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February 19, 1988

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FEB 22 1988

OIL CONSERVATION DIVISION

Mr. David Catanach
Oil Conservation Division
State Land Office Building
Santa Fe, New Mexico 87501

Re: New Mexico Oil Conservation Division Case 9129:
Application of Virginia P. Uhden, Helen Orbesen and
Carroll O. Holmberg to Vacate Order Nos. R-7588 and
R-7588-A, and to Establish Eight Non-Standard
Spacing and Proration Units, San Juan County,
New Mexico

Dear David:

Enclosed for your consideration is the Memorandum of William P. Carr, et al. and C & E Operators, Inc. discussing the due process claim in the above-referenced case. Also, enclosed for your consideration is a proposed Order.

If you need anything further from us to proceed with on your decision in this matter, please advise.

Very truly yours,



William F. Carr
WFC:mlh

Enclosures

cc w/enc.: M. W. Carr
C & E Operators, Inc.
4849 Greenville Avenue, Suite 1100
Dallas, Texas 75206

BEFORE THE
OIL CONSERVATION COMMISSION
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

RECEIVED
JUL 25 1984

OIL CONSERVATION DIVISION

APPLICATION OF VIRGINIA P. UHLEN, HELEN
ORBESEN AND CARROLL O. HOLMBERG TO
VACATE ORDER NOS. R-7588 and R-7588-A,
AND/OR THE FORMATION OF SIX 160-ACRE
GAS PRORATION UNITS,
SAN JUAN COUNTY, NEW MEXICO.

CASE NO. 9129

MEMORANDUM OF WILLIAM P. CARR, et al.,
AND C & E OPERATORS, INC.

Virginia P. Uhden, Helen Orbesen and Carroll O. Holmberg (hereinafter called "the Uhdens") are mineral interest owners in the Cedar Hill-Fruitland Basal Coal Pool who leased their interests to Amoco Production Company for the development of the hydrocarbons thereunder. In 1984 Amoco filed an application with the New Mexico Oil Conservation Division seeking the promulgation of Special Pool Rules for the pool including 320-acre spacing or proration units.

William P. Carr, et al., and C & E Operators, Inc. (hereinafter referred to as "C & E") are working interest owners in this pool. Certain of C & E's working interest is dedicated to two wells which are operated by Amoco. C & E has paid its share of the development and production costs associated with these wells. Should the Division change the spacing rules or create the non-standard proration units requested by applicants, C & E will

have its acreage removed from the proration units dedicated to the Amoco operated wells and will have to either drill to protect itself or be drained.

By Order Nos. R-7588 and R-7588-A the Division established Special Pool Rules for the Cedar Hill-Fruitland Basal Coal Pool which included provisions for 320-acre well spacing. Notice of the hearings which resulted in these Orders was provided by publication in accordance with Division rules.¹

In this case the Uhdens challenge these Orders on the ground that their constitutional right to due process of law was denied for they did not receive notice of the original hearings and therefore did not appear in opposition to the proposed spacing rules for this pool.

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The rules of the Division in effect at the time of the original 1984 hearings provided for notice by publication, one time, in a newspaper in the County where the property is located. These notice rules were amended in 1985 to provide that in cases involving pool rules, actual notice must be given by regular mail, to all operators of wells and each unleased mineral interest owner within the pool boundaries and to all operators of wells within one-mile of such boundaries. See, Division Rule 1207(a)4. At no time have the Division rules required notice to lessors, for they have, by their lease agreement, given their lessee the right to and responsibility for development of their lands. Royalty interest owners do not look to the Oil Conservation Division or applicants for notice of hearings, but rely on their lessee to carry out their responsibilities under their individual lease agreements.

Furthermore, for the Division to conclude that the Uhdens have a right to notice of the original application for 320-acres spacing would require it to also conclude that all Royalty Interest owners in this pool should have received notice of Uhdens application in this case. Neither ruling would, of course, be correct.

The essence of procedural due process is that the parties be given notice and an opportunity for hearing. Jones v. Nuclear Pharmacy, Inc., 714 F.2d 322 (10th Cir. 1984) this notice must be reasonable and the party must have an opportunity to be heard and present any claim or defense. McCoy v. New Mexico Real Estate Commission, 614 P.2d 14, 94 N.M. 602 (1980).

In this case the Uhdens complain that their due process rights have been violated. Their complaints are raised, however, at a hearing in which they have been afforded an opportunity to appear in opposition to the 320-acre spacing for the lands in which they have interests in the Cedar Hill-Fruitland Basal Coal Pool. Having been afforded a full and complete opportunity to present their case, they cannot now be heard to complain of the violation of their constitutional due process rights and the Division should proceed to enter its Order based on the evidence presented.

The record in this case consists of the records in Cases 8014, 8014 (reopened) and 9428 which were incorporated into these de novo proceedings. The record in this case clearly supports 320-acre spacing for this pool for even the Uhdens expert geological witness, Stephen Pearlman, admitted on cross-examination that 320-acre spacing may ultimately be the appropriate spacing pattern for this pool. Furthermore, he admitted that development on 160-acre spacing could result in the drilling of unnecessary wells thereby causing waste.

On this record, the Division can only carry out its statutory duty to prevent waste and protect correlative rights by denying in total this application.

Respectfully submitted,

CAMPBELL & BLACK, P.A.

By: *W. F. Carr*
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Dallas, Texas 75206

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the foregoing pleading to be mailed to James G. Bruce, Post Office Box 2068, Santa Fe, New Mexico 87504 on this 25th day of July, 1988.

W. F. Carr
William F. Carr