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Mr. Wampler            We are now ready to continue the hearing for the establishment of drilling unit and forced pooling for E-34 well of Oxy USA, Inc. You are objecting.

Mr. Johnson            I represent Rogers.

Mr. McGuire            I represent Ashland.

Mr. Wampler            State your objections first for the Board.

Mr. Johnson            Are you talking about the motion to dismiss. Or are you talking about the objections?

Mr. Wampler            Objections

Mr. Johnson            The objections which we have filed which were mailed to the Board and Council of record on October 4th, these objections first relate to the lack of Oxy USA, Inc. to have standing to file the application as we have in other proceedings. We objected on the basis that they did file with the Board in a separate proceedings on Unit C-38 designation of operator, limited power of attorney dated September 14, 1990. Again we argue to the Board that they are in fact acting for their principal Island Creek Coal Company and that Oxy USA, Inc. should not be the applicant but it should be, if there is an application, should be filed by the true applicant, Island Creek Coal Company pursuant to the documents which the Board has in its possession as well as those attached to various pleadings in this and other proceedings. We also object on the basis that the unit fails to comply with the statewide field rules which were effective July 1, 1990 which were adopted by the Virginia legislature. Our argument there simply is that these field rules should take precedence over any field rules established by the prior Oil and Gas Conservation Board and the field rules that are being applied and the unit that is being applied were adopted prior to statewide spacing rules which required a greater spacing. We also argue that the coal lease may not be assigned that in order for Oxy to operate and be the applicant that it must be pursuant to an assignment which has not been given. We made other objections which are set forth basically to object to the unit and to allow us to proceed as to whether or not this is a valid application. I filed a four page objection to the application and the reason for that is because of the procedural rules that the Board adopted. I believe if you will look at this particular response you will find what an applicant or what a respondent should do, in my opinion, in order to protect their interest to participate in the hearing and to cross-examine witnesses and present evidence as to matters pending before the Board. I don't know if the Board wishes me to go through all of these. I have objected with regard to several different matters as are set forth in the written document which I have submitted which would allow my clients, Lon B. Rogers and the Rogers Bradshaw trust to participate in these hearings and to present evidence and cross-examine witnesses.

Mr. Wampler            The Board has a copy of that Mr. Johnson.

Mr. Johnson            I would say to the Board that it is my feeling that this is the type of document which is necessary solely because these rules place on a respondent the burden of coming forward. Again, I hope you will hear various lawyers out who do participate in front of this Board who now have had an opportunity to review these rules. So we might comment on them. I understand that perhaps you may allow us to do that. I guess to try to simplify matters for the Board, our basic objections are those similar in nature to the prior rulings that the Board has made with regard to standing of Oxy USA, Inc. but in addition thereto we have raised objections to permit us to cross-examine and to challenge various aspects of the application.

Mr. McGlothlin        I have got three objections to pooling applications are they the same, they seem to be the same.

Mr. Wampler            One is an objection to pooling and one is a motion to dismiss.

Ms. Davis              He has two of the same things.

Mr. Wampler            Mr. Johnson you talked about, if I missed something you can set me straight, the Statewide Field Rules should over-ride the prior Board's Oakwood Field Rules.

Mr. Johnson            Yes

Mr. Wampler            Would you explain.

Mr. Johnson            I would be glad to explain that. The legislature adopted statewide field rules which were effective on July 1, 1990 with regard to coalbed methane wells. The Conservation Board, at the request of Oxy USA, Inc. established field rules for this field and in doing so I know of nothing that would indicate that they had considered the fact that the legislature had preponderated rules which would be effective one month or a month-and-a-half later. After these field rules went into effect, then the legislature adopted by virtue of passing this statute and signature by the Governor, effective July 1, 1990, adopted basically broader field rules than were adopted for the Oakwood Field. Simply my position that if the legislature thought that the field rules ought to be at a certain spacing and those field rules were to take effect a couple of months after this some prior Board adopted some field rules, it is my position that those are the field rules, the Statewide Field Rules should be the rules enforced and effect and not the Oakwood Field Rules.

Mr. Wampler            Mr. Johnson under 36.17 states that unless prior approval has been received from the Board or a provision of the field rule or pool rule so allows.... and then it goes into the statewide spacing.

Mr. Johnson            I am saying that the field rules that were adopted were adopted prior to the passage and effective date of this legislation and therefore it is the new rules that should be in effect. Those that were adopted by the legislature and not the prior rules of some Conservation Board who had previously adopted. These were the first field rules adopted

and set forth by legislative dictate and for that reason I believe that these are the rules that should be effective as to any applications which are filed subsequent thereto unless and until this Board adopts other rules.

Mr. Wampler O.k. Mr. McGuire.

Mr. McGuire My objections parallel those of Lon Rogers with one exception. Ashland continues its objection that it has had in previous hearings and this does go to standing that the applicant has not standing to apply because Ashland is the oil and gas owner and gas means gas whether it is coalbed methane or conventional. Ashland does not believe this Board can hear this application because just by allowing the application to go forward it is determining that Oxy has property rights. Ashland does not believe that is a proper function of the Board. That this should be before a Court of competent jurisdiction. Otherwise our other objections are similar and we join in Lon Rogers objections that have been filed.

Mr. Wampler Let me ask a question while we are just clarifying here as were are stating out. Do these same arguments go to E-36 and D-36, both parties.

Mr. Johnson Yes they do.

Mr. McGuire Yes they do.

Mr. Wampler Is there any harm in grouping?

Mr. McGuire Those two threshold questions.

Mr. Johnson For purposes of those two threshold questions I see no reason.

Mr. Wampler Who is the claimant.

Mr. Johnson Yes who is the claimant.

Mr. Wampler And the field rules.

Mr. Johnson And the field rules that we have raised. Again, Ashland's lengthy objections, the bulk of which was just for a purpose of allowing us to participate in the presentation by Oxy USA, Inc. with regard to their application if the Board determines that they are the proper party to proceed. I don't see any reason and have no objection to grouping these threshold questions because they are all the same for all three applications.

Mr. Wampler O.k., do you have any problem with that.

Mr. Schwartz I think it would save time. I don't want to hear this for a third, fourth and fifth time.

Mr. Wampler Is that o.k. with the Board. I will hear from Oxy.

Mr. Schwartz I am just going to limit my response to the issues that have been raised. There are a lot more issues in the four page objection but with regard to the standing issue that both the Rogers and Ashland have raised today I believe was just determined it is the same they are arguing that a coal lessee such as Island Creek is not a claimant. They are arguing that if you are not a claimant you cannot bring a pooling application. I think you have just ruled in the last day or two in an identical situation that Oxy as special agent for Island Creek did have, was a claimant and did have standing to make a request for a pooling application in coalbed methane. If you have already resolved that I don't see what I need to say about that. It doesn't seem any different than what we dealt with yesterday. With regard to this alleged failure to comply with statewide field rules, I find this to be an amazing argument. We have spent the last couple of days spending a lot of time looking at a map that has broken this particular field into 80 acre tracts and in talking about permitting on all those tracts. I would point to the language of the statute which I think you folks done a moment ago. It says statewide spacing of wells and it says unless prior approval has been received from the Board. Our application is an application for approval to pool and drill on the spacing that the Board has established in this field. It doesn't mean prior to the passage of the statute. It means prior to pooling, prior to drilling the well. Unless prior approval has been received from the Board you guys drill your wells on this spacing. Our application and our well permit is going to be for the purpose of seeking prior approval of this Board to drill wells consistent with the field rules that apply specifically to this field that you all have promulgated. I just find this to be unbelievable. I am not saying that what you did or your predecessor board did in May entitles me to something. We are here with an application that seeks to pool a unit consistent with prior acts of the Board, but we are seeking your permission to do it. That is the whole purpose of our petition. So we are here seeking prior approval which is contemplated by Section 361.17. That is my interpretation of the Statute and that is why we are here and I don't know what else I can say in that respect. Mr. Johnson raised an issue with regard to lease clause and assignability of the lease a contention he apparently has that maybe the lease has or hasn't been assigned. I would submit to you all that it is my understanding that questions of contract interpretation, lease interpretation, document interpretation are probably not something you all are suppose to resolve. I think that is private matters. If they want a declaratory judgment action or they want an interpretation of a lease provision there is a certain court here that can accommodate that. I don't think that this Board is in the business of construing leases and clauses in leases. I may be wrong but I don't sense that that is something we need to be concerned with here. Those are private rights of the party under contracts they have entered into independent of these regulations and these statutes. So with regard to the limited issues that have been raised by Mr. Johnson and Mr. McGuire those would be my comments. I would like to ask one question. One other comment that I might have. I would be very interested to hear from Mr. Johnson if it is his view today that the special order or the order that you all entered with regard to this particular field establishing drilling units on 80 acres, whether he considers that to be an annuity. I guess another interpretation of the Statute might be that I could come in here and say that you gave blanket prior approval to people in

that field to produce coalbed methane on 80 acre drilling units and I am not sure if he isn't arguing that the prior action of your predecessor Board are annulity and I would like to know if that is an issue he is raising because certainly it would seem that an argument could be made that establishment of the drilling units by the prior Board is in a sense prior approval. We are now coming before you to get specific prior approval for Oxy to act and drill within one of those units, actually since we have consolidated three of these, within three of those units have been established.

Mr. Johnson                    I would be glad to respond to that.

Mr. Wampler                    Go ahead.

Mr. Johnson                    I feel like that here's the way that I feel this thing ought to be and this is my position and my client's position with regard to what has happened. The legislature meets. There is no such thing as this field, there is no field application. I think maybe there was some old one out there so I don't want to miss-speak it but the legislature meets and for the first time the legislature says in a statute it says that for coalbed methane wells you have to space them a certain way. For wells drilled in search of coalbed methane the statute says the wells shall not be located closer than 1,000' to any other coalbed methane well and the legislature says that that this statute will be effective on July 1, 1991 which was just a few months ago. This is the first time the legislature has ever told anybody what the field rules ought to be. They had a rule with regard to conventional gas wells that said something about 2500' presumption which I think probably troubled the prior Board. But at any rate, they never had declared what field rules should be on statewide basis. This is a brand new statute. Oxy USA, Inc. then comes to the Oil and Gas Conservation Board which is a predecessor Board to this Board and asked for spacing in this particular area in our Commonwealth and that Board sets up 80 acre units which allows the wells, I believe I don't want to miss-speak, allows them to be drilled as close 600' apart. I don't know if there is any evidence to show, I am not aware of any that would indicate that that Board considered the statewide spacing rules which were going to come into effect six weeks later. Then, after that Board issues these statewide rules, statewide spacing rules we now have a legislation which comes into effect on July 1, 1990. That legislation requires that unless there has been prior approval from the Board on a provision of the field rules that the wells will be spaced at least 1,000' apart. So yes, Mr. Schwartz, I do argue that that order was annulled and that these rules ought to take precedence over it. Because they were adopted by the legislature and were effective on July 1, 1990.

Mr. Schwartz                    I am looking at an order that was promulgated with regard to this field and it is entitled the "Commonwealth of Virginia, Department of Mines, Minerals & Energy, Division of Gas and Oil" it is in regard to the Oakwood Coalbed Gas Field and establishing drilling units therein and it is dated and it is signed. It was signed May 18, 1990. It is a prior order of this Board and it is a prior order of the Department of Mines, Minerals and Energy. I don't see anything, are we sitting here assuming that the legislature was so stupid that when it passed this law

after this rule was in place that if they wanted to repeal it they didn't. There is nothing in the statute that says prior orders, prior rules of the Department of Mines, Minerals are void. We have addressed this issue exhaustively. We have an order of the Department of Mines, Minerals and Energy, which still exists, Division of Oil and Gas, Gas and Oil. That is clearly a prior act with regard to what well spacing will be. We are here today asking that that prior order be applied to allow us to pool and drill. Eventually we will have drilling permits if we have not already applied for them, pool and drill on that spacing. If the Commonwealth of Virginia, Department of Mines, Minerals and Energy, Division of Gas and Oil went away and did not exist I guess maybe I would be concerned, but the entity that issued this ordered.

Mr. Johnson                    Mr. Schwartz the entity that issued this order was the Virginia Oil and Gas Conservation Board and it is signed by Mr. Benny R. Wampler, its Chairman, not by the Division.

Mr. Schwartz                They don't have any authority other than through the Division.

Mr. Johnson                You are saying this Board does not have any authority other than through this Division?

Mr. Schwartz                They are a sub-division of the Division.

Mr. Wampler                Gentlemen, I am not going to let you talk back and forth. Mr. Schwartz if you have any final comment.

Mr. Schwartz                No

Mr. Wampler                Do you folks want to go into executive session.

Mr. Evans                    I move we go into executive session.

Mr. McGlothlin            I second it

Mr. Wampler                There is a motion and second that the Board go into executive session. All in favor signify by saying I, opposed likewise (no opposed). We are in executive session under Section 2.1-344 #7 consultation with legal council and briefings of staff.

The Board adjourned to executive session

Mr. Wampler                I will now entertain motions from a member of the Board that we come out of executive session.

Mr. Evans                    So moved.

Mr. Kelly                    Second

Mr. Wampler            A motion and second, all in favor say I, opposed likesame (none opposed). I will ask you to affirm that we had no other discussion than with council on this matter.

Mr. McGlothlin        Yes

Mr. Kelly             Yes

Ms. Zander            Yes

Mr. Evans             Yes

Mr. Wampler           Yes, and thank you. What is the Board's pleasure.

Mr. Kelly             Mr. Chairman, I would like to make a motion. That we consider that Oxy is a valid claimant and that the Oakwood Field Rules are valid and stand as previously adopted.

Mr. Evans             Second

Mr. Wampler           Motion and second, all in favor say I, opposed likesame (none opposed). Thank you. We will now ask you to go ahead and present the evidence. If there is a way to consolidate, and I don't know this, you folks will have this as open discussion as you bring on witnesses, if their cases are closely enough related that we can do any consolidation, if not we will do whatever we need to do.

Mr. Schwartz         I think you need to ask the objecting parties, we are going to put in the bear bones, what we feel we need to put in on each of the pooling applications. If we could proceed to do that then they can recall any of the witnesses that we have called to present their objections, that might be a way to expedite it, I don't know.

Mr. Wampler           That is what I am seeking is there a way to do it for everyone.

Mr. Counts            All the parties essentially to all these applications are the same parties. I think it would be prudent to combine these matters.

Mr. Johnson           Is it my understanding Mr. Schwartz you are going to present the evidence as to all three applications at the same time?

Mr. Schwartz         We will have to take them in order or it would be unbelievable but it won't take very long for each one. I am incorporating a lot of this stuff and we can go through it as quickly as we can. Can we do them all at the same time, great. I would request that Rick be allowed to do that and for once I have two people against me. I would request that Rick be allowed to go through this and I be allowed to come back with regard to the objections, not two on the objection. They are going to cross-examine the same witnesses.

Mr. Wampler           They may do that.

Mr. Johnson            To the extent that they want to \_\_\_\_\_ what they are doing, Rick wants to put on these witnesses and Mr. Schwartz wants to participate in any cross-examination, I don't have any problem with that. I do have a problem with both of them putting on evidence, both of them cross-examining and both of them standing up and giving testimony to what their objections are at the same time. As long as there is some differentiation between what Mr. Counts is doing and what Mr. Schwartz is doing, I have no problem, otherwise I do object.

Mr. Wampler            I think the Board has already said we are not going to let them do the same thing.

Mr. Johnson            As long as it is a fairly clear line of demarcation, I have no problem.

Mr. Schwartz           Let Rick get the bare bones stuff in and I will come back.

Mr. Wampler            All right lets go. Just remember we have to have a preserved record and make sure we are clear on record.

Mr. Counts            I would like to call Mr. Martin Wirth.

Mr. Wampler            Mr. Wirth you have already been sworn. Go ahead Mr. Counts.

Mr. Counts questioning of Mr. Wirth

Q                        Mr. Wirth you are a project landmanager for Oxy USA, is that correct sir?

A                        That is correct

Q                        Mr. Wirth you have previously testified before the Board and your testimony as an expert witness has previously been accepted?

A                        That is correct.

Q                        Mr. Wirth, do your responsibilities include the lands surrounding and underlying the three units subject to these various applications?

A                        Yes it is.

Q                        Are you familiar with the applications in this matters?

A                        Yes I am.

Q                        Does Oxy seek to force pool the drilling rights on the approximate 80 acre drilling and spacing units identified as E-34, E-36 and D-36 in the Oakwood Coalbed Gas Field for all coal seams below the Tiller Seams?

A                    Would you repeat the well numbers again?

Q                    Yes sir, the wells would be E-34, E-36 and D-36.

A                    Yes they do.

Q                    Are you familiar with the ownership of the drilling rights of these units?

A                    Yes I am.

Q                    Does Oxy own rights underlying these units?

A                    Yes it does.

Q                    Would you indicate the interest of Oxy in these units where it derives its interest.

A                    Oxy is the designated operator for Island Creek Coal Company by virtue of its coal lease. It has a lease of the coalbed methane claims from the owners of a 100 percent of that unit for all units.

Q                    Of units E-34, E-36 and D-36?

A                    Yes

Q                    Mr. Wirth, does Oxy wish to dismiss any of the respondents noted on the Exhibits for the wells that we are now discussing?

A                    No it does not.

Q                    Does Oxy seek an order pooling all interest or estates in the coalbed methane gas drilling unit for the development and operation?

A                    Yes it does.

Q                    Does Oxy seek to force pool the drilling rights of each individual notified if living and if deceased the unknown successors or assignees.

A                    Yes it does.

Q                    Were efforts made to determine the whereabouts of all individuals and all parties?

A                    Yes

Q                    Are the addresses set out in Exhibit B the of the application, the correct addresses for those persons or entities?

A Yes, Lon B. Rogers, Bradshaw Trust and Fon Rogers have a new address of 300 East Main Street. We were just up in their office and they advised us of such.

Q A change of address, is that correct?

A That is correct.

Q Mr. Wirth, prior to this hearing were efforts made to contact these parties and attempt to work out an agreement with regard to development of these units that we are discussing?

A Yes, everyone was located and contacted either by phone, in person or by mail an offered a lease for the coalbed methane interests or assign.

Q Is it in your opinion that a bona fide effort was made to reach an agreement with these parties on behalf of Oxy?

A Yes it was.

Q Mr. Wirth, what offer would you make for leases of these possible coalbed methane interests?

A One dollar an acre bonus with a ten year primary term with a 1/8th royalty interest.

Q Mr. Wirth when an application was made for a pooling order was made for these units, did Oxy provide notice by certified mail to each person identified?

A Yes it did.

Q Mr. Wirth do you recommend that the order provide that any elections by persons notified be in writing be sent to Oxy at the address set forth in paragraph 1.1 of the application.

A Yes

Q Mr. Chairman I move that the remaining questions with regard to specifics within the order itself be incorporated into the order itself be incorporated into the record from prior testimony with regard to prior Oxy forced pooling applications presented before the Board today.

Mr. McGuire I object to that I would like to know what it is.

Mr. Counts continues questioning

Mr. Counts I will be happy to do that sir. Mr. Wirth should this address be for all communications with Oxy concerning the pooling order?

A Yes it should.

Q How much time from the date of the order should these persons have to file a written election?

A Ten days.

Q If any person elects to participate, how much time from the date of the order should such person have to pay Oxy his or her share of the well cost?

A Fifteen days.

Q Does Oxy expect the electing party to participate to pay in advance that parties share of drilling and completion costs?

A Yes

Q Does Oxy have available today to provide to the Board a copy of the drilling well estimate with regards to these wells?

A Yes it does.

Q Exhibit 1 Ms. Davis. Mr. Chairman if there is no objection while I am going through these files I will also offer into evidence copies of the notification. Ms. Davis this is the notification on E-34.

Mr. Johnson Mr. Chairman, if I might make one statement about the procedure we are using. Certainly I would want the Board to understand that we would anticipate that the Board would make three individual decisions with regard to this.

Mr. Wampler I think you can anticipate that.

Mr. Johnson And to the extent that we can that exhibits be dispersed among the three hearings as applicable.

Mr. Lepchitz For record keeping, these should all be marked as Exhibit one with respect to that well.

Mr. Wampler That is the way she is doing it.

Mr. McGlothlin Mr. Chairman is it appropriate to ask some questions on the DWE?

Mr. Wampler Sure

Mr. McGlothlin Mr. Wirth on the production casing, what is that a foot?

Mr. Counts Mr. Chairman let me ask a question if I could of Mr. McGlothlin. Excuse me for interrupting. I assume that the DWE is something that these other parties may want to go into and I only have a few more

questions if I can get through those and we can go back and address any questions at that time, would that be appropriate?

Mr. Wampler                    That is fine as long as we can come back and address it. Do you folks have questions on the DWE's.

Mr. Johnson                    Absolutely

Mr. McGuire                    Yes

Mr. Wampler                    O.k. go ahead Mr. Counts.

Mr. Counts                    Mr. Wirth, how much time from the date of the order should Oxy have to pay or tender any cash bonus becoming due under a Board order?

A                                    Fifteen days

Q                                    Do you recommend that the forced pooling order provide that if any person elects to participate but fails to pay or furnish security satisfactory to Oxy for the payment of well costs, then such persons election to participate should be treated as having been withdrawn and such person should be treated as if no initial election had been made or entity should be treated as no initial election had been filed under the forced pooling order.

A                                    Yes

Q                                    Do you recommend that the forced pooling order provide that where a person elects to participate but is more than 30 days in default with regard to payment of well costs any cash sum becoming payable to such person or entity be paid instead towards such entity or person pro-rata cost of such well costs?

A                                    Yes

Q                                    In the event of conflicting claims to coalbed methane ownership, do you recommend that the Board establish an escrow account into which the payments for costs or proceeds attributable to such conflicting claims be deposited and held for the interests of the claimants?

A                                    Yes

Q                                    Does Oxy, as the coalbed methane gas well operator intend to deposit into such escrow account any money paid by person claiming a contested ownership interest as a participating operator share of costs?

A                                    Yes it does.

Q                                    Does Oxy seek to have any person who does not make an election under the forced pooling order to have been deemed subject to a

final legal determination of ownership to have leased his interest in coalbed methane gas to Oxy as the coalbed methane gas well operator?

A Yes

Q Do you recommend that the forced pooling order provide that if any person elects to lease his interests but refuses to accept the cash bonus or the cash bonus cannot be paid to a party for any reason or there is a title defect with such persons interest that the operator create an escrow account under the appropriate provisions of the Virginia Code or otherwise to hold the money in an account for the owners benefit until the money could be paid to the party or till the title defect is cured to the operator's satisfaction.

A Yes

Q Mr. Wirth, does Oxy have on file with the Department of Mines, Minerals & Energy a blanket bond and proper security?

A Yes it does.

Q Mr. Wirth, who should be named operator under the forced pooling order?

A Oxy USA, Inc.

Q Thank you sir.

Mr. Wampler Cross examine witness

Mr. Johnson Does the Board wish to go first?

Mr. Wampler Do you want to wait and see how they answer their question's. However you want to do it?

Mr. McGlothlin Let me ask it.

Mr. Wampler Go ahead.

Mr. McGlothlin Mr. Wirth on your DWE for E-34, E-36 and D-36, I bring your attention to production casing. On E-34 it is 1790' you have a cost of \$10,255.

Mr. Wirth Mr. McGlothlin, Mr. Vangolen would be answering your technical questions as to the detailed well estimates.

Mr. Vangolen What was it now Kevin?

Mr. McGlothlin O.k., production casing, 1790 at \$10,255 and I can't do quick division in my head so I don't know what that cost per foot is but anyway on E-36 you go down an additional ten feet with your production casing at a difference of \$60 in price. So we assume \$6 a foot more. Then

we go down another ten foot and we have a \$55 difference at \$5.50 per foot. Production casing it would seem to me to be a constant item.

Mr. Vangolen Kevin, these numbers are rounded off per foot basis. Production casing is somewhere around \$5.70 foot is what we are estimating. This is an estimate. When we go out and purchase pipe for a program we will purchase a major allotment of pipe.

Mr. McGlothlin I understand that but I would think you could keep them a little constant. Particularly when you are dealing with three wells all at the same time. Lets go ahead and look at the tubing there is some discrepancy there also. This is the first time I have had an opportunity to have three of these in front of me at one time. Here ten foot and \$35 difference from E-34 to 36 and then from E-36 to D-36 there is just some discrepancies I feel like these are constant costs. If it were for contract drilling that is going to be variable from time to time I could understand that. I understand that this is variable from time to time.

Mr. Vangolen I have a number of engineers that work for me Kevin. Each one has their own interpretation of what a conservative estimate is and what is not a conservative estimate. That is why these are called well estimates. Each individual does an estimate. The discrepancies are miniscule percentages of what we are talking about here.

Mr. McGlothlin That may not be the case. You are talking to someone who wants to participate and you are asking them to come based on this figure. And pennies add up to dollars.

Mr. McGlothlin That is true. I don't deny that.

Mr. Wampler You are saying different people prepared these Mr. Vangolen?

Mr. Vangolen Yes

Mr. McGlothlin In lieu of an answer I will defer to council.

Mr. Wampler Would you start cross-examination.

Mr. Johnson in questioning Mr. Wirth

Q Mr. Wirth, I need to ask you a few questions just for the record in this case. It is my understanding that Oxy USA Inc. is applying for this application based solely upon the coal lease from Lon B. Rogers, is that correct? The Lon B. Rogers coal lease to Island Creek Coal Corporation.

Mr. Schwartz I will object to that we have been through this.

Mr. Johnson You may object to it, I want to get it on the record sir. I want him to just state and confirm on the record what is the reason

why he feels Oxy USA has made the application. Upon what basis? I just want it on the record.

Mr. Wampler                We will overrule the objection and let him put it on the record.

Mr. Wirth                 Yes as a possible claimant to the methane rights we are going under Island Creek's coal lease.

Mr. Johnson               That is the sole basis upon which you are filing your application for these units, pursuant to the Island Creek Coal lease.

Mr. Wirth                 All three units.

Mr. Johnson               Yes all three units. I believe, I will hand you a document which was styled designation of operator, limited power of attorney which is dated September 14, 1990 and signed by Mr. Ken Price on behalf of Island Creek Coal Company for purposes of the record I am going to hand you three copies of this and ask if you will identify that as the agreement pursuant to which you are contending that you have the right to act in this matter as the applicant? Those are three identical copies.

Mr. Wirth                 Yes they are.

Mr. Johnson               I would like to have these introduced as Rogers Exhibit 1 and have them distributed amongst the three files so that they will be part of the record as the three well files to be considered. These are also the same documents that were introduced in well C-38. I am sure you have copies of those.

Mr. Schwartz             A lot of trees gave their lives for that thing.

Mr. Johnson               I believe you stated that your proceeded to obtain coalbed methane leases. Since you are proceeding under the coal lease, I want to ask why did you feel it necessary to acquire coalbed methane leases or why did you attempt to do such?

Mr. Wirth                 As the ownership issue, Oxy USA as a prudent operator, has been trying to obtain coalbed methane leases from any and all potential claimants under the units and should they not be able to come to agreements that is why we are before the Board in order to pool.

Mr. Johnson               You also testified that escrows that contested ownership interests would be placed in an escrow account. Is that also true with respect to Oxy's interest to the extent that it might be contested?

Mr. Wirth                 As provided under the Virginia Gas and Oil Act, yes it is.

Mr. Johnson               The operating agreement under which you are proceeding, would you advise the Board under what operating agreement you are proceeding. I don't believe you testified to that sir.

Mr. Wirth                    Joint operating agreement offered to other parties, is that what you are asking?

Mr. Johnson                I am asking, yes, what operating would you be proceeding under?

Mr. Wirth                    The one we have offered to the Board previously. A joining operating agreement which we have prepared.

Mr. Johnson                That is a model form operating agreement also known as form 610-1982, is that correct, with modifications.

Mr. Wirth                    If I could see it if you have it. It appears to me if all pages are correct in this one, this is the same one I offered to the Board.

Mr. Johnson                Thank you sir. Is this the operating agreement which Oxy has made several applications, in otherwords this is the one you are using for the applications which have been heard and those which are pending, is that correct?

Mr. Wirth                    That is correct.

Mr. Johnson                With regard to the three units and the wells which would be proposed on those units, could you advise whether or not there have been applications, well applications as to any of the three units?

Mr. Wirth                    One second.

Mr. Lepchitz                Mr. Johnson would you be satisfied with the Inspector's answer on that?

Mr. Johnson                I don't know that the inspector can testify for Oxy USA, Inc.

Mr. Wirth                    To the best of my knowledge the permit applications have not been applied for as of yet.

Mr. Johnson                When does Oxy USA, assuming this pooling order would be granted, when would Oxy USA apply for these well application permits in order to drill?

Mr. Wirth                    Immediately upon completion of the well operator permitting requirements for the well application and when completed by the surveyors.

Mr. Johnson                How long will that take sir?

Mr. Wirth                    I can only give you a guesstimate, because you have surveys and other things but it could be 15 to 20 days depending on outside help which we retain or hire.

Mr. Johnson           When would you anticipate, after the approval of the permit, drilling the well.

Mr. Wirth             We plan to have any and all wells which we can permit in the Commonwealth drilled prior to December 31, 1990.

Mr. Johnson           What point in time would you frac or perforate the coal seams which you determine should be fraced or perforated?

Mr. Schwartz          Excuse me I did not hear that question.

Mr. Johnson           At what point in time after the well is drilled, does your company intend to frac or perforate the well.

Mr. Wirth             Mr. Johnson, I would be glad to answer but I am a landmanager and you are asking production questions.

Mr. Johnson           I will wave the question of this witness to allow the substitute witness to appear. Mr. Vangolen I understand you are the witness on behalf of Oxy USA Inc. for technical matters. Is that correct sir?

Mr. Vangolen          That is correct.

Mr. Johnson           I have just asked a question, when after a well has been drilled in your program would the well then be fraced or perforated?

Mr. Vangolen          It would be fraced and/or perforated sometime between now and September of 91.

Mr. Johnson           What is the reason for waiting until as late as September 91, if there is one.

Mr. Vangolen          That is the anticipated hook-up date for all our wells for which to pull gas and we do not want to incur capitol expenditures until we have a place to sell the gas.

Mr. Johnson           Are you or Mr. Wirth the appropriate person to ask the question with regard to a sales contract.

Mr. Schwartz          If you are going to ask other than the existence of one I am going to object.

Mr. Johnson           That is what I am going to ask about.

Mr. Lepchitz          Phrase your question Don.

Mr. Johnson           I want to know who is going to answer the question about contracts, gas contracts.

Mr. Vangolen          I will answer it.

Mr. Johnson Does Oxy USA at the present time have a gas purchase contract for the gas to be sold to come from any of these units, E-34, D-36 or E-36, sir?

Mr. Vangolen Mr. Johnson I am a little confused with your question.

Mr. Johnson Do you have a gas sales contract to sell the gas?

Mr. Vangolen Oxy USA has a number of gas sales contracts to purchasers throughout the US whether this gas flows to those purchasers is not determined at this time.

Mr. Johnson Well, what contracts do you intend to consider selling this gas through if you are now telling me differently than you told me yesterday? What contracts are you intending to sell this gas through sir.

Mr. Schwartz I am going to object to that question. I don't want to get into any contracts, specific terms or who the purchasers are. This is proprietary information. Who we sell our gas to, what they pay for it. I think the answer he is getting is we don't have a specific contract that we have gone out and solicited with regard to this gas. We have other contracts in the United States...

Mr. Johnson I think counsel is testifying, objection.

Mr. Schwartz I think he has got an answer.

Mr. Johnson I object to counsel testifying.

Mr. Wampler I will sustain the objection.

Mr. Johnson Can you tell me what is different between yesterday and today. Yesterday I asked you if...

Mr. Schwartz Objection this is argumentative.

Mr. Johnson I asked you and you said no.

Mr. Wampler I will sustain the objection. If you want to rephrase your question.

Mr. Johnson I think I know how to do that. Yesterday I asked you whether or not you had a gas sales contract and you said no, is that correct?

Mr. Vangolen That is correct.

Mr. Johnson Today you are telling me you have some gas sales contracts but you don't know which one is going to be used, is that correct?

Mr. Vangolen That is correct.

Mr. Johnson            Can you tell this Board or any operator who might wish to participate in this well, the sells price for the gas which would come out of this hole?

Mr. Schwartz           I am going to object to that.

Mr. Wampler            Sustained

Mr. Johnson            Can you tell the Board whether or not it might be an important element in the decision of whether or not to participate to know the sells price for the gas coming out of this particular well.

Mr. Schwartz           I am going to object to that question because he is asking him to speculate on the motivation of the person who may or may not opt into the well.

Mr. Wampler            I will sustain, that would be speculative even if he tried to answer it based on his prior answer.

Mr. Johnson            Do you know, with regard to these three units, or can you testify to when in time Island Creek Coal Corporation intends to undermine the area where the units are located?

Mr. Vangolen           Mr. Johnson, I don't work for the coal company. I can not testify to that.

Mr. Johnson            Have you reviewed their plans and do you know the answer to that question?

Mr. Vangolen           I have not seen projections past a year for most of Island Creek's mining.

Mr. Johnson            Do you know whether or not with regard to these three unit areas how long in time it would be before Island Creek Coal Company would undermine them.

Mr. Vangolen           No I do not.

Mr. Wampler            I will ask you to proceed with your questions.

Mr. Johnson            Sorry Mr. Wampler we are conferring here. I would like to ask Mr. Wirth a question. Do you know whether or not Oxy USA, Inc. has notified all of the interests in the oil and gas in this tract. That would be the conventional oil and gas or the oil and gas.

Mr. Wirth              To the best of our knowledge yes.

Mr. Johnson            Are you aware that there are other Rogers interests outstanding other than the Lon B. Rogers Bradshaw trust.

Mr. Wirth              The trust as to the trust agreements?

Mr. Johnson            No I am asking interests in the oil and gas that were not a part of the Lon B. Rogers Bradshaw trust.

Mr. Wirth            Other than the conversations we had with Mr. Lon Rogers II and Fon B. Rogers, there may be an interest as to cousins or something and that is the reason for the pooling hearing for all parties that may have an interest in it.

Mr. Johnson            Did you attempt after learning this information from Mr. Rogers to notify those persons or identify them.

Mr. Wirth            We are in the process of trying to notify any and all parties. But as you are well aware from the meetings we just attended and come back, Mr. Johnson I have not been back in the office.

Mr. Johnson            Mr. Wirth I believe we had that meeting on October 3, 1990 in Lexington Kentucky, is that correct?

Mr. Wirth            I believe, it was on a Wednesday Mr. Johnson. Mr. Johnson did we have a hearing, to make sure I am right, a hearing on October 4 before the Oil and Gas Inspector.

Mr. Johnson            Yes sir it was the day before we met with the Oil and Gas Inspector.

Mr. Wirth            Yes that would be the date then.

Mr. Johnson            With regard to what you refer to as a DWE which is on these forms, can you tell me at this time, either of these gentlemen Mr. Wirth or Mr. Vangolen, which of these costs Oxy USA has already incurred and if they can tell us what they are and for what categories they should go. Have you had title?

Mr. Wirth            We have had title.

Mr. Johnson            Is that the only expense you have incurred up front?

Mr. Wirth            As you can see you have survey plats and we have title expense and other overhead.

Mr. Johnson            Can you tell me how much that has been with regard to any of these unit applications?

Mr. Wirth            I can give you an average cost of what it is usually running for a tract but you are well aware being counsel in title situations cost will vary a great deal on title examinations. I don't know, I can't give you an exact.

Mr. Johnson            What is the average cost of the title work that is being done on this field? If you can't give it to me on these three wells what is the average on the field prior to submitting the applications?

Mr. Wirth                    It is usually running somewhere from \$5,000 per tract depending on the ownership going back to present day with Buchanan County Courthouse burning and floods and the curative work.

Mr. Johnson                Are you saying it averages about \$5,000 to bring it to this point?

Mr. Wirth                    No that is an estimate.

Mr. Johnson                An estimate of an average is that correct sir?

Mr. Wirth                    That is a good number.

Mr. Johnson                Is the pipe that you show on here, is any of it surface piping which would be a part of a gathering system?

Mr. Vangolen                It is all on lease.

Mr. Johnson                That is on the DWE.

Mr. Vangolen                It is on lease.

Mr. Johnson                Is part of that a gathering system on lease?

Mr. Vangolen                Just up to the sales meter.

Mr. Johnson                Where would you intend to locate the sales meter, would it be on or off lease?

Mr. Vangolen                On lease.

Mr. Johnson                Is that to all three of the unit applications we are considering?

Mr. Vangolen                Yes

Mr. Johnson                How many meters would you install for a given area. Would you only install one meter or would you install one for each well?

Mr. Vangolen                Mr. Johnson depending on the ownership of each well, some may require a meter for each well also depending on the lease. We have some leases that require payout by well. Those wells would require a meter.

Mr. Johnson                As to metering requirements, where all the interests are basically the same, or are the same, would you then only require one meter?

Mr. Vangolen                We would look at consolidating meters, yes for same interests?

Mr. Johnson                And the DWE's all have metering costs, is that correct?

Mr. Vangolen                Yes

Mr. Johnson            Are these metering costs being pro-rated between three units or are they separate metering costs anticipating an individual meter?

Mr. Vangolen           It is anticipating an individual meter.

Mr. Johnson           I will allow counsel for Ashland Exploration to cross-examine.

Mr. McGuire           I would like to cross-examine both witnesses. First one question with regard to the power of attorney that was put in as an exhibit. Was that power of attorney executed after the date of the order establishing the Oakwood Coalbed Gas Field?

Mr. Schwartz           I am going to object to that question, the power of attorney speaks for itself. It has a date and we all know it.

Mr. McGuire           I just want to get it for the record.

Mr. Wampler           I sustain the objection. It is in the record.

Mr. McGuire           I don't know whom I am addressing this to so you will have to tell me who is the appropriate person to respond. Does Oxy plan to drill any test wells.

Mr. Vangolen           No, the testing we are doing is limited to coring.

Mr. McGuire           Isn't it common industry practice to drill test wells?

Mr. Vangolen           If you are going to an area that you are unsure about the resources.

Mr. McGuire           You are sure there is a resource there?

Mr. Vangolen           We wouldn't be spending 50 million dollars if we weren't.

Mr. McGuire           All of these wells are going to be good wells?

Mr. Vangolen           I can't testify to that at this date.

Mr. McGuire           Can you testify that the well we are talking about, the A-34 is going to be a good well?

Mr. Vangolen           Counsel this well hasn't been drilled yet.

Mr. McGuire           But you told me you are not going to test because you are confident.

Mr. Vangolen           Personally

Mr. Schwartz I think the witness may be assuming you have been here for all these hearings and heard about the test wells that were drilled by Oxy. Maybe he is assuming you already know about that.

Mr. McGuire For the record I asked if there have been any test wells and if there have been I would like to hear about it.

Mr. Schwartz I am sure he would be delighted to tell you.

Mr. Vangolen Yes there have been a number of frac wells that have been done. Several frac wells that have been done for Island Creek.

Mr. McGuire I must not have been here, several?

Mr. Vangolen Three

Mr. McGuire When you frac a well does it only affect the coal seams you are looking at or does it affect any other seams, sandstone seams or others outside the coal seam?

Mr. Vangolen We are perforating the coal seam and fracing the coal seam.

Mr. McGuire It has no effect on any of the other strata?

Mr. Vangolen Based on modeling we do, we don't see any effect on the other strata. There are very different rock properties associated with each strata.

Mr. McGuire My remaining questions have to do with the operating agreement.

Mr. Wirth May I borrow one of your copies?

Mr. McGuire We would like to introduce these as exhibits Ashland/Rogers Exhibit 2. We would like to make sure that at least one copy of each of those documents finds it way into each of the files for the proceedings of this Board as an exhibit. We understand that this particular document does reside at the office of the Gas and Oil and we want to have these documents as part of the file.

Mr. Wampler These are all these same?

Mr. Johnson Yes

Mr. McGuire Under Oxy's operating agreement, are you proposing to allow participants such as Ashland any preferential rights to purchase, if Oxy decides it wants to sell out?

Mr. Wirth Preferential rights purchase in a joint operating agreement under Article 8 has been deleted.

Mr. McGuire            Are you aware that Ashland has other oil and gas holdings in the vicinity of this unit?

Mr. Wirth             Yes I am aware of that.

Mr. McGuire            Wouldn't it be common industry practice to allow a preferential right for a participant to purchase the gas?

Mr. Wirth             Preferential right to purchase is not to purchase gas. You asked me one question.

Mr. McGuire            I didn't hear the answer.

Mr. Wirth             Are you talking, you said preferential right to purchase. Is that what we are addressing?

Mr. McGuire            Yes sir

Mr. Wirth             A preferential right to purchase is the preferential right should the operator be removed or decide to sell out. Then the other party is offered that interest to purchase that. That has been deleted in this because of certain things that can be made by any and all owners. Therefore, conflicting claims could arise preferential purchase, right to purchase is deleted in this contract due to the ownership position of coalbed methane.

Mr. McGuire            What is the origin of the model form operating agreement?

Mr. Wirth             The origin of the 1982, this agreement or the 82 agreement?

Mr. McGuire            The one I put in as an exhibit.

Mr. Wirth             The 1982 model form operating agreement is an AAPL form 6101982 approved by the American Association of Petroleum Landmen used throughout the industry as a model form, as you are well aware or I hope you are well aware, ownership to coalbed methane is not a standard and had not until now or earlier of recently had a specific operating agreement which could deal with the ownership issues in Virginia. Oxy USA did a quite extensive amount of time, research and money to develop the riders you see and the deletions and additions into this where we could incorporate the model operating agreement to help the operators that may wish to participate had familiarization plus it does have riders and clauses to be governed under the Virginia Gas Act in others areas as to ownership of methane.

Mr. McGuire            You say this is standard and used throughout the industry?

Mr. Schwartz           No he has not said that.

Mr. Wirth             I did not say that.

Mr. McGuire            Would you tell me what you did say. I mis-heard you, I am sorry.

Mr. Wirth            The 1982 agreement you have in front of you by the AAPL is a standard agreement. We used as a basis this agreement to make sure that every party that may come in but may not be familiar with coalbed methane gas...

Mr. McGuire            I understand that I am sorry, I was talking about the form before it was marked up you may have misunderstood my question. The form before it was marked up to fit the coalbed methane, is a standard form used throughout the industry?

Mr. Wirth            It is a standard AAPL form, American Association of Petroleum Landmen on 6101982 form, yes.

Mr. McGuire            You say you have made some changes to adapt it to coalbed methane and make some changes to help the operator. Is that correct?

Mr. Wirth            Not the operator for the ownership issue, it is for any and all participating parties a lot of the considerations for everything not only just the operator but all parties to be fair and equitable.

Mr. McGuire            So you changed this to help the other participating parties as well as the operator, is that right?

Mr. Wirth            And to abide by the laws of the Commonwealth of Virginia.

Mr. McGuire            How does the deletion of the preferential rights of Ashland help Ashland if it participates?

Mr. Wirth            Ashland may not be an owner. Island Creek, we are the operator, Island Creek may want to become the operator. It may not be sold. It is a negotiable item. But the preferential rights that we are offering to the parties has been deleted as you will see in a lot of the other JOA's presented before this Board on other wells have been also. I believe Ashland just executed a previous one standard with other operators in the area with that preferential right deleted and you executed the same.

Mr. McGuire            Does a non-operator, say Ashland participates as a non-operator, does it have a lien on the gas to secure Oxy's payment of Oxy's proportionate of Oxy's expenses?

Mr. Wirth            A lien on the gas?

Mr. McGuire            Yes

Mr. Wirth            Under Article 7, is that what you are referring to?

Mr. McGuire           It is your document not mine but yes on page 9, under liens and payment defaults.

Mr. Wirth             "Each known operator grants to the operator a lien on its oil and gas rights in the contract area for security interest in its share of oil and gas" and before the Board before we got into this definition when it says oil and gas it also includes coalbed methane.

Mr. McGuire           But you have deleted the sentence that says the operator....

Mr. Schwartz          Excuse me a minute I am going to object to this. The money we are talking about here is going to be in an escrow account so where are we headed?

Mr. Wampler           Sustained

Mr. Johnson           It is not going to stay there forever. I don't want to get into two lawyers arguing before the Board on a position but it is not going to stay there forever Mr. Wampler.

Mr. Wampler           I understand.

Mr. McGuire           How much interest is going to be earned on the escrow account?

Mr. Schwartz          I am going to object to that.

Mr. Wampler           Sustained

Mr. McGuire           Is it interest bearing.

Mr. Lepchitz          The statute requires it be interest bearing. That is the law of the Commonwealth.

Mr. McGuire           I just wanted to get it in the record.

Mr. Lepchitz          That is the law of the Commonwealth.

Mr. McGuire           Mr. Wirth, is Oxy providing insurance to protect all of the participants.

Mr. Wirth             As you will see in your operating agreement, we will provide insurance as to the different properties as explained in the operating agreement.

Mr. McGuire           Doesn't exhibit D say that the operator will provide workers compensation coverage etc. etc. and that no other insurance shall be provided by the operator for the benefit of the parties hereto?

Mr. Wirth             Exhibit D, for workmans compensation and in accordance with the law of the Commonwealth where the operations are being conducted.

Mr. McGuire            Other than workmans compensation you are not providing insurance for the benefit of any other party is that right?

Mr. Wirth             What kind of insurance are we talking about. We have a bond, we have insurance capabilities....

Mr. McGuire           Right I understand that Oxy has a bond and is insured but I am saying is this a correct statement or not on Exhibit D, it says that no other insurance shall be provided by the operator for the benefit of the parties, is that a correct statement or not?

Mr. Wirth             Are you saying is Oxy going to buy insurance?

Mr. McGuire           I am saying does Oxy propose to have any other insurance other than workers compensation that will benefit the other parties?

Mr. Wirth             We are self insured.

Mr. McGuire           My question is if there is a landowner that owns a piece, this is hypothetical, if there is a landowner on a certain piece are you going to provide any insurance to protect that landowner in case he or she gets sued because of an accident that happens on a unit.

Mr. Schwartz           It doesn't look like it, I will just stipulate to that so we can move on.

Mr. McGuire           I am sorry I missed the stipulation. My understanding is Oxy stipulates there is no liability insurance coverage to benefit other parties.

Unknown               People need to buy their own insurance.

Mr. Wampler           I just remind you here that the Board has been very tolerant of a lot of things here that has nothing to do with what the Board has to decide and I would ask you to move on to questions that would be more relevant. I understand how you might relate this and how the Board is concern would be to this. We are concerned but we are not going to be deciding those particulars. Those typea of questions are very relevant when you are having discussions with Oxy either one of you in deciding whether or not to make an election and all those kinds of things. But so far as them being pertinent to what the Board has to make a decision on it is hard for the Board.

Mr. McGuire           I believe they are relevant. I believe this is an owner agreement and we should have the opportunity to demonstrate to this. We will demonstrate that this is not a common industry standard.

Mr. Johnson           Isn't the Board going to approve this operating agreement for these units? Isn't the Board going to say this is what this operator proposes and we believe that this is o.k. for you to propose this? This is what is going to bind the other parties who wish to participate. If they don't want to participate, that is fine but if they do they are bound

by this model form as amended as adopted. Isn't that what the Board is going to be telling the persons who may wish to participate in this well.

Mr. Schwartz I think my comment is if you are going to ask a witness if the agreement has a provision in it, you can argue that without asking questions of the witness. If you have identified provisions in here you think are unreasonable, they are in here and you can argue them. I think that is the point the chairman is making that if you want to argue this you don't have to ask Mr. Wirth if there is insurance provision. You already know it and you can argue.

Mr. McGuire But I could not get a straight answer out of him for about five minutes.

Mr. Wampler That is stricken from the record. Simply saying Mr. Schwartz, what you said is correct. The document is before the Board and the document and the document speaks for itself I believe. I fail to follow the reasoning of examining every item in the document here before the Board.

Mr. Johnson Isn't it explicit upon the Board to determine whether or not the Board is going to decide whether or not to accept this operating agreement as being reasonable. Isn't the Board going to make that determination ultimately in all of these pooling applications and put the persons who may wish to participate in a position of electing to accept what the Board is telling them they must accept or electing not to accept that and not to participate. I think that is why we believe this operating agreement is pivotal to all of these unit applications.

Mr. Wampler All we are hearing though, here again is questions about it and nothing about the unreasonableness of it. No evidence is being put on.

Mr. Johnson We will put some on.

Mr. Schwartz Then do that.

Mr. Johnson We will do it.

Mr. McGuire I have no further questions.

Mr. Johnson I have just a couple more questions that don't relate to this operating agreement.

Mr. Schwartz I thought you were done. You had at both of these witnesses and now you are getting a second pick at them. I haven't asked them any questions.

Mr. Johnson You go ahead and ask them some questions and I will ask them some follow up based upon the cross-examination that Mr. McGuire proceeded on.

Mr. Wampler            Mr. Johnson I am going to go ahead and allow you to ask a couple of questions to see where you are heading with this.

Mr. Johnson            I am just going to ask some questions on things I want clarified. I wanted to ask Mr. Vangolen, basically how much exploratory work has already been done in the area where these wells are going to go by Island Creek by its core drilling program as well as any frac wells that have been drilled?

Mr. Vangolen            There have been no frac wells in this area as to the number of core holes I can't testify to that off the top of my head but the coal seam has been mapped well in this area.

Mr. Johnson            You know where the isopac lines lie with regard to coal thicknesses based upon those core drilling activities?

Mr. Vangolen            Not off the top of my head Mr. Johnson.

Mr. Johnson            I didn't ask if you knew them, do they exist?

Mr. Vangolen            Yes they do exist.

Mr. Johnson            If counsel for Oxy would like to ask any questions of these witness we would be welcome to allow them to do that. We are all done with these witnesses and are ready to call ours.

Mr. Schwartz            That is great, just give me a second. You have been at us for quite awhile and if I take a minute is that all right with you?

Mr. Johnson            That is certainly fine sir. I would be glad to adjourn...

Mr. Wampler            Gentlemen I am not going to tolerate that at all. We are just not going to have it.

Mr. Johnson            I am just saying we are ready to go. That is all.

Mr. Wampler            I understand. The Board will stay in a position of encouraging you folks to work together and we certainly don't want to allow anything that will move you further apart to go on in any our proceedings.

Mr. Schwartz            I don't have any questions.

Mr. Johnson            You may proceed to call your witness. I would like to call Mr. Michael Edwards who I believe has already been sworn before this Board.

Mr. Wampler            Has he been sworn?

Ms. Davis              Not today.

Mr. Wampler            Swear him in please.

Mr. Michael Edwards was sworn in.

Mr. Johnson            Mr. Edwards I believe you have testified previously in hearings before the Board during the past two days. Is that correct?

Mr. Edwards            Yes sir.

Mr. Johnson            Would you briefly tell the Board who you are and who you work for for the record sir.

Mr. Edwards            My name is Michael Edwards I am president of Edwards & Harding Petroleum Company.

Mr. Johnson            Does Edwards & Harding Petroleum Company operate generally in Buchanan County Virginia as well as other places?

Mr. Edwards            Yes sir we do.

Mr. Johnson            Can you tell the Board briefly what experience your company has had and you as an executive officer of your company has had in working on and using oil operating agreements?

Mr. Edwards            Yes, I can. I have personally negotiated and executed joint operating agreements of this type with most of the major operators in this area including Equitable Resources Exploration, the largest operator in the Commonwealth, Columbia Natural Resources, second largest operator in the Commonwealth, Cabot Oil & Gas Corporation, Penn Virginia Resources. In addition, throughout my career I have seen joint operating agreements and been involved in their negotiation and execution concerning in excess of 200 wells in the states of Texas, Oklahoma, Louisiana, West Virginia, Utah and Virginia.

Mr. Johnson            How many years have you been involved in the oil and gas industry?

Mr. Edwards            Approximately ten years.

Mr. Johnson            Have you had an opportunity to examine the operating agreement which has been introduced today which is a form 610-1982 model form operating agreement showing Oxy USA, Inc. to be the operator for wells in Buchanan County, Virginia.

Mr. Edwards            Yes I have.

Mr. Johnson            Have you at my request highlighted the provisions in the agreement which you feel are different or vary substantially from the standard form agreement.

Mr. Edwards            Yes I have.

Mr. Johnson            Have you highlighted those in yellow?

Mr. Edwards                    That is correct.

Mr. Johnson                    I believe the copies the board has shows those same yellow highlights. Would you then starting from the beginning of the agreement review with the Board the provisions which you feel are not reasonable in light of the intent of this agreement with respect to participation in a well pursuant to this operating agreement.

Mr. Edwards                    Mr. Johnson if I might, this is a lengthy agreement and the hour is late and we have all been here a long time and rather than going through this line by line and page by page I probably prefer to address what I think are the few most prominent aspects of the proposed agreement which I have questions about.

Mr. Johnson                    With that understood, I will ask you to proceed sir.

Mr. Edwards                    I would like to start with the copious accounting procedure which is exhibit c of the operating agreement. I would like to note that two of the most important provisions of this agreement are blank and have not been filled out. These concern Article 3. A-1 and A-2 on page 4 of the operating agreement regarding overhead, the drilling well rate and the producing well rate. These are generally two of the first items that are filled in by parties in these agreements. Leaving them blank gives the operator wide latitude to set charges basically as they see fit. I certainly would never execute an agreement for myself or for my company in which these provisions were not filled out.

Mr. Johnson                    That is in Exhibit of the overall agreement which is styled "Accounting procedures joint operations" is that correct?

Mr. Edwards                    Yes and it is toward the back. Again let me point out this is an extremely critical section especially with regards to producing well rates. If the producing well rate is set high enough particularly on average or marginal wells, the other participants are not going to receive very much net operating income. Some of the other, again I would like to add that there are a number of clauses in this agreement that I do not believe that my company would agree to in a negotiated settlement nor do I believe that any of the other operators in the area would agree to. But I am just going to concentrate on the most critical ones. In what Oxy styles rider 15, which is immediately following page 14 of the main body of the agreement, Oxy states that non-operators will not have any ownership in any gathering systems that are built to connect these wells. That in and of itself is not unusual however I would like to point out that Oxy does not specify anywhere in here what charge they are going to make for gathering or transporting the gas and that is an extremely critical element of any relationship and especially in a situation like this where the sales price of the gas is unknown. If the transportation charge is envisioned is also unknown, potential non-operators have no way of knowing what their net well head price is going to be. There net wellhead price could theoretically be zero. Although I would assume Oxy would permit the non-operator to receive some net income. Another provision just above that regards salt water disposal, which these wells will produce some salt water and we anticipate

that salt water disposal will be a significant production cost. Oxy as with the gathering systems is stating that non-operators acknowledge that they will not own any interest in such water disposal facilities and that Oxy is expressly authorized to dispose of such waters for non-operators but again no rate for the disposal of this salt water is established. Again, this coupled with the fact that the producing well overhead rate has not been specified means that a non-operator has no idea of what the operating cost is going to be for his well. There may be little or no net income from this well. In fact these wells may operate at a net loss. Again, as a potential non-operating participant I would consider the next item I am about to bring up as being an extremely important element of the agreement. In article six of the main agreement, on pages 4 and 5 under drilling and development, Oxy states that the operator may elect to delay completion of a well until such time as gas transportation facilities have been constructed. In light of their public statements and their statements today on the record of what they drilling and development plans what this in effect means is they are going to drill a large number of wells, in excess of a 100 wells, before they know if any of them are any good. Because they are not going to complete the wells until, in the words of one of the Oxy witnesses, until perhaps as late as September 1991 or I would imagine until gas transportation facilities have been constructed. This is, in my opinion, an extremely imprudent development plan. No other operator that I know of in this area would embark on such a plan without at least testing initial wells in each of the development areas. For example, the only current producer of coalbed methane gas in the State of Virginia is Equitable Resources. Their program has been deliberately phased. They have drilled a few test wells in each area to determine how good they are. Then in, and I have made detailed studies of the production results of the Equitable wells, and not all of these wells are good. There is a number of wells, there are some of them that are but there are a number of wells that aren't. You are committing a fatal error if you drill all of these wells before you know what is there. By delaying the completion and testing of any of these wells, I feel that is an extremely imprudent practice.

Mr. Wampler                      Mr. Johnson I am going to ask you to keep your witness testifying to the effect of the operating agreement not going into other areas.

Mr. Edward                      I am sorry Mr. Chairman. I just wanted to point out that that is the net effect of this clause. There are also a number of what I generally refer to as the democracy provisions of the operating agreement, article five on page four most operating agreements, as a matter of fact any operating agreement that I have ever signed contains protection for the non-operating parties in the event of non-performance by the operator or substandard performance by the operator. Generally, a majority of non-operating parties have the right to remove the operator. This agreement has been modified to substantially weaken those democracy rights. As a matter of fact, in my opinion one of the most significant modifications has been line two in article five B.1, Oxy has stricken the requirement that the operator own an interest in the contract area. The net effect of this would be that even in the event that the operator were determined to not have an interest in the resource that they would not, there would be no way to

remove them as operator and they would be free to charge high operating costs to the other non-operating parties. Again, I apologize for taking so much of your time but there are a number of provisions that are in here that are grossly unfair. The last comment I would like to make is that in Rider 6.E.4 contains language so called mine through provisions which state that operator shall have full authorization to plug a well at the request of the coal mining lessee which in this case is a sister company of Oxy. They are both wholly owned subsidiaries of Oxidental Petroleum and representatives of Oxy have testified that they work closely with Island Creek in its development and that the costs of such plugging shall be born by the parties. I would just like to state that at minimum that anybody that was considering participating in this in the drilling of this well would certainly like to know how long it was going to be until these wells were mined through. For example if Island Creek were planning on mining through this area like in five years and if Oxy does not have a gas purchase contract for example and is not planning on connecting the wells for 12 months and things go wrong in this business, they may not get them connected for 24 months, you might only have a well that is going to be in production for three years. The coal companies, and I assume Oxy, know generally what their future mining plans are. Those plans do change but that information should certainly be provided to the non-operators as a result of that rider. Mr. Johnson there are a number of other provisions but in the interest of time.

Mr. Johnson                    You have highlighted the changes in here on a page by page basis in yellow. Is that correct?

Mr. Edwards                    That is correct.

Mr. Johnson                    The items you have testified, what opinion do you have as to whether or not those items are commercially reasonable with respect to this project and anyone who wishes to participate.

Mr. Edwards                    Well I can only speak for myself or my company that I certainly know I would never voluntarily execute such an agreement and that I seriously doubt if any of the other gas operators in the Appalachian Basin would.

Mr. Johnson                    I have no further questions of the witness.

Mr. McGuire                    I have none either.

Mr. Wampler                    O.k. cross examine.

Mr. Schwartz                    Thank you. How many coalbed methane joint operating agreements have you negotiated that have been signed?

Mr. Edwards                    Currently none.

Mr. Schwartz                    So you can't show me or the Board an agreement that you have actually entered into with someone?

Mr. Edwards            Yes that is correct. However I would point out that the drilling and operation of coalbed methane wells is not dissimilar from the drilling and operation of oil wells or of shallow gas wells. There are many cases where shallow gas wells have to have pumping units. Have to have compression. The mechanical similarities with coalbed methane are the same with other types of oil and gas operations with which I am familiar.

Mr. Schwartz           How many coalbed methane wells have you drilled?

Mr. Edwards           We currently as Edwards & Harding Petroleum Company have not drilled any.

Mr. Schwartz           Before you were Edwards & Harding, how many did you drill?

Mr. Edwards           None, again I would point that coalbed methane wells are not dissimilar in many respects from other wells of which I am familiar.

Mr. Schwartz           That is based on your reading or what?

Mr. Edwards           Personal experience.

Mr. Schwartz           With what coalbed methane wells?

Mr. Edwards           I have already stated that I have not been involved with coalbed methane wells but that coalbed methane wells are similar to other types of oil and gas wells.

Mr. Schwartz           They are also different, aren't they?

Mr. Edwards           There are differences. There are differences between any type of oil and gas well.

Mr. Schwartz           Is one of the biggest differences that when an operator of a conventional oil and gas well becomes the operator and has a participation in the well or a working interest in the well, the operator knows that he is going to have it unless his title fails?

Mr. Edwards           That is generally the case.

Mr. Schwartz           And there is a huge difference between that situation and a coalbed methane gas well?

Mr. Edwards           We don't believe that to be the case.

Mr. Schwartz           Could I finish my question?

Mr. Edwards           Certainly

Mr. Schwartz           You may guess wrong, let me ask a different one. Is a difference between a traditional oil and gas operating agreement situation and a coalbed methane situation the fact that the participants, the people

who elect to participate in a coalbed methane well, don't know who is going to wind up owing the proceeds.

Mr. Edwards            You are making that assertion, I don't necessarily share that opinion.

Mr. Schwartz           Do you have a prediction as to the outcome of the Virginia Supreme Court on this issue that you want to share with us? Is that what you are basing...

Mr. Edwards            I am sure your client....

Mr. Wampler            We are not going to...

Mr. Schwartz           Well the answer he is giving me, well I won't argue I think you got the point. Have you been hired as a consultant or expert. Are you being paid to be here today by the two gentlemen who brought you here today.

Mr. Edwards            No sir I am not.

Mr. Schwartz           Did you volunteer?

Mr. Edwards            I was requested by counsel to testify as an expert witness.

Mr. Schwartz           You are doing it without compensation?

Mr. Edwards            That is correct.

Mr. Schwartz           I am just going to touch on a couple of your comments. When people are about to sign a contract that has blanks in it, as you mentioned there were some provisions of the form agreement that Oxy has proposed to use that were not completed, in your experience of negotiating conventional oil and gas agreements do parties that start with a form contract and there are blanks in the contract normally negotiate something to put in those blanks.

Mr. Edwards            Yes, but generally prior to presenting such a document our practice and that of all other operators that I have been familiar with is to fill in the blanks.

Mr. Schwartz           So you would not regard Oxy's blanks as being an invitation to negotiate?

Mr. Edward            I am not sure what they indicate.

Mr. Schwartz           They might be more flexible than you where you have filled in the blanks, correct?

Mr. Johnson            Objection

Mr. Wampler Sustained

Mr. Schwartz With regard to mine through provisions, you apparently have some concerns with regard to the mine through rider on the Oxy agreement?

Mr. Edwards I have no comment one way or the other as to whether such a provision ought to be included. I would just simply like to state that if it is included, that the non-participants should have access to the anticipated mine through dates even if those are rough estimates.

Mr. Schwartz Would you agree that anticipated mine through rates could change dramatically if the price of coal changed dramatically?

Mr. Edwards Yes definitely.

Mr. Schwartz That predictions in that regard should never be regarded by any one as guarantees?

Mr. Edwards Yes absolutely and we understand that and I believe any other non-operator would also understand that.

Mr. Schwartz You understand that there is a tax credit associated with these wells?

Mr. Edwards Yes I do.

Mr. Schwartz That unless the congress, which is about to stop paying everyone in the country, reaches some kind of budget agreement that incorporates an extension of that, that credit is going to expire December 31st of this year. Do you understand that?

Mr. Johnson Again, that is speculation.

Mr. Schwartz No it is not speculation.

Mr. Wampler I don't know why it is speculation, it is the way it is.

Mr. Edwards Our philosophy is we generally don't consider...

Mr. McGuire I object to the question because the law does speak for itself and I object to the question and would like a ruling.

Mr. Schwartz Now that we know that the law speaks for itself I will assume that it does. Now that we know that the current law will expire December 31st, would you agree that that is a major incentive for an operator to drill every conceivable well they could to take advantage of this tax credit?

Mr. Edwards Not necessarily. We and I believe many, if not most, operators generally regard investments or evaluate investments regardless of their tax consequences because the tax code changes regularly. This I

believe is a prudent practice and given the amount of capitol that is going to be asked to be expended and due to the escrow provisions, this capitol is going to have to be put up up front before anybody knows how good these wells are going to be. We feel that the magnitude of the dollars that are being asked to be put up front would outweigh any tax benefits.

Mr. Schwartz            Are you aware of the fact that there are other coalbed methane production basins in the United States?

Mr. Edwards            Yes I am.

Mr. Schwartz            Are you aware of the fact that operators in those basins are drilling like crazy to complete wells before December 31st.

Mr. Edwards            There certainly is a lot of activity. Now whether or not those operators are being prudent is another question. As you are well aware there was a large frenzy of drilling activity in 1981 also which most of which did not turn out to be economic. I would make the comment that if this development is carried out as anticipated, many of these wells will also probably not be economic.

Mr. Schwartz            You would concede though I take it that Oxy's desire to drill as many wells as possible before the end of the year is a desire that many other operators currently have in the United States and are pursuing a similar program?

Mr. Edwards            Yes there are other people doing that.

Mr. Schwartz            With regard to drilling these wells, whether you drill one well or a hundred wells, would you agree that the participants would have to come up with the money up front before they knew whether it was a winner?

Mr. Edwards            Yes, but in the case here I believe there are a number of wells that the applicant is proposing to drill on that same property involving that same owner. I would again like to add that I don't know of any other oil and gas company that would put up this amount of money up front before drilling some test wells and knowing how good they are going to be. I have done a lot of deals in this basin, that is pretty standard practice.

Mr. Schwartz            In essence their are either crazy or they know something in your opinion.

Mr. Edwards            I am not qualified to answer that.

Mr. Schwartz            That is all I have.

Mr. Johnson            Can I ask a couple questions of the witness if counsel is through.

Mr. Wampler            Mr. Johnson I guess we are really starting to get to a point of repeating. If you have somewhere where you are particularly going and can get there do that.

Mr. Johnson            I want to respond to cross examination that is all Mr. Wampler. I don't intend to expand upon anything other than to try and clarify some things.

Mr. Wampler            Go ahead.

Mr. Johnson            Mr. Edwards, what experience have you had in reviewing logs and other information about coalbed methane wells in the Commonwealth of Virginia.

Mr. Schwartz           I am going to object to this as beyond the scope.

Mr. Johnson            It is not. You asked him specifically about the fact that he did not know anything about coalbed methane wells and he never drilled any. He did not know a darn thing about it. That is what you are trying to get the Board to think and I want to ask him what knowledge he does have about coalbed methane wells.

Mr. Wampler            I am going to let him answer the question.

Mr. Edwards            We have made an extensive study of this resource in the Commonwealth and we do in fact have a planned program of our own. I would like to add that we run coal logs on each one of our wells and we have extensively studied the results of the only current commercial coalbed methane project in the Commonwealth and that in order to carry out our program we hired a chief engineer in charge of that program for Equitable Resources who does have extensive experience with coalbed methane wells.

Mr. Johnson            With regard to coal mining plans in Southwest Virginia and specifically in Buchanan County, are you familiar as to whether or not Island Creek Coal Company does have plans to mine coal in Southwest Virginia based upon your experience as an operator in the area?

Mr. Schwartz           I am going to object to that unless he can lay a foundation.

Mr. Lepchitz           I think the Board can take judicial notice of Island Creek's operations. I mean they are there.

Mr. Johnson            Are you familiar with whether or not they have operations in Buchanan County?

Mr. Edwards            Yes I am.

Mr. Johnson            Do you know whether or not the tax law which Mr. Schwartz examined you extensively on will or will not be extended by congress?

Mr. Schwartz I will object to that as speculative.

Mr. Wampler Sustained

Mr. Johnson With regard, Mr. Schwartz asked you several questions about other coalbed methane fields in this country and you testified that you thought perhaps that some of those operators were developing gas wells now and that they were developing several gas wells now that were coalbed methane wells. What knowledge do you have with regard to the development scheme that those operators may be following with regard to test wells or other development schemes?

Mr. Edwards We made a study of the Black Warrior Basin, San Juan Basin, Piceance Basin, Greater Green River Basin and Uinta Basins as well as the Central Appalachian Basin for coalbed methane development starting in 1987 and just briefly in the Black Warrior Basin the coalbed methane gas has been produced commercially in the Black Warrior Basin since the early 1980's and that and the San Juan Basin are currently the most active arenas for this development. Coalbed methane has been produced commercially in the San Juan Basin for in excess of 30 years. There is extensive operating experience in both of those areas and the recent flurry of development and again much of which I consider will probably be uneconomic, has taken place after many years of development in those other areas.

Mr. Johnson I have no further questions Mr. Chairman.

Mr. Wampler I will ask you to go ahead and do your summary arguments and we will give five minutes to each side to do that. Mr. Schwartz will go first since he represents the applicant.

Mr. Schwartz In support of our applications with regard to these three petitions we have I believe put enough information before the Board to make the types of determinations that it needs to make with regard to whether or not a pooling application should be considered. We have spent a lot of time at various times on these applications and on other ones talking about the DWE's and I can tell you based on our experiences these two days we are going to do something about them and maybe make them a little more detailed but I don't think there has been any serious challenge mounted at all that the numbers are not generally what they are suppose to be and that is an estimate of what it is going to cost to drill those wells. We have submitted a form operating agreement for the Board to consider. We have had some discussions on it. It has been criticized by a gentleman who has never entered into a joint operating agreement with regard to a coalbed methane well. Most of his criticisms relate to differences between the modified form which Mr. Wirth testified was modified because of issues peculiar to coalbed methane and it has a mine through rider for goodness sakes because it is a safety issue and it is required by the statute that you be able to mine safely and if they are headed your way you have to do something with that well. You would not normally find that in some of the other agreements but the agreement has been modified by Oxy's representatives as best they can to deal with open questions of ownership and to deal with other issues that are peculiar to coalbed methane. It is a first effort in that regard.

There are complaints that there are blanks in there. Our answer to that is a blank, in my judgement, is an invitation to negotiate. I would also suggest to the Board that just because the Board approves one of these joint operating agreements the Board has continuing jurisdiction as I read your statute to resolve, I am reading from 361.21.G ... "the board shall resolve all disputes arising among gas or oil operators regarding the amount and reasonableness of well operation costs" what I am suggesting to you and I hope this doesn't happen, I hope you don't become a forum for disputes about whether someone should have spent \$50 on an item or not, but if there are inequities with regard to these wells and legitimate disputes with regards to costs in the future once these wells are operating, you have jurisdiction to deal with those issues and correct those inequities. We are not asking, no one is laying any agreement in front of you here that you cannot deal with in the future to make sure that they are fair in the application. I am suggesting to you that Oxy has submitted the document that they believe reasonably addresses the problems peculiar to this and have made some changes. I am also telling you that to the extent there are legitimate complaints between the parties in the future, you have authority to deal with that. You ought to take that into consideration when you are looking at these contracts. Lastly I would suggest to you that there has been no serious challenge at all to these three applications. I would request that you approve them over the objections that have been tendered.

Mr. Wampler                      Thank you.

Mr. McGuire                      You have heard from counsel for Oxy say that this model form that was submitted to you was drafted just to accommodate the coalbed methane issue. That is not the case and I hope that you in looking at this application will see that the changes that have been made go to help Oxy. They don't go to help the other parties involved and the issue of the blanks that was raised by the other side, we don't regard as an invitation to negotiate it is an invitation for Oxy to fill in those blanks to benefit Oxy. I think if you take a look at this agreement you will see that this agreement is one sided. It benefits Oxy. I can't see a single part of this agreement that benefits anybody else who wants to participate. I have nothing further.

Mr. Johnson                      I feel like what this Board needs to do is spend more time looking at DWE's or whatever you want to call them. They ought to spend more time looking at operating agreements particularly by an operator who proposes to drill over 100 wells in Buchanan County Virginia pursuant to this document. Not just these three units but every unit that they have come here and tried to get this Board approve. Every well application that they have submitted to the Inspector they are going to come here and ask for a pooling order or they are going to have the whole thing lease. When they come in here for a pooling order they are going to ask you, the Board, to approve this contract. I know Mr. McGuire has made some copious notes on it but you have copies of it. What I am telling you about it is that it is not fair. It is not equitable. There is a gas company that use to be around here called Equitable gas, it is not equitable. It is one sided. What Mr. Edwards did, he took his yellow pen out and he just went through the changes that are not equitable and if you will take a look at that contract you can

go page by page and find where he has marked on there a change that Oxy has made from what they testified to was a standard form good boy we will all sign it operating agreement. They say now this big association of petroleum landmen come out with this operating agreement, they say this is fair. This is what you ought to be using. Now not everything, in fact not very much of what is going on here is just because they are coalbed methane wells. It is because Oxy wants this agreement to be the form that the participants in these wells must adhere to. I disagree with what Mr. Schwartz has told you that if the future participants think something is unfair and they are a little unhappy they can come in here and you will tell them that we don't care what the operating agreement said, you have to abide by it. The Board approved it. I know that is what this Board is going to say. This Board is not going to go out and re-write this operating agreement. This Board might argue over the price of pipe fittings or something like that and allow the parties to argue on some little aspect but the Board is not going to re-write this agreement unless it does it now. The Board is not going to require anything else unless it requires it now. So we come to you and attempted to show you that Oxy is coming to this board with a very one sided agreement. They don't introduce it at every proceeding. They introduced it up front. Have never disclosed it, never discussed it with this Board. They certainly, when they came in here yesterday in the C-38 case they said we have one on file, I have never seen it. I doubt that any of you except perhaps Mr. Fulmer have ever looked at it. I feel that what we are asking you to do is take a look at it and if it is improper I think that this Board ought to find it improper or find the aspects of it which are erroneous to be erroneous and I don't ask what else we can ask the Board to do but to take an honest look at it and remember that you are not talking about three wells on the Lon Rogers tract, you are talking about every unit operation this outfit is proposing to pursue in front of this Board. With regard to the other issues, we have raised standing issues, I have also notified the Board there are parties that have interests in the oil and gas which Mr. Wirth has testified he is aware of who were not notified. I just make note of that to the Board. The Lon B. Rogers, Bradshaw trust as I understand, my clients have advised me somewhere in the neighborhood of 65% interest in the oil and gas the others belong to other family members. My client did get notice of this application and I am not denying that. I also want to make note that Lon B. Rogers is the owner of the coal and that he did lease the coal to Island Creek Coal Company and they are proceeding pursuant to this coal lease. I do ask the Board to seriously consider what we have raised because I don't think it is going to go away and I don't think this Board can take these operating agreements car-blank I don't think they can take these DWE's are whatever they are, I still haven't figured that out, whatever they are as just the law on the subject. I think this Board has an obligation to the people who may become operators in these wells to make sure that these estimates are fair and reasonable estimates and to make sure that the operating agreement is a fair and reasonable operating agreement. Thank the Board very much.

Mr. McGlothlin            I move that the Board adjourn to executive session.

Ms. Zander                Second

Mr. Wampler All in favor signify by saying I (all agree) Opposed (none). We are going into executive session under Section 2.1-344 of the Virginia Freedom of Information Act to have consultation with legal counsel and staff.

Mr. Wampler We will entertain a motion to come out of executive session.

Mr. McGlothlin So moved.

Mr. Evans Second

Mr. Wampler Motion and second. All in favor signify by saying I (all in favor) opposed likewise (none). I will now ask you each to affirm that all we discussed was legal matters relevant to this case.

Mr. McGlothlin Yes

Mr. Kelly Yes

Ms. Zander Yes

Mr. Evans Yes

Mr. Wampler Yes Thank you. What is the Board's pleasure in this case?

Mr. Kelly Mr. Chairman I would like to make a motion. I would like to move that the pooling applications for wells E-34, E-36 and D-36 be approved as submitted and further stipulate that the Board does not approve or disapprove of the joint operating agreement as submitted to us but would request that a final executed negotiated copy be presented to the Board when it is available.

Mr. McGlothlin Second

Mr. Wampler I have a motion and a second. All in favor signify by saying I (all in favor) opposed likewise (none). Motion carries. Thank you all. This hearing is adjourned.

Mr. Counts Thank you Mr. Chairman and members of the Board for your indulgence.

Mr. Johnson Thank you Mr. Chairman and Board

Mr. McGuire Thank you.