

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION
STATE LAND OFFICE BLDG.
SANTA FE, NEW MEXICO

25 May 1983

EXAMINER HEARING

IN THE MATTER OF:

Application of Basin Minerals, Inc.
for compulsory pooling, San Juan County,
New Mexico.

CASE
7883
~~7884~~
7885

BEFORE: Richard L. Stamets, Examiner

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the Oil Conservation
Division:

W. Perry Pearce, Esq.
Legal Counsel to the Division
State Land Office Bldg.
Santa Fe, New Mexico 87501

For the Applicant:

Ernest L. Padilla, Esq.
P. O. Box 2523
Santa Fe, New Mexico 87501

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A P P E A R A N C E S

For Barbara Witten,
Judy Zweiback, and
Myra Raffkind:

Andrew M. Ives, Jr., Esq.
RODEY, DICKASON, SLOAN, AKIN,
& ROBB
Post Office Box 1357
Santa Fe, New Mexico 87501.

I N D E X

WILLIAM J. MOUNTS

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2 MR. STAMETS: We'll call next Case
3 7883.

4 MR. PEARCE: That case is on the appli-
5 cation of Basin Minerals, Inc., for compulsory pooling, San
6 Juan County, New Mexico.

7 MR. PADILLA: Mr. Examiner, Ernest L.
8 Padilla on behalf of the applicant in this case.

9 We'd request that this case be consoli-
10 dated for purposes of testimony with 7884 and 7885.

11 MR. STAMETS: The call in those two
12 cases is identical. If there is no objection, they will be
13 consolidated.

14 MR. PADILLA: Mr. Examiner, I have one
15 witness to be sworn.

16 MR. PEARCE: Are there other appearances
17 in this matter?

18 MR. IVES: Yes, Mr. Examiner. Andrew
19 Ives of the Rodey Firm for Barbara Ann Witten, Judy Zweiback,
20 and Myra Raffkind.

21 MR. PEARCE: Mr. Ives, your appearance
22 is being entered in each of the three consolidated cases, is
23 that correct?

24 MR. IVES: That's correct.

25 MR. PEARCE: Thank you.

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2 MR. PADILLA: Has the witness be sworn?

3 MR. PEARCE: No, he has not. Would you
4 rise, please, sir?

5
6 (Witness sworn.)

7
8 WILLIAM J. MOUNTS,

9 being called as a witness and being duly sworn upon his oath,
10 testified as follows, to-wit:

11
12 DIRECT EXAMINATION

13 BY MR. PADILLA:

14 Q. Mr. Mounts, for the record would you please
15 state your name?

16 A. I'm William J. Mounts.

17 Q. And where do you reside?

18 A. I live in El Paso, Texas.

19 Q. What is your connection with Basin Minerals,
20 Inc.?

21 A. I'm an officer, director, and principal
22 stockholder.

23 Q. Mr. Mounts, have you previously testified
24 before the Oil Conservation Division and had your credentials
25 accepted as a matter of record?

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A. No, I have not.

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Q. Would you please give us your educational background?

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A. I graduated from high school from McLean, Texas, in 1947, I believe. I went to New Mexico State University from 1948 to 1952 and graduated with a Bachelor of Science degree. Then I went to the University of Texas law school in 1954 through 1957. I graduated in 1957 from the University of Texas law school.

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14

I became licensed to practice law in the State of Texas, actually in 1956 before I graduated from law school, and I was admitted to practice law in the State of New Mexico in October of 1957.

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Q. And you've been practicing law since that time?

17

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19

A. Yes, I have.

MR. PADILLA: Mr. Examiner, are the witness' qualifications acceptable for testimony as a --

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23

MR. STAMETS: Certainly. We always permit those people who are owners to testify in their own behalf in any case, as long as they don't start testifying about things they don't know anything about.

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Q. Mr. Mounts, are you familiar with the title to the west half of Section 27, Township 31 North, Range 11

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West, San Juan County?

A Yes, I am.

Q Can you tell us what the purpose of the hearing is today?

A Basically we want to drill some wells there in the Pictured Cliffs formation, on 160-acre spacing, and a Mesaverde well on 320-acre spacing.

That three -- well, the 160 acres, the southwest quarter is made up of 120 acres of a Federal lease, 40 acres of a fee lease.

In the northwest quarter the 160-acre Pictured Cliffs Unit is made up of 80 acres of a Federal lease and 80 acres of a fee lease.

The 320-acre spacing unit for Mesaverde is made up of 200 acres of a Federal lease and 120 acres of a fee lease.

Q Mr. Mounts, let me show you what has been marked as Exhibit Number One and ask you to identify that and tell us what it contains.

A This is a letter dated May 11th, 1983, to the royalty owners under the fee lease in the west half of Section 27, advising them of the hearing to be held today.

Q And those royalty owners who have not consented, are they listed in that letter?

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A Yes, they are.

Q And there are some pages attached to that.
What are those?

A These are return receipts on certified mail and it appears that the royalty owners have received this notification on or about May 11, 1983. There's one dated May 13th; most of them were received on May 11th.

Q There is one in particular on the last page, Mr. Mounts. We don't have a return receipt on that, for that particular interest owner. What has your experience been in connection with attempting to notify this person?

A Well, I contacted, or attempted to contact all of these people, all the royalty owners back in the later part of January and the early part of February of this year, and I tried to get hold of Mr. Mizel. In El Paso I'm a private attorney but I represent El Paso Natural Gas Company and who buys a lot of production up in the San Juan Basin and they have several wells that involve these people.

So I got them to give me the names and addresses of where they were mailing the checks to the people and so I notified all of them by mail, including Mr. Mizel, but I haven't heard from him.

Q Mr. Mounts, let me show you what we have marked as Exhibit Number Two. Can you tell us what that is

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and what it contains?

A. Yes. Exhibit Number Two is composed of two instruments. One is an oil and gas lease from Saul Yeager and wife, Miriam Yeager, dated September 1, 1948, recorded in Book 135, page 86 of the Deed Records, San Juan County, New Mexico, which covers 160 acres, 120 acres of which is in the west half of Section 27 and 40 acres of which is in the east half of Section 27.

The next instrument is an assignment from the lessee of that oil and gas lease to a Mr. Pettigrew, dated September 24, 1948.

Q Does that oil and gas lease on this exhibit overlap into the southwest quarter and the northwest --

A. Yes.

Q -- quarter of Section 27?

A. The lease covers, among other lands, the south half of the northwest quarter of Section 27 and the northeast quarter of the southwest quarter of Section 27, plus the northwest quarter of the southeast quarter of Section 27.

Q Mr. Mounts, I'm going to hand you now what has been marked as Exhibits Number Three, Four, and Five, and have you tell us what they are.

A. Exhibit Number Three is an assignment from

1
2 Mr. Pettigrew and his wife of this oil and gas lease, the
3 Yeager lease, to Delhi Oil Corporation, dated August 8th,
4 1953.

5 The next exhibit, Number Four, I guess, is
6 an assignment of that oil and gas lease from Delhi Oil Corpor-
7 ation to El Paso Natural Gas Company, dated March 1, 1952,
8 and the last exhibit is an assignment of that particular lease
9 insofar as it covers the 120 acres in Section 27, or in the
10 west half of Section 27, to Basin Minerals, Inc., from El
11 Paso Natural Gas Company, dated May 23, 1983.

12 Q Let me hand you now what we have marked as
13 Exhibit Number Six and have you identify that for the Examiner.

14 A Exhibit Number Six is an instrument that I
15 drew and it is an amendment to this base lease. The base
16 lease did not have a pooling provision and so I prepared an
17 amendment to the base lease to include a pooling provision
18 so that I could combine the northeast quarter of the south-
19 west quarter with the rest of the southwest quarter for a
20 Pictured Cliffs Unit; the south half of the northwest quarter
21 with the rest of the northwest quarter for another Pictured
22 Cliffs, and the entire 120 acres for a Mesaverde well in the
23 west half of Section 27.

24 Q Did you submit this proposed amendment to
25 the royalty owners that you have mentioned --

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A. Yes, I did, each one of them at the addresses furnished to me by El Paso Natural Gas Company, which are the addresses that El Paso used to mail their checks.

Q. Did -- when did you submit or propose this agreement to the royalty owners?

A. The best of my recollection it was in the latter part of January somewhere to the middle part of February of this year. I know that it was one of the things I had to do before I went on a trip and I went on the trip in about the middle of February, so I know I sent that before I went on the trip.

Q. You've alluded to other attempts and other communications with the royalty owners, but can you amplify on that as to what other attempts you've made to --

A. All right.

Q. -- reach an agreement with the royalty owners?

A. All right, I got back from my trip and I hadn't had any response from any of the royalty owners, so I decided I'd try to reach them by phone and I had my secretary in my office try to get the phone number for each one of these people, and without fail, except for one person, they were all unlisted, and it happened I was able to get the phone number of the lady in Amarillo, Mrs. Raffkind, and

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I called there and she was no longer living there but I got hold of her husband and he wouldn't tell me where she was but he did tell me where I could locate her attorney, who is a Mr. David Fest (sic) out of Tulsa, and that's how I got to amplify on my communications with these royalty owners. I got hold of Mr. Fest, talked to him, he represented Mrs. Zweiback and Mrs. Raffkind and then he gave me the phone number for Mr. Witten in New York. Mr. Witten is also an attorney in New York.

And so I've had some communication with those people in that fashion. And I tried to persuade them to sign this amendment to the pooling agreement so I can pool that royalty and drill a well.

Q When was your last communication with these royalty owners?

A Well, as late as Friday, Mry 20, I had a rather lengthy telephone conversation with Mr. Witten and he called me from New York to discuss this matter; approximately an hour.

Q Have you proposed any changes to the royalty under the oil and gas lease to the base royalty?

A Have I proposed?

Q Yes.

A Yes, I've talked to them and I told them if

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2 they would -- if they would sign that amendment and let me
3 avoid the compulsory pooling thing, that I would be willing
4 to increase that royalty from 1/8th to 1/4th.

5 Q What is your timetable for drilling each of
6 the proration units under consideration today?

7 A Well, I want to drill the -- or Basin Miner-
8 al, why I say "I", I mean Basin Mineral, Incorporated, Basin
9 would like to drill a Pictured Cliffs well in the southwest
10 quarter within the next two weeks, if possible, and then de-
11 pending upon the results of that well, or or about -- between
12 now and the first of the year we'd like to drill the other
13 Pictured Cliffs well.

14 Within 120 days, or so, I'd like to be able
15 to drill the Mesaverde well.

16 Q So you would like an order for -- of the
17 Commission to allow you sufficient time to -- to commence the
18 respective wells so that --

19 A I would like to have a look and only have
20 one well goind at a time.

21 Q But the southwest quarter well would be
22 first and then the --

23 A That would be the first one. We've got --
24 already got all of the environmental clearance and I believe
25 everything we need as a condition preceding to commencing

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2 drilling operations for the Pictured Cliffs well in the
3 southwest quarter. We've got archeological clearance. We've
4 got the clearance from the Environmental Protective Agency.
5 We've filed, I assume, all of the data. Mr. Red Walsh of
6 Farmington is handling that for me and he tells me that when
7 I sent him the designation of operator from Tenneco and Conoco
8 that was the last thing I needed to furnish.

9 Q Even though you're not pooling any of the
10 working interest in the west half or under any of the pro-
11 posed proration units, can you tell us approximately what the
12 cost is going to be for drilling each of the wells?

13 A Well, I anticipate the Pictured Cliffs well
14 will run approximately \$100,000 and a Mesaverde well will run
15 approximately \$350,000, but these are pretty rough guesses.

16 Q Basin Minerals desires to be the operator
17 of the wells?

18 A Yes.

19 Q And named operator under this --

20 A Yes.

21 Q -- order? Mr. Mounts, would approval of
22 this application be in the best interest of conservation, the
23 protection of correlative rights, and --

24 A In my opinion it would be. There's no need
25 for drilling any additional wells up there. The two Pictured

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2 Cliffs wells and one or two Mesaverde wells will be adequate.
3 There's no reason for additional wells that I can see.

4 MR. PADILLA: Mr. Examiner, we offer
5 Exhibits One through Six and we pass the witness at this
6 point.

7 MR. STAMETS: Exhibits One through Six
8 will be admitted.

9
10 CROSS EXAMINATION

11 BY MR. STAMETS:

12 Q I'd like to clarify a couple of things be-
13 fore we let Mr. Ives have a turn.

14 I would assume, now, that you are only
15 pooling these royalties. The mineral interests are not --
16 the working interests are not being pooled.

17 A That's true.

18 Q And when you talked to those parties you're
19 attempting to pool here today, I think you talked to two of
20 them, were you able to ascertain that the addresses that El
21 Paso had given you were correct?

22 A Theirs were correct, yes.

23 I've not been able to communicate at all
24 with the Mizel. As far as I know, I'm sending them to the
25 correct address.

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Q Okay.

A And I did ask the other people that I contacted but they advised me that they were not in communication with Mizel.

Q And you in fact do have a lease on this acreage that's being pooled but it just not have a pooling clause --

A Does not have a pooling clause.

Q All right.

MR. STAMETS: Mr. Ives, do you have any questions?

MR. IVES: Yes.

CROSS EXAMINATION

BY MR. IVES:

Q Mr. Mounts, do I understand that Basin has holds the Federal lease?

A Yes, on the 200 acres, the remaining 200 acres in the west half of Section 27.

Q Okay. Was that presented as an exhibit or no?

A It wasn't.

Q Okay, I just wondered if I'd missed something, because I hadn't seen that interest. Mr. Mounts, at

1
2 the time this case was advertised for hearing Basin did not
3 own this oil and gas lease for the private lands.

4 A Well, really --

5 Q Is that correct?

6 A No, that's not precisely correct. We did
7 own it. It's a -- if you want to get into the title, it's a
8 very lengthy, cumbersome, as you know. The record title was
9 in El Paso Natural Gas Company and the other title's in Kenneth
10 Murchison and his heirs. Basin had assignments from the Mur -
11 chison heirs. They own the -- they actually own the operating
12 rights for, well, for a year, not quite a year, and we did
13 get the -- the record title is in El Paso Natural Gas Company
14 but El Paso has always agreed that they'd assign the lease to
15 me whenever I wanted them to.

16 Q Right, but, in fact, Basin didn't hold title
17 by virtue of an assignment till day before yesterday.

18 A Well, we have assignment from the Murchison
19 people that actually own it, yes, we did. I've got quit
20 claims from El Paso to indicate that they weren't claiming
21 any interest in it, although if you just look at the abstract
22 it would appear that El Paso owned the -- the lease; however,
23 El Paso didn't claim the lease is why they were willing to
24 assign it to me.

25 Q Well, as you know, Mr. Mounts, from our

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2 discussions prior to this hearing today, that the folks I
3 represent are concerned about this state of the title and we--
4 while I understand that the Hearing Examiner is not interested
5 in exploring the state of the title, you didn't offer to
6 deliver to me a copy of the lease until it was provided as an
7 exhibit here during the course of the hearing, and in fact,
8 the copy of the lease which I had obtained from the records
9 of San Juan County indicated that there was a dispute as to
10 which section was involved, is that accurate?

11 A. That's accurate, although I did tell you I
12 had the original lease and I had the precise, exact footage
13 description.

14 Q. Right, but you declined to furnish me a
15 copy of it when I asked.

16 A. I don't remember. I gave you lots of -- I
17 gave you Division orders. I thought I'd given you that. If
18 I didn't, I'm sorry. It's of record.

19 Q. Mr. Mounts, I don't mean to argue with you,
20 but I asked you, did I not, if I could have copies of the
21 Division orders and you declined to give me those?

22 A. Well, I -- I showed them to you. I didn't
23 give them to you but I did show them to you.

24 Q. And, Mr. Mounts, I also stated on behalf of
25 Myrna Raffkind and Judy Zweiback to you, did I not, that they

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2 were willing to accept an offer with respect to the royalty
3 interest as you represented to the Hearing Examiner?

4 A Well, I don't remember them saying that --
5 I don't remember you telling me they were accepted and I know
6 their attorney never told me. He told me what he wanted but
7 that he wouldn't accept it unless the Wittens also accepted
8 it, and didn't ever get the Wittens to tell me what they
9 wanted, except they wanted more than what I was offering.

10 Q I understand, but was it not your stated
11 position that you only wanted to deal with all and not part
12 of the royalty owners?

13 A Well, it was the position they made to me,
14 your client, the Raffkinds and Zweiback, that they weren't
15 going to do anything, or make any type of agreement that was
16 not acceptable to the Wittens. That's why I went to the
17 Wittens.

18 MR. IVES: No further questions.

19 MR. STAMETS: Any other questions of
20 the witness?

21 MR. PADILLA: Yes, sir. I have one
22 other questions.

23 MR. STAMETS: Mr. Padilla.
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REDIRECT EXAMINATION

BY MR. PADILLA:

Q Mr. Mounts, you did have the operating rights, although not record title to the fee lease for quite some time already, haven't you?

A Yes, for not quite a year, but I've had the assignments from the Murchison heirs, the Mudge people, and the Group.

Q By virtue of those assignments you could have drilled that well during -- since the time of those assignments.

A Yes. As soon as I got the designation of operator from Tenneco and Conoco, that's the only thing. It wasn't because they wouldn't give it to me, just they didn't get around to it.

MR. PADILLA: I have nothing further, Mr. Examiner.

MR. STAMETS: If there is nothing further, any statements?

MR. IVES: Yes, Mr. Examiner. In light of the fact that the title, record title was not transferred until day before yesterday and the matter was not -- this property was not in the ownership of Basin Minerals at the time it was advertised, I would ask that the -- and for the

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2 other reasons that were apparent from the testimony of Mr.
3 Mounts, that the case be dismissed without prejudice by
4 reason of the fact that negotiations did not (inaudible).

5 MR. STAMETS: Mr. Mounts, let me ask
6 you a couple of questions.

7 Who has the lease on the north half of
8 the northwest quarter?

9 A. Well, that is a Federal lease and that's
10 Basin Minerals has the operating rights. The lessee of --
11 lessees of record are Tenneco and Conoco, but the operating
12 rights are owned by Basin Minerals, Inc.

13 MR. STAMETS: When did you get those?
14 When did Basin get those?

15 A. I don't know. Hasn't been too long; hasn't
16 been too long. It was not, you know --

17 MR. STAMETS: In the last two days or
18 when --

19 A. No, yeah, it's -- the designation of oper-
20 ator is what I really needed. The leasehold -- the operating
21 rights I got when I got the fees from the Murchison heirs,
22 the Mimms, so I've had the operating rights for a year. I got
23 the designation of operator from Tenneco and Conoco, oh, --

24 MR. STAMETS: How did you acquire the
25 operating rights?

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2 A Well, this particular lease, and some others,
3 were subject to a farm out agreement back in 1951 between E.
4 W. Mudge and Delhi Oil Company.

5 The Delhi-Mudge agreement provided that
6 there were six half sections of maybe 50,000 acres involved in
7 the deal, but that Mudge could have the -- retain the oper-
8 ating rights to these six half sections and that he could go
9 in and earn these sections by drilling Mesaverde wells on
10 them.

11 He went in and he drilled on five of them
12 but he didn't drill on this one and he kept getting extensions
13 and extensions and finally they just said, well, you go up
14 there and one of these days you drill a Pictured Cliffs well
15 up there and you'll earn the operating rights, or the oper-
16 ating rights are yours.

17 And so about two years ago I started getting
18 these interests. In the meantime Murchison died; I went to
19 his heirs. He had peddled part of this to a fellow by the
20 name of Mimms, and an E. W. Mudge had a piece of the interest,
21 and I went to all of those people and I -- I've got assign-
22 ments of their operating rights back in, well, the earliest
23 one was May of 1957 and the latest one was probably January
24 of this year -- not '57, I'm sorry, of -- May of '82 -- and
25 the last one was probably in January of '83, but since January,

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2 of 1983 I have had the operating rights, or Basin Mineral has
3 had the operating rights, has the right to drill.

4 MR. STAMETS: What about the south --
5 remainder of the southwest quarter?

6 A. Well, we got the whole thing at the same
7 time, you see, Murchison was entitled to the entire west half,
8 which was composed of 200 acres in a Federal lease and 120
9 acres in a fee lease.

10 Well, the assignments included both of them.
11 And I've had them --

12 MR. STAMETS: Mr. Ives, I believe that
13 the applicant had -- had what was necessary to file this ap-
14 plication with the Division at the time of filing, and so I
15 will overrule your motion.

16 Now, did you have a statement or was
17 that it?

18 MR. IVES: Well, that point aside, I --
19 I think in terms of the issue of negotiating in good faith,
20 the question then is whether the reluctance to deliver docu-
21 ments until the time of hearing to show the basis upon which
22 negotiations are to occur raises a good faith issue, and it's
23 my understanding that good faith means that the individual
24 negotiating the royalty with the holder of the private lease
25 here is under some duty to demonstrate his good faith and I

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2 Think in the absence of the delivery of these documents until
3 just now, that we've not had an opportunity to negotiate on
4 an arms length basis, and I think we could arrive at some
5 resolution, but having not had the benefit of the underlying
6 documents until just now, we've been at somewhat of a loss
7 insofar as our negotiating position is concerned.

8 MR. STAMETS: Well, let me suggest that
9 the parties negotiate subsequent to today's hearing, knowing
10 full well that if they can reach some sort of a voluntary
11 agreement, things will move along much more speedily than if
12 the Examiner has to decide these cases as a part of an exten-
13 sive docket such as we've had here today, and provide that
14 impetus for both parties to negotiate in good faith this
15 afternoon and see if they can't get something signed and tell
16 me that you'd like three dismissals in this case, these cases.

17 If there is nothing further, these
18 cases will be taken under advisement.

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20 (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 that the foregoing Transcript of Hearing before the Oil Conservation Division was reported by me; that the said transcript is a full, true, and correct record of the hearing, prepared by me to the best of my ability.

Sally W. Boyd CSR

I do hereby certify that the foregoing is a complete record of the proceedings in the Examiner hearing of Case No. _____, heard by me on _____ 19____.

_____, Examiner
Oil Conservation Division

SALLY W. BOYD, C.S.R.

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