

OIL AND GAS BOARD OF REVIEW

STATE OF OHIO

CAPITAL OIL & GAS, INC., )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 J. MICHAEL BIDDISON, Chief, )  
 Division of Oil and Gas, )  
 Ohio Dept. of Natural Resources, )  
 )  
 Appellee. )

APPEAL NO. 306

CHIEF'S ORDER  
NO. 88-643

ENTRY

**Appearances: For Appellant:** Thomas A. Hill, Esq.  
 Capital Oil & Gas, Inc.  
 3896 Oakwood Avenue  
 Youngstown, Ohio 44515

**For Appellee:** Anthony J. Celebrezze, Jr.  
 Attorney General, State of Ohio  
 By Scott E. Farkas  
 Assistant Attorney General  
 Environmental Enforcement Section  
 Division of Oil and Gas  
 Bldg. A, 4435 Fountain Sq. Drive  
 Columbus, Ohio 43224

**For Third-party  
 Intervenor,  
 Copperveld  
 Energy, Inc.:** W. Jonathan Airey  
 Drew T. Parobek  
 Vorys, Sater, Seymour & Pease  
 52 East Gay St., P.O. Box 1008  
 Columbus, Ohio 43216-1008

## I. BACKGROUND

The instant appeal was brought by Capital Oil & Gas, Inc. (hereinafter referred to as "Capital" or "Appellant") from Chief's Order No. 88-643 denying mandatory pooling. On December 18, 1987, Capital applied for a permit to drill the Leo and Roberta Davis Well No. 1 and was obliged to seek the inclusion of a 3.61 acre arc owned by the Ohio Department of Transportation (hereinafter referred to as "ODOT") which was leased to Copperweld Energy, Inc. (hereinafter referred to as "Copperweld"). This 3.61 acre arc was a part of the St. Nicholas Unit, a 50.0383 acre unit comprised of seven separate tracts of land. The St. Nicholas Unit was formed by Copperweld pursuant to pooling clauses in the attendant leases, including the ODOT lease.

A hearing on Capital's application for a mandatory pooling order was held on March 10, 1988 before the Technical Advisory Council on Oil and Gas (hereinafter referred to as the "TAC"). After that hearing, the TAC recommended that Capital's application be denied. On April 25, 1988, the Chief of the Division of Oil and Gas (hereinafter referred to as "Chief" and "Division" respectively) issued Order No. 88-643, which upheld the TAC's denial of Capital's application for mandatory pooling.

Capital filed its notice of appeal with the Oil and Gas Board of Review (hereinafter referred to as the "Board") on May 19, 1988. The Board initially held a hearing on March 30, 1989, to consider Capital's appeal. At the hearing, Capital sought the

mandatory pooling of certain described tracts into its Davis Unit, including the 3.61 acre arc from the St. Nicholas Unit. Copperweld, ODOT and the Division objected to the mandatory pooling of the 3.61 acre arc.

The Board issued a Partial Entry on July 20, 1989. In that Partial Entry, the Board preliminarily determined that Order of the Chief No. 88-643, denying Capital's application for mandatory pooling, was unlawful and unreasonable. Accordingly, the Board granted Appeal No. 306, but the Board scheduled a subsequent hearing to address certain unresolved issues.

This hearing was conducted on October 31, 1989. Prior to the hearing, however, Capital and Copperweld entered into a settlement agreement which effectively resolved the issues between them on terms substantially similar to a voluntary pooling arrangement. Because the agreement did not include the tracts owned by Bubon, Rapone and Steinbeck, the Board is compelled to issue a mandatory pooling order with respect to those tracts and attendant interests as set forth in this Entry.

## II. FINDINGS OF FACT

1. The factual findings set forth above and those contained in the Board's Partial Entry, dated July 20, 1989, are incorporated by reference herein and are made final with the entry of this decision.

2. The only owners to appear before the Oil and Gas Board of Review and to offer testimony in this matter were Copperweld and ODOT.

3. Capital and Copperweld have entered into a settlement agreement, dated October 30, 1989, by the terms of which Copperweld and other working interest owners in the St. Nicholas Unit will collectively participate as a working interest owner of the Davis #1 Well.

4. The apportionment of landowner royalties from production of the St. Nicholas Unit is governed by the respective leases and related agreements comprising that Unit; the allocation of royalties to be paid on production forthcoming and attributable to the 3.61 acre arc to be included in the Davis #1 Unit shall, accordingly, be based on the proportions therein specified as further governed by the settlement agreement between Capital and Copperweld.

### III. CONCLUSIONS OF LAW AND ORDERS

1. Subject to the terms of this Entry and the settlement agreement, the Order contained in the Board's Partial Entry dated July 20, 1989, overruling Chief's Order No. 88-643 shall be, and is hereby, made a final order.

2. It is further ordered that mandatory pooling is established for the drilling unit requirements of the well to be known as the Davis Unit #1 Well on the terms and conditions set forth and contained in the settlement agreement between Copperweld and Capital.

3. It is further ordered that the pooled unit shall be as follows:

a. The boundaries of the drilling unit shall be in accordance with the unit boundaries indicated on the surveyor's plat.

b. The designated drilling site is located 1330 feet from the south line and 710 feet from the east line of the southeast quarter of Section 3, T-4, R-4, Warren Township, Trumbull County, Ohio, attached heretô as Exhibit A.

c. The tracts of land or parts thereof pooled by this Entry are as follows:

(1) Lot No. 28 in Pleasant View Allotment No. 4, being part of original Section No. 3, Warren Township, Trumbull County, Ohio. Said lot is a .485 acre parcel owned by Jerry aka Jerome D. Bubon and Kimberly L. Bubon, with tax-mailing address at 4120 Leavitt Drive, N.W., Warren, Ohio 44485.

(2) Lot No. 30 in Pleasant View Allotment No. 4, being part of original Section No. 3, Warren Township, Trumbull County, Ohio. Said lot is a .485 acre parcel owned by James V. Rapone and Dianne T. Rapone, with tax-mailing address at 4140 North Leavitt Drive, N.W., Warren, Ohio 44485.

- (3) Lot No. 22 in Pleasant View Allotment No. 3, being part of original Section No. 3, Warren Township, Trumbull County, Ohio. Said lot is a .475 acre parcel owned by Gary Steinbeck with tax-mailing address at 4060 Leavitt Drive, N.W., Warren, Ohio 44485.
- (4) 3.61 acres, depicted on the attached Exhibit A, of Parcel No. 329WL of lands owned by the Ohio Department of Transportation and subject to an oil and gas drilling permit issued by ODOT to Copperweld on November 10, 1986 and recorded on November 26, 1986 in Volume Official Records 332, Page 221 of the Trumbull County records.

d. The allocation of production to each tract owner shall be on a pro rata basis.

e. The costs and expenses of drilling, equipping and operation of the Davis #1 Well will be assumed by Capital Oil & Gas, Inc.

f. With respect to the Bubon, Rapone and Steinbeck parcels, it is the order of the Board that the owners of these parcels and their lessee be treated as having elected to be non-participating owners. Provided, however, that within ten (10) days of receipt by Capital of

this executed Entry, it shall cause a copy of the Entry to be served by Certified Mail, Return Receipt Requested upon Jerome D. Bubon and Kimberly, L. Bubon, James V. Rapone and Diane T. Rapone, Gary Steinbeck and their lessee, Everflow Eastern, Inc., along with an offer to participate in the Davis #1 Well. These entities shall have thirty (30) days from the date of the mailing of the certified notice to elect to participate in the Davis #1 Well and if an election to participate is not made within said time period, they shall be deemed to have elected not to participate in the Davis #1 Well.

g(i) With respect to the 3.61 acres owned by ODOT and consolidated with the St. Nicholas Unit, it is the order of this Board that the right of all working interest owners in the St. Nicholas Unit #1 Well to participate in the Davis #1 Well shall be governed by the Settlement Agreement between Capital and Copperweld.

g (ii) Within ten (10) days of receipt by Copperweld of this executed Entry, it shall cause a copy of the Entry to be served by Certified Mail, Return Receipt Requested, upon each working interest owner in the St. Nicholas Unit #1 Well, along with an offer to participate in the Davis Unit #1 Well on the terms specified in the Settlement Agreement. Said working interest owners shall have thirty (30) days from the date of mailing of

the certified notice to elect to participate in the Davis Unit #1 Well under the terms of the Settlement Agreement. If an election to participate is not made in writing within said time period, such working interest owners shall be deemed to have elected not to participate in the Davis #1 Unit well and their interests shall be allocated ratably to Copperweld and other working interest owners that elect to participated in the Davis Unit #1 Well as part of the twenty percent (20%) working interest in said Davis Unit #1 Well agreed to be purchased by Copperweld as a part of the Settlement Agreement. This paragraph of the Entry is intended only as a means of implementing the Settlement Agreement; provided however, that upon completion of the notice and election procedure described herein, it is the determination of the Board that the St. Nicholas Unit #1 working interest owners shall be bound by the terms of this Order.

h. The Permit to drill the Davis #1 Unit Well shall be issued to Capital Oil & Gas, Inc.

4. The estimated costs of drilling, equipping and operating the Davis #1 Well are itemized in the Authority for Expenditure attached hereto as Exhibit B and incorporated by reference as if fully rewritten herein. Should the actual costs vary substantially from the estimates, the Chief shall notify all concerned parties of



any authorized adjustments. The costs, as chargeable to the working interest described in Part 3(g) above, however, shall be governed by the Settlement Agreement between Capital and Copperweld and the operating agreement referenced therein.

5. Capital shall bear the costs of drilling, equipping and operating the Davis Unit #1 Well for the benefit of the non-participating owners and shall be entitled to the share of production from the drilling unit accruing to the interest of the non-participating owner, exclusive of his proportionate share of the one-eighth (1/8) royalty interest, until the share of costs charged to the non-participating owners, plus fifty-percent (50%) has been recovered, as governed and permitted by O.R.C. Section 1509.27.

6. The decision of the Board to include 3.61 acres of the existing St. Nicholas Unit for inclusion in the Davis Unit #1 is undertaken as a unique solution in this specific case where the major parties have otherwise agreed, where this action is less disruptive than others proposed and for the conservation of natural resources. The Board finds that in this instance its order does not alter the contractual or physical integrity of the existing St. Nicholas Unit and does conserve natural resources..

The Oil and Gas Board of Review accordingly **ORDERS** that Appeal No. 306 is hereby granted subject to the conditions herein contained, and the Order of the Chief No. 88-643 is hereby accordingly overruled.

Alan H. Coogan  
Alan H. Coogan, Chairman

Abstention due to conflict  
Benita Kahn, Secretary


Robert H. Alexander (per phone authorization 9/17/90)  
Robert H. Alexander

Gail Ignatz-Hoover (per phone authorization 9/17/90)  
Gail Ignatz-Hoover

William G. Williams (per phone authorization 9/17/90)  
William G. Williams

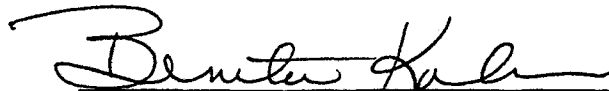
**CERTIFICATE OF SERVICE**

A true copy of the foregoing Entry was mailed by certified mail, return receipt requested, to Thomas A. Hill, Attorney for Capital Oil & Gas Inc., 3896 Oakwood Avenue, Youngstown, Ohio 44515; and W. Jonathan Airey, Attorney for Copperweld Energy, Inc., at Vorys, Sater, Seymour & Pease, 52 East Gay Street, Columbus, Ohio 43215, by regular U.S. mail, this 17<sup>th</sup> day of September, 1990.



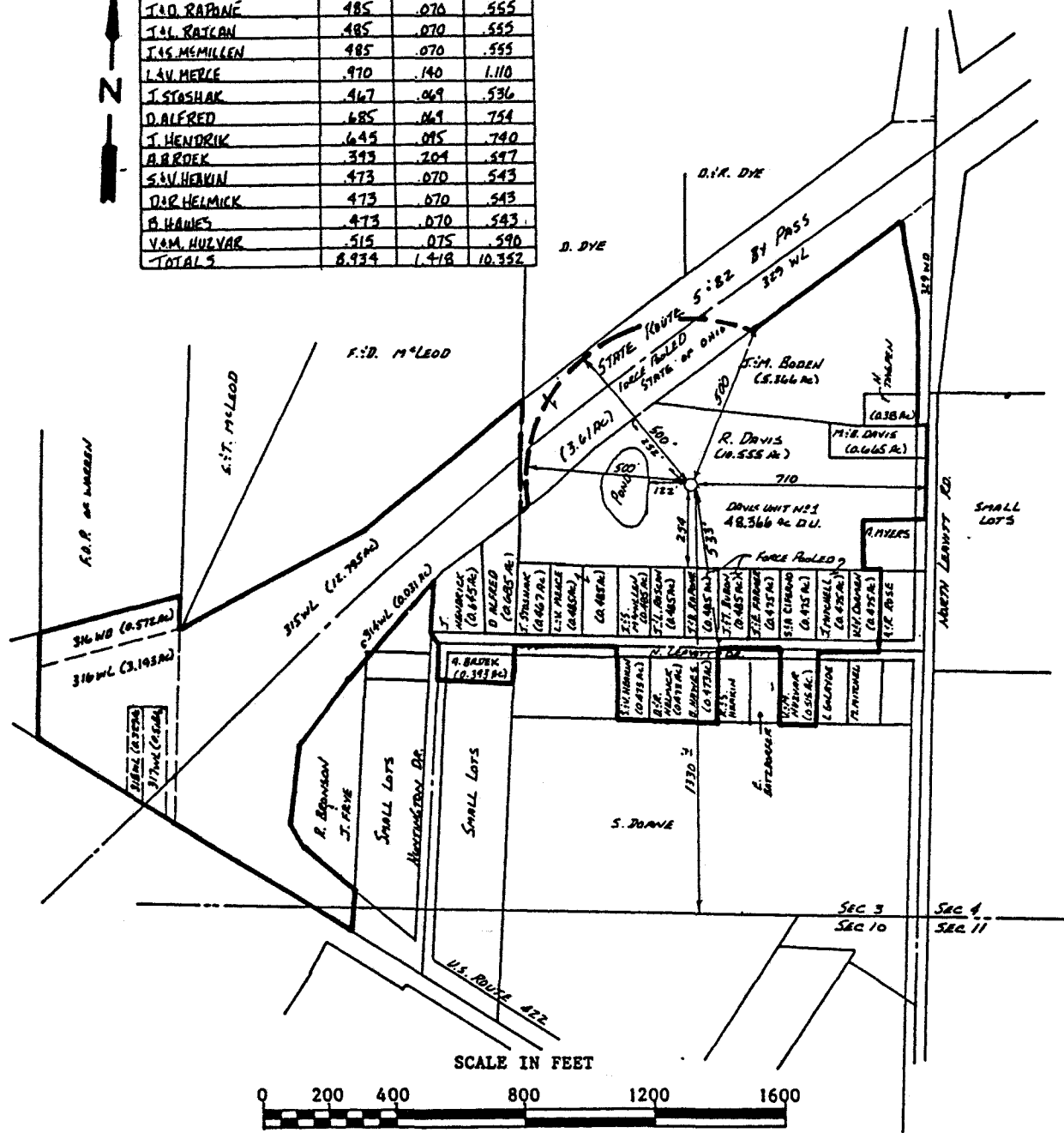
BENITA KAHN, Secretary  
Oil and Gas Board of Review

A true copy of the foregoing Entry was mailed by regular U.S. mail to Scott E. Farkas, Assistant Attorney General, Building A, 4435 Fountain Sq. Drive, Columbus, Ohio 43224, this 17<sup>th</sup> day of September, 1990.



BENITA KAHN, Secretary  
Oil and Gas Board of Review

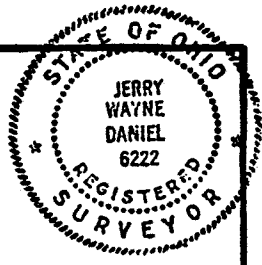
OWNER	AC. IN LOT	AC. INST.	TOTAL
V.V. CARMEN	.475	.069	.544
J. MITCHELL	.475	.069	.544
S.A. CIFEENO	.475	.069	.544
J.E. FARMER	.475	.069	.544
J.T. BURAN	.485	.070	.555
J.D. RAPANE	.485	.070	.555
J.M. RATCAN	.485	.070	.555
J.G. McMILLEN	.485	.070	.555
L.V. MERCE	.970	.140	1.110
J. STASHAK	.467	.069	.536
D. ALFRED	.685	.069	.754
J. HENDRIK	.645	.075	.720
A. BROEK	.393	.204	.597
S.V. HERWIN	.473	.070	.543
D.R. HELMICK	.473	.070	.543
A. HAWES	.473	.070	.543
V.M. HUZVAR	.515	.075	.590
TOTALS	8.934	1.418	10.352



PLAT SHOWING PROPOSED LOCATION OF OIL OR GAS WELL

OPERATOR CAPITAL OIL & GAS Co.  
 ADDRESS 3896 OAKWOOD AVE. YOUNGSTOWN, OHIO 44575  
 DAVIS UNIT WELL NO. 1 ACRES 48.366  
 COUNTY TRUMBULL TWP. WARREN  
 QUAD. CHAMPION N. 580850  
 OHIO PLANE COORDINATES E. 2447900  
 ELEV. 910

TWP. 4  
 RANGE 4  
 SECTION 3 LOT \_\_\_\_\_  
 TRACT \_\_\_\_\_  
 DATE DRAWN 2-5-87  
 DRAWN BY: RLW JOB NO. 0718-1



I hereby certify that all drilling or producing wells within 1000 feet and all buildings and streams within 150 feet have been shown, there are no drilling unit lines nearer than 500 feet, that this plat is true and correct and was prepared according to the current State of Ohio, Department of Natural Resources, Division of Oil and Gas Regulations.

Jerry W. Daniel, Registered Surveyor No. 6222  
 101 North Center Street  
 Newton Falls, Ohio 44444

REVISED D.U. 11-8-89  
 REVISED D.U. 5-3-88  
 REVISED D.U. 4-18-88  
 REVISED D.U. 2-19-88  
 REVISED LOCATION 2-16-88

**EXHIBIT B**

**AFE**

**Capital Oil & Gas Well A.F.E.**

Well Name : DAVIS #1	Permit # :	_____
NRI :	WI :	_____
County : TRUMBULL	Township :	WARREN

**Well Cost Summary**

**Intangibles**

810.70	Location Preparation	\$12,600.00
810.71	Location Work	\$12,100.00
810.01	Contract Drilling	\$32,300.00
810.02	Install 8 5/8" Casing	\$2,620.00
810.03	Install 4 1/2" Casing	\$2,980.00
810.04	Install 2" Line Pipe	\$600.00
810.67	Logging	\$1,800.00
810.95	Construction Damages	\$500.00
810.63	Hauling Material & Supplies	\$500.00
810.68	Treating Well	\$31,400.00
810.73	Other Costs	\$17,600.00

Total Intangibles \$115,000.00

**Tangibles**

810.05	8 5/8" Casing	\$2,080.00
810.06	4 1/2" Casing	\$14,760.00
810.07	1 1/2" Tubing	\$5,160.00
810.47	Wellhead Equipment	\$2,050.00
810.44	Tank Battery	\$3,726.00
810.48	Flow Line	\$924.00
810.69	Other Equipment	\$6,300.00

Total Tangibles \$35,000.00

Total Well Cost \$150,000.00

Max. Well Cost \$150,000.00

**Well Cost Details**

**Intangibles**

810.70	Location Preparation:	
	Lease Cost	\$1,000.00
	Survey & Stake	\$600.00
	Title Work/Opinion	\$6,000.00
	Drilling Permits & Bonds	\$1,000.00
	Engineering & Supervision	\$4,000.00
810.71	Location Work:	
	Build Roads & Location	\$1,800.00
	Reclamation	\$3,500.00
	Stone & Culvert	\$6,000.00
	Seeding	\$800.00
810.01	Contract Drilling:	
	4500 Feet @ \$7.00	\$31,500.00
	Mud & Chemicals	\$800.00
	Water Hauling & Tank	\$0.00
810.02	8 5/8" Casing:	
	Hauling	\$350.00
	Cementing	\$2,270.00
	Dozer	\$0.00

810.03	4 1/2" Casing:		
	Hauling		\$350.00
	Cementing		\$2,330.00
	Power Tongs		\$300.00
	Dozer		\$0.00
810.04	2" Line Pipe:		
	Hauling		\$150.00
	Trench & Bury		\$300.00
	Dozer		\$150.00
810.67	Logging		\$1,800.00
810.95	Construction Damages		\$500.00
810.63	Hauling Material & Supplies		\$500.00
810.68	Treating Well:		
	Perforating		\$1,200.00
	Frac Job		\$13,000.00
	Tank Rental		\$2,250.00
	Propane		\$1,200.00
	Hauling Water For Frac		\$2,250.00
	Service Rig		\$3,600.00
	Dozer		\$1,600.00
	Water Disposal		\$6,300.00
810.73	Other Costs:		
	Geological & Overhead		\$15,000.00
	Roustabout Work		\$2,000.00
	Paint Tanks & Wellhead		\$600.00
gibles			
810.05	8 5/8" Casing		
	320 Ft. @ \$6.50		\$2,080.00
810.06	4 1/2" Casing		
	4500 Ft. @ \$3.28		\$14,760.00
810.07	1 1/2" Tubing		
	4300 Ft. @ \$1.20		\$5,160.00
810.47	Wellhead Equipment:		
	Casing & Tubing Head		\$850.00
	Valves & Connections		\$1,200.00
810.44	Tank Battery:		
	100 BBL		\$1,650.00
	50 BBL		\$876.00
	Misc. Fittings		\$1,200.00
810.48	Flow Line		
	600 Ft. @ \$1.54		\$924.00
810.69	Other Equipment:		
	Production Unit used		\$4,500.00
	Drips & Misc Fittings		\$1,800.00

COPY

Vorys, Sater, Seymour and Pease

52 East Gay Street  
Post Office Box 1008  
Columbus, Ohio 43216-1008



(614) 464-5442

April 24, 1990

Robert H. Alexander  
Secretary  
Oil and Gas Board of Review  
c/o Clinton Oil Company  
4770 Indianola Avenue  
Columbus, Ohio 43214

Re: Capital Oil and Gas, Inc. v. J. Michael Biddison,  
Chief; Appeal No. 306

Dear Bob:

At long last, please find enclosed the original and five (5) copies of the Agreed Order which serves to resolve the above-referenced matter. This Order has been approved by representatives of Capital Oil & Gas and Copperweld Energy, Inc. The Order has also been reviewed by Scott Farkas of the Ohio Attorney General's Office. Scott does not believe that the A.G. can presently sign the Order because of its general opposition to the concept of mandatorily pooling acreage dedicated to a producing unit; he also has concerns over language contained on page two of the Order referring to suggestions made to Capital by the Division as to the unit's boundaries. Despite an appreciation for Scott's concerns, we believe that the Order is limited precedentially because the parties entered into an amicable settlement arrangement as noted therein.

In light of the foregoing, we feel that the Order is ready for distribution to the members of the Board of Review. We certainly appreciate your patience in allowing us to resolve this matter independently and would welcome any questions should they arise.

Sincerely yours,

Drew T. Parobek

DTP/jlp  
Enclosures

cc: W. Jonathan Airey, Esq.  
Thomas A. Hill, Esq.  
✓ Scott E. Farkas, Esq.  
Jeffrey Ash

COPY

Vorys, Sater, Seymour and Pease

52 East Gay Street  
Post Office Box 1008  
Columbus, Ohio 43216-1008



(614) 464-6487

September 17, 1990

Thomas A. Hill, Esq.  
Capital Oil & Gas, Inc.  
3896 Oakwood Avenue  
Youngstown, Ohio 44515

Re: Appeal #306  
Chief's Order No. 88-643

Dear Mr. Hill:

Enclosed please find the executed Entry of the Ohio Oil and Gas Board of Review for the above-referenced matter.

If you have any questions regarding the above, please do not hesitate to contact me.

Very truly yours,

OIL AND GAS BOARD OF REVIEW

Benita A. Kahn  
Secretary

BAK:tlk  
Enclosure

cc: ✓ Mr. Scott E. Farkas  
W. Jonathan Airey, Esq.