

1 STATE OF NEW MEXICO
2 ENERGY AND MINERALS DEPARTMENT
3 OIL CONSERVATION DIVISION
4 STATE LAND OFFICE BLDG.
5 SANTA FE, NEW MEXICO

6 3 June 1987

7 EXAMINER HEARING

8 IN THE MATTER OF:

9 Application of Virginia P. Udden, CASE
10 Helen Orbesen, and Carroll O. Holm- 9129
11 berg to void and vacate Division Or-
12 der Nos. R-7588 and R-7588-A, San
13 Juan County, New Mexico.

14 BEFORE: David R. Catanach, Examiner

15 TRANSCRIPT OF HEARING

16 A P P E A R A N C E S

17 For the Division: Jeff Taylor
18 Legal Counsel for the Division
19 Oil Conservation Division
20 State Land Office Bldg.
21 Santa Fe, New Mexico 87501

22 For the Applicants: James G. Bruce
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For Amoco Production: W. Perry Pearce
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I N D E X

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STATEMENT BY MR. BRUCE

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STATEMENT BY MR. PEARCE

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VIRGINIA P. UHLEN

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Direct Examination by Mr. Bruce

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Cross Examination by Mr. Pearce

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STATEMENT BY MR. BRUCE

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E X H I B I T S

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Applicant Exhibit One, Order

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Applicant Exhibit Two, Order

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MR. CATANACH: Call next Case
Number 9129.

MR. TAYLOR: Application of
Virginia P. Udden, Helen Orbesen, and Carroll O. Holmberg to
void and vacate Division Order Nos. R-7588 and R-7588-A, San
Juan County, New Mexico.

MR. CATANACH: Are there ap-
pearances in this case?

MR. BRUCE: Mr. Examiner, I'm
Jim Bruce with the Hinkle Law Firm, Santa Fe, New Mexico,
appearing on behalf of the applicants.

MR. CATANACH: Are there other
appearances?

MR. PEARCE: Yes, Mr. Examiner,
I'm W. Perry Pearce, of the law firm Montgomery & Andrews,
Santa Fe, New Mexico, appearing on behalf of Anoco Produc-
tion Company.

MR. CATANACH: How many wites-
ses do you have?

MR. BRUCE: I have two, Mr. Ex-
aminer.

MR. PEARCE: We do not expect
to have any, Mr. Examiner.

MR. CATANACH: Okay, will the

1 two witnesses please stand and be sworn in at this time?

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(Witnesses sworn.)

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MR. PEARCE: May it please the Examiner, I have a preliminary matter which I would like to address before we begin testimony in this matter.

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MR. CATANACH: You may.
MR. PEARCE: Mr. Examiner, I have received a copy of a letter which applicants in this matter through their counsel sent to Amoco Production Company. That letter states that the applicants wish Amoco to give notice of this case to all other parties who are supposed to receive notice.

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Amoco has not chosen to accept that responsibility, which is appropriate on the applicant in this matter; therefore, it seems to me that the appropriate course of proceeding in this matter is for this application to be dismissed.

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We've come on hearing, so far as I know. Perhaps we can be enlightened, but so far as I know, applicant has only provided notice of this matter to Amoco Production Company.

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Amoco Production Company is, in fact, an interested party in this matter, but we have not

1 determined whether or not there are other parties who may
2 have interests at issue in this matter. So far as we know,
3 if there are other parties who are interested in this mat-
4 ter, those parties are not present to represent their inter-
5 ests, and I can certainly assert to the Division that we are
6 not pretending on this record to represent anyone's interest
7 other than our own.

8 MR. CATANACH: Mr. Bruce, would
9 you care to respond to that?

10 MR. BRUCE: Yes, Mr. Examiner.
11 In this application the Applicants seek revocation of 320-
12 acre spacing in Sections 28 and 33, I believe that's Town-
13 ship 33 North, 10 West.

14 The Applicants notified Amoco
15 of this case, since Amoco was the one that brought the pre-
16 vious cases.

17 The Applicants have no way of
18 knowing the names and addresses of other interest owners,
19 except with the help of Amoco. Amoco did not notify anyone
20 else of the case; however, we believe it would be unfair not
21 to go forward with the hearing at this time, especially con-
22 sidering the fact that the Applicant, that Amoco has had
23 notice of this case for a month and a half and did not bring
24 up this objection until the hearing today, and furthermore,
25 considering one of the Applicants has come from California

1 to testify, and we would suggest that the hearing go forward
2 and the case be held open until Applicants can obtain the
3 names and addresses of the other interest owners and give
4 notice of them of the hearing or of this application to
5 other interest owners and hold the case open.

6 We think that would give every-
7 one an opportunity to appear, but dismissal is certainly not
8 appropriate.

9 Furthermore, we would note for
10 the record that the only notification that Amoco gave of the
11 previous cases, Case Nos. 8014 and 8014-Reopened, was publi-
12 cation notice. I believe the record in those case would
13 show that.

14 Apparently Amoco now believes
15 that further notice is due all of the interest owners and we
16 would just note that for the record.

17 MR. CATANACH: How much addi-
18 tional time do you think you'd need to obtain this informa-
19 tion and send out notification?

20 MR. BRUCE: Well, I believe,
21 without Amoco voluntarily giving us the names and addresses
22 of the interest owners in Sections 28 and 33, we would have
23 to submit interrogatories to them which would take about
24 thirty days and then, of course, the regular twenty day
25 notice period.

1 MR. PEARCE: May it please the
2 Examiner, if I may comment.

3 There seems to me to be some
4 confusion. It is not clear to me after listening to Mr.
5 Bruce what we are here for.

6 I read the style of this case
7 in the advertisement and I thought I read the application in
8 this case to provide for a change in the special pool rules
9 for the Cedar Hill Fruitland Basal Coal Pool. I think
10 that's the way the case is styled.

11 Mr. Bruce may be indicating to
12 us now that he only seeks a change in the spacing in two
13 sections within that pool. If that is the case, then once
14 again I think this case is improperly styled and even the
15 people who got notice of this case by reading an advertise-
16 ment in a newspaper received improper notice of this pro-
17 ceeding, because what he said and what's styled and adver-
18 tised are not the same thing.

19 With regard to Mr. Bruce's pre-
20 sentation that he has no way of finding out who interest
21 owners are, other than through Amoco, that's not the way I
22 understand records to be kept in counties and I think anyone
23 who owns an interest in any of the properties involved
24 either within two sections or within the pool as a whole
25 probably has something of public record, either in the re-

1 cords of the county in which the property is located or in
2 the files of the New Mexico Oil Conservation Division, if
3 there is an operator operating a well within those sections.

4 There is nothing magical about
5 Amoco's knowledge of interest owners. They have gone to or-
6 iginal source records to acquire that information.

7 It seems clear to me, if you
8 look at the transcript of the cases, the transcripts backing
9 up the orders which Mr. Bruce now wishes to have under con-
10 sideration, there were several other parties of record in
11 those cases. One simply has to go to the Oil Conservation
12 Division files and look at those transcripts and one is made
13 aware of a number of parties who were interested, who did
14 receive notice and participate in the previous hearings;
15 were represented by counsel, and therefore the Applicant now
16 to indicate that it has no idea of who else might be inter-
17 ested when even that sort of simple check will turn up sev-
18 eral other parties, appears to me to be inappropriate.

19 As to the notice rules, the no-
20 tice rules of the New Mexico Oil Conservation Division have
21 been fairly recently amended and I read the new Rule 1207,
22 sub-part 4, to deal specifically with who is to receive no-
23 tice of amendment to special pool rules, and the way I read
24 the advertisement of that case, that's what we're here for.

25

1 MR. CATANACH: Mr. Bruce, what
2 is the nature of your case here today?

3 MR. BRUCE: Well, as set forth
4 in the application, Mr. Examiner, page nine, we request that
5 Sections 28 and 33 be developed on 160-acre spacing.

6 Secondly, with regards to the
7 applicant may be able to find out the well operators, but a
8 search of the public records may well be prohibitively
9 expensive and furthermore, in discovery proceedings, I
10 believe the names and addresses of the other interest owners
11 in these sections would probably be obtainable; furthermore,
12 regarding publication notice, if Amoco is willing to concede
13 on the record that even the publication notice is
14 insufficient, that rule is constitutionally deficient, we'll
15 be quite happy with that, since that is the only notice,
16 which we will testify about, that is the only notice the
17 Applicants in this case received of the previous cases, and
18 furthermore, the Division counsel is aware of the separate
19 case, Edwards versus McHugh, pending in the the First
20 Judicial District Court, which held that constitutional
21 notice requirements are not met by publication notice.

22 Therefore, Amoco seems to think
23 that constitutional requirements are met when they published
24 notice of the previous cases but are not met today, which
25 certainly we do not agree with.

1 However, we think in all
2 fairness the hearing could go forward today and any defects
3 could be remedied over the next month or so with keeping
4 the case open for other parties to appear, at which time we
5 would certainly bring back our expert witness for cross
6 examination.

7 MR. CATANACH: This should not
8 have any -- any effect whatsoever on any interest owner in
9 the pool outside of Section 28 and 33.

10 MR. BRUCE: That is -- we have
11 not requested for any relief outside of Sections 28 and 33.

12 MR. CATANACH: But will it
13 affect anybody outside?

14 MR. BRUCE: Not that I know of.
15 Mr. Pearce may object to that but --

16 MR. PEARCE: Mr. Examiner, if I
17 may just jump into that, it does seem to me that we need to
18 consider whether or not closer spacing in two particular
19 sections, if in fact that's all we're talking about here,
20 raises the likelihood of increased drainage from adjoining
21 sections, and I have no engineering work-up on that question
22 at all, but it does seem to me that possibly that's the
23 question. It now sounds to me as if this case is really a
24 case for, I suppose, four nonstandard -- no, however many
25 nonstandard proration units, rather than for any amendment

1 to pool rules and the reopening of a previous case.

2 If the previous case is re-
3 opened, it seems to me the pool rules are called into ques-
4 tion.

5 If the applicant wishes to have
6 two sections of that pool spaced differently, that's a non-
7 standard spacing unit case, which requires different adver-
8 tisement, requires notice to different individuals, and
9 whoever they are, they apparently have not gotten notice.

10 MR. BRUCE: Mr. Examiner, I
11 notice that the current notice rules of the OCD with regard
12 to special pool rules require notice to the well operators
13 in the sections. For the record, I did look at Sections 28
14 and 33 and at least for this formation I only noticed Amoco
15 as being the operator. I may have made a mistake there,
16 however.

17 MR. PEARCE: If I may once
18 again, Mr. Examiner, that's the sort of problem we have in
19 trying to figure out what kind of case we have here. The
20 rule which Mr. Bruce just referred to says that operators
21 and unleased mineral interest owners within the pool are to
22 receive notice of special pool rule changes, which is the
23 way I understand this case is to be carried forward.

24 MR. CATANACH: Let's go off the
25 record.

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(Thereupon a discussion was had off the record.)

MR. TAYLOR: We're goin to go ahead and hear the evidence today and based upon the alternatives available to the applicant in formulating his application, I guess after the hearing the applicant will have to determine what kind of notice should be given. It could either be -- and we're doing this mainly because of his out-of-town witness -- it could either be a case for a change in the pool rules, changing the spacing for the whole pool, or he could set up nonstandard proration units for the acreage he wants to affect, or I assume he could attempt to withdraw this acreage from the pool and have it declared a new pool.

And until we hear the evidence, I guess we won't really know what kind of notice he could give, but obviously you'll have to have your witnesses ready and willing to reappear should, after notice is given, people want to come in here and oppose the case other than the ones that are here today.

Is that agreeable?

MR. BRUCE: If it's acceptable, can we just put on our California witness today, Mr. Examiner?

1 MR. TAYLOR: Well, that's all
2 you want to do is put on one witness today and --

3 MR. BRUCE: Yes.

4 MR. CATANACH: That would be
5 acceptable, Mr. Bruce.

6 MR. TAYLOR: Is that agreeable
7 with you, Mr. Pearce?

8 MR. PEARCE: That's fine. I
9 don't feel like we're in the driver's seat.

10

11 VIRGINIA P. UHDEN,

12 being called as a witness and being duly sworn upon her
13 oath, testified as follows, to-wit:

14

15 DIRECT EXAMINATION

16 BY MR. BRUCE:

17 Q Would you please state your full name and
18 your address, please?

19 A My name is Virginia P. Uhdén. My address
20 is 4012 Via Opata, Palos Verdes Estates, California.

21 Q And are you one of the applicants in Case
22 Number 9129?

23 A Yes.

24 MR. BRUCE: Mr. Examiner, I am
25 not qualifying this witness as an expert.

1 Q Mrs. Udden, do you own fee royalty inter-
2 ests in Sections 28 and 33, Township 32 North, Range 10
3 West, San Juan County, within the Cedar Hill Fruitland Basal
4 Coal Pool?

5 A Yes.

6 Q I hand you Exhibit One-A, and ask you to
7 identify it, please.

8 A Exhibit One-A is a copy of Amoco's
9 Division order for the Kahn (sic) Gas -- Commission -- Well
10 in the northwest one-quarter of Section 33, dated November
11 10th, 1978.

12 I executed this Division order under
13 which I was entitled to one-half of well royalties or 6.25
14 percent of production. At the time only the northwest one-
15 quarter of Section 33 was dedicated to the well.

16 Q Are you aware that the OCD promulgated
17 special pool rules for the Cedar Hill Fruitland Pool, which
18 increased well spacing from 160 to 320 acres?

19 A Yes.

20 Q When did you first become aware of the
21 increased spacing?

22 A I became aware of the increase in spacing
23 in May of 1986.

24 Q I hand you Exhibit One-B and ask you to
25 describe how you became aware of the increase in spacing

1 unit size?

2 A Exhibit One-B is a second Division order
3 which I received from Amoco regarding the Kahn (sic) well.
4 Is it dated April 29th, 1986, and I received it shortly
5 thereafter.

6 My royalty entitlement on this Division
7 order was cut in half to 3.125 percent.

8 In May, 1986, I wrote to Amoco asking why
9 the well was respaced and was notified by Amoco that Order
10 No. R-7588 respaced this well.

11 Q Do you also own a royalty interest in the
12 Schneider Well in the southwest quarter of Section 28?

13 A Yes, and my royalty in that well was also
14 reduced from 6.25 to 3.125 percent, due to the Order No. R-
15 7588.

16 Q Had Amoco been paying royalties to you
17 until May, 1986, based on 160-acre spacing?

18 A Yes, and in August, 1986, I was told by
19 Amoco that I had been overpaid royalties and that I owed Am-
20 oco \$132,000. I have received no royalties from either the
21 Schneider or Kahn Wells since May, 1986, because Amoco is
22 retaining all payments as an offset.

23 Q Were you ever notified personally or by
24 mail of OCD Case No. 8014 in 1984 or of Case No. 8014-
25 Reopened in 1986?

1 A No.

2 MR. BRUCE: Mr. Examiner, at
3 this time I move the admission of Exhibits One-A and One-B.

4 MR. PEARCE: No objection.

5 MR. CATANACH: Exhibit One-A
6 and One-B will be admitted into evidence.

7 MR. BRUCE: I have no further
8 questions of this witness at this time.

9 MR. PEARCE: I have just a
10 couple, if I may, Mr. Examiner.

11 MR. CATANACH: You may.

12

13 CROSS EXAMINATION

14 BY MR. PEARCE:

15 Q Mrs. Uhden, I want to understand your
16 property ownership relation out there in these two sections
17 that we're talking about.

18 Do I understand correctly that you have
19 leased the mineral rights on those properties to someone?

20 A Amoco.

21 Q When did you enter into those leases with
22 Amoco?

23 A I inherited the property in 1973, I be-
24 lieve, and there were two existing leases at that time, and
25 then these two have been made out since, the two that are in

1 question.

2 Q When --

3 A Or leases are --

4 Q The Division order's that we discussed
5 earlier --

6 A Yes, Division, yes.

7 Q -- but those Division orders are under
8 the leases which had already been made before you got your
9 interest --

10 A That's right.

11 Q -- in the property.

12 A Uh-huh.

13 Q Is all of the interest which you inher-
14 ited in these properties covered by those leases with Amoco?

15 A Yes.

16 Q So the only remaining interest that you
17 have in these properties is the royalty which is granted by
18 those leases, is that correct?

19 A Uh-huh.

20 Q You -- am I correct that neither you nor
21 anyone in your family who owns an interest in those proper-
22 ties operates wells on those properties?

23 A No.

24 Q Just for the record, Mrs. Uhden, in pre-
25 paring for this case today, do you know if you or your at-

1 torney gave notice of your application to the other parties
2 who are reflected as owning some interest in these proper-
3 ties by the Division orders?

4 A Not that I know of. As we stated before,
5 we don't know who they are.

6 Q My specific question this time related to
7 individuals who are named on the two Division orders and as
8 I understand it, neither you nor your attorney, as far as
9 you know, provided notice to any party reflected on those
10 Division orders other than Amoco, is that correct?

11 That was a terrible question. I
12 apologize to you.

13 A Yeah, I lost you somewhere awhile ago.

14 Q On the Division orders reflected as
15 Exhibits One-A and One-B that we've been talking about here,
16 a number of other parties are named. An Albert Logan, a
17 Martha Logan, Helen Mills, Dorothy Mullens living trust,
18 with Dorothy H. Mullens as a trustee, Patricia Pitney, Leon
19 and Golden L. Stafford, Alda Wilde, and Bruce and Pearl
20 Wilkes as joint tenants, are reflected on Exhibit One-B as
21 owing an interest in the properties that we're discussing
22 here.

23 Do know if you or your attorney sent
24 notice to those individuals whose names you would know from
25 the Division order?

1 A I don't think they were notified.

2 Q Mrs. Uhden, have you read the lease which
3 your -- covering the property you inherited in 1973 to see
4 what the provisions of that lease are?

5 A Well, I have read it previously, not re-
6 cently, so I probably don't know -- couldn't answer your
7 questions on what it is.

8 MR. PEARCE: Mr. Examiner, I do
9 not have any further questions of this witness, and I'd like
10 to say for the record and for the benefit of Mrs. Uhden that
11 I -- it does not appear to me that it would be necessary for
12 her to return to Santa Fe, although I think it's a wonderful
13 place to come, --

14 A It is, yes.

15 MR. PEARCE: -- when we finally
16 hear this case. If -- unless you were coming to hear the
17 case, I don't think your attendance at the hearing will be
18 necessary when we hear it again.

19 If that changes in the interim
20 I will let your attorney know and if he doesn't hear from
21 me, you don't have to come because of me.

22 A I appreciate that.

23 MR. PEARCE: Yes, ma'am.

24 MR. CATANACH: Is that all we're
25 going to have for today?

 MR. BRUCE: That is all for to-

1 day until the case is readvertised.

2 MR. CATANACH: Mr. Bruce, for
3 the record can I get you to briefly state exactly what you
4 wanted to get from this application, or what the application
5 was for, for the record.

6 MR. BRUCE: Mr. Examiner,
7 first, the applicants are contending that since notice to
8 them of the original cases resulting in Orders R-7588 and R-
9 7588-A was only given by publication that notice was consti-
10 tutionally defficient and those orders are void as to the
11 applicants.

12 Secondly, they are contending
13 that because of the engineering natures of coal bed gas pro-
14 duction and also due to the current well placement and
15 drainage patterns in order to protect the rights of the par-
16 ties in Sections 28 and 33, those two sections should be de-
17 veloped on 160-acre spacing.

18 Now, if you'd care to charac-
19 terize that as nonstandard units or merely having those
20 areas revert to the previous 160-acre spacing, I can cer-
21 tainly get together with you later to --

22 MR. CATANACH: Okay, so that
23 basically sums it up, those two points.

24 Okay, I think we need to get
25 together and the case definitely needs to be readvertised

1 and additional notice probably is going to have to be given.

2 So -- Mr. Pearce?

3 MR. PEARCE: I apologize for
4 breaking in, Mr. Examiner.

5 I did want the record to
6 reflect one other thing.

7 I have been handed by
8 representatives of Amoco in attendance today a map which
9 purports to reflect rights in the Fruitland formation within
10 the Cedar Hill Fruitland Basal Coal Pool. It indicates in
11 addition some wells presently producing, some pressure
12 observation wells, at least one authorized location which
13 has not been drilled.

14 I have checked, Amoco has other
15 copies of this and we are going to give this to the
16 applicants at this time in the hope that it will help clear
17 up who needs to get notice no matter how we -- we finally
18 settle this case; so far as I know it reflects Amoco's
19 current knowledge of working interest ownership in the area.

20 I am not by giving this to
21 applicants at this hearing waiving any future objection
22 which I might have to some party not being notified who we
23 think should have received notice, because I'm not going on
24 record on at this point as certifying to the accuracy of
25 this document; however, without a specific land title search

1 at this time, I believe it's the best information we have
2 right now.

3 MR. BRUCE: Thank you, Mr.
4 Pearce.

5 MR. PEARCE: Yes, sir.

6 MR. CATANACH: Mr. Bruce, do
7 you think if we continue this case to July 1st that that
8 would be sufficient to allow you --

9 MR. BRUCE: Huh-uh.

10 MR. CATANACH: July 15th?

11 MR. PEARCE: Both of us, Mr.
12 Examiner, have shaken our heads and grunted no. I think we
13 may have a couple of discussions about the proper styling of
14 this case and then there's a question of preparing and giv-
15 ing twenty days notice. I think thirty days may cut it a
16 little too close.

17 MR. CATANACH: Okay, July 15th
18 or do you want to go for the second hearing in July?

19 MR. BRUCE: Preliminarily put
20 it for July 15th but if either Mr. Pearce or I have a prob-
21 lem, we will --

22 MR. CATANACH: Okay.

23 MR. TAYLOR: Obviously, the
24 whole import of this case is that a royalty owner who has
25 signed a lease has a right to notice and I think certainly

1 for this case to go forward much further, at the time of the
2 hearing you guys, or the attorneys, should be prepared to
3 either argue or brief the issue of whether a royalty owner
4 who signed a lease, and in particular maybe this lease, has
5 signed away rights to notice in these circumstances, or whe-
6 ther those -- whether this is not such an operating situa-
7 tion that they wouldn't have a right to come in and put on
8 their case, in any type, I suppose, of spacing proceeding,
9 and we don't need those before then, but I certainly think
10 that that's a predicate of going all the way with this case,
11 is that Jim would have to show that royalty owners have not
12 signed away those rights when they've leased and an operator
13 has taken over.

14 MR. CATANACH: Okay, is there
15 anything further in Case 9129 at the present time?

16 If not, it will be continued
17 and readvertised for the July 15th Hearing Examiner's hear-
18 ing. I'll leave the record open until then.

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(Hearing concluded.)

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C E R T I F I C A T E

I, SALLY W. BOYD, C.S.R., DO HEREBY CERTIFY the foregoing Transcript of Hearing before the Oil Conservation Division (Commission) was reported by me; that the said transcript is a full, true, and correct record prepared by me to the best of my ability.

Sally W. Boyd CSR

I do hereby certify that the foregoing is a true and correct copy of the original as recorded on June 3, 1969.
David R. Catanzano, Examiner
Oil Conservation Division