Amoco Production Company
Denver Region
1670 Broadway
P.O. Box 800
Denver, Colorado 80201
303-830-4040

Kent J. Lund
Attorney

July 27, 1988

Via Federal Express

Mr. William J. Lemay
Director
Oil Conservation Commission
State Land Office Building
Old Santa Fe Trail
P.O. Box 2088
Santa Fe, New Mexico 87504-2088

RE: Case No. 9129 (De Novo), Application of Uhden, et al

Dear Mr. Lemay:

Pursuant to your Order at the end of the July 14, 1988, hearing in this case, enclosed is Amoco's Brief for your consideration in this case.

We respectfully urge that the Application be denied, and we appreciate your consideration of the matters set forth in our Brief.

Sincerely,

Kent J. Lund

KLJ:meb

Encl.

cc: James G. Bruce, Esq.
William F. Carr, Esq.
W. Thomas Kellahin, Esq.

BEFORE THE NEW MEXICO OIL CONSERVATION COMMISSION

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

No. 9129 (DE NOVO)

BRIEF OF AMOCO PRODUCTION COMPANY

Pursuant to the Director's Order at the conclusion of the July 14, 1988, hearing in this de novo case, Amoco Production Company ("Amoco"), by its attorney, respectfully submits the following Brief:

I. FACTS AND PROCEDURAL BACKGROUND

To shorten this Brief, Amoco incorporates by reference the Brief in this case which it filed with the Examiner on February 16, 1988. A copy of that Brief is attached as Exhibit "A" and is incorporated in its entirety by this reference.

In addition to the factual matters set forth in Exhibit "A", two additional significant developments have occurred since the January 20, 1988, hearing before the Examiner. First, a transcript of the January 20 hearing has been prepared so that specific references to that hearing may be made in this Brief. Second, the New Mexico Oil Conservation Division heard extensive testimony in Farmington, New Mexico, on July 6, 1988, in case numbers 9420 and 9421, with respect to specific regulatory needs (the prevention of waste and the protection of correlative rights) for the production of coalbed methane gas in New Mexico. Both of these developments will be discussed below.

Initially, it must be noted that the complete records of the proceedings before the Examiner in case number 9129, and the complete records in case numbers 8014, 8014 (reopened), 9420 and 9421, have been incorporated by reference for purposes of this case by agreement of all counsel. In the January 20, 1988, hearing before the Examiner in case number 9129, the applicants presented the testimony of Stephen H. Perlman, a geologist retained by the applicants for purposes of this case. Several aspects of Mr. Perlman's testimony are important for consideration by the Commission in this de novo case.

The principal issue now before this Commisssion is whether the Cedar Hill Fruitland Basal Coal Gas Pool in San Juan County (subsequently referred to as the "Cedar Hill area" or "Cedar Hill pool"), a coalbed methane gas pool, should be developed on 320 acre spacing or 160 acre spacing. Although applicants have raised certain constitutional arguments with respect to notice, Amoco's previously submitted Brief (Exhibit "A") demonstrates that such arguments are patently without any factual or legal merit and, in any event, are not matters within the jurisdiction of this Commission. The applicants illogically and without technical support contend that all or part of only two sections within the Cedar Hill pool (Section 33 and Section 28, Township 32 N, Range 10 West, San Juan County, New Mexico) should be developed on 160 acre proration units. Amoco and the other parties who opposed this application (C & E Operations, Inc., W. P. Carr, other Carr family members and Meridian Oil Company) maintain that the proper spacing in the Cedar Hill area is 320 acre proration units, and that 320 acre spacing is required by the technical evidence and N.M.Stat.Ann. Section 70-2-17(B).

Mr. Perlman testified in the January Examiner hearing for the applicants, among other things, that even he agreed that 320 acre spacing may well be "ultimately" appropriate within the Cedar Hill area. Tr. of the January 20, 1988, Examiner hearing in Case No. 9129 at 21, 32-33, 41-42 (this transcript shall be referred to in this Brief as "Tr. at ___."). However, he could not conclude at that time that 320 acre spacing in the Cedar Hill pool was necessarily inappropriate. As the basis for his uncertainty, Mr. Perlman relied exclusively on certain traditional volumetric engineering calculations with respect to drainage which were presented by an Amoco engineer, Mr. Chuck Boyce, in a January 18, 1984, hearing in Case No. 8014. Tr. at 22, 24-25, 32. Indeed, Mr. Perlman admitted that he relied solely on Mr. Boyce's volumetric calculations with respect to drainage in reaching his conclusion that it might be appropriate to develop the area on 160 acre spacing. Tr. at 36-37. It should be noted that Mr. Perlman, a geologist and not an engineer, is incompetent to render any opinions on engineering matters such as drainage analyses in the Cedar Hill pool.

In any event, and significantly, Mr. Perlman admitted that there was a pressure response between two Cedar Hill 160 acre offset wells within a short time period. Tr. at 29-31. Mr. Perlman further testified that there was no pressure response between two Cedar Hill 640 acre offset wells in four years of production. Tr. at 31-32. Moreover, the applicants' Amended Application expressly admits that the first wells drilled in the Cedar Hill pool, which were developed on 160 acre spacing, "were in communication."

Mr. Perlman again flatly admitted, subsequently in the January hearing, that there was pressure interference or communication on 160 acre spacing, but there was no pressure response on 640 acre spacing. Tr. at 38, 42. Furthermore, Mr. Perlman testified that there are no geologic differences or anomalies in Sections 28 and 33 as opposed to the reservoir underlying the rest of the Cedar Hill area. Tr. at 42-43. Therefore, there is absolutely no technical basis to single out those two Sections in the Cedar Hill pool for special consideration or treatment. Finally, Mr. Perlman also testified that the wells he studied may very well be draining reserves from properties other than just the 160 acre area around each of those wells. Tr. at 47.

In summary, the applicants' own Amended Application and evidence (Mr. Perlman's January 20, 1988, testimony) reaffirmed the previous findings by the New Mexico Oil Conservation Division that 320 acre spacing is appropriate and, indeed, is mandated in the Cedar Hill area. Mr. Perlman admitted that there was pressure communication and interference between 160 acre offsets and that there was no such pressure communication and interference between 640 acre offsets. The sole basis of his testimony was that he believed certain traditional volumetric engineering testimony with respect to drainage presented by an Amoco engineer in 1984 indicated that the Cahn Well in the Cedar Hill pool (the discovery well) had already recovered all of the reserves estimated at that time to ultimately be recovered by that well. The critically important point is that Mr. Perlman was in basic agreement that the hard technical evidence, the production and interference evidence, demonstrated that 320 acre spacing is required in this area.

Based on Mr. Perlman's testimony, the parties in opposition to the Application at the January 20, 1988, hearing elected to stand on the prior hearing records in Case numbers 8014 and 8014 (reopened), and elected not to present additional technical evidence. Since that time, however, the New Mexico Oil Conservation Division heard testimony in case numbers 9420 and 9421 on July 6, 1988, in Farmington, concerning the recommendations of the Fruitland Coalbed Methane Committee, which included recommendations for special rules (including 320 acre spacing), regulations and operating procedures for the coalbed methane area in New Mexico and Colorado. The applicants' own witness, Mr. Perlman, testifed in the January 20, 1988, Examiner hearing that the conclusions of this Committee "will help define what should be the spacing" for the development of these coalbed methane gas reserves. Tr. at 33.

The Fruitland Coalbed Methane Committee was formed at the request of the New Mexico and Colorado oil and gas conservation agencies as a two-state committee to consider how the vast coalbed methane gas reserves should be developed in Colorado and New Mexico. In particular, those state agencies were committed to developing those resources pursuant to their statutory mandates of preventing waste and protecting correlative rights. The Committee consisted of numerous industry representatives, major lessors such as the BLM and the Southern Ute Indian Tribe, and members of the staffs of both the New Mexico Oil Conservation Division and the Colorado Oil and Gas Conservation Commission. Significantly, the Committee, in its recommendations to both the Colorado and New Mexico Oil and Gas Conservation agencies, recommended that the coalbed methane gas reserves be developed on 320 acre spacing. The

primary basis for the recommendation of 320 acre spacing was the hard technical data collected in the Cedar Hill area. During the July 6, 1988, hearing in Farmington, Amoco petroleum engineer and proration/unitization expert Mr. C. Alan Wood presented extensive testimony on the issue of spacing of coal seams and concluded that 320 acre spacing was required for the development of the coalbed methane resources. Mr. Wood further testifed that: (1) traditional volumetic engineering calculations as they pertain to drainage (such as those exclusively relied on by Mr. Perlman) are not particularly applicable in the study of appropriate spacing for coalbed methane gas production; (2) the best technical evidence available to date concerning the proper spacing in developing the coalbed methane gas reserves is the Cedar Hill production and interference data which demonstrated that 320 acre spacing is required; (3) that Cedar Hill evidence is the only definitive technical evidence available concerning proper spacing; and (4) to avoid the drilling of numerous unnecessary wells, which constitutes waste, it is preferable to initially start on a larger spacing pattern and later infill if infill drilling is technically warranted. Other participants in that hearing on behalf of the Committee agreed with Mr. Woods analysis. See, in particular, the testimony and exhibits of Meridian Oil Company reservoir engineer John Caldwell. The records in case numbers in 9420 and 9421 have been incorporated by reference into this proceeding. Therefore, Amoco respectfully directs this Commission's attention to the spacing evidence in those cases, and particularly to: (1) the testimony of Mr. Wood; and (2) Amoco exhibits 1 through 5 which Mr. Wood sponsored and which were admitted into evidence during that hearing.

In short, the evidence which has been presented concerning spacing in the Cedar Hill area, as well as the spacing in all New Mexico/Colorado coalbed methane areas, overwhelmingly demonstrates that 320 acre spacing is required. Interested parties may always examine the technical evidence applicable to any particular coal seam area to determine whether development on a smaller spacing pattern is warranted. Indeed, the Fruitland Coalbed Methane Committee agreed that technical evidence derived from an area may justify one additional well in a 320 acre proration unit, but that Committee concluded -- after careful technical (not pocketbook) analysis -- that the coalbed methane gas reserves should be initially developed on 320 acre spacing. That conclusion was, in large part, based on hard, undisputed Cedar Hill technical evidence, and this Commission should likewise conclude that 320 acre spacing is appropriate in the Cedar Hill area.

II. LEGAL ARGUMENTS

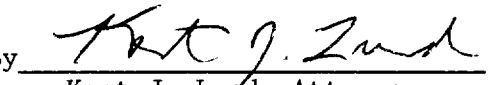
Amoco's legal arguments are fully set forth in its February 16, 1988, Brief which was filed with the Examiner in this case. That Brief has been incorporated by reference into, and is attached as Exhibit "A", to this Brief. Therefore, those arguments will not be repeated in this Brief. However, Amoco respectfully reserves the right in the future, if necessary, to respond to the applicants' Brief filed in this de novo case.

III. CONCLUSION

There is absolutely no factual, technical or legal basis to grant the applicants' requests for relief in this de novo proceeding. Applicants utterly failed to carry their burden of proof under Section 70-2-17(B) to establish that a smaller spacing than 320s in all or part of the Cedar Hill pool is warranted. Indeed, applicants agreed with the definitive evidence that 320 acre spacing is required in this pool. Amoco respectfully urges that applicants' claims for relief be denied in their entirety and that the 320 acre spacing units for the Cedar Hill Fruitland Basal Coal Gas Pool remain in full force and effect, effective February 1, 1984.

Respectfully submitted this 27th day of July, 1988.

AMOCO PRODUCTION COMPANY

By 

Kent J. Lund, Attorney
Amoco Production Company
1670 Broadway
P.O. Box 800
Denver, Colorado 80201
303/830-4250

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the foregoing Brief of Amoco Production Company has been forwarded to the following by placing same in the U.S. mail, properly addressed and postage prepaid, this 27th day of July, 1988:

James G. Bruce, Esq.
Hinkle Law Firm
P.O. Box 2068
Santa Fe, New Mexico 87504

William F. Carr, Esq.
Campbell & Black

P.O. Box 2208
Santa Fe, New Mexico 87501

W. Thomas Kellahin, Esq.
Kellahin, Kellahin & Aubrey
P.O. Box 2265
Santa Fe, New Mexico 87501

k1727/k17

EXHIBIT "A"

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

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

NO. 9129

BRIEF OF AMOCO PRODUCTION COMPANY

Pursuant to the Examiner's order at the conclusion of the January 20, 1988, hearing in this case, Amoco Production Company ("Amoco") respectfully submits the following brief:

I. FACTS

By their Amended Application dated December 31, 1987, Applicants Virginia P. Uhden, Helen Orbesen and Carroll O. Holmberg ("Applicants") applied for an order vacating Division Order Nos. R-7588 and R-7588-A "as to Applicants insofar as they establish 320 acre spacing, and to establish eight non-standard spacing and proration units in Sections 28 and 33, Township 32 North, Range 10 West, N.M.P.M. ... " in San Juan County, New Mexico. Applicants alleged that they are mineral interest owners within the Cedar Hill Fruitland Basal Coal Gas Pool and alleged that they "were not given actual notice" of Case No. 8014 or Case No. 8014 (reopened). Applicants claimed that they had no opportunity to appear and present evidence in opposition to 320 acre spacing and that their constitutional due process rights were violated. Applicants alleged that, had they received notice, they would have appeared to

protest the Oil Conservation Division proceedings which resulted in 320 acre spacing.

Applicants' Amended Application (paragraph 10) expressly admits, however, that the first wells drilled in the Cedar Hill Fruitland Basal Coal Pool, which had been drilled on 160 acre spacing, "were in communication." Nevertheless, Applicants alleged that Sections 28 and 33 in the pool "should be developed on eight 160 acre spacing and proration units, with production limitations on wells located within said sections."

Applicants requested that Division Orders R-7588 and R-7588-A be vacated "as to them" and that the Division establish 160 spacing and proration units in Sections 28 and 33 only. Alternatively, Applicants requested that the Division "make said spacing orders {establishing 320 acre spacing} effective as to Applicants as of the date notice was provided to Applicants by Amoco Production Company."

For the reasons set forth below, Applicants' Amended Application must be denied in its entirety. Pursuant to the Examiner's Order, this brief will focus on Applicants' notification arguments, but must necessarily discuss some of the evidence presented in case numbers 8014, 8014 (reopened) and the present case, case number 9129.

II. NOTICE FOR THE CEDAR HILL FRUITLAND BASAL COAL GAS POOL SPACING PROCEEDINGS WAS FULLY AND PROPERLY EFFECTUATED BY THE OIL CONSERVATION DIVISION

N.M. Stat. Ann. §70-2-7 provides that the Oil Conservation Division "shall prescribe its rules of order or procedure" for hearings or other proceedings before the Division. "Any notice required to be given under

this act or under any rule, regulation or order prescribed by the commission or division shall be by personal service on the person affected, or by publication once in a newspaper of general circulation published at Santa Fe, New Mexico, and once in a newspaper of general circulation published in the county, or each of the counties if there be more than one, in which any land, oil or gas, or other property which may be affected shall be situated." (emphasis added). That statute further specifies how the notice shall be constituted and given by the Director of the Division.

Pursuant to that statutory mandate, the Division has promulgated notice rules for Division proceedings. The Division's Rules on Procedure 1204-1207 (dated March 1, 1982) were in place for purposes of the January 18, 1984, hearing before the Division in case number 8014. Rule 1204 contained language just like the statute quoted above and Rule 1207 provided that the Division shall prepare, serve and publish all required notices without cost to the applicant. It is undisputed that the Division fully complied with these rules with respect to Amoco's Application which was heard on January 18, 1984, see Order at paragraph 1, and the Division should take administrative notice of its own records which demonstrate that proper notice was given.

Subsequently, Rule 1207 was amended by the Division. Specifically, amendments were effective on certain parts of that Rule on January 1, 1986, and March of 1987. It is critical to note that the new notice rules state that each applicant for a hearing before the Commission or Division "shall give additional notice" as specified in the additional notice rules. Thus, the new notice rules are in addition to the notice

required by N.M. Stat. Ann. 70-2-7, and are an additional burden on the applicant. Since the Division simply reopened the 1984 application in Case No. 8014 for a review in 1986, and because that 1986 review was specified in the Division's 1984 Order in Case No. 8014 (paragraph 15), notice was properly given for the 1986 review hearing. Indeed, Amoco was not the "applicant" for Case No. 8014 (reopened). The official record in the reopened case in February of 1986 demonstrates that proper notice was given.

III. THE OIL CONSERVATION DIVISION LACKS JURISDICTION TO CONSIDER THE CONSTITUTIONALITY OF NEW MEXICO STATUTES AND THE DIVISION'S RULES ON PROCEDURE

As discussed above, Applicants' Amended Application raises constitutional issues. It is axiomatic that the Oil Conservation Division, an administrative agency, lacks jurisdiction and authority to rule on constitutional issues. Instead, Applicants must raise those issues in a judicial forum if it so desires.

IV. NEW MEXICO REVISED ANNOTATED STATUTES 70-2-7 AND THE OIL CONSERVATION DIVISION'S NOTICE RULES ARE CONSTITUTIONAL

The Applicants apparently contend that notice by publication is unconstitutional, and at least with respect to them for purposes of Case No. 8014. In support of this argument, Applicants made reference to an unpublished New Mexico state district court decision and Louthan v. Amoco Production Company, 652 P.2d 308 (Okla. App. 1982).

Applicants have not provided the Division or the protestors with any written order issued by the New Mexico District Court. Moreover, we have been informed that that litigation has been settled and, as a

result, it is doubtful that the District Court's decision, even if relevant, has any precedential value.

The Louthan case is clearly distinguishable. In that case, Amoco drilled a producing oil well in December of 1961 on a 160 acre lease in the northwest quarter of the southeast quarter on a section (section 20) in Major County, Oklahoma. In 1969, Cherokee Resources, Inc. obtained oil and gas leases on the northwest and northeast quarters of Section 20. In 1970, Cherokee applied to the Oklahoma Corporation Commission (Oklahoma's oil conservation agency) to establish 640 acre spacing for Section 20. The application was set for hearing in June of 1970 and the only type of notice required by statute, and the only type of notice given, was by publication. Notice was neither mailed to nor served upon Amoco personally.

The court held that, under those facts, Amoco was denied due process of law. It held that "it was even more important that all mineral interest owners in Section 20 be constitutionally notified since a producing well existed on it - a well that Cherokee knew or should have known about."

At issue in Louthan was whether an oil and gas lessee who had a producing oil well on the property subject of the spacing application should have been provided with some form of actual notice of that application. The court answered in the affirmative, and its reference to royalty interest owners of the pre-existing well was dictum since the only issue before the court was whether Amoco, as an existing oil and gas lessee who had previously drilled a producing oil well, should have been provided with actual notice of those spacing proceedings.

The South Dakota Supreme Court recently considered - but did not decide - the constitutionality of a South Dakota statute similar to N.M. Stat. Ann. §70-2-7. See In Re Application of Koch Exploration Company, 387 N.W.2d 530 (S.D. 1986). The South Dakota statute on notice, like the New Mexico statute, stated that the Board of Minerals and Environment could either provide notice by personal service or by publication. The trial court held that the statute was constitutional, but the Supreme Court did not reach the constitutional issue because the complaining parties had made a general appearance before the Board and participated in all phases of the hearing. Thus, the complaining parties had waived any right to challenge the manner in which notice was given, and the court noted that the requirement of personal jurisdiction may be intentionally waived or a party may be estopped from raising that issue.

In addition, the court held that the Board had subject matter jurisdiction over the application despite the allegation that notice was improper. Since "the basis for constitutional requirement of notification is to give parties an opportunity to be heard," the court held that an argument of improper notice was "meaningless" where the complaining parties made a general appearance at all proceedings before the Board and participated fully in that hearing.

In short, the New Mexico state district court decision relied upon by Applicants in this case, which has not been provided to the parties to this case, is not dispositive. Moreover, the Louthan decision does not support Applicants' argument. Finally, there is authority upholding the constitutionality of published notice in these circumstances. For

all these reasons, Applicants' consitutional arguments are patently without merit.

V. APPLICANTS HAVE NO LEGAL RIGHT TO RECEIVE PERSONAL NOTICE OF SPACING PROCEEDINGS BEFORE THE DIVISION

Applicants have conveniently failed to inform the Division that they have no right to receive personal notice of spacing proceedings. For example, Mrs. Uhden is the successor in interest to a July 6, 1948, oil and gas lease which Kate E. Cahn entered into with Stanolind Oil and Gas Company, Amoco's predecessor in interest. Paragraph 9 of that oil and gas lease provides:

> As to the gas leasehold estate hereby granted (excluding casinghead gas produced from oil wells), lessee is expressly granted the right and privilege to consolidate said gas leasehold with any other adjacent or contiguous gas leasehold estates to form a consolidated gas leasehold estate which shall not exceed a total area of 640 acres; and in the event lessee exercises the right and privilege of consolidation, as herein granted, the consolidated gas leasehold estate shall be deemed, treated and operated in the same manner as though the entire consolidated leasehold estate were originally covered by and included in this lease, and all royalties which shall accrue on gas (excluding casinghead gas produced from oil wells), produced and marketed from the consolidated estate, including all royalties payable hereunder, shall be prorated and paid to the lessors of the various tracts included in the consolidated estate in the same proportion that the acreage of each said lessor bears to the total acreage of the consolidated estate, and a producing gas well on any portion of the consolidated estate shall operate to continue the oil and gas leasehold estate hereby granted so long as gas is produced therefrom.

Therefore, and assuming that the above clause is representative for all of the lessor-Applicants, the applicable oil and gas leases expressly permit the lessee, such as Amoco, to form drilling and spacing units for gas wells provided that such drilling and spacing unit does not exceed a total area of 640 acres. It is undisputed that Amoco acted prudently in asking the Division to space this pool as required by N.M.

Stat. Ann. Sec. 70-2-17B and, in doing so, acted in accordance with proper conservation purposes.

Even though the Division lacks jurisdiction and authority to interpret oil and gas leases and adjudicate disputes based on oil and gas leases, it is important to note that Amoco was expressly granted the right to form appropriate drilling and spacing units for gas wells not to exceed 640 acres. Based on this express contractual authority, Applicants lack standing to attack the spacing proceedings for the Cedar Hill Fruitland Basal Coal Gas Pool. See generally Kuntz, The Law of Oil and Gas, §48.3 (1972); Lowe, Oil and Gas Law in a Nutshell, Chapter 9, Part 3 (1983).

VI. SINCE APPLICANTS HAVE NOW HAD THEIR HEARING, THEIR ARGUMENTS WITH RESPECT TO NOTICE ARE MOOT

Applicants had their hearing on January 20, 1988. Since constitutional due process of law only requires an "opportunity to be heard," Applicants no longer have even an arguable claim that they should have been given other than publication notice for the prior proceedings. One of Applicants' principal arguments is that, had they been given personal notice, they would have appeared before the Division in 1984 and 1986 to protest a change from 160 to 320 acre spacing. As demonstrated below, Applicants could not have presented technical evidence then, and they did not present technical evidence on January 20, that would justify 160 acre spacing on all or part of the Cedar Hill Fruitland Basal Coal Gas Pool. Such an effort then, as on January 20, 1988, would have been an effort in futility.

VII. APPLICANTS' EVIDENCE PRESENTED ON JANUARY 20, 1988, WAS NOT SUFFICIENT TO REQUIRE A SPACING OF LESS THAN ONE WELL FOR EACH 320 ACRES IN THE CEDAR HILL FRUITLAND BASAL COAL GAS POOL

N.M. Stat. Ann. §70-2-17B states that the Division "may establish a proration unit for each pool, such being the area that can be efficiently and economically drained and developed by one well ...." In establishing such a proration unit, the Division "shall consider": (1) the economic loss caused by the drilling of unnecessary wells; (2) the protection of correlative rights, including those or royalty owners; (3) the prevention of waste; (4) the avoidance of the augmentation of risks arising from the drilling of an excessive number of wells; and (5) the prevention of reduced recovery which might result from the drilling of too few wells.

In spacing the Cedar Hill Fruitland Basal Coal Gas pool on 320 acre spacing units, the Division fully complied with that statutory mandate. The Division considered substantial technical evidence in both the January 18, 1984, hearing and the February 19, 1986, spacing review hearing. The Examiner in Case No. 9129 incorporated by reference the official records of those prior two hearings for consideration in Case No. 9129.

Significantly, the Applicants' Amended Application, in paragraphs 9 and 10, expressly admit that the first wells drilled in the pool, which were drilled and spaced on 160 acre units, "were in communication." Applicants' geologist, Stephen Perlman, testified at the January 20, 1988, hearing that wells with 160 acre offsets were in communication and were impacted by wells on that spacing pattern. In contrast, Mr. Perlman testified that no such communication or production affects were

the result of a 640 acre offset well, the Leeper B #1. Mr. Perlman further testified that it is possible, even in his view, that 320 acre spacing is appropriate for this Pool. Finally, Mr. Perlman testified that there are no geologic abnormalities in Sections 28 and 33.

The applicable New Mexico statute requires establishment of a proration unit based on technical evidence: a proration unit must be the area that can be "efficiently and economically drained and developed by one well." The statute requires the establishment of proration units to be based on technical evidence, not "pocketbook" evidence. The Division has no legal authority to establish proration units because a royalty owner selfishly wants to be paid a royalty based on a proration unit which is smaller than the technical evidence requires. Since no evidence was presented to justify a change from 320 acre spacing for any part of the Pool, the Amended Application must be denied.

VIII. APPLICANTS' ALTERNATIVE REQUEST FOR RELIEF IS ILLEGAL

Applicants' Amended Application requests, in the alternative, that the Division make the 320 acre spacing order effective as to Applicants "as of the date notice was provided to Applicants by Amoco Production Company." This request must be rejected because it is illegal.

N.M. Stat. Ann. §70-2-18A provides in part that any Division order that increases the size of a standard spacing or proration unit for a pool shall provide that production shall be shared "from the effective date of the said order." Thus, production must be shared as of the effective date of order number R-7588 (February 1, 1984) and Applicants' request to change that effective date is legally unsupportable.

IX. CONCLUSION

For all these reasons, Applicants' notification arguments are without merit and must be rejected. The Amended Application must be denied in its entirety and the 320 acre spacing units for the Cedar Hill Fruitland Basal Coal Gas Pool must remain in full force and effect, effective February 1, 1984.

Respectfully submitted this 16th day of February, 1988.

AMOCO PRODUCTION COMPANY

By Kent J. Lund
Kent J. Lund
Attorney

Amoco Production Company
1670 Broadway, P.O. Box 800
Denver, Colorado 80201
303/830-4250

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the foreging Brief was forwarded to the following by placing a copy of same, properly addressed and postage prepaid, in the United States mail this 16th day of February, 1988.

James G. Bruce, Esq.
Hinkle Law Firm
P.O. Box 2068
Santa Fe, New Mexico 87504

William F. Carr, Esq.
Campbell & Black
P.O. Box 2208
Santa Fe, New Mexico 87501

W. Thomas Kellahin, Esq.
Kellahin, Kellahin & Aubrey
P.O. Box 2265
Santa Fe, New Mexico 87501