO:	CAMPBELL, BYRD & BLACK, P.A. Attorneys at Law Post Office Box 2208 Jefferson Place Santa Fe, New Mexico 87501 BY MR. WILLIAM F. CARR and MR. TOM B. COONEY, JR.
FOR THE DEFENDANTS AMERADA HESS CORPORATION and CITIES SERVICE COMPANY:	KELLAHIN & KELLAHIN Attorneys at Law 500 Don Gaspar Avenue Post Office Box 1769 Santa Fe, New Mexico 87501 BY MR. W. THOMAS KELLAHIN and WYN DEE BAKER
FOR THE INTERVENOR, COMMISSIONER OF PUBLIC LANDS:	J. SCOTT HALL Attorney at Law 310 Old Santa Fe Trail Santa Fe, New Mexico 87501

* * * * *

I N D E X

THE COURT: Gentlemen, let me thank you for your presentations and for their brevity and their clarity during the course of this hearing on all sides.

It seems to me that there are a couple of issues that I must defer at the moment because they have been raised. Whether they were raised in the Pleadings or not, I am a little unclear about on reading the Pleadings. But, very clearly, a part of this lawsuit which is going to get up to the Supreme Court on one side or the other -- regardless of what I do today -- is whether or not the Commission has the power to provide for the kind of preliminary, exploratory unitization agreement that this appears to be, and making an effort to provide, in the Commission's view, for the least wasteful means of exploration and ultimate determination of the apportionment process for the proceeds and the gain to be derived from that exploration. That is specifically what the Commission did, feel that it has had that power.

Since that is not directly briefed, I believe I must defer any kind of decision on that question and allow the parties in this case a period of ten days or so to brief that question and submit briefs to the Court on that specific jurisdictional question.

I will determine it during the course of this proceeding. It seems that I must, since that is the primary argument that has been raised by the Plaintiffs here.

I must agree with you, Mr. Kerr, that is basically dispositive of most of your agreements since everyone seems to concede that the findings themselves are supported by substantial evidence and much of this is an exploratory stage of the entire unit and determining just exactly where the deposits are located under the ground.

The specific legal arguments that I would request, then, would be the power of the Commission to provide for a preliminary exploratory unitization agreement or a final unitization agreement with preliminary findings before the limitations of a field have been determined to a geologic probability. I believe that is what you have got in this case. If you can submit those to the Court, then I will decide this case. I know a lot of you have traveled a long way just for the benefit of this couple of hours of hearing, but I will decide this case before the end of the year if you can submit your briefs on time.

Is there anything else at this time by any of the attorneys?

Court will be in recess.

(Hearing concluded at 12:20 P.M.)

* * * * *

REPORTER'S CERTIFICATE

I, ANGELA M. ALBAREZ, a Court Reporter and Notary Public, do hereby certify that the foregoing pages numbered 1 through 5, both inclusive, are a correct transcript of the proceedings had in the above-entitled cause and on the date and at the times therein specified.

Dated at Albuquerque, New Mexico, this 15th day of December, 1981.

Angela M. Albarez
Court Reporter

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

BRUCE KING
GOVERNOR
LARRY KEHOE
SECRETARY

December 9, 1982

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

Mr. William Monroe Kerr
Kerr, Fitz-Gerald and Kerr
Attorneys at Law
P. O. Drawer 511
Midland, Texas 79702

Re: Casados, et al. vs. Oil Conservation Commission
Supreme Court Cause
No. 14,359

Dear Mr. Kerr:

Enclosed please find the Motion for Extension of Time in the above-captioned case which was filed with the Supreme Court today.

Sincerely,

W. PERRY PEARCE
General Counsel

WPP/dr

enc.

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

ROBERT CASADOS, et al.,

Plaintiffs-Appellants,

vs.

OIL CONSERVATION COMMISSION,
et al.,

Defendant-Appellees, No. 14,359

ALEX J. ARMIJO, Commissioner
of Public Lands,

Intervenor-Appellee.

ORDER

This matter came before the Court by motion of Defendant-Appellee Oil Conservation Commission for extension of time to file its Answer Brief.

The Court having considered this matter, being fully advised in the premises and good cause appearing, it is therefore

ORDERED that the time for filing of the Answer Brief of Defendant-Appellee Oil Conservation Commission is hereby extended to December 17, 1982.

_____
Justice of the Supreme Court for the
State of New Mexico

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

ROBERT CASADOS, et al.,

Plaintiffs-Appellants,

vs.

OIL CONSERVATION COMMISSION,
et al.,

Defendant-Appellees, No. 14,359

ALEX J. ARMIJO, Commissioner
of Public Lands,

Intervenor-Appellee.

MOTION FOR EXTENSION OF TIME
TO FILE ANSWER BRIEF

Comes now Defendant-Appellee, Oil Conservation Commission, by and through its attorney, and moves the Court to grant an extension of time not to exceed seven (7) days to file Defendant's Answer Brief, and as grounds therefore certifies the cause for delay as follows:

1. Plaintiffs-Appellants filed their Brief-in-Chief on September 15, 1982.

2. Defendant-Appellee, Amoco Production Company, filed a motion to Stike Certain Issues on Appeal on October 15, 1982, which, pursuant to Rule 16(d) of the Rules of Appellate Procedures For Civil Cases, tolled the time for filing the Answer Brief of the Defendants-Appellees until 10 days after disposition of the motion.

3. Amoco Production Company's motion was granted on November 30, 1982.

4. The order of the Court was not received until the afternoon of December 3, 1982.

5. That representatives of the Oil Conservation Commission, including its entire technical and legal staff were out of town until December 9, 1982.

6. That the Court has previously granted the extension of Defendant-Appellee Amoco Production Company and that it is necessary for Defendants-Appellees to coordinate their answer briefs.

7. That the Answer Brief of Defendant-Appellee Oil Conservation Commission shall be filed no later than December 17, 1982.

Respectfully submitted,

JEFF BINGAMAN
Attorney General

W. PERRY PEARCE
Assistant Attorney General for the
Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Extension of Time to File Answer Brief was mailed to all counsel of record this 9th day of December 1982., properly addressed and postage prepaid.

W. PERRY PEARCE

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

ROBERT CASADOS, et al.,

Plaintiffs-Appellants,

vs.

OIL CONSERVATION COMMISSION, et al.,

Defendant-Appellees, No. 14,359

ALEX J. ARMIJO, Commissioner of Public Lands,

Intervenor-Appellee.

MOTION FOR EXTENSION OF TIME

TO FILE ANSWER BRIEF

Comes now Defendant-Appellee, Amoco Production Company, by and through its attorneys, and moves the court to grant an extension of time not to exceed seven (7) days to file Defendant's Answer Brief, and as grounds therefore certifies the caus for delay as follows:

1. Plaintiffs-Appellants filed their Brief-in-Chief on September 15, 1982.

2. Defendant-Appellee, Amoco Production Company, filed a motion to Strike Certain Issues on Appeal on October 15, 1982 which, pursuant to Rule 16(d) of the Rules of Appellate Procedu For Civil Cases, tolled the time for filing the Answer Brief of the Defendants-Appellees until 10 days after disposition of the motion.

3. Amoco Production Company's motion was granted on November 30, 1982.

4. The order of the court was not received until the afternoon of December 3, 1982.

5. That representatives of the Oil Conservation Commission, including its entire technical and legal staff are out of town until December 9, 1982.

6. That it is necessary for Defendant-Appellant, Amoco Production Company to coordinate its Answer Brief with that of the Oil Conservation Commission.

7. That the Answer Brief of Defendant-Appellee shall be filed no later than December 17, 1982.

Respectfully submitted,

CAMPBELL, BYRD & BLACK, P.A.

By William F. Carr
William F. Carr
Attorneys for Defendant-Appellee,
Amoco Production Company
P. O. Box 2208
Santa Fe, New Mexico 87501

Approved:

_____
Justice of the Supreme Court
for the State of New Mexico

Dated:_____

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Extension of Time to File Intervenor's Answer Brief was mailed to all counsel of record this 6th day of December, 1982., properly addressed and postage prepaid.

William F. Carr

STATE OF NEW MEXICO

IN THE DISTRICT COURT

COUNTY OF TAOS

FILED IN MY OFFICE
COUNTY, NEW MEXICO

ROBERT CASADOS, et al.,

Plaintiffs,

v. / District Court Clerk

81-176

OIL CONSERVATION COMMISSION, et al.,

Defendants.

BE IT REMEMBERED that on Monday, December 7, 1981, at 10:20 A.M., this matter came on for the taking of a Hearing before the HONORABLE JUDGE JOSEPH CALDWELL at the Santa Fe District Court, Santa Fe, New Mexico, before ANGELA M. ALBAREZ, a Certified Shorthand Reporter and Notary Public.

CERTIFICATION PURSUANT TO RULE 2 OF THE SUPREME COURT RULES GOVERNING COURT REPORTERS IN THE COURTS OF NEW MEXICO

I, ANGELA M. ALBAREZ hereby certify that this transcript or recording was taken by me on, December 7, 19 81, and that on that date I was a New Mexico Certified Shorthand Reporter.

Angela M. Albarez

CSR License No.: 107

Expiration Date: 12/31/82

Cost of this transcript to the Plaintiffs: $ 227.76

CERTIFICATION PURSUANT TO RULE 2 OF THE SUPREME COURT RULES GOVERNING COURT REPORTERS IN THE COURTS OF NEW MEXICO

I, Angela M. Albarez hereby certify that this transcript or recording was taken by me on December 7 1981, and that on that date I was a New Mexico Certified Shorthand Reporter.

Angela M. Albarez

CSR License No.: 107

Expiration Date: 12/31/82

Cost of this transcript is $100.00 to the Plaintiffs

STATE OF NEW MEXICO IN THE DISTRICT COURT

COUNTY OF TAOS

ROBERT CASADOS, et al.,

Plaintiffs,

81-176

v.

OIL CONSERVATION COMMISSION, et al.,

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* * * * * * * * * * *

A P P E A R A N C E S

For the Plaintiffs: KERR, FITZ-GERALD & KERR
Attorneys at Law
By: Mr. William Monroe Kerr
111 Midland Tower Boulevard
Midland, Texas 79701

APPEARANCES (Continued):

For the Defendant New Mexico Oil Conservation Commission:

W. PERRY PEARCE
General Counsel
Oil Conservation Division
Post Office Box 2088
Land Office Building
Santa Fe, New Mexico 87501

For the Defendant AMOCO:

CAMPBELL, BYRD & BLACK, P.A.
Attorneys at Law
By: Mr. William F. Carr
Post Office Box 2208
Santa Fe, New Mexico 87501

and

TOM B. CONNEY, JR.
Member of the Texas Bar

For the Defendant American Hess Corporation and Cities Service Company:

KELLAHIN & KELLAHIN
Attorneys at Law
By: Mr. W. Thomas Kellanhin
500 Don Gaspar Avenue
Santa Fe, New Mexico 87501

and

WYN DEE BAKER
Member of the Oklahoma Bar

For the Intervenor The Commissioner of Public Land:

J. SCOTT HALL
Attorney Legal Division
310 Old Santa Fe Trail
Santa Fe, New Mexico 87501

THE COURT: I must first apologize for the lack of formality. It has been one of those mornings this morning. I see Miss Albarez is here as the court reporter.

This matter is styled Robert Casados, et al., was Plaintiffs versus the Oil Conservation Commission, et al. This is a consolidated case involving various cases which are now designated as Taos County Cause 81-176. As I ask whether or not the Plaintiffs and the Defedants in this case are ready, I will ask that each of the attorneys here state your name and who you represent in this cause.

Beginning with the Plaintiffs, I will ask if the Plaintiffs are ready.

MR. CARROLL: Your Honor, my name is Ernest Carroll. I represent the Plaintiffs. I am associated with Bill Kerr of Kerr, Fitz-Gerald & Kerr of Midland, Texas. With the Court's permission, Mr. Kerr will present the Plaintiffs' side of argument in today's hearing. We are ready for trial.

THE COURT: Whom do you represent, sir?

MR. CARROLL: We represent the Plaintiffs from the Casados group.

THE COURT: This is what I am asking you, Mr. Carroll, is if you can designate your parties as Plaintiffs.

MR. CARROLL: Your Honor, all the Plaintiffs are represented by Mr. Kerr and myself.

THE COURT: All right, sir.

Are the Defendants ready?

MR. PEARCE: Your Honor, I am W. Perry Pearce appearing on behalf of New Mexico Oil Conservation Commission in this matter.

THE COURT: All right, Mr. Pearce.

MR. CARR: May it please the Court, I am William F. Carr with the law firm of Campbell, Byrd & Black. We represent AMOCO, and I am appearing today in association with Tom B. Conney, Jr., an attorney with AMOCO, a member of the Texas Bar.

MR. KELLAHIN: Your Honor, I am Tom Kellahin from Santa Fe, New Mexico, appearing in association with Miss Wyn Dee Baker, a member of the Oklahoma Bar, and representing Amerada Hess Corporation. In addition, You Honor, I represent Cities Service Company.

MR. HALL: Your Honor, my name is J. Scott Hall. I am Sepecial Assistant Attorney General representing the Intervenor in this case, the Commissioner of Public Lands.

THE COURT: All right, Mr. Hall.

MR. HALL: We are ready.

THE COURT: Is there any other person who is appearing on behalf of or in representation of any other party, whether Plaintiff or Defendant in this matter, and who has not yet been indicated?

First, as an administrative matter, gentlemen, speaking to Messrs. Pearce, Kellahin and Hall, I must ask if there is any objection to be raised to the representation of

the parties here by Counsel not a member of the New Mexico Bar. I understand that Mr. Conney and Ms. Baker are members of the bars of other states and are appearing here at the request of various members of the New Mexico Bar to represent parties in this action. I will ask them specifically if there is any objection on the part of any party to the representation by those attorneys.

Beginning with you, Mr. Carroll. Is there any objection, sir?

MR. CARROLL: None on behalf of the Plaintiffs, Your Honor.

MR. PEARCE: None on behalf of the Oil Conservation Commission.

MR. CARR: None on behalf of AMOCO.

MR. KELLAHIN: None on our behalf.

MR. HALL: The Intervenor has no objections.

THE COURT: Thank you

Mr. Kerr, are you ready, sir?

MR. KERR: Yes.

(Whereupon, follows argument of Counsel of Messrs. Kerr, Pearce, Hall, Carr and Kellahin, which is not here transcribed.)

THE COURT: Gentlemen, let me thank you for your presentations and their brevity and their clarity during the course of this hearing on all sides. It seems to me that there are a couple of issues that I must defer at the moment because they have been raised. Whether they were raised in the

Pleadings or not I am a little unclear about on reading the Pleadings. But very clearly, a part of this lawsuit is going to get up to the Supreme Court on one side or the other, regardless of what I do today; whether or not the Commission has the power to provide for the kind of preliminary, exploratory unitization agreement that this appears to be, and making an effort to provide, in the Commission's view, for the least wasteful means of exploration and ultimate determination of the apportionment process for the proceeds and the gain to be derived in that exploration. That is specifically what the Commission did, was feel that it has that power.

Since that is not directly briefed, I believe I must defer any kind of decision on that question and allow the parties in this case a period of 10 days or so to brief that question and submit briefs to the Court on that specific jurisdictional question. I will determine it during the course of this proceeding. It seems that I must, since that is the primary argument that has been raised by the Plaintiffs here.

I must agree with you, Mr. Kerr, that is basically dispositive of most of your agreements since everyone seems to concede that the Findings themselves are supported by substantial evidence inasmuch as this is an exploratory stage of the entire unit and determining just exactly where

the deposits are located under the ground.

The specific legal arguments that I would request, then, would be the power of the Commission to provide for a preliminary exploratory unitization agreement or a final unitization agreement with preliminary findings before the limitations of a field have been determined to a geologic probability. I believe that's what you have got in this case. If you can submit those to the Court, then I will decide this case.

I know a lot of you have traveled a long ways just for the benefit of this couple of hours of hearing, but I will decide this case before the end of the year, if you can submit your briefs on time.

Is there anything else at this time by any of the attorneys?

Court will be in recess.

(Whereupon, the hearing was concluded at 12:20 o'clock P.M.)

STATE OF NEW MEXICO)
) ss
COUNTY OF TAOS)

I, ANGELA M. ALBAREZ, a Certified Shorthand Reporter and Notary Public, DO HEREBY CERTIFY that I did therefore report in stenographic shorthand the proceedings heard with only arguments of Counsel admitted, and the foregoing is a true and correct transcription of the proceeding had upon the taking of this Hearing.

I, FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case, and that I have no interest whatsoever in the final disposition of this case.

I, FURTHER CERTIFY that the cost of this transcript is $ 100.00 to the Plaintiffs.

Angela M. Albarez
Certified Shorthand Reporter
and Notary Public.

My Commission Expires: March 9, 1986

STATE OF NEW MEXICO

IN THE DISTRICT COURT

COUNTY OF TAOS

ROBERT CASADOS, et al.,

Plaintiffs,

v. 81-176

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* * * * * * * * * * *

A P P E A R A N C E S

For the Plaintiffs:

KERR, FITZ-GERALD & KERR
Attorneys at Law
By: Mr. William Monroe Kerr
111 Midland Tower Bovlevard
Midland, Texas 79701

and

EARLE M. CRAIG, JR. CORPORATION
Attorneys at Law
By: Mr. Ernest L. Carroll
1400 Midland National Bank Tower
Midland, Texas 79702

APPEARANCES (Continued):

For the Defendant New Mexico Oil Conservation Commission:

W. PERRY PEARCE
General Counsel
Oil Conservation Division
Post Office Box 2088
Land Office Building
Santa Fe, New Mexico 87501

For the Defendant AMOCO:

CAMPBELL, BYRD & BLACK, P.A.
Attorneys at Law
By: Mr. William F. Carr
Post Office Box 2208
Jefferson Place
Santa Fe, New Mexico 87501

and

TOM B. CONNEY, JR.
Member of the Texas Bar

For the Defendant American Hess Corporation and Cities Service Company:

KELLAHIN & KELLAHIN
Attorneys at Law
By: Mr. W. Thomas Kellanhin
500 Don Gaspar Avenue
Santa Fe, New Mexico 87501

and

WYN DEE BAKER
Member of the Oklahoma Bar

For the Intervenor The Commissioner of Public Land:

J. SCOTT HALL
Attorney Legal Division
310 Old Santa Fe Trail
Santa Fe, New Mexico 87501

THE COURT: I must first apologize for the lack of formality. It has been one of those mornings this morning. I see Miss Albarez is here as the court reporter.

This matter is styled Robert Casados, et al., as Plaintiffs versus the Oil Conservation Commission, et al. This is a consolidated case involving various cases which are now designated as Taos County Cause 81-176. As I ask whether or not the Plaintiffs and the Defendants in this case are ready, I will ask that each of the attorneys here state your name and who you represent in this cause.

Beginning with the Plaintiffs, I will ask if the Plaintiffs are ready.

MR. CARROLL: Your Honor, my name is Ernest Carroll. I represent the Plaintiffs. I am associated with Bill Kerr of Kerr, Fitz-Gerald & Kerr of Midland, Texas. With the Court's permission, Mr. Kerr will present the Plaintiffs' side of argument in today's hearing. We are ready for trial.

THE COURT: Whom do you represent, sir?

MR. CARROLL: We represent the Plaintiffs from the Casados group.

THE COURT: This is what I am asking you, Mr. Carroll, is if you can designate your parties as Plaintiffs.

MR. CARROLL: Your Honor, all of the Plaintiffs are represented by Mr. Kerr and myself.

THE COURT: All right, sir.

Are the Defendants ready?

MR. PEARCE: Your Honor, I am W. Perry Pearce appearing on behalf of New Mexico Oil Conservation Commission in this matter.

THE COURT: All right, Mr. Pearce.

MR. CARR: May it please the Court, I am William F. Carr with the law firm of Campbell, Byrd & Black. We represent AMOCO, and I am appearing today in association with Tom B. Conney, Jr., an attorney with AMOCO, a member of the Texas Bar.

MR. KELLAHIN: Your Honor, I am Tom Kellahin from Santa Fe, New Mexico, appearing in association with Miss Wyn Dee Baker, a member of the Oklahoma Bar, and representing Amerada Hess Corporation. In addition, Your Honor, I represent Cities Service Company.

MR. HALL: Your Honor, my name is J. Scott Hall. I am Special Assistant Attorney General representing the Intervenor in this case, the Commissioner of Public Lands.

THE COURT: All right, Mr. Hall.

MR. HALL: We are ready.

THE COURT: Is there any other person who is appearing on behalf of or in representation of any other party, whether Plaintiff or Defendant in this matter, and who has not yet been indicated?

First, as an administrative matter, gentlemen, speaking to Messrs. Pearce, Kellahin and Hall, I must ask if there is any objection to be raised to the representation of

the parties here by Counsel not a member of the New Mexico Bar. I understand that Mr. Conney and Ms. Baker are members of the bars of other states and are appearing here at the request of various members of the New Mexico Bar to represent parties in this action. I will ask them specifically if there is any objection on the part of any party to the representation by those attorneys.

Beginning with you, Mr. Carroll. Is there any objection, sir?

MR. CARROLL: None on behalf of the Plaintiffs, Your Honor.

MR. PEARCE: None on behalf of the Oil Conservation Commission.

MR. CARR: None on behalf of AMOCO.

MR. KELLAHIN: None on our behalf.

MR. HALL: The Intervenor has no objections.

THE COURT: Thank you.

Mr. Kerr, are you ready, sir?

MR. KERR: Yes.

May it please the Court. This case is a direct attack by appeal from an order entered by the Oil Conservation Commission on rehearing of this matter as it appeared before them last year. It is a statutory appeal. It is on the record made before the Commission, as I understand it, so there is no additional testimony or evidence to be admitted at this hearing. The issue involved and the attack is upon the order approving the Bravo Dome Unit or the proposed

Bravo Dome Carbon Dioxide Gas Unit Agreement by the Oil Conservation Commission. The manner in which it was done in its order entered in the rehearing before this body, to give a little background -- I am not too sure to what degree the Court may have this -- but I think, if I may, I will just proceed like the Court had no particular prior knowledge of the matter from the record.

THE COURT: Proceed with your argument, Mr. Kerr.

MR. KERR: The agreement in question, the proposed Bravo Dome Carbon Dioxide Agreement is a unitization agreement which involves as many as perhaps 1,174,000 acres of land, more or less, in three counties in northern New Mexico. It has a delineated limit by identifiable marks on the map or on the ground. It consists of perhaps 1550 different tracts of land, many of which are covered by our oil and gas lease or most, perhaps, of which are covered by the oil and gas lease. In the breakup of the ownership of land, I believe 291,000 acres belongs to the State through its Commissioner of Public Lands. About 90,000, perhaps, belongs to the United States, and the balance belongs to fee land owners. The Unit Agreement would purport to take the various leases covering those various tracts of land and amalgamate them in a unit to be operated and managed as though it were one large lease. In this Unit Agreement, in effect, the surface easements, and so forth, for the use of the surface to

develop the carbon dioxide in the tub formation underneath that land, the only interval underneath that land that is purported to be unitized by this Agreement, that would be made into one large unit or one large tract of land to be developed as though it were under one lease.

In the Unit Agreement itself, it purports to modify the terms of the existing leases on those 1550 tracts, more or less, to whatever extent is required to make them uniform with the terms of the Unit Agreement. Among the provisions of the Unit Agreement, in addition to the modification of the existing leases, are the provisions that it will waive any implied covenants of the leases themselves. As the Court may be aware in the making of an oil and gas lease, the normal situation is not every agreement is expressed in the leases themselves because of the reliance upon the self-interest of the lessee to take care of the interests of the lessor. Among those implied covenants that would normally exist in an oil and gas lease and which this Unit Agreement would purport to eliminate would be the implied covenants to drill offset wells if the lease does not specifically deal with that subject, the implied covenant to reasonably develop the field or the natural resource subject to the lease, and the implied covenant to market fairly the gas production that is obtained from that lease.

Most of the leases in gas, as Your Honor may be

aware, normally do not take in kind gas, but normally those are paid on a dollar based on the market value at the wellhead of the gas; whereas, oil is generally one that is taken in kind or sold by the royalty owner or landowner himself. In the Unit Agreement, the provision was expressly made that the sharing arrangement would be by tracts, so that of the 1550-odd tracts, they comprise the Unit as it is finally formed, or whatever that number would be out of that number, and that each acre would be equal in every respect to each other acre during the first 15 to 20 years of the existence of this Unit.

At the end of 15 to 20 years, the Unit operator, with the approval of the Commissioner of Public Lands, I believe, has the power, and perhaps the duty, under the Unit Agreement to eliminate the nonproductive acres. The method of doing that, of eliminating nonproductive acres from the Unit, that is by determining whether there is any tub section that correlates to anything else that is productive. It doesn't mean that it is productive. It does not mean that it is not water bearing. It does not mean that it will ever produce or that it will produce more or less. It just means that at all times those acres that are in the Unit will be treated as equals in every respect for the purpose of sharing production from the Unit Area.

In the evidence presented at the first hearing

before the Commission which, I believe, all of which is before the Court, there was testimony from the exhibits and explaining the exhibits, at the time of that hearing there had been approximately, I believe, 42 wells drilled in the Unit Area; that under the rules and regulations of the Oil Conservation Commission, a proration or a spacing unit would consist of 160 acres. This is one of those areas that the Commission certainly has in its power, as facts develop, to change their mind if it develops that they were either too conservative or if they overestimated the ability of a well to drain that number of acres. Based on 1,174,000 acres, it is 160 acres per well. That would be approximately 7300 wells that would be required to drill this to density.

At the time of the hearing, approximately 42 had been drilled. Most of those, or many of those, at least, had not even been completed, and almost none of them had been tested. But there was proof before the Commission that some of those are what they call wet wells. While they had the tub section, they were not capable of producing carbon dioxide because of the water content. In effect, they would not be able to produce carbon dioxide.

In those exhibits, if the Court will take those out and look at them, there are geologists explaining the cross sections, trying to show, and I think from that the Court can very plainly see that in this 1,174,000 acres, which I

am going to say essentially form a square, although there are some irregularities in the outer boundaries, it is not a perfect square, but essentially square, that as you start in the northwest part of the Unit Area, that you have a section which is a --

THE COURT: One moment, Mr. Kerr. Specifically what part of the transcript and what exhibit are you referring to?

MR. KERR: The exhibits that I am referring to that show these things, these are the things you stick on the wall, Judge, to see them. They roll out. But 5, 6, 7, 8, 9, and 10, I believe, is what they are, and the transcript of the first hearing. Also the witness, whose name I can't recall, an AMOCO witness, was explaining his method of preparing these and what they purport to portray.

But, in any event, I think, from those, you can see -- and as you go, and in accordance with the testimony which is at that area of the transcript, that expert's testimony -- starting in the northwest and proceeding on the east and southeast, the tub section, the unitized interval thickens considerably. There is some suggestion that the tightness of the formation changes considerably as you take that course generally from west to east and southeast. This, to us, indicates very plainly that the land, while it may all be underlying with the tub formation section, the section that produces carbon dioxide, that there will be a great

disparity, and it could only be assumed there will be a great disparity in the producing capabilities, the quality, if you will, of the various tracts of land that are situated therein. Those on the extreme west side should be expected to be fairly low in recoverable reserves; that as you proceed to the east and southeast, there should be a material change in those producing capacities and capabilities over the life of this field. Yet, going back to the sharing arrangement, each section is treated as an equal, so that if, in the full Unit Area, the full unitized area, a given tract has 10X reserves per acre, it will participate in 1X reserve; whereas, the tract that is either water bearing or non-productive or tight or thin and without much recoverable reserves will also participate in the one. This is the subject of what this attack is mainly about, the correlative rights which is, in effect, the ability within practical limits, I would say, to be certain that a given tract in a unit receives or is entitled to its fair share based on the characteristics of that tract and its ability to produce the substance that is involved; in this case, carbon dioxide.

Now then, in this Unit Agreement, there is, in some states, as the Court may know, some of the states, for example, Texas, my state, does require that its regulatory agency, its equivalent, and the Texas Railroad Commission approve all Unit Agreements. New Mexico does not have that

rule of the Commission. So this matter comes before the Commission in the beginning because the Unit Agreement itself, part of its contract of that Unit Agreement was that it would never become effective unless it was approved by the Oil Conservation Commission or its Division.

This would have been put together, perhaps, without that requirement, it is our view, and we think it stands to reason that the reason it was put in there at all was to give consolation and some assurances to those, in effect, thousands of people that are involved in this Unit Agreement, that this would have the Good Housekeeping Seal of Approval of the Oil Conservation Commission in a matter within its jurisdiction.

Now then, in the matter of the jurisdiction of the Oil Conservation Commission, to start with, it is a creation of the Legislature of the State of New Mexico; in our opinion. I think the cases from other jurisdictions involving similar-type agencies, a quasi-Legislative body exercising under the Constitution of the United States was prescribed as police powers. This is a matter of police powers involving a matter that is within the public interest; namely, the conservation of natural resources of the State. In this, a great deal of power was given to the Commission in the name of conservation to prevent waste and to protect correlative rights. That would be the only function. I believe there are only five or six cases that have ever gone to the Supreme Court

of New Mexico from that body. But, I believe, that is the teaching of all of those.

Incidentally, I have put on your bench and given to opposing counsel a trial brief citing these cases, if it will be of any value to you.

THE COURT: Yes, sir. Thank you.

MR. KERR: In order so that, in our view, going back that this matter of approval by the Conservation Commission required, in the exercise of its jurisdiction to prevent waste and deal with correlative rights, that is not put there to decide if it was a good idea or to decide if it was a more efficient means. Simms v. Mechem says efficiency is not the equivalent of waste. It is, no doubt, more efficient. How does that balance with the private rights of the private property ownership involved in this matter?

Now then, at the first hearing, the Commission entered its order finding that this unit would prevent waste and would protect correlative rights. On behalf of affected landowners in the Unit Area, most of whom are Plaintiffs in this case, we filed a Motion for Rehearing. I think it is extremely important to understand what the Commission did on rehearing because that becomes very much the gist of this direct attack on that order.

On rehearing, the Commission, one, found that there is not a sufficient amount of reservoir data to now permit

the presentation of evidence or the findings that the Unit Agreement provides for the long-term development of the Unit Area a method which will prevent waste. Further development in the Unit Area should provide the data upon which such determinations could, from time to time, be made.

In this, it also found, in Finding 25 -- and I have these specifically in our trial brief -- that, at least initially, this is probably fair. Keep in mind that, initially, and until about, at least, mid 1984, which is the earliest date that had been suggested and AMOCO suggested it would be 1984, according to their plan as it existed at that time before there would be first production, the sharing of production isn't really significant because there is not any being sold and probably will not be until 1984. But, in this case, the Commission also found that it should exercise continuing jurisdiction over the matter, and that it would rely upon AMOCO as the Unit operator who owns approximately 68 percent of the leases in the Unit Area and whose Unit operator would report, from time to time, on its plans for development and on how it, AMOCO, was protecting correlative rights of the parties. With this continuing jurisdiction, I think it is implicit in the order that the Commission feels that it has the power and the duty and the authority, from time to time, to require these contractual agreements to be altered, amended, changed, or what have you, to protect those

correlative rights. The thrust of this matter is that this is a contract in which property rights of the people owning interests in those 1550 tracts, more or less, become jelled the instant that this unit becomes legally effective, and that there is no power under the police power; the Legislature itself could not lawfully, much less the Oil Conservation Commission, much less AMOCO, for that matter, cause these to be changed without the unanimous agreement of the thousands of persons owning interest in that unit. That is not within the power of this State and certainly not within the power of AMOCO to go in and to take and tell the man that has been participating in 1X per acre share of production, but because his tract is barren or is virtually barren of carbon dioxide, to cause him to be eliminated or materially reduced in his share of the production.

In other words, I think the thrust of this matter is that the Commission exceeded itself in what it believed to be its lawful powers and duties with respect to the future in matters of preventing waste and protecting correlative rights. Neither it nor AMOCO -- it is on the false premise on its powers as granted that there is a provision of the New Mexico Enactments creating and empowering the Oil Conservation Commission, giving them the power to do whatever is reasonably necessary. But when it comes to telling AMOCO they must drill more wells and spend X million dollars more

in 1983, 1984, 1990, or whatever it is, and produce more gas than they are producing, and to cause AMOCO to change the sharing arrangements so each tract receives the share to which it is entitled, once we know what that share is, it is completely beyond the importance of a quasi-judicial body. I am not even sure it is within the range of the judicial function of the State.

We have separation of powers in New Mexico, as I read it. I am not even sure that a Court could change those property rights from one to another. But certainly there is no quasi-judicial body that can be empowered to do this. Now, I think there are affirmative things that the Oil Conservation Commission can do in the name of the police power. For instance, they can compel and command that a well be plugged that is causing damage to a reservoir or to the surface estate. Just in the same way that a fire department can, perhaps, compel a house to be burned to prevent the smell of a conflagration burning in a city. But I don't believe in the affirmative matters of the Commission acting somewhat as a czar -- and I don't say that disrespectfully -- but be a baseball czar to sit and override and become the person who can control the rate of development since the implied covenants of development have been waived, to drill offsets, to market the gas since that has been waived, and to, in effect, change the sharing arrangement as among these private

parties, I don't believe that that is within their power to do.

That is really the thrust and the essence of our case as the matter came on rehearing. On this matter, if I may address it on the opening remarks, the Commissioner of Public Lands who, as I say, has about 290,000 acres of land which is leased in this matter, at the first hearing, Mr. Jordan, as Counsel for the Commissioner, appeared at the conclusion of the case and made a statement. In that statement, he advised the Commission that the Commissioner had given tentative approval to this unit having exacted from the Unit operator some concessions and some variances off the term of what was in that Unit Agreement. At the second hearing, at the conclusion of this matter, after we had dwelled further into the subject of these correlative rights and the sharing arrangement that had existed, the Commissioner again, through Mr. Jordan, appeared and advised the Commission -- and this is in the record at the end of the rehearing -- these were the last people to testify before arguments commenced, I should say, made a statement that the reason the Commissioner approved this was that with their 291,000 acres displaced as it was through the Unit, that he felt they would come out on average. But, for the landowner who owns only one tract, one or two tracts, or an interest in one or two tracts, that averaging won't get it. In effect,

he is having his correlative rights now and in the future left up for grabs, powerless, without anybody to do anything about it hereafter.

That is why, in the rehearing and in the Commission proceedings, we took the position that this Unit Agreement was premature; that until this field is developed to where you know what the reserves are within realms of practicality, that you know what the producing characteristics of a given well are, until you know how much recoverable reserves, within reason, are attributed to that tract, that you cannot have a fair sharing arrangement that protects the correlative rights that are those involved.

Now, if we didn't have this business about the protection of correlative rights by virtue of the Commission's approval, I would agree, and there have been trial briefs submitted, and you will see them if you have not already, and they make the point this is a voluntary unit. Yes, it is a voluntary unit. If someone is insistent that his unit and interests not be included in the terms of this agreement, then he is excluded unless he is granted a power of attorney to his lessee or arrange to include him in the unit of which a lot of acreage included in a unit under those kinds of arrangements are made. But, nevertheless, those ratifications to this voluntary unit were based on the very basic premise that this unit would never be effective unless the Oil

Conservation Commission of this state approved it. The only base it had to approve it was on the basis of waste and correlative rights.

So I don't think the voluntariness of this has too much to do with it. Granted, if they had not had that, those who wanted to combine their interests, convey, cross assign, enter into contractual arrangements to share, that would have been no business of the State's whatsoever and no business of anybody who didn't join in that contract. I would freely say that is true. I believe people have the right to contract within the limitations of public policy at any time they wish and any manner they wish. But, in this instance, this deal put up the Good Housekeeping Seal of Approval as a prerequisite, and that is what we are talking about, that the Good Housekeeping Seal of Approval did not take care of this.

If the Commission, in fact, can tell AMOCO and the other working interest owners, "In 1984, as an example, you will spend $400,000,000 drilling X number additional wells, and you will produce those wells at so many million cubic feet a day, and you will sell this gas, and you will, as it becomes apparent, change the arrangement on sharing of that production," that might be a good thing. But that is foreign to our system of private property and foreign to the system of separation of powers. It is foreign to the power

of this particular agency to compel such. In our state, it is, and I cite the cases in the brief. When it comes to matters like forced unitization, that is within the power if the Legislature specifically does it.

In New Mexico, in 1975, I believe, if my year is correct, it did authorized forced unitization of an entire field for the purposes of secondary and tertiary recovery of oil. In that, the Legislature laid out very specific ground rules about how those correlative rights would be protected to be sure each property owner received his fair share within the realm of practicality within that unit. That involves fully developed fields where the matter of recoverable reserves, and so forth, is within the range of engineering estimates with meaningful analysis of content and, hence, a sharing arrangement. This instance here, there is no such thing. In the evidence in this case, again going back to the first hearing, and also in the second, the experts testified this is a fluvial deposit which is, in effect, washed out in geologic history from streams in much the same way you would expect. We have different depositions; we have different thicknesses. We have different characteristics all the way through. This is a faulted zone. This is on the testimony of AMOCO that this is a well-faulted zone. It may really consist of several fields, not just one 1,174,000-acre field. Those fault

systems have, in effect, what is a sharing arrangement within the pool that they are being received from, and from where the production might be obtained.

In essence, Your Honor, this matter is absolutely premature. We believe that 42 wells out of 7300 is not anything in so vast an area. We believe the Commission has found this is probably the biggest unit they have had any dealings with. I think they think -- and I think so myself -- this is the largest unit that has ever been or attempted to be put together. There is some evidence in the record to that effect. From my own view, I am not so expressed, I have to say. No one's had any experience with this vast a project. It is a finding of fact in the Commission's Rehearing Order.

There is no reason to hurry this thing up until they have been able to drill enough wells to begin to get a hold on this thing, and then we could come up with the sharing arrangement. This thing might last 100 years, 50 years, 20 years. We are talking about a big shift between landowners, the haves versus the have nots, and that is what the correlative rights are protecting.

So we submit to Your Honor that the Commission entered its order on a false premise about its powers, and that there is no substantial evidence that can support this ability to retain jurisdiction to control these very items

of which I spoke. I am sure the Commission has a lot of persuasion about how its operators in the State handle matters of plugging of wells. Certainly in the matter, when you go into a new field and you drill a well, you need to start producing that. So the Commission certainly has it in its power to prepare proration formuli or a formula for that field which, as the field develops and its perimeters are discovered and the various capacities to produce 10 tanks, the traits and characteristics are developed, they can change that. They can change the 160 acre spacing rule if its later developments should reveal that, in fact, one well will drain, more or less. They can cut it back to $.80 or make it $6.40. They can do all that based on new findings. But, in this instance, they can never change this sharing agreement of this Unit Agreement as they think they can compel. They can never change that. The minute this order becomes final, once this lawsuit is over, that sharing agreement is jelled. AMOCO can't go take it away, take an interest away from one and give it to another. Neither can the Commission do so itself. There is no other state and, I believe in New Mexico, there has been one example wherein in the matter of eminent domain, that we have had problems from time to time where the condemning authority will, in effect, condemn property for the benefit of another private person. That is outlawed. It is said under the condemnation

powers of the Constitution of this state and other states that there is no power of the State to take private property from one citizen and award it to another. That is what would be involved if, in fact, to make this correlative rights thing square once the facts were known, somebody -- either the Commission or AMOCO -- was to try to take from the have nots and give to the haves under this contractual agreement. These people who did ratify this did not ratify an agreement that, in effect, said it was subject to whatever all the changes or amendments the Oil Conservation Commission wanted to make. It is an up or a down. It is all or nothing. The Commission is not given the power to rewrite this Agreement or to make agreements for these people that they themselves did not make and could not even dream of.

The words of the sanctity of the contract is right here, and the Commission is not there to change it. The Commission can change how much a given well can produce, but I don't think they can make an operator drill wells to produce gas. I don't think they can make an operator produce more gas than he is willing to produce. I think that is the flaw of this order on rehearing, is this retained czar function and, again, that is the best way I can describe it. That is not intended to be an affrontry to the Oil Conservation Commission, but that is precisely the role they would retain if they had the ability to make all these changes.

That is fatal to this Unit Agreement.

Under these circumstances, it is our belief, Your Honor, that this is an up or down deal, because it is based on a false premise. It cannot be supported by any substantial premise. That would be the essence of our case.

THE COURT: Mr. Kerr, just to make sure that I understand, though, I see two arguments. One: that the Commission does not have the constitutional or legal power to act as it has in determining the extent of this unit and the correlative rights within the Unit. Now, that's one.

Without saying whether or not I feel that is correct or incorrect at this time, if the Court should find that the Commission did have that power, what is the second basis of your argument, then?

What about the reveiw procedure and, specifically, the record on reveiw here -- that you are basing, as I understand, your second premise -- that there is nothing that would support the Commission --

MR. KERR: Your Honor, the Commission itself has found there is no evidence to determine whether this will protect correlative rights. So I don't have to go into and delve into the record and say the evidence is insufficient to establish that it will protect because they have found that they have no basis. There is no evidence available -- and it is a fact -- which you can determine that this will, in

fact, protect correlative rights. The Commission, by making that finding, has taken all of the evidence and said, "This doesn't add up to protecting correlative rights."

So I am not attacking that finding. I am saying yes, that is true.

But then to go ahead and approve on a premise that is false, that is the thrust of this case.

THE COURT: All right, Mr. Kerr. Thank you.

Mr. Pearce?

MR. PEARCE: May it please the Court. Your Honor, as Counsel for the Oil Conservation Commission at this time, I would like to make a brief statement which I feel is necessary to retract this proceeding, because I think the question that Your Honor asked of Mr. Kerr is the crucial question.

What is the standard of review of an administrative order?

As Mr. Kerr pointed out, this proceeding began with an application with the New Mexico Oil Conservation Commission for approval of a voluntary carbon dioxide unit. A hearing was held on the propriety of that action and an order was entered. That order found that the Unit Agreement should be approved by the Oil Conservation Commission. Petitioners here and others then filed a petition for re-hearing. A rehearing was held and a subsequent order was issued. The second order, on the basis of the same and

additional evidence, found that the Unit Agreement should be approved. The Petition for Review to this Court was then filed. The Petition for Review addresses the standard of review which I believe is in issue in this hearing. The petition claimed that there was not substantial evidence in the record to support the Division of the Oil Conservation Commission and, although in a somewhat crowded statement, I believe that that Commission also claims that the findings made by the Commission are insufficient. The Oil Conservation Commission issues a tremendous number of orders. Some of those orders are appealed and substantial evidence questions are frequent participants in those hearings.

The New Mexico Supreme Court in 1975, in the case of Grace v. The Oil Conservation Commission at 87 New Mexico 205, addressed what the substantial evidence standard of review required. The Court, in that case, found that substantial evidence is such evidence as a reasonable mind might accept to support a conclusion. That is the question for review upon appeal of administrative orders. Is there sufficient evidence so that a reasonable mind might accept the conclusion drawn?

In the Grace case, the Court went further. The Court in Grace said that in resolving substantial evidence questions, it would not weigh the evidence. In addition, the Court in that proceeding found that the body who had issued the order before it, specifically, The Oil Conservation

Commission, that was a body of experience, technical competence, and specialized knowledge, and, as such, its orders should be given special credence.

That seems to me that is the test under which Your Honor is called upon to judge the challenge of substantial evidence. Is there reasonable evidence to support the conclusion?

The second part of Petitioner's challenge is a challenge to the findings. I think it is fair to say, Your Honor, that the Oil Conservation Commission was taken to school by the New Mexico Supreme Court in a case called Fasken v. The Oil Conservation Commission reported at 87 NM 292. The Supreme Court found in that case that the Findings entered by the Oil Conservation were insufficient, and it set forth the tests that it applied in determining whether or not findings were adequate. It said that first the order must contain findings of ultimate fact, such as a finding that the order prevents waste or protects correlative rights. In regard to that, Findings 9, 25, and 37 of Order Number R6446B entered by the New Mexico Oil Conservation Commission state, "The approval of the Bravo Dome Carbon Dioxide Unit operates to prevent waste and protects correlative rights."

The second part of the Fasken test of findings is: Are there sufficient findings to enable the reviewing body

to determine the basis upon which the ultimate facts were concluded? The reasoning process the Commission used, the Commission refers this Court to Findings Number 8 and 9 in regard to prevention of waste and, particularly, to Findings 13 through 17 on the issue of correlative rights, and again, to Findings 25 and 37.

The third part of the Fasken test on the review of findings is: Does the record contain substantial evidence to support those findings? That is the first point that was raised in the Petition for Review before this Court.

Mr. Kerr has spoken as length this morning on matters which relate almost entirely to correlative rights. Certainly, there is not information in the Commission's record that the Commission would want. The reason that information is not there, as Mr. Kerr pointed out, is because the information is not yet available. Yet the Commission was presented with a situation in which waste would occur very quickly unless the Commission issued an order. The Commission issued the order approving the Unit Agreement, and although it would like additional information about correlative rights, the case of Grace v. The Oil Conservation Commission addresses a similar problem. In that case, the New Mexico Supreme Court said -- and if you will excuse me, I will read it -- "Prevention of waste is paramount and private rights such as drainage not offset by

counter drainage and correlative rights must stand aside until it is practical to determine the amount of gas underlying each producer's tract or the pool."

I believe, Your Honor, that is the situation presented to the Oil Conservation Commission. The Commission was presented with an agreement that would prevent waste in substantial measure, and that had an equitable -- at least, at the current state of knowledge -- an equitable sharing arrangement. The Commission approved that agreement.

I feel compelled to respond to Mr. Kerr's statements that the New Mexico Oil Conservation Commission wishes to act as a czar in this or any other matter. I would simply refer this Court to the order portion of Order 6446B which sets out the requirements upon the applicant before the Commission to submit periodic reports for approval. The Commission does not in that order, and would not in any other order, I believe, argue that it has the power to change private contractual agreements between private parties. The Commission, at some future hearing, may refuse to approve a plan of development for the Bravo Dome Carbon Dioxide Unit. I assume that if the New Mexico Oil Conservation Commission does, in fact, refuse to draft an agreement, parties will move out of what Mr. Kerr calls the quasi-judicial branch of government and move to the full judiciary branch of government. The New Mexico Oil Conservation

Commission is not empowered and does not feel competent to resolve private contractual disputes.

At this time, Your Honor, in the interest of clarity and brevity, I will ask the Counsel for the Commissioner of Public Lands to state clearly for the record what the Commissioner's position in this matter is. The Commissioner is an Intervenor and is the largest single land owner in the Unit. Then I will ask Counsel for the applicants before the Commission to summarize this substantial evidence in the record which supports the decision.

We believe that is the appropriate test, Your Honor.

THE COURT: Mr. Pearce, before you do that, I have got a couple of questions for you.

The first one is: In reference to your outlining the review procedure and the limits of the review of this Court -- and just to make sure that I understand it -- is your position that this Court can only review the record and determine whether or not your findings by the Commission are supported by substantial evidence?

MR. PEARCE: Yes, Your Honor. That is our position.

THE COURT: Mr. Kerr raised another problem, and that is whether or not you have the ability to make certain findings or make certain conclusions; that is, in your order arising out of the findings you have made -- specifically having found that there is an insufficient evidence to openly

determine where the gas is located -- whether or not the Commission can enter an order in that manner and approve it in the manner that had been done with this order. To me, that is another standard for review, and I wish you would address the position of the Commission on the Court's ability to make that review.

MR. PEARCE: It is our position, Your Honor, that under Grace, the primary standard under which the Commission operates is the prevention of waste. That is our first statutory duty.

THE COURT: Let me back up a little bit.

I know that. What I'm trying to get at is whether or not you feel the Court can review the legal limitations of the Conservation Commission in entering or in approving the Unit Agreement you have in this case based upon the facts there is insufficient evidence to establish a Unit Agreement.

MR. PEARCE: Your Honor, I believe that, first of all, I believe it is an overstatement to say the Commission found there was insufficient evidence to allow the Commission to act to protect correlative rights because the Commission, in its findings, states that it is acting to do exactly that.

In response to the specific question, I believe that this Court has the power to review whether or not an administrative agency has acted within its scope of authority in issuing orders. I also believe, frankly, that there has been a very severe overstatement of what the Commission's

order does or purports to do. But, yes, I believe you also have the right to review our statutory authority data.

THE COURT: All right.

Mr. Hall?

MR. HALL: Your Honor, my name is Scott Hall. I represent the Commissioner of Public Lands in this proceeding who comes, more or less, as a landowner, but somewhat uniquely situated as apart from the other people in this lawsuit.

I would like to state, as a preface, I think Counsel for the Oil Conservation Commission has ably presented arguments about the standard and scope of review. I will not address those at length here, although I would like to make one statement -- and Counsel hit upon this -- that is, I think, Mr. Kerr may have fudged a little bit in his oral argument about the issues presented in his Pleadings. I would object to consideration by the Court of any subject matter beyond the Pleadings except what is specifically stated there. Specifically, I wonder if really it is before the Court today to address the specific authority of the Commission and whether arguments have been presented in the Pleadings about the Commission acting in excess of its authority. I frankly just don't find those in the Pleadings.

I think it would be helpful to the Court at this time if I set out the interests and institutional parameters of the Commissioner of Public Lands in this case. I am sure

the Court is quite well aware that the Commissioner acts under the ambit of the New Mexico Constitution in an enabling act that placed him in the position of a constitutional agent for the State of New Mexico in administering lands that the State had acquired from the Congress of the United States. Specifically, the Constitution states that the Commissioner shall administer the lands for the benefit of some 24 specifically enumerated trust beneficiaries; in essence, he was placed in the position of a true trustee in administering the lands. Furthermore, there is statutory and legislative-mandated directives in his administration of estate trusts lands. They are found in Chapter 19 of the New Mexico Statutes Annotated generally. Specifically, as concerns this proceeding, Chapter 19, Subchapter 10 addresses oil and gas lands. There is a specific statute that is directly relevant to the Commissioner's participation in the Unit, and that is Section 19-10-46. That statute sets out three basic findings that the Commissioner must make.

If I might take a half-second of the Court's time, I would like to read into the record the thrust of that Statute, if there is no objection. 19-10-46 basically Part A states that, "Such agreement will tend to promote the conservation of oil, gas, and the better utilization of reservoir energy." Under the operations proposed, the State, and each beneficiary of the lands involved, will

receive its fair share of the recoverable oil and gas in place under its land in the area affected, and the agreement is, in other respects, for the best interests of the State.

Now, the thrust of that statute has been adopted in the Commissioner's Administrative Rules. I would direct the Court to Administrative Rule 45. I have attached a copy of that to my trial brief which I placed on your bench this morning. In that Rule 45, it sets out again the basic findings required by the statute. I think the significance of those findings to the Court today is that they parallel almost exactly the findings that are required to be made by the Oil Conservation Commission insofar as prevention of waste is concerned. There are other requirements, too, that require the Commissioner to find that the Unit is indeed in the best interests of trust beneficiaries whose lands are committed to the Unit. Also notable is Rule 46 which requires, "Any applicant presenting a voluntary unit to the Commissioner for his consideration to predetailed petroleum engineering and geologic data for review and synthesis by the Commissioner's own inhouse expert staff."

AMOCO, in fact, did that, I believe, as far back as 1978 when this unit was first produced.

Another notable rule is Rule 47. It is key in this proceeding because it sets out the manner in which the Commissioner of Public Lands may conduct his decision making.

It is his decision-making process. Rule 47 states, "The Commissioner may delay his decision until the Oil Conservation Commission receives its own evidence and digests that and comes out with its order approving or disapproving."

The Commissioner may also look at the evidence brought before the Oil Conservation Commission and have his own expert staff evaluate that. In essence, I think the thrust of that Rule 47 is that it places the Commissioner in somewhat a position of that of the Court today. The Commissioner looks at the record of the OCC, and if he finds substantial evidence warranting his approval of the Unit, then he will, in most cases, go ahead and enter into the Agreement.

That is, in fact, what he did in this proceeding. His expert staff, over many months' time, and after attending the Oil Conservation's hearings themselves, participating in the hearings, reviewed the Commission's evidence and found nothing at all in there that would warrant his disapproval of the Unit. I think that is a significant finding in this case. The significance to the Court lies in effect that the two findings somewhat parallel each other and, in fact, augment each other. You have the Commissioner acting almost as a quasi-judicial or administrative body in this proceeding. He undergoes his own synthesis of evidence and comes up with his own conclusion. So, at the very least, I think that would

offer substantial and persuasive proof that there was substantial evidence in the OCC record to warrant his approval.

That is the conclusion of my statement. I would stand for questioning at this time or whatever the Court desires.

THE COURT: Mr. Hall, I take it your comments relative to the Commissioner's review of the evidence submitted to the Commission only goes so far as the Commissioner of Public Lands, of participation in the Unit.

MR. HALL: That's correct.

THE COURT: Does the Commissioner of Public Lands take any position about the Unit itself other than the effect upon the Commissioner of Public Lands and the Public Lands of New Mexico?

MR. HALL: Yes, sir, insofar as he is directed by that Statute in that he is required to make that finding that there is prevention of waste by the Unit. That's correct.

I also point out to the Court that the Commissioner of Public Lands is one of the three Oil Conservation Commissioners by Statute, although he did not participate in this proceeding.

THE COURT: All right, sir. Thank you, Mr. Hall.

Mr. Kerr?

MR. KERR: I will present the case for AMOCO.

May it please the Court. I would initially like to address the Court briefly concerning the authority to enter certain of the findings which he has specifically challenged; particularly those findings which relate to conditions subsequently imposed by the Commission in this order.

In this, Section 7211 of the New Mexico Statutes Annotated, this section is style "Power of Commission and Division to Prevent Waste and Protect Correlative Rights." It reads "The Division is hereby empowered, and it is its duty to prevent waste prohibited by this Act and to protect correlative rights as in this Act provided."

To that end, the Division is empowered to make and enforce rules, regulations, and orders, and to do whatever may be reasonably necessary to carry out the purposes of this act whether or not indicated or specified in any section hereof.

Now we would submit to you that if any of the horror stories Mr. Kerr related by the Commission taking property rights from one side and passing them to another, if any of these stories ever came to pass, AMOCO would be before you with Mr. Kerr challenging that action. But we look at the order, and if you read the order, you find the Commission has clearly the right to continue jurisdiction over this order and to review it from time to time.

THE COURT: Let me stop you, Mr. Carr. I hate to interrupt

your argument, but I have got a question I need to ask you while it is on my mind, and that is: Is your position that the Commission has the power to review this based upon their statutory authority or based upon the contracts which indicated that it must be reviewed by the Commission?

MR. CARR: We believe it is under their statutory authority.

THE COURT: Let's hear your argument.

MR. CARR: Under our statutory authority, they can do whatever is reasonably necessary or proper to effect the purposes of the right to prevent waste, to protect correlative rights, and, as such, they can, from time to time, review it to see if, in fact, the review agreements are accomplishing those ends. We don't believe they could alter property rights, but we believe they could rescind their approval at any time.

That is our argument on that point. As Mr. Pearce pointed out, my purpose today is to review for you the basic issues which were presented to the Court in the Petition to Appeal. Those were whether or not the findings on waste and correlative rights are supported by substantial evidence. That was in Paragraph 6 of the Petition to Appeal, and Paragraph 7 attacks the sufficiency of the findings on both these points.

It is important, therefore, Your Honor, to review the standards to be employed by the Court when the sufficiency of the findings is in issue. Twice before, the Supreme Court

of New Mexico has been called upon to review an order of the Commission when the sufficiency of the findings were challenged in Continental v. The Oil Conservation Commission. This was a case involving a prorationing matter. The Court found that although formal and elaborate findings are not absolutely necessary, basic jurisdictional findings supported by the evidence are required. Then, at a later time, in David Fasken v. The Oil Conservation Commission, the Court again was asked to review the sufficiency of the findings of the Commission order and the order stated the order must contain sufficient findings to disclose the reasoning of The Oil Conservation Commission in reaching its ultimate findings that waste will be prevented and correlative rights protected.

Then it went on to state that the findings must be sufficiently extensive to show the basis of the Commission's order. So this is the standard we believe to be applied by the Court when reviewing sufficiency of the findings.

Also, as Mr. Pearce noted, the findings have been attacked on the grounds that they are not supported by substantial evidence. He noted that the Supreme Court has given really the general definition of substantial evidence in a previous case involving an Oil Conservation Commission order. The Court of Appeals of New Mexico in Martinez v. Sears, Roebuck and Company defined the standard of review in deciding whether or not a finding has substantial support.

In that case, the Court of Appeals stated, in deciding whether a finding has substantial support, the Court must review the evidence in the light most favorable to support the finding and reverse only if convinced that the evidence thus viewed together with all reasonable inferences to be drawn therefrom cannot sustain the finding. In making this review, any evidence unfavorable to the finding will not be considered.

The Supreme Court extended these standards to decisions of administrative boards in United Veterans Organization v. New Mexico. All of these cases are fully cited in the trial brief which AMOCO Production Company has previously submitted to the Court. I think it is important, therefore, Your Honor, for us to now look at the waste question and then at the correlative rights question to see if, in fact, the findings and the record support the order of the Commission.

First, let's look at waste. Waste is defined in several ways in the Oil and Gas Act. Two definitions of waste are particularly relevant to the proceeding pending before the Court. Waste is described in one way as underground waste. This definition includes the locating, spacing, drilling, equipping, operating, or producing of any well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from the pool.

Waste is also defined as surface waste. When they talk about surface waste, they are talking about, among other things, evaporation, seepage and leakage. The definition of surface waste includes loss or destruction incident to or resulting from the manner of spacing, equipping, operating, or producing a well or wells.

Now, these definitions, although they speak in terms of oil and natural gas, have been extended by the Statute to also apply to carbon dioxide gas.

I would now like to direct the Court's attention to the waste findings in this order. They're Findings 8, 9, and 37. Finding 8 reads in part that the unitized operation and management of the proposed unit has the following advantages over development of this area on a lease-by-lease basis; a more efficient, orderly, and economic exploration of the unit area. Witnesses for AMOCO, for City Services Company, and for the Plaintiffs all testified that unitized operation and management was the best method for developing this field. F.A. Calloway, a reservoir engineer called by the Plaintiffs stated, and I quote: "I have always been an advocate of field-wide unitization. I feel that is the optimum method for operation in order to achieve the maximum recovery of hydrocarbons; in this case, gas, and operates under the most efficient circumstances."

Now, there is a substantial amount of evidence in this transcript supporting this portion of Finding 8. I

will not burden the Court by reading all of the transcript references. As I noted before, this has been fully briefed for the benefit of the Court. I would, with the Court's permission, offer the basic information that the unitized operation and management of the proposed unit has the following advantages over development of this area on a lease-by-lease basis: (a) More efficient, orderly and exonomic exploration of the Unit Area; and (b) More economical production, field gathering, and treatment of carbon dioxide gas within the Unit Area.

Evidence was presented by the Unit Agreement that it will provide for orderly development of the Unit Area; that it will enable the operator to develop the Unit by drilling wells in the most desirable locations; that this will enable the operator to drain the reservoir in an effective manner with the most efficient spacing pattern; that Unit management will avoid wasteful drilling and practices; that it will enable the operator to only drill the wells necessary to produce their reserves and, therefore, will avoid the drilling of unnecessary wells.

Finding 8(b) provides that unitized operation and management of the proposed unit will, and I quote: "Provide for more economical production, field gathering, and treatment of carbon dioxide gas within the Unit Area."

Jim Allen, Sr., Petroleum Supervisor for AMOCO

Production Company, testified that Unit management was the most efficient way to produce CO_2 from the Bravo Dome Unit Area. For the company, CO_2 would be produced by using fewer surface facilities, and this would, in turn, result in reduced production costs. Max Coker, a consulting petroleum geologist with extensive experience in unitization, was called by AMOCO Production Company. He testified as to the primary factors which result in the surface loss of a product in the oil fields or, in this case, in the CO_2 field. He stated the principal causes were mechanical misfunction and manmade accident. He concluded his testimony by stating there would be a substantially greater risk of surface loss if this area were developed on a lease-by-lease basis than if it were operated under a plan of unitization.

Finding Number 9 in this Commission order provides that said advantages will reduce average well costs within the Unit Area, provide for longer economic well life, result in the greater ultimate recovery of carbon dioxide gas thereby preventing waste.

Mr. Allen testified that Unit operations, only six surface facilities would be required as opposed to as many as 4,435 such facilities if the area had to be developed on a lease-by-lease basis. He testified that fewer facilities result in lower cost; that lower costs extend the economic well lives of the wells involved; that the longer well lives

result in the increased recovery of the product which prevents waste and is consistent and in line with the statutory definition of underground waste. He further stated that the savings that would be accomplished in the area of surface facilities was only indicative of a number of other savings that would result from unitized operations.

We submit to you that the Oil Conservation Division findings clearly disclose the Commission's reasoning that approval of this Unit Agreement will prevent waste. Their reasoning was it is more efficient. This results in savings which extends lives of the wells involved, which increases the ultimate recovery of the product, and that, by definition, prevents waste. Each of these findings is supported by substantial evidence.

Now let's look at correlative rights. I think initially it is important to focus on the definition of correlative rights. It is defined by Statute as the opportunity afforded so far as it is practicable to do so to the owner of each property in a pool to produce, without waste, his just and equitable share of the oil or gas or both in the pool. That definition then goes on to explain how that should be calculated.

In the Continental decision, the Supreme Court stated that correlative rights are not absolute or unconditional but noted that the Legislature has enumerated in

the definition of correlative rights, which we just read, certain elements containing such a right. Then the Court went on to prescribe certain specific correlative rights, findings that should be made by the Commission prior to the entry of an order so far as it is practicable for the Oil Conservation Commission to do.

Now Mr. Kerr would like us to return to the standard announced in Continental and prohibit the Oil Conservation Commission from entering an order protecting correlative rights until the full extent of the reserves are known. This is not the first time a decision of the Oil Conservation Commission has been attacked on these grounds. Witter and Willbanks v. The Oil Conservation Commission, the Commission approved two nonstandard or proration agreements. Those were unusually large, and it went to the Supreme Court. In ruling for the Commission, the New Mexico Supreme Court stated the following, and I would like to read this.

"When the Commission exercises its duty to allow each interest owner in a pool his just and equitable share of the oil or gas underlying his property, the mandate to determine the extent of those correlative rights is subject to the qualification as far as it is practicable to do so. While the evidence lacked many of the factual details thought to be desirable in a case of this sort, it was because the appropriate data was as yet unobtainable. We

cannot say that the exhibits, statements, and expressions of opinion by the applicants do not constitute substantial evidence or that the orders were improperly entered or that they did not protect the correlative rights of the parties so far as could be practicably determined."

That is very important to this case, Your Honor, for we have a very similar situation here. Certain additional evidence, of course, would be desirable. But what we have is an exploratory unit, and that evidence is not, as yet, obtainable. If we wait until all of the data is in, it will be too late to derive the benefits of unitization thereby preventing the waste which we have previously discussed.

Mr. Kerr has indicated that this Unit Agreement and this order is premature. We would submit to you that that is impossible with an exploratory unit. You have got to unitize for the purpose of exploring and development. You unitize before you know what the reserves are because then you are not hamstrung by offsetting drilling obligations and matters which really, in the final analysis, result in wasteful development of a natural resource. But we don't profess to stand before you and say this record is devoid of the issue of correlative rights. I think it is important to look at the correlative rights findings in this matter.

Finding Number 14 reads: "That the evidence presented demonstrated that there are two methods of

participation which would protect the correlative rights of the owners within exploratory units through the distribution of production or proceeds therefrom from the Unit; these methods are as follows: (a) A formula which provides that each owner in the Unit shall share in production from any well(s) within the Unit in the same proportion as each owner's acreage interest in the Unit bears to the total Unit acreage, and

(b) A method which provides for the establishment of participating areas within the Unit based upon completion of commercial wells and geologic and engineering interpretation of presumed productive acreage with only those parties of interest within designated participating areas sharing in production."

That is the other method for which evidence was offered at the Commission hearing.

Neil Williams, a petroleum consultant, testified for AMOCO Production Company about both of these types of participation methods in voluntary Unit Agreements. These two types were generally concurred in by Mr. Calloway, Plaintiffs' witnesses, and were also discussed in a statement presented on behalf of the Commissioner of Public Lands.

Finding Number 15 provides: "That each of the methods described in Finding Number 14 above was demonstrated to have certain advantages and limitations."

Bruce Landis, Regional Unitization Superintendent for AMOCO, testified as to the benefits of the proposed method of participation. He also testified about possible problems that arise when you are dealing with the participating area approach. Testimony was also received from Mr. Calloway, the Plaintiffs' witness, about problems with both of these types of proposed methods of participation and problems that were also outlined in the statement offered by Oscar Jordan on behalf of the Commissioner of Public Lands.

Finding 17 reads: "That the method of sharing the income from production from the unit as provided in the Unit Agreement is reasonable and appropriate at this time."

Mr. Williams testified in response to questions as to the reasonableness of an undivided participation formula like that in the Bravo Dome and said it was probably the most ideal situation to have when we're dealing with an exploratory unit.

He went on to say, and I quote: "Geology is not an exact science so, therefore, by all the parties voluntarily agreeing to sharing whatever there might be is the ideal situation in my opinion, regardless of where the production is, because you don't know that to begin with."

The Commission, in Finding 25, stated: "That the evidence presented in this case establishes that the unit

agreement at least initially provides for the development of the unit area in a method that will serve to prevent and which is fair to the owners of interests therein."

Then it entered its ultimate finding on waste and correlative rights and said: "That approval of the proposed unit agreement with the safeguards provided above should promote the prevention of waste and the protection of correlative rights within the unit area."

The Oil Conservation Commission's reasoning, we submit, is clear. They have said evidence was presented on two approaches, all equating the production, two approaches that would protect correlative rights. But the method in the Bravo Dome unit was reasonable and appropriate, and the method was there to interest owners; that it would protect correlative rights. We submit there is substantial evidence to support these findings.

As we started out on correlative rights, we noted it is defined as "the opportunity to produce one's just and fair share of one's reserves."

We submit that, in this case, the interest owners have the opportunity to produce their share of the CO_2. They have exercised that right and have availed themselves of the opportunity by voluntarily joining, contracting, and joining in the Unit Agreement. It is a voluntary unit. This is important because they have voluntarily committed

their interests and have mutually agreed as to how they will produce their fair share of the reserves. Those who have not joined the Unit are not affected but are protected by the terms of their individual lease agreements.

We submit to you, Your Honor, that this Unit Agreement has been approved by the Oil Conservation Commission, and the Commissioner of Public Lands, and by the United States Geological Survey. It is here before you to be reviewed to determine whether or not it is consistent whether the orders are consistent with the statutory authority of the Commission; whether the findings disclosed the reasoning of the Commission, and whether those findings are supported by substantial evidence. We believe that our review of the records clearly shows the findings are supported by the evidence; but they are consistent with the Commission and stand firm.

I stand for any questions.

THE COURT: Just one, and it is real elementary, so you must forgive me.

How did the Commission determine the exterior boundaries, the surface boundaries of the Unit to begin with?

MR. CARR: The surface boundaries of the Unit were presented to the Commission by AMOCO Production Company, and in the transcript on the original hearing, a number of cross sections were offered. Although admittedly there isn't sufficient evidence to determine how many reserves are under each

individual tract, they had testimony showing that within the area they were seeking to designate as the Unit Agreement in the tub formation, there appeared to be greater prospects for production of CO_2 that in the areas outside the area that was defined as the Bravo Dome Unit.

THE COURT: This was based on what kind of exploration?

MR. CARR: Cross sections done from geologic data, well logs reviewed, and from these well logs, they tried to extrapolate and determine the extent of the carbon dioxide producing formation.

THE COURT: So when Mr. Kerr was referring to some 41 wells, are those the wells you were referring to?

MR. CARR: That's correct, Your Honor. Those are the wells from which data was drawn for the purposes of trying to determine the extent of the reservoir. It was primarily geologic considerations that were used to establish where the boundaries of this Unit should be.

One other point in that regard, Your Honor. There is a discrepancy as to the number of acres in the Unit. We're talking about 1,033,000 acres, and that is because, in our brief, I don't want that to be confused. Certain acreage has been contracted out.

THE COURT: Once you get over a million acres, Mr. Carr, it is just a lot of land.

MR. KELLAHIN: Your Honor, I represent two oil and gas companies

that were involved in this proceeding, the first of which is Amerada Hess. They own about 9.5 percent of the acreage committed to this Unit, and they support the Court's reaffirmance of the Division's order. The second company I represent is Cities Service Company. They have about one-half of one percent of the acreage committed to the Unit. They also support affirmance of the order.

In preparation for the hearing today, Your Honor, I understood from the Petitioner's Petition for Review, that this was to be an ordinary garden-variety appeal from an Oil Commission Order, a question of substantial evidence and sufficiency of the findings. That standard as set forth in Faskens has been articulated for you by Mr. Pearce. It is my understanding that is what we were to discuss today. The question of whether there was substantial evidence to support the findings and whether, in the second point, those findings were certainly sufficient to articulate the reasons of the Commission. I learn, in coming to Court today from Mr. Kerr's argument and from his Petition which I read this morning, that he raises for, I believe, the first time, the question concerning the jurisdiction of the Commission. As the Court knows, the scope of review before this Court is determined by those issues presented in the Petitioner's Application for Rehearing. That is specifically set forth in 70-22-25. If I may, I will read you the appropriate

section.

"The scope of review is in the District Court. That the questions reviewed on appeal shall be only questions presented to the Commission by the Application for Rehearing."

There is a question, I think, before you today, Your Honor, ~~sas~~ to whether any issues outside that can now be presented for your review. It would be our position that Mr. Kerr and his clients are limited to those questions raised in the Application for the Petition for Review as set forth in the Application for Review.

THE COURT: Mr. Kellahin, I keep asking that. Mr. Kerr has raised a jurisdiction question of the Commission. When does the party have a right to raise an issue of jurisdiction before a judiciary body? Does it follow the same as in Courts in that it can be raised on any order?

MR. KELLAHIN: I suspect the choices are two. They have to be presented before the administrative agency to alert them, "Say, fellows, you are exceeding your jurisdiction of review. Why don't you do something about that?"

They have some obligation, I think, to alert the agency that at least one party feels that what they're doing exceeds their authority. However, as you know, fundamentally in District Court proceedings, you can raise jurisdictional issues at any time. I am not sure what Mr. Kerr has said is, in fact, one of those classic jurisdictional questions that

can be appealed at any time.

THE COURT: I know, but his argument is that the ultimate order exceeded the authority of the Commission, either legally or constitutionally, or otherwise. That is one of his arguments, as I hear it. I don't see how you can raise that before you get the order here in the first place.

I was just hoping you could enlighten me a little bit about what the law said on that subject.

MR. KELLAHIN: Perhaps I haven't, Your Honor.

The business about a voluntary unit, I think, deserves some clarification. Admittedly, this is probably one of the largest voluntary exploratory units ever presented to the Commission for review. But the Court should know that, as a matter of routine, all voluntary exploratory units come to them as they come to them, first of all, in one of three ways. One is statutorily. The Oil Commission prevents waste and, generally governs oil and gas **because** in New Mexico. These cases will come to them for that type of order under that statutory provision. Second of all, the contract, as it does in this case, provides for review by the Division. This case came to the Division in both those kinds of concepts. A third way, as stated by Mr. Hall, is when the Commissioner of Public Lands asks that it be done. He asked that because he does not have the expertise to determine those questions set forth in the statute. He

defers to the expertise of the Oil Conservation Division.

In regard to Mr. Kerr's statement that there are findings in the Order that it either explicitly or implicitly says that the Commission lacks or has failed to find that there is sufficient evidence, or there is no evidence to protect correlative rights, I think that exceeds what this order, in fact, says.

I have, again, reviewed the Order in terms of what Mr. Kerr has said, and I cannot find the kinds of findings that he cites that support that conclusion. It would appear to me that those findings that are addressed to the lack of evidence are addressed to which of the two formulas, either of which is acceptable to the Division, will ultimately determine how the product is to be allocated among the interest owners. In fact, that is true of all exploratory units. The method of allocation of production, and the extent that each acre is underlying by a given amount of hydrocarbons can only be determined after development is completed.

It is with those points in mind, then, and I think specifically trying to answer a question raised to them by the Commissioner of Public Lands, one of those questions is whether the Unit Agreement is going to provide the State of New Mexico and its beneficiaries with a fair and reasonable share of the production.

If you read that in this light, then you will find the justification for the continuing jurisdiction of the

Commission. In other words, at some point in the future, that information, when it comes available, will be presented to them and they can determine, at that date, whether the participation formula is fair. That does not mean to say that either one of these is not fair and appropriate to protect correlative rights and prevent waste.

We believe, for those reasons, as well as other reasons stated today, that the Commission's Order ought to be affirmed.

THE COURT: Thank you, Mr. Kellahin.

I believe I have heard from everyone. Mr. Kerr, your response, please.

MR. KERR: May it please the Court. In the matter of unitization, we did have an expert -- and I don't think that there is probably any doubt about it -- that unitization, as such in the last concept of the unitization, is a sufficient orderly thing; that it makes good sense. I don't know that anybody exactly is opposed to unitization just for the sake of unitization. In the subject of unitization, there are probably 100,000 different ways to go about forming a unit. In this particular instance, in the proceedings before the Commission, we indicated, for example, that they had taken, in the preparation of this Unit Agreement, perhaps an American Petroleum Landman's form with a Federal Unit form as prescribed by the Geological Service or the Federal

Government Land Department.

In that instance, we showed, as an example, that in federal exploratory units, that they have a provision where you have a supervisor who is there in a proprietary capacity; mainly, as a landowner. As the field is developed and the pools are defined, there would be a sharing among the owners in that particular pool without getting off into all these things because that was a matter of contract. If, in fact, those things were not done, that the supervisor of the Federal Government, under a proprietary capacity, would have a right to revoke the unitization. That would be one thing. We have cited in the footnote a case, and when we come in now, we come up with a vast area, a million acres, or whatever the number is, a big one, anyway, with fluvial deposits, where we already have dry holes, thickening from the thing; we know that from testimony that was presented the first day. We know these things are not equal. Not all acreage is born equal.

In the matter of carbon dioxide, we know these things, so we come up with the Unit Agreement or a sharing agreement that is fixed and jelled forever for all intents and purposes on a sharing basis that can never protect correlative rights. In addition to that, we go in and eliminate the safeguards that landowners would have if there is insufficient development of the field to go to the

Courthouse, and seeing the cancellation of their lease on the grounds, there was insufficient development as a reasonably prudent operator would do. The Court would give them so much time to do that if the Court found that, in fact, because the Court has been doing this for 50 or 75 years in the oil fields. If, in fact, there was an unfair sharing agreement, if under that business of unilateral sharing, they could be made to solve those problems. In this instance, we come up with a Unit Agreement, and they just picked a Unit Agreement that can't ever take care of the correlative rights on the record that we see here before us. That doesn't mean there can't be a Unit Agreement; that doesn't mean there can't be a proper one for that field. It just means you can't go and do it the simplest way and give it the least thought and come up with a bag of bones and say because it is unitization, that is holy and, therefore, the exception. That is exactly what I think has happened in this case.

Now then, in this thing, orderly development, and all of this, that Simms v. Mechem case, which is cited in the trial brief, one of those six cases went to the Supreme Court from the Commission, or maybe seven, it makes a point that is not the prevention of waste. Efficiency and orderliness is not synonymous with prevention of waste. I am saying to them if they would get back to the boards,

they could probably work this matter out to have a formula to take care of it. If you have 20 reservoirs, the people with those 20 reservoirs would share it. If you have net acre feet -- would want to get into that -- but there are ways to do this on net acre feet; 20 different ways. You need hard-job type of decisions made by numbers pertinent to who would have a vital vested interest, and you work those out. But you just don't slam them down.

THE COURT: Let me ask you something, Mr. Kerr.

Specifically what in the Commission's Order prevents that kind of proceeding at some time in the future?

MR. KERR: I would like to say, if my Pleadings are insufficient to get to this business from the conclusion, that I would like to make an amendment to make them conform to my briefs, the argument I am making.

THE WITNESS: Let's hear your argument.

MR. KERR: The argument is that, in this case -- let me go to Finding 17; "That the method of sharing the income from production from the unit as provided in the Unit Agreement is reasonable and appropriate at this time."

The Commission finds that, at least initially, the development of the Unit Area in a method which will serve the owners of the interests therein. At the time, we have no production. That was speaking of initially.

Then I will go on, paraphrasing, that there is no

data available to determine whether or not long-term developments of the Unit is a method which will prevent waste and which is fair. Finding 27 states: "That further development within the Unit Area should provide the data upon which such determinations could, from time to time, be made."

Then it goes on, in Finding 28: "That the Commission is empowered and has the duty with respect to unit agreements to do whatever may be reasonably necessary to prevent waste and protect correlative rights."

"To do whatever may be reasonably necessary." That is what I am saying they don't. The Commission should exercise continuing jurisdiction in the future so that they can take those steps required to prevent waste and protect correlative rights. Among those things they can do in the future is well spacing, requiring wells to be drilled, requiring elimination of undeveloped or dry acreage from the unit area, and modification of the unit agreement. That is Finding Number 30.

Then in Finding Number 37: "That approval of the proposed unit agreement with the safeguards provided above should promote the prevention of waste and the protection of correlative rights within the unit area.

In the interim, they put in findings that AMOCO, as the unit operator, should make reports, come back and get approvals, and all this kind of business. In this, they

have operated on a basic premise they can make people drill wells, that they can require modification of the Unit Agreement in such matters, I presume, of correlative rights. In that, this is where they got out in left field. That is just not one of the powers that they constitutionally have or can have, in effect, as to requiring modification of the contractual agreements.

Now then, Mr. Carr raises an interesting subject, and that is if they start producing in 1990, 1984 -- or whenever it might be -- and there is some development in the meantime, and we find out the nature of the field is such that the correlative rights are really not being attended to in a practical matter -- that the Commission can revoke the Unit Agreement. Maybe they can; I don't know. That is an interesting question.

I would imagine they could come closer to revoking it before they can start commanding modification of the Unit Agreement. I think that would be, in a continuing jurisdiction sense, very possible. What do we do then? Do we go back and have, among 1400 people, a lawsuit to see who is going to collect the back royalties that were paid, with the surface uses combined, and all of this thing? In other words, I think that would be a bigger mess than anything we could possibly have. But the Commission hasn't considered this. The Commission considers, and its whole

order was based on the very basic premise it could control these matters now and for the life of carbon dioxide formation from the tub formation in that field. I would personally think AMOCO -- if that is what the Commission said, and that is what it says in Finding 29 -- I think AMOCO would have to, if they thought they could be compelled by the Oil Conservation Commission, to change their rights in this thing. If the Court, in fact, is going to hold that is true, maybe that gives us a safeguard. But I can't believe that it is a valid exercise by any concept of the powers of regulatory agencies; at least, as practiced up to this time. This is foreign to anything that I personally -- and I think probably anybody in this room -- has ever had to cope with, of having a regulatory agency impose its powers on a Unit Agreement.

In one of these things, to go and tell AMOCO to spend $500,000,000 this year drilling wells, as they indicated they have a right to do, as the Commission indicates in Finding 29, it is unbelievable. We are dealing, and the record will show, the bucks are big in this operation.

When it comes down to it, this needs to be sent back, and AMOCO, if they want unitization with these folks, need to come up with a scheme to protect these correlative rights if they want to unitize it now. This is not such an exploratory unit that we are dealing with something under

North Pole that nobody has any siesmology on. But you have been producing in small areas of this, about 6,000 acres for 30, 40 years. We know something about this, plus these 42 wells indicate we have got vast disparities in the quality of the reserves and, hence, the recovery that a particular tract is entitled to. In effect, this has come up too halfcocked. They came up with a plan of sharing that will not work, and they waived out too many requirements that this Commission is trying to plug up. God bless them for trying, but they haven't got the power.

Now then, I would like to say that Mr. Kellahin raised an interesting question. In this first hearing before the Commission -- not the rehearing but the first hearing -- we filed, and I believe it is in the record, a Motion for Rehearing and submitted a brief in support thereof. It was attacking the orders as they then existed, which said,"We find that correlative rights are protected if the prevention of waste will be prevented"; ergo the Order is approved effective whatever the date was. It was very short. It is in the record, also.

Then on Rehearing, taking into account our Motion, I assume -- I take some credit for that -- they then go back to the drawing boards because I think it is so obvious that the correlative rights issue is going begging as well as this matter of reasonable development which the State's got

a right smart interest in, too, in this deal. They come up with this thing, this theory that they will retain this right, and they will, in the future, be able to enter orders requiring wells to be drilled, elimination of acreage, and modification of the Unit Agreement. That is a false, false premise on which they acted. That so permeates, Your Honor, this entire order, the order that was entered starting at the bottom of that page, on which I just read that thing from. If the Commission were to be authoritatively told, "Gentlemen, you do not have the power to require modification of the Unit Agreement," I think the Commission itself would be up here asking to pull this thing down. We are dealing with the one great carbon dioxide development that this State has. This has got lots of ramifications to it. I am not trying to overdo that, but they asked to pull this down themselves. If they know they don't have that power, as a matter of law, that the general language of the act of the Legislature saying they have the power to do these things, to take care of things like spacing rules, proration formula; all of these things which they do and do a good job of. But they don't have the power to go in and start modifying contracts. If they understood that, I think they would pull it down themselves because this is serious business we are talking about here.

The language we are talking about, all of these wells and the costs and the recoveries expected, we are

talking about a gigantic thing. We are also talking about a resource that is essential to the State of New Mexico in this matter. Whenever we got it where AMOCO has 68 percent of the Unit, can control the rate of growth, production, and so forth, and if the Commission can't go in there and say, "Go drill more wells, produce more gas," we got a problem on our hands, Judge.

THE COURT: Mr. Kerr, one question sir. I still have to ask it because I don't have any answer yet.

You indicated as you read to me certain Findings that the Commission would retain jurisdiction and would review. As I understand the order to be, the apportionment of gain to be received from these wells as exploration should develop a reasonable formula. That is the way I read it. Am I right or wrong?

MR. KERR: When it says "The powers they reserve are the right to modify the Agreement," and I am assuming because the subject is correlative rights to a very large degree, I am assuming they are assuming they have the right to require the modification of the contract in regard to sharing, which is what correlative rights are all about.

THE COURT: So, to understand your argument, it isn't the issue that the method of apportionment is fixed forever, but that the right of the Commission to fix that method or approve it is such --

MR. KERR: Not really. I am saying, in fact, they have come up with something that is fixed and jelled. That is to the contrary.

In the future, the minute that Landowner X or Company Y gets themselves reduced in their sharing, because of the Commission's act or the operator's act, unilateral act of trying to adjust correlative rights, I think that the courts of this state are going to say that that was not the power, duty, or function of the Commission, and certainly not of AMOCO, or whoever it might be that did it, and that in effect, this is jelled.

The minute that this deal got the Good Housekeeping Seal of Approval, if you wanted to attack it, you had to attack it now while it is a direct attack; no collateral attacks. If you want to raise that issue, you better raise it now or forever hold your peace. I think that's where we are. I don't believe that we can take from Landowner X, when it develops that his property is marginal property in **this** thing, and cut his sharing arrangement by act of this Commission. Yet Findings 29 and 30 are exactly what this Commission is basing this premise on with these safeguards. They consider them safeguards, and they may be, if they have the power. But they don't have the power. I think before this case is all over, it is going to probably take a ruling. If they have the power to do that, then I think probably my appeal is wasted. Probably I would have to almost concede

that. If they have the power to change these things, that is one thing. But I think it will have to take a court hearing for some force of law.

MR. KELLAHIN: Your Honor, might I respond to your question?

THE COURT: No, sir, not yet. Let me do this in turn or I will get lost.

Thank you, Mr. Kerr. Mr. Pearce?

MR. PEARCE: Thank you, Your Honor. I will resist the temptation to be repetitive. I would refer the Court specifically to Findings 29 and 30 which state: "That the Commission may and should exercise continuing jurisdiction over the unit correlative to all matters given it by law."

In addition to that, I would refer the Court to the Order portions rather than the Findings portions of the Order; specifically 6446-B.

Mr. Kerr, perhaps we should be honored that he thinks we should take charge of private contractual disputes between individuals because perhaps he feels we are particularly competent, and we appreciate any statement of our competence. The Oil Conservation Commission is not authorized to state --

THE COURT: Let me state that may not have the total agreement of the people in this room.

MR. PEARCE: Yes, sir, but if I have Mr. Kerr's, I will take all I can get.

The Oil Conservation Commission does not, did not, and will not enter into private contractual disputes. If the parties to this Unit Agreement or outside the Unit Agreement have contractual disputes, they proceed to other forums than the New Mexico Oil Conservation Commission.

Thank you, sir.

THE COURT: All right, sir. Mr. Hall, I believe you were next in order of argument.

MR. HALL: Your Honor, yes, sir, and it will be brief.

I would like to respond a little bit that we seem to be keying in on two issues; one, correlative rights, and the second being the authority of the parties really to submit their contract, refer elements of their contract to findings of an administrative body. I would like to state again that I request the authority of the Plaintiffs to raise this particular point at this time. However, I have not briefed the issue, and I know of nothing in the law that would prevent any parties that contract in referencing any part of their agreement to a finding of the Commission or whomever.

Another point on correlative rights: As I have pointed out, the Commissioner of Public Lands does not particularly concern himself with determining correlative rights. Although State land is scattered almost equally throughout the Unit, that does not mean we do not take into consideration findings regarding correlative rights. In

fact, we do. If we had found anything in the Oil Conservation Commission's record that would put us in the position of placing the correlative rights of the State land trust beneficiaries' properties in jeopardy, we would be on the side of the Plaintiffs here today. However, we simply did not find those in the record.

I would like to point out one thing to the Court; that the issue of correlative rights and waste have been defined by the New Mexico Supreme Court before. If you have one, the courts seem to say you have another. If I could point out Continental Oil Company, 70 NM 310, I would like to read one particular line out of that. Starting in mid sentence: "but the basis of its powers" -- speaking of the OCC -- "is founded on the duty to prevent waste and to protect correlative rights. Actually, the prevention of waste is a paramount power inasmuch as this term is an integral part of the definition of correlative rights."

So if it is submitted to by Mr. Kerr, or any other party, that the correlative rights of anyone here, including the State, were not protected by the Oil Conservation Commission, we just did not find that in the record. Otherwise, we would have joined in the Plaintiffs in this proceeding.

That is all I have, Your Honor.

THE COURT: Thank you, Mr. Hall.

Mr. Carr?

MR. CARR: Very briefly.

Mr. Kerr indicated efficiency was not tantamount to prevention of waste. We do think it is important to note, however, that the definitions of waste provide that waste is caused by anything which does not tend to produce the ultimate recovery of a resource, and that the efficiencies that will be accomplished by the unitization will result in greater oil recovery, and thereby do fall within the definition of the prevention of waste. Mr. Kerr has indicated there may well be a day when a question needs to be brought before this Court if the Oil Commission should tell AMOCO to drill wells, cut production, or whatever, and I submit that is not really a question before the Court today. The questions were the questions in this Petition to Appeal. Mr. Kerr has said what AMOCO created is an unworkable scheme. If that is so, 100 percent of the working interests in the Bravo Dome Agreement have ratified this agreement, and the vast majority of the interest owners have done so. We submit that they have agreed as to how their correlative rights will be protected.

THE COURT: I don't suppose you want to take a vote today?

MR. CARR: I would very much like to defer the vote, Your Honor.

THE COURT: Mr. Kellahin?

MR. KELLAHIN: Your Honor, a small point, but I think it is

significant.

What we're doing here today, Your Honor, is reviewing an order of the Oil Conservation Division, and we are not litigating the contractual disputes or difference of Mr. Kerr's clients who might have interests in this acreage. At the time of the hearing, it was 91.5 percent of the interests voluntarily committed to the Unit which resulted in 86 percent of the royalty. It is our position that the people who have become signatories of the Unit Agreement are the ones who have contracted concerning their correlative rights. We are satisfied that the correlative rights to those people are properly protected. As to those people that are not participants in the Unit as being signatories, I am at a loss to understand why Mr. Kerr wants to protect those interests in this order, because, as I see it, they are not affected by this Order.

THE COURT: Thank you, Mr. Kellahin.

Gentlemen, let me thank you for your presentations and their brevity and their clarity during the course of this hearing on all sides. It seems to me that there are a couple of issues that I must defer at the moment because they have been raised. Whether they were raised in the Pleadings or not I am a little unclear about on reading the Pleadings. But very clearly, a part of this lawsuit is going to get up to the Supreme Court on one side or the

other, regardless of what I do today; whether or not the Commission has the power to provide for the kind of preliminary, exploratory unitization agreement that this appears to be, and making an effort to provide, in the Commission's view, for the least wasteful means of exploration and ultimate determination of the apportionment process for the proceeds and the gain to be derived in that exploration. That is specifically what the Commission did, was feel that it has that power.

Since that is not directly briefed, I believe I must defer any kind of decision on that question and allow the parties in this case a period of 10 days or so to brief that question and submit briefs to the Court on that specific jurisdictional question. I will determine it during the course of this proceeding. It seems that I must, since that is the primary argument that has been raised by the Plaintiffs here.

I must agree with you, Mr. Kerr, that is basically dispositive of most of your agreements since everyone seems to concede that the Findings themselves are supported by substantial evidence inasmuch as this is an exploratory stage of the entire unit and determining just exactly where the deposits are located under the ground.

The specific legal arguments that I would request, then, would be the power of the Commission to provide for

a preliminary exploratory unitization agreement or a final unitization agreement with preliminary findings before the limitations of a field have been determined to a geologic probability. I believe that's what you have got in this case. If you can submit those to the Court, then I will decide this case.

I know a lot of you have traveled a long ways just for the benefit of this couple of hours of hearing, but I will decide this case before the end of the year, if you can submit your briefs on time.

Is there anything else at this time by any of the attorneys?

Court will be in recess.

(Whereupon, the hearing was concluded at 12:20 o'clock P.M.)

STATE OF NEW MEXICO)
) ss
COUNTY OF TAOS)

I, ANGELA M. ALBAREZ, a Certified Shorthand Reporter and Notary Public, DO HEREBY CERTIFY that I did therfore report in stenographic shorthand the questions and answers set forth herein, and the foregoing is a true and correct transcription of the proceeding had upon the taking of this Hearing.

I, FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case, and that I have no interest whatsoever in the final disposition of this case.

I, FURTHER CERTIFY that the cost of this transcript is $ 227.76 to the Plaintiffs.

Angela M. Albarez
Certified Shorthand Reporter
and Notary Public.

My Commission Expires: March 9, 1986

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

CASE NO. 6967
Order No. R-6446

APPLICATION OF AMOCO PRODUCTION COMPANY FOR APPROVAL OF THE BRAVO DOME CARBON DIOXIDE GAS UNIT AGREEMENT, UNION, HARDING, AND QUAY COUNTIES, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on July 21, 1980, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 14th day of August, 1980, the Commission, a quorum being present, having considered the the testimony, the record, and the exhibits, and being fully advised in the premises,

FINDS:

(1) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof with respect to prevention of waste and protection of correlative rights.

(2) That the applicant, Amoco Production Company, seeks approval of the Bravo Dome Carbon Dioxide Gas Unit Agreement covering 1,174,225.43 acres, more or less, of State, Federal and Fee lands described in Exhibit A attached hereto and incorporated herein by reference.

(3) That all plans of development and operation and all expansions or contractions of the unit area should be submitted to the Director of the Oil Conservation Division, hereinafter referred to as the Division, for approval.

(4) That approval of the proposed unit agreement should promote the prevention of waste and the protection of correlative rights within the unit area.

IT IS THEREFORE ORDERED:

(1) That the Bravo Dome Carbon Dioxide Gas Unit Agreement is hereby approved.

(2) That the plan contained in said unit agreement for the development and operation of the unit area is hereby approved in principle as a proper conservation measure; provided, however, that notwithstanding any of the provisions contained in said unit agreement, this approval shall not be considered as waiving or relinquishing, in any manner, any right, duty, or obligation which is now, or may hereafter be, vested in the Division to supervise and control operations for the exploration and development of any lands committed to the unit and production of carbon dioxide gas therefrom.

(3) That the unit operator shall file with the Division an executed original or executed counterpart of the unit agreement within 30 days after the effective date thereof; that in the event of subsequent joinder by any party or expansion or contraction of the unit area, the unit operator shall file with the Division within 30 days thereafter counterparts of the unit agreement reflecting the subscription of those interests having joined or ratified.

(4) That all plans of development and operation and all expansions or contractions of the unit area shall be submitted to the Director of the Oil Conservation Division for approval.

(5) That this order shall become effective 60 days after the approval of said unit agreement by the Commissioner of Public Lands for the State of New Mexico and the Director of the United States Geological Survey; that this order shall terminate ipso facto upon the termination of said unit agreement; and that the last unit operator shall notify the Division immediately in writing of such termination.

(6) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

ALEX J. ARMIJO, Member

EMERY C. ARNOLD, Member

JOE D. RAMEY, Member & Secretary

S E A L

fd/

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

CASE NO. 6967
Order No. R-6446-A

APPLICATION OF AMOCO PRODUCTION COMPANY FOR APPROVAL OF THE BRAVO DOME CARBON DIOXIDE GAS UNIT AGREEMENT, UNION, HARDING AND QUAY COUNTIES, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for reconsideration for a rehearing upon the application of Abe Casados, et al (petitioners).

NOW, on this 12th day of September, 1980, the Commission, a quorum being present, having considered the application for rehearing,

FINDS:

(1) That Order No. R-6446 was entered in Case No. 6967 on August 14, 1980.

(2) That the application for rehearing in Case No. 6967 was received by the Oil Conservation Division from petitioners within the period prescribed by law.

(3) That petitioners allege, among other things, that the application is premature, that the Commission's findings and conclusions are based on insufficient evidence, and that additional findings concerning prevention of waste and protection of correlative rights should be made by the Commission.

(4) That a rehearing should be held on Case No. 6967 in Morgan Hall of the State Land Office Building, Santa Fe, New Mexico, to permit all interested parties to appear and present evidence relating to this matter, and that the evidence thus presented should address the following particulars:

ANNEX "4"

(a) prevention of waste within the unit area,

(b) protection of correlative rights within the unit area as afforded by the unit agreement, its plan and participation formula, and

(c) whether the unit agreement and its plan are premature.

IT IS THEREFORE ORDERED:

(1) That Case No. 6967 be reopened and a rehearing of same be held at 9 o'clock a.m. on October 9, 1980, in Morgan Hall, State Land Office Building, Santa Fe, New Mexico, at which time and place all interested parties may appear and present evidence with respect to the particulars outlined in Finding No. (4) above.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

ALEX J. ARMIJO, Member

EMERY C. ARNOLD, Member

JOE D. RAMEY, Member & Secretary

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STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

CASE NO. 6967
Order No. R-6446-B

APPLICATION OF AMOCO PRODUCTION
COMPANY FOR APPROVAL OF THE BRAVO
DOME CARBON DIOXIDE GAS UNIT AGREEMENT,
UNION, HARDING, AND QUAY COUNTIES,
NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for rehearing at 9 a.m. on October 9, 1980, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 23rd day of January, 1981, the Commission, a quorum being present, having considered the testimony, the record, and the exhibits, and being fully advised in the premises,

FINDS:

(1) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof with respect to prevention of waste and protection of correlative rights.

(2) That the applicant, Amoco Production Company, seeks approval of the Bravo Dome Carbon Dioxide Gas Unit Agreement (Unit) covering 1,174,225.43 acres, more or less, of State, Federal and Fee lands described in Exhibit A attached hereto and incorporated herein by reference.

(3) That this matter originally came on for hearing before the Commission on July 21, 1980.

(4) That on August 14, 1980, the Commission entered its Order No. R-6446 approving said Bravo Dome Carbon Dioxide Unit Agreement.

(5) That the Commission received a timely application for rehearing of Case No. 6967 from Abe Casados, et al (petitioners).

(6) That petitioners alleged, among other things, that the application was premature, that the Commission's findings and conclusions were based on insufficient evidence, and that additional findings concerning prevention of waste and protection of correlative rights should be made by the Commission.

(7) That on October 9, 1980, a rehearing was held in Case No. 6967 for the purpose of permitting all interested parties to appear and present evidence relating to this matter, including the following particulars:

(a) prevention of waste within the unit area,

(b) protection of correlative rights within the unit area as afforded by the unit agreement, its plan and participation formula, and

(c) whether the unit agreement and its plan are premature.

(8) That the unitized operation and management of the proposed unit has the following advantages over development of this area on a lease by lease basis:

(a) more efficient, orderly and economic exploration of the unit area; and

(b) more economical production, field gathering, and treatment of carbon dioxide gas within the unit area

(9) That said advantages will reduce average well costs within the unit area, provide for longer economic well life, result in the greater ultimate recovery of carbon dioxide gas thereby preventing waste.

(10) That the unit area is a large area with carbon dioxide gas potential.

(11) That at the time of the hearing and the rehearing some areas within the unit boundary had experienced a long history of production.

(12) That at the time of the hearing and the rehearing a number of exploratory wells had been completed in scattered parts of the unit.

(13) That the developed acreage within the proposed unit is very small when compared to the total unit area and when viewed as a whole, the unit must be considered to be an exploratory unit.

(14) That the evidence presented demonstrated that there are two methods of participation which would protect the correlative rights of the owners within exploratory units through the distribution of production or proceeds therefrom from the unit; these methods are as follows:

(a) a formula which provides that each owner in the unit shall share in production from any well(s) within the unit in the same proportion as each owner's acreage interest in the unit bears to the total unit acreage, and

(b) a method which provides for the establishment of participating areas within the unit based upon completion of commercial wells and geologic and engineering interpretation of presumed productive acreage with only those parties of interest within designated participating areas sharing in production. Such participation would be based upon the proportion of such owner's acreage interest within the participating area as compared to the total acreage within the participating area.

(15) That each of the methods described in Finding No. (14) above was demonstrated to have certain advantages and limitations.

(16) That there was no evidence upon which to base a finding that either method was clearly superior upon its own merits in this case at this time.

(17) That the method of sharing the income from production from the unit as provided in the Unit Agreement is reasonable and appropriate at this time.

(18) That the evidence presented at the rehearing demonstrated a clear need for the carbon dioxide gas projected to be available from the unit for purposes of injection for the enhanced recovery of crude oil from depleted reservoirs.

(19) That approval of the unit and development of the unit area at this time will not result in the premature availability or excess capacity of carbon dioxide gas for injection for enhanced recovery purposes.

(20) That the Commissioner of Public Lands and the United States Geological Survey have approved the proposed unit with respect to state and federal lands committed to the unit.

(21) That the application is not premature.

(22) That this is the largest unit ever proposed in the State of New Mexico, and perhaps the United States.

(23) That there is no other carbon dioxide gas unit in the State.

(24) That the Commission has no experience with the long term operation of either a unit of this size or of a unit for the development and production of carbon dioxide gas.

(25) That the evidence presented in this case establishes that the unit agreement at least initially provides for development of the unit area in a method that will serve to prevent waste and which is fair to the owners of interests therein.

(26) That the current availability of reservoir data in this large exploratory unit does not now permit the presentation of evidence or the finding that the unit agreement provides for the long term development of the unit area in a method which will prevent waste and which is fair to the owners of interests therein.

(27) That further development within the unit area should provide the data upon which such determinations could, from time to time, be made.

(28) That the Commission is empowered and has the duty with respect to unit agreements to do whatever may be reasonably necessary to prevent waste and protect correlative rights.

(29) That the Commission may and should exercise continuing jurisdiction over the unit relative to all matters given it by law and take such actions as may, in the future, be required to prevent waste and protect correlative rights therein.

(30) That those matters or actions contemplated by Finding No. (29) above may include but are not limited to: well spacing, requiring wells to be drilled, requiring elimination of undeveloped or dry acreage from the unit area, and modification of the unit agreement.

(31) That the unit operator should be required to periodically demonstrate to the Commission that its operations within the unit are resulting in prevention of waste and protection of correlative rights on a continuing basis.

(32) That such a demonstration should take place at a public hearing at least every four years following the effective date of the unit or at such lesser intervals as may be required by the Commission.

(33) That all plans of development and operation and all expansions or contractions of the unit area should be submitted to the Commission for approval.

(34) That in addition to the submittal of plans of development and operation called for under Finding No. (33) above, the operator should file with the Commission tentative four-year plans for unitized operations within the unit.

(35) That said four-year plan of operations should be for informational purposes only, but may be considered by the Commission during its quadrennial review of unit operations.

(36) That the initial four-year plan should be filed with the Commission within 60 days following the entry of this order, and that subsequent plans should be filed every four years within 60 days before the anniversary date of the entry of this order.

(37) That approval of the proposed unit agreement with the safeguards provided above should promote the prevention of waste and the protection of correlative rights within the unit area.

IT IS THEREFORE ORDERED:

(1) That the Bravo Dome Carbon Dioxide Gas Unit Agreement is hereby approved.

(2) That the plan contained in said unit agreement for the development and operation of the unit area is hereby approved in principle as a proper conservation measure; provided, however, that notwithstanding any of the provisions contained in said unit agreement, this approval shall not be considered as waiving or relinquishing, in any manner, any right, duty, or obligation which is now, or may hereafter be, vested in the Commission to supervise and control operations for the exploration and development of any lands committed to the unit and production of carbon dioxide gas therefrom, including the prevention of waste, and the protection of correlative rights.

(3) That the unit operator shall file with the Commission an executed original or executed counterpart of the unit agreement within 30 days after the effective date thereof; that in the event of subsequent joinder by any party or expansion or contraction of the unit area, the unit operator shall file with the Commission within 30 days thereafter counterparts of the unit agreement reflecting the subscription of those interests having joined or ratified.

(4) That the operator of said unit shall be required to periodically demonstrate to the Commission that its operations within the unit are resulting in the prevention of waste and protection of correlative rights on a continuing basis.

(5) That such demonstration shall take place at a public hearing held at least every four years following the effective date of the unit or at such lesser intervals as the Commission may require.

(6) That all plans of development and operation and all expansions or contractions of the unit area shall be submitted to the Commission for approval.

(7) That in addition to the submittal of plans of development and operation required under Order No. (4) above, the operator shall file with the Commission tentative four-year plans for unitized operations within the Bravo Dome Unit.

(8) That said four-year plan of operations shall be for informational purposes only, but may be considered by the Commission during its quadrennial review of unit operations.

(9) That the initial four-year plan shall be filed with the Commission within 60 days following the entry of this order, and

that subsequent such plans shall be filed every four years within 60 days before the anniversary date of the entry of this order.

(10) That this order shall become effective 60 days after the approval of said unit agreement by the Commissioner of Public Lands for the State of New Mexico and the Director of the United States Geological Survey; that this order shall terminate ipso facto upon the termination of said unit agreement; and that the last unit operator shall notify the Commission immediately in writing of such termination.

(11) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

ALEX J. ARMIJO, Member

EMERY C. ARNOLD, Member

JOE D. RAMEY, Member & Secretary

S E A L

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
Tuesday, November 30, 1982

NO. 14,359

ROBERT CASADOS, et al.,

Plaintiffs-Appellants,

vs. Taos County

OIL CONSERVATION COMMISSION, et al.,

Defendants-Appellees,

ALEX J. ARMIJO, Commissioner of Public Lands,

Intervenor-Appellee.

This matter coming on for consideration by the Court upon Motion of Appellees to Strike Issues on Appeal, and the Court having considered said motion and briefs of counsel and having heard oral argument and taken the matter under advisement;

NOW, THEREFORE, IT IS ORDERED that the Motion to Strike Issues on Appeal is hereby granted, and the issues to be entertained by the Supreme Court will include only those issues which were raised by Appellants in the Motion for Rehearing before the Commission, pursuant to Section 70-2-25, N.M.S.A. 1978.

ATTEST: A TRUE COPY

Clerk of the Supreme Court
of the State of New Mexico

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

ROBERT CASADOS, et al.,	)	
	)	
Plaintiffs-Appellants,	)	
	)	
vs.	)	
	)	
OIL CONSERVATION COMMISSION, et al.,	)	Taos County
	)	
	)	Cv. No. 14,359
Defendants-Appellees,	)	
	)	
ALEX J. ARMIJO, Commissioner of Public Lands,	)	
	)	
Intervenor-Appellee.	)	

MOTION TO EXTEND TIME FOR FILING OF REPLY BRIEF

COMES NOW, the Intervenor-Appellee Commissioner of Public Lands, by and through his undersigned counsel and moves the Court to grant an extension of time to file his reply brief and as grounds therefor would show the court the following:

1. The Court's ruling on the Motion to Strike of Amoco Production Company was issued on November 30, 1982 and effectively determined the substance of arguments to be contained in the reply briefs.

2. Rule 16 of the Rules of this Court require responsive briefs to be submitted within 10 days of the Court's ruling on such a motion, which in this case would be December 10, 1982.

3. Counsel for the Intervenor-Appellee was not notified of the Court's ruling until the late afternoon of December 6, 1982.

4. The resulting briefing schedule places counsel in the position of having to compose this reply brief and the brief-in-chief in a separate cause in the same week.

WHEREFORE, the Intervenor-Appellee prays for an extension of time until December 22, 1982, in which to file his reply brief.

J. SCOTT HALL,
Attorney for Alex J. Armijo,
Commissioner of Public Lands
P.O. Box 1148
Santa Fe, New Mexico 87504-1148
AC/505/827-5713

CERTIFICATE

I hereby certify that a true and correct copy of the foregoing pleading was mailed to opposing counsel of record this 7th day of December, 1982.

JSH

IN THE SUPREME COURT

STATE OF NEW MEXICO

ROBERT CASADOS, ET AL,	§	
	§	
Plaintiffs-Appellants	§	
	§	
VS.	§	
	§	
OIL CONSERVATION COMMISSION, ET AL,	§	
	§	
	§	NO. 14,359
Defendants-Appellees,	§	
	§	
AND	§	
	§	
ALEX J. ARMIJO, COMMISSIONER OF PUBLIC LANDS,	§	
	§	
Intervenor-Appellee	§	

APPELLANTS' CITATIONS OF ADDITIONAL AUTHORITY THAT MAY BECOME RELEVANT ON HEARING OF THE AMOCO PRODUCTION COMPANY MOTION TO STRIKE ISSUES ON APPEAL

Appellants respectfully submit for the consideration of the Court the following authorities which may become relevant in the consideration of the Amoco Production Company Motion to Strike Issues on Appeal:

I. Pertaining to the Judicial Function in Judicial Review of Actions of Administrative Agencies. (Herein also in limitations on the Legislative and Executive Branches of government)

Albert E. Utton, Constitutional Limitations On Judicial Functions by Administrative Agencies, 7 National Resources Journal 599 (1967).

"After considerable judicial wandering, the courts now have little problem in allowing administrative agencies to exercise adjudicatory functions so long as the judicial power to pass ultimately on

> the question of what is lawful is reserved to the judiciary so as to provide a check on the other branches and satisfy the doctrine of separation of powers." At page 603.

State ex rel Hovey Concrete Products Co. vs. Mechem, 63 New Mexico 250, 316 P. 2d 1069 (1957), making a distinction between "public rights" and "private rights".

Comment: 7 National Resources Journal, at 604. Discussion of legislatively created administrative agencies, commencing at page 609.

Decision of Continental Oil Company vs. Oil Conservation Commission, 70 New Mexico 310, 373 P. 2d 809 (1962), delegation of legislative duty. Recognition of "grave constitutional problems" of Commission performing judicial functions. 70 New Mexico 310, at 324, 373 P. 2d, at 818.

Determination of merits of controversy "divvying up" property rights involves dispute between private parties after the Commission has performed its legislative functions of setting a maximum production allowable for a field. 7 National Resources Journal, pages 610 through 612.

Criticism of Mechem rationale distinguishing "public rights" and "private rights". 7 National Resources Journal, 609-612.

> "It would be far better to recognize that there is good reason for having the initial decision made by a specialized body with expert competence in the area, but subject to judicial review by the courts." 7 National Resources Journal, 611.
>
> "Review by the courts of administrative agency actions is the very essence of judicial power that must be preserved under the separation of powers doctrine. 7 National Resources Journal, 612.

Many states include in their constitutions provisions governing the review of judicial functions performed by administrative agencies. In each instance, the "judicial power" to fully determine what is lawful reposes in the courts. 7 National Resources Journal, 624.

> "It is essential that courts retain the power to review for legality so that we can have uniform principles of interpretation and to deter abuse of administrative discretion." 7 National Resources Journal, 626.

II. The Egg From Which the Commission Theory Sprang:

In Continental Oil Company vs. Oil Conservation Commission, 70 New Mexico 310, 373 P. 2d 809 (1962), the court spelled out what the Commission must find in order to determine that correlative rights will be protected, not the least of which is the extent of the correlative rights to be protected.

In El Paso Natural Gas Company vs. Oil Conservation Commission, 76 New Mexico 268, 414 P. 2d 496 (1966), the court explained the Continental case, to allow the necessary Commission findings to be expressed in terms of equivalence.

> "We did not, in Continental, say that the four basic findings must be determined in advance of testing the results under an existing or proposed allocation formula. Actually what we said was '...that the extent of the correlative rights must be determined before the Commission can act to protect them is manifest...'"

Both the Continental and El Paso Natural Gas Company cases involve proration formulae.

In Grace vs. Oil Conservation Commission, 87 New Mexico 205, 531 P. 2d 939 (1975), the Commission also dealt with gas prorationing in the Morrow Gas Pool, a relatively new field with little production history, and which had not been fully developed. The Commission found that for various reasons determination of reserves in the field could not be made. Under these circumstances, the court held that correlative rights must stand aside until it is practical to determine the amount underlying each producer's tract and in the pool.

Proration formulae and spacing rules can be set and reset and set again by the Commission as evidence develops in the process of development of a field. There is a vital distinction between the situation in which the Commission has the power to change its proration formulae and its spacing rules to fit known facts and the situation involved with this unit in which the act of approval jells the correlative rights formula forever.

III. The New Mexico Administrative Procedure Act, §12-8-1 to 12-8-25, N.M.S.A., 1978, and Particularly §12-8-16B and C, §12-8-22 and 12-8-25, Copies of Which Are Attached.

The Administrative Procedure Act is very liberal in according judicial review and the scope of review, trying apparently to make it easy. While the Administrative Procedure Act does not appear to have been made applicable to the Oil Conservation Commission in its procedures, it is, nevertheless, instructive as a source of administrative law. In De Vargas Savings and Loan Association vs. Campbell, 87 New Mexico 469, 535 P. 2d 1320 (1975), this Court applied provisions of the Administrative Procedure Act to an agency which had not been made subject to the Administrative Procedure Act. See 6 New Mexico Law Review 401.

IV. New Mexico Separation of Powers Cases.

City of Hobbs vs. ex rel Reynolds, 82 New Mexico 102, 476 P. 2d 500 (1970); Fellows vs. Schultz, 81 New Mexico 496, 469 P. 2d 141 (1970); Continental Oil Company vs. Oil Conservation Commission, 70 New Mexico 310, 373 P. 2d 809 (1962); Kelley vs. Carlsbad Irrigation District, 71 New Mexico 464, 379 P. 2d 763 (1963); Ammerman vs. Hubbard Broadcasting Co., 89 New Mexico 307, 551 P. 2d 1354 (1976); State ex rel Anaya vs. McBride, 88 New Mexico 244, 539 P. 2d 1006 (1975); Southwest Underwriters vs. Montoya, 80 New Mexico 107, 452 P. 2d 176 (1969); State ex rel Delgado vs. Stanley, 83 New Mexico 626, 495 P. 2d 1073 (1972); In Re Gibson, 35 New Mexico 550, 4 P. 2d 643 (1931).

V. Exhaustion of Administrative Remedies.

2 Am. Jur. 2d, Administrative Law, §595, et seq.

Basically, the doctrine of exhaustion of administrative remedies is a product of judicial self limitation, but in certain instances the doctrine, or principles involved therein, are directly related to express statutory provisions. 2 Am. Jur. 2d 428.

The courts have emphasized that the doctrine rests on considerations of comity and convenience. 2 Am. Jur. 2d 428.

It has been said, however, that the exhaustion doctrine has no application where the administrative agency does not have authority to pass on every question raised by the party resorting to judicial relief. 2 Am. Jur. 2d 431.

The cases must be read in the light of the relief sought that is legal and equitable. He who seeks an equitable remedy, such as injunction or prohibition, must make a preliminary showing concerning lack of other available remedies.

VI. Exhaustion of Remedies as a Matter of Discretion or Jurisdiction.

The authorities are not in accord. 2 Am. Jur. 2d 435.

VII. Limitations on the Doctrine.

2 Am. Jur. 2d, Administrative Law, §602-606.

> "In some cases it is recognized that the doctrine of exhaustion of administrative remedies is a general rule only. The doctrine affords no rigid rule applicable indiscriminately to each and every situation where a party resorting to a court has failed to exhaust an available administrative remedy, but is subject to some limitations and exceptions which, however, are not susceptible of exact and comprehensive definition beyond the suggestion that judicial relief will be provided when necessary." 2 Am. Jur. 2d 436-37.
>
> "One line of cases representing a limitation on the exhaustion doctrine turns on the nature of the defect urged by a party as ground for judicial relief from action, threatened or completed, by an administrative authority of first instance in the administrative machinery; another line of cases turns on the futility of exhausting the administrative remedy. Some decisions support the view that the doctrine does not apply when only questions of law are involved." 2 Am. Jur. 2d 437.
>
> "...There is no question that an obvious lack of jurisdiction accompanied with irreparable injury asserts a grave claim on the power of the courts. In some instances, the exhaustion doctrine has not been applied where the defect urged by the complaining party went to the jurisdiction of the administrative agency or the existence of its power to do the act complained of, as

distinguished from a defect arising from a mere error of the administrative agency in passing upon the merits, at least, where the jurisdictional issue, as a mere 'question of law' did not depend upon disputed facts, so that an administrative denial of the relief sought would have been wholly without evidentiary support, clearly arbitrary, and would not upon well-settled principles have concluded the courts." 2 Am. Jur. 2d 440-441.

VIII. The Cases Located So Far Holding That a Second Petition for Rehearing Before the Administrative Agency Is Not Necessary to Judicial Review.

Carroll vs. Industrial Commission of Colorado, 69 Colo. 473, 195 Pac. 1097, 19 A.L.R. 1007-1010 (1920).

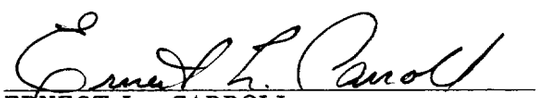
Carver vs. Industrial Commission of Colorado, 570 P. 2d 256, 258 (Colo. Court of Appeals 1977).

"To give such a construction would serve absolutely no purpose other than further to delay termination of the proceedings and would transform the procedure for administrative review in workmen's compensation cases into a meaningless and never-ending charade", at page 258.

Crowe Glass Co. vs. Industrial Accident Commission, 258 Pac. 130, 133 (Cal. District Court of Appeals, 1927); Harlan vs. Industrial Accident Commission, 194 Cal. 352, 228 Pac. 654 (1924); Schrewe vs. New York Central Railway Company, 192 Mich. 170, 158 Northwest 337; Federal Mutual Liability Insurance Company vs. Industrial Accident Commission, 190 Cal. 97, 210 Pac. 628.

IX. The Court May Wish to Consider Remanding the Case to the Commission For It to Reconsider the Extent of Its Powers to Modify the Agreement, Compel the Drilling of Additional Wells, and the Like, in the Light of the Fact that the Commission Has Found that It Cannot Determine From the Existing Facts Whether the Agreement Will Prevent Waste and Protect Correlative Rights, and the Fact That the Agreement is Effective if the Commission's Approval Stands.

Respectfully submitted,



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12-8-16. Petition for judicial review.

B. Any party also has a right to judical review, including relief deemed appropriate, at any stage of any agency proceeding or other matter before the agency and prior to a final order or decision, or the exhausting of administrative remedies or procedures, upon a showing of serious and irreparable harm, or the lack of an adequate and timely remedy otherwise or upon a showing of other good cause to the satisfaction of the court if the party was required to await a final order or decision or was required to exhaust administrative remedies or procedures.

C. Except as the constitution or statutes specifically preclude judicial review or action, any person suffering legal wrong because of any agency action or inaction or adversely affected or aggrieved by the action or inaction, within the meaning of any relevant statute or constitutional provision, is entitled to judicial review thereof and relief.

History: 1953 Comp., § 4-32-16, enacted by Laws 1969, ch. 252, § 16.

Only those agencies specifically placed by law under Administrative Procedures Act are subject to its provisions. Since public employees retirement board had not been placed under the act, nor subjected to its provisions, court of appeals did not have jurisdiction to review decisions of that agency. Mayer v. Public Employees Retirement Bd., 81 N.M. 64, 463 P.2d 40 (Ct. App. 1970).

Court of appeals lacks jurisdiction to review decisions of commissioner of revenue under the Administrative Procedures Act (12-8-1 to 12-8-25 NMSA 1978), but does have jurisdiction to review such decisions under 7-1-25 NMSA 1978 of the Tax Administration Act (7-1-1 to 7-1-80 NMSA 1978). Westland Corp. v. Commissioner of Revenue, 83 N.M. 29, 487 P.2d 1099 (Ct. App.), cert. denied, 83 N.M. 22, 487 P.2d 1092 (1971).

Law review. — For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law §§ 553 to 582.

Computation of time: exclusion or inclusion of terminal Sunday or holiday in computing time for taking or perfecting administrative appeal or review, 61 A.L.R.2d 484.

Court review of administrative decision, effect of, 79 A.L.R.2d 114.

73 C.J.S. Public Administrative Bodies and Procedure §§ 160 to 185.

12-8-22. Scope of review.

A. In any proceeding for review of an agency decision or order, the court may set aside the order or decision, or reverse or remand it to the agency for further proceedings or may compel agency action unlawfully withheld or unreasonably delayed, if it determines that the substantial rights of a party to review proceedings have been prejudiced because the agency findings, inferences, conclusions or decisions are:

(1) in violation of constitutional provisions;

(2) in excess of the statutory authority or jurisdiction of the agency or otherwise not in accordance with law;

(3) made upon unlawful procedure, including failure to follow the provisions of the Administrative Procedures Act [12-8-1 to 12-8-25 NMSA 1978];

(4) affected by other error of law;

(5) unsupported by substantial evidence; or

(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion or upon a showing of substantial bias or prejudice.

The reviewing court shall make the foregoing determinations upon consideration of the entire record, or portions of the record cited by the parties. The court may give due weight to the experience, technical competence and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it.

B. The reviewing court may remand the case to the agency for the taking and consideration of further evidence if it is deemed essential to a proper disposition of the issue.

C. The reviewing court shall affirm the order or decision of the agency if it is found to be valid and the proceedings are free from prejudicial error to the appellant.

D. The reviewing court shall compel agency action unlawfully withheld or unreasonably delayed.

History: 1953 Comp., § 4-32-22, enacted by Laws 1969, ch. 252, § 22.

Meaning of "substantial evidence". — "Substantial evidence" means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. In resolving these arguments of appellant, the supreme court will not weigh the evidence. By definition, the inquiry is whether, on the record, the administrative body could reasonably make the findings, and special weight and credence will be given to the experience, technical competence and specialized knowledge of the commission. Rutter & Wilbanks Corp. v. Oil Conservation Comm'n, 87 N.M. 286, 532 P.2d 582 (1975).

Appeal from human rights commission is trial de novo. — Appeal from decision of human rights commission is not restricted to grounds for relief set forth in this section, but is by trial de novo. Therefore, school district was not required to state grounds for its appeal from commission's decision, and its notice of appeal was effective to give district court jurisdiction to try the case de novo. Linton v. Farmington Mun. Schools, 86 N.M. 748, 527 P.2d 789 (1974).

Law reviews. — For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M. L. Rev. 184 (1973).

Am. Jur. 2d and C.J.S. references. — 2 Am. Jur. 2d Administrative Law §§ 610 to 622.

73 C.J.S. Public Administrative Bodies and Procedure §§ 198 to 212.

12-8-25. Purpose of act; liberal interpretation.

The legislature expressly declares its purpose in enacting the Administrative Procedures Act [12-8-1 to 12-8-25 NMSA 1978] is to promote uniformity with respect to administrative procedures and judicial review of administrative decisions, and the Administrative Procedures Act shall be liberally construed to carry out its purpose.

History: 1953 Comp., § 4-32-25, enacted by Laws 1969, ch. 252, § 25.

Separability clause. — Laws 1969, ch. 252, § 26, provides for the severability of the Administrative Procedures Act if any part or application thereof is held invalid.

IN THE SUPREME COURT

STATE OF NEW MEXICO

ROBERT CASADOS, ET AL,	(	
	(	
Plaintiffs-Appellants,	(	
	(	
VS.	(	
	(	
OIL CONSERVATION COMMISSION, ET AL,	(	
	(	
	(	NO. 14,359
Defendants-Appellees,	(	
	(	
AND	(	
	(	
ALEX J. ARMIJO, COMMISSIONER OF PUBLIC LANDS,	(	
	(	
Intervenor-Appellee	(	

COUNTY OF TAOS

CALDWELL, J.

ANSWERING BRIEF TO THE MOTION OF AMOCO PRODUCTION COMPANY TO STRIKE ISSUES ON APPEAL

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ANSWERING BRIEF TO THE MOTION OF AMOCO PRODUCTION COMPANY TO STRIKE ISSUES ON APPEAL

Appellants submit this Brief in support of denial of the Motion of Amoco Production Company ("Amoco") to Strike Issues on Appeal, respectfully showing:

On May 28, 1980, Amoco filed with the Oil Conservation Commission ("Commission") its application for approval of the proposed Bravo Dome Carbon Dioxide Gas Unit Agreement ("Agreement")("Commission Transcript").

The Commission conducted a hearing on the application on July 21, 1980, and on August 14, 1980, the Commission entered its Order finding that the proposed Agreement would prevent waste and would protect correlative rights, and granting its approval of the Agreement (1 Tr. 8-15).

On September 2, 1980, Appellants and others timely filed with the Commission their Application for Rehearing, to attack the Commission's findings that the Agreement would prevent waste, and would protect correlative rights, urging that the approval of the Agreement is premature, and requesting additional findings. (1 Tr. 16-31)

On September 12, 1980, the Commission ordered a rehearing. On October 9, 1980, the Commission heard further evidence and, on January 23, 1981, entered its Order (1 Tr. 34-45) to take a new tack. It made additional findings, including the finding that (a) the availability of reservoir data does not now permit the presentation of evidence or the

finding that the Unit Agreement provides for the long term development of the Unit area in a method which will prevent waste and which is fair to the owners of interest therein (Finding 26); (b) further development within the Unit area should provide the data upon which such determination could, from time to time, be made (Finding 27); (c) the Commission is empowered with respect to the Agreement to do whatever may be reasonably necessary to prevent waste and protect correlative rights (Finding 28); (d) the Commission should exercise continuing jurisdiction over the Unit relative to all matters given it by law, and take such actions as may, in the future, be required to prevent waste and protect correlative rights therein (Finding 29); and (e) the actions contemplated by Finding No. 29 may include, but are not limited to, requiring wells to be drilled, elimination of undeveloped or dry acreage from the Unit area, and modification of the Agreement (Finding 30). The Commission then approved the Agreement, retaining jurisdiction for the entry of such other orders as it might deem necessary (1 Tr. 37-40).

Appellants sought and obtained the rehearing. On rehearing, Appellants successfully obtained findings that it cannot now be determined that the Agreement would either prevent waste or protect correlative rights, which should have compelled an Order denying the Application, without prejudice. But the Commission, at the suggestion of neither proponents of the Agreement nor Appellants, adopted a theory that it could nevertheless approve the Agreement because it

would hereafter have the power from time to time to cure deficiencies by doing such things as modifying the Agreement, changing the unit area and compelling the drilling of additional wells. If the Commission lawfully can and will, itself, modify the Agreement, its Sharing Arrangements, compel the drilling of additional wells, and delete acreage, require minimum (as distinguished from maximum) production, and the like, perhaps the Commission might well be able to protect correlative rights in the future. But if the Commission does not lawfully have, and be able to enforce, such extraordinary and heretofore unheard of powers, the Agreement will stand jelled and in place, to destroy forever correlative rights in the Unit area. Change would require unanimous agreement of thousands of people, including windfall recipients under the Agreement as written and approved, many acting contrary to their self interest to revise the Sharing Arrangements of the Agreement and restore to the Agreement the eradicated implied covenants of oil and gas leases.

Throughout these proceedings before the Commission, and in the District Court, and in this Court, Appellants have attacked the approval of the Commission of the proposed Agreement, on the grounds that the Agreement does not protect correlative rights, does not prevent waste and is premature. Throughout the Commission proceedings, the Commission was made aware that approval of the Agreement at this time would not protect the correlative rights, was of dubious value in preventing waste, and was therefore, prema-

ture, but Appellants did not attack the lawful power of the Commission to do such things as modify the Agreement, compel additional drilling, and the like, since there was absolutely no reason to suspect that the Commission would take the tangent it did on rehearing. In the District Court, and in this Court, with favorable Commission findings on waste and correlative rights made on rehearing, Appellants have borne down on the lawful existence of the Commission's proclaimed reserved powers to change things and make people do things they might not want to do.

With the Commission's entry of its January 23, 1981 Order of Rehearing, Appellants turned to the New Mexico statutes, and particularly Section 72-2-25, N.M.S.A., 1978, to see how to move, in the belief that this statute governed the procedures to be followed by aggrieved applicants for rehearing before the Commission.

The statutes, rules and regulations make no provision for (or time allowance for) second or additional motions for rehearing before the Commission. Instead, the statute, in plain words, tells aggrieved applicants for rehearing that, if they wish to pursue the legality of the Commission order entered on application for rehearing, they must get to the courthouse within "twenty days after the entry of the order following rehearing", lest the avenues for direct attack on the Commission's order on rehearing be forever barred.

Perhaps it would have been wise had the Legislature foreseen such changes of tack by the Commission on

rehearing, so that it might have set the stage in this case for a purely legal argument before the Commission on the lawful powers of the Commission to exert the extraordinary powers that the Commission now claims for itself. Then again, perhaps, the Legislature may have recognized that such would involve a purely judicial function reserved to the Judicial Branch of the New Mexico government under Article III, Section 1, of the New Mexico Constitution. In every event, if it is to be said that the administrative process was cut short, it was the Legislature of the State of New Mexico, in enacting Section 70-2-25, N.M.S.A., 1978, that cut it short, and not fault that should be charged against aggrieved and vitally affected applicants for rehearing. For Appellants to file a second application for rehearing with the Commission, to argue legal powers of the Commission, within the same time span allowed by the statute for the commencement of Court proceedings, was to forego review by the only bodies that have the power, to authoritatively decide the legal issues, namely the Courts. Surely the Legislature, in according its citizens a judicial review by a direct attack, did not intend to nullify the grant in situations in which action on the first application for rehearing yielded new theories of power.

The Commission, on rehearing, found that it could not, from the evidence available, determine whether waste would be prevented and correlative rights protected under the Agreement. Thereby the Commission acted in its area of

ascribed expertise. This leaves the legal issues of lawful power of the Commission to be determined by the courts in a direct attack on the legality of the Commission's order, without doing any violence to the concept of "exhaustion of administrative remedies."

Before the Commission, Appellants successfully attacked originally made findings that the Agreement would prevent waste and protect correlative rights. With the repudiation of these findings on rehearing, Appellants were relieved of the necessity of establishing that there was no substantial evidence to support the original but repudiated findings. It would seem passing strange if judicial review were to be limited to an attack by Appellants on the original, but Commission repudiated, findings, leaving to go begging profound legal questions about the Commission's theories of its power to change the provisions of contracts and compel affirmative acts.

In Pubco Petroleum Corp. vs. Oil Conservation Commission, 75 N.M. 36, 399 Pac. 2d 932, 933 (1965), cited by Amoco, this Court construed the predecessor statutes to Section 70-2-25, N.M.S.A., 1978, as requiring a party seeking review of a Commission order to have been not just a party to rehearing proceedings but a dissatified applicant for rehearing. In this case, Appellants are dissatisfied applicants for rehearing who cannot believe that the Commission has the lawful power to rewrite the Agreement to compel Amoco to drill additional wells and produce more gas and otherwise perform implied covenants of oil and gas

leases that Amoco explicitely wrote out of the Agreement, the good intentions of the Commission to the contrary notwithstanding. Appellants also fear, with some reason, especially in light of the pending motion, that efforts of the Commission to exercise such reserved powers will be so blatantly void that they can never be enforced and that the deficiencies of the Agreement will be either left in place or be so ensnarled that nothing can ever be done about them.

Appellants would also cite to the Court Rule 11 of the Rules of Appellate Procedure for Civil Cases, dealing with scope of review. This Rule provides that appellate courts will not be precluded from considering questions involving: (a) general public interest; and (b) fundamental rights of a party. The Commission itself says that this is the largest unit ever proposed in the State of New Mexico and, perhaps, the United States, and that there is no other carbon dioxide gas unit in the State (Findings 22 and 23, 1 Tr. 37). Involved is a mode of governmental regulation devised by the Commission that is extraordinary, to say the least, is heretofore unknown in the field of either state or federal non-proprietary regulation in the field of natural resources or otherwise, and creates a governmental role that is downright dangerous to a free society if pursued by government. Appellants submit that if preservation of the issues of power heard by the the District Court and proffered by Appellants in this Court is somehow lacking because the Commission was not empanelled on a second motion for rehearing to weigh and consider the legal argument, such

issues should nevertheless be carefully scrutinized by this Court under the provisions of the cited Rule 11 because of the general public interest in the validity of such a mode of regulation and its effect on an area so large and which is the State's only carbon dioxide unit. Additionally, there is the matter of fundamental rights of the parties, in this case property rights, which stand to be trampled upon severely if the Agreement stands approved and all of the powers purportedly reserved to itself by the Commission should later be held to be non-existent or unfinancable. Whether the Commission has the lawful powers that it proclaims for itself should be decided now before the web becomes hopelessly entangled.

From the beginning, including in their application for rehearing before the Commission, Appellants have urged that approval of the Agreement by the Commission is premature because it cannot be determined now that the Agreement will serve to either prevent waste or protect correlative rights. Without such determination, approval of the Agreement is beyond the lawful power of the Commission. The power of the Commission and prematurity have always been issues in this case. Appellants submit that the motion is only an attempt to limit the legal considerations that go into the legal determination of power and prematurity. The Court should never be limited in its ability to consider all relevant legal concepts and arguments bearing on the issues of power and prematurity, whether conceived by the parties or by the Court itself.

Accordingly, Appellants pray that Amoco's motion be denied so that the court might fully consider on full briefs, argument and inquiry, the legal validity of the Commission's order entered on rehearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On this the 22 day of October, 1982, a true and correct copy of the foregoing was placed in the United States mails in properly stamped envelopes, addressed to each of counsel of Defendants-Appellees and Intervenor, as follows:

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Ernest L. Carroll

ERNEST L. CARROLL

NOTICE OF PUBLICATION

STATE OF NEW MEXICO

ENERGY AND MINERALS DEPARTMENT

OIL CONSERVATION DIVISION

SANTA FE - NEW MEXICO

The State of New Mexico by its Oil Conservation Commission hereby gives notice pursuant to law and the Rules and Regulations of said Commission promulgated thereunder of the following public hearing to be held at 9 o'clock a.m. on OCTOBER 9, 1980, Morgan Hall, State Land Office Building, Santa Fe, New Mexico.

STATE OF NEW MEXICO TO:

All named parties and persons
having any right, title, interest
or claim in the following cases
and notice to the public.

(NOTE: All land descriptions herein refer to the New Mexico Principal Meridian whether or not so stated.)

CASE 6967: (Rehearing)
Application of Amoco Production Company for
a carbon dioxide gas unit agreement, Union,
Harding, and Quay Counties, New Mexico.

Applicant, in the above-styled cause, seeks approval for the Bravo Dome Carbon Dioxide Gas Unit Area, comprising 1,174,225 acres, more or less, of State, Federal, and fee lands situate in all or portions of the following townships: in Union County: Township 18 North, Ranges 34 thru 37 East; Township 19 North, Ranges 34, 35, and 36 East; Townships 20 and 21 North, Ranges 34 and 35 East; Townships 22 and 23 North, Ranges 30 thru 35 East; Township 24 North, Ranges 31 thru 34 East; in Harding County: Townships 17 thru 21 North, Ranges 29 thru 33 East; and in Quay County: Township 16 North, Ranges 34, 35, and 36 East; and Township 17 North, Ranges 34 thru 37 East.

The lands proposed to be included in said Bravo Dome Carbon Dioxide Gas Unit Area are more specifically described in documents on file with, and available for public inspection in, the offices of the Oil Conservation Division, State Land Office Building, Santa Fe, New Mexico.

Upon application of Abe Casados, et al, this case is being reopened for rehearing.

GIVEN Under the Seal of the New Mexico Oil Conservation Commission at Santa Fe, New Mexico, on this 19th day of September, 1980.

STATE OF NEW MEXICO

OIL CONSERVATION DIVISION

JOE D. RAMEY

Division Director

S E A L