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VIRGINIA OIL AND GAS CONSERVATION BOARD

HEARING OF OCTOBER 20, 1992

9:00 A. M.

IN THE BOARD OF SUPERVISORS ROOM

COURTHOUSE

GRUNDY, VIRGINIA

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1 a copy? Do you have copies of the affidavit of election?
2 (Pause.) Okay.

3 MS. RIGGS: At the last Board hearing we considered a modifi-
4 cation of the existing pooling orders in order to modify
5 the escrow provisions contained within each of those
6 orders to name Tazewell National Bank as the escrow agent
7 and to instruct that future funds will be escrowed with
8 that bank as the escrow agent for the Board. So the
9 modification of the escrow standards hasn't changed since
10 the last meeting. It's the same recommendation. And the
11 purpose of that order is to implement the selection of
12 the escrow agent by modifying existing forced pooling
13 orders to name Tazewell National Bank as the escrow
14 agent. Do you want to take these one at a time?

15 MR. CHAIRMAN: I think we should.

16 MS. RIGGS: Maybe that's the easiest way. Are there any
17 comments from members of the Board with reference to the
18 draft that's been circulated on the modification of the
19 escrow standards?

20 MR. MCGLOTHLIN: I believe if I'm following it the modifica-
21 tion of escrow standards in those -- let me read number
22 one. "Hearing date and place was 9:00 A.M. September
23 15th." Is that the one we're talking about?

24 MR. CHAIRMAN: That's the one.

25 MR. MCGLOTHLIN: Number 5-A under the escrow provisions for

1 unknown or unlocatable persons, we have "If any payments
2 of bonus royalty payments or other payments due in owning
3 under this order cannot be made because the person
4 entitled to thereof cannot be located or is unknown then
5 such cash bonus, royalty payment or other payment shall
6 not be co-mingled with any funds in a unit operator and
7 shall pursuant to Section 45.1-361-21.D of the Code of
8 Virginia, as amended, be deposited as the operator into
9 the escrow account commencing when the sale of gas
10 produced from the well commences." We change this to
11 reflect that the bonus payment be made at such time of
12 forced pooling or lease.

13 MR. RIGGS: I guess what I done in my draft is change that to
14 within blank days of the notice of entry of this order.
15 And I think what has to happen at this point is once you
16 adopt these form of the orders we're going to have to go
17 back -- there are three things to be accomplished by the
18 supplemental order we're going to consider next. And
19 that's; Certify that the copies of pooling order were
20 mailed to all parties of interest, set forth the state-
21 ment of interest, and set forth the affidavit of elec-
22 tions. Those are now being done by separate processes
23 and we're trying to roll those all into one process which
24 means we'll then have to conform the dates in the forced
25 pooling order to tie into that supplemental order. Right

1 now I think the -- for example, the bonus has to be paid
2 within 60 days of recording. They've got 60 days to make
3 certain filings. So we need to make all of these times
4 consistent so that it flows as one continuous process.
5 And once the supplement order is entered the escrow agent
6 can set up the escrow agent and be prepared to then
7 receive the monies as they flow in.

8 MR. MCGLOTHLIN: Okay. I also note that that also needs to be
9 done for the next paragraph as well.

10 MS. RIGGS: So we'll conform those dates to tie into the
11 supplemental order, is that --

12 MR. MCGLOTHLIN: That's fine. Thank you.

13 MR. MASON: I don't know whether this is the appropriate time
14 to bring this up, but under the law -- the Virginia Gas
15 and Oil Act -- there are three situations in which
16 payments are made into escrow. One of them, of course,
17 was with respect to payments related to a well coming
18 from either the operator or the well production for
19 unknown unlocatable person. The second, the same
20 payments for conflicting claims. There's a third
21 situation in which money under the Act is paid into
22 escrow which relates to where a person elects to partici-
23 pate and has to pay into escrow their proportionate share
24 the estimated drilling and completion cost. Maybe I
25 haven't gotten it, but I don't see that that's dealt with

1 in here.

2 MS. RIGGS: There's just the other payments, due language, and
3 I think it would be appropriate to spell that out
4 specifically right in the provision.

5 MR. CHAIRMAN: Would that take care of your concern? In other
6 words, stipulating those other payments rather than say
7 other payments --

8 MR. MASON: Where does it say "other payments due"?

9 MR. CHAIRMAN: Under paragraph 5-A that says the escrow
10 provisions for conflicting claimants.

11 MS. RIGGS: I think it would be appropriate to spell that out,
12 though, as a specific --

13 MR. MASON: Yeah. I guess the reason I say that is I think it
14 needs to be clear that those other payments are all
15 payments generated from or through the operator as
16 opposed to something that a person -- where the potential
17 claimant puts up their money. I just want to make sure
18 it's understood that these provisions apply to all three
19 of those situations. Have we had anyone do that yet?

20 MS. RIGGS: Yes.

21 MR. MASON: So it is an actual situation?

22 MS. RIGGS: That's my understanding.

23 MR. MASON: Thank you.

24 MR. CHAIRMAN: Any other comments? Is anyone here today that
25 wishes to address the Board on this matter on either of

1 these, the supplemental order or the affidavit?

2 MR. SWARTZ: I'd just like to make a comment that we discuss
3 the 60 day period and I thought that the Board had
4 indicated at the last meeting that that was acceptable
5 and I just wanted to make sure that that was still --

6 MR. CHAIRMAN: That's still on the table.

7 MS. SWARTZ: On the table, okay.

8 MS. CLEVINGER: Could I say something?

9 MR. CHAIRMAN: Regarding these orders, yes, ma'am.

10 MS. CLEVINGER: The gas and oil and what the paper states,
11 "Known or unknown persons are claiming an interest in
12 it." Well, I do and if I don't do something it's going
13 to be stolen right out from under me. The Commissioner
14 has stated that I own the gas and the oil, but yet he
15 won't let us pay the taxes on it. And then when I have
16 lease -- I don't but my son does that Fred York brought
17 to my house a few years ago and we didn't sign it with
18 him at the time and I don't know where he went to.

19 MR. CHAIRMAN: Could you state your name for us, ma'am.

20 MS. CLEVINGER: Nancy Clevenger, Rowe, Virginia.

21 MR. CHAIRMAN: Ms. Clevenger, right now we're dealing with the
22 proposed supplemental order and an affidavit of election
23 that handles monies that's paid into escrow and directs
24 the escrow agent what they're to do with those funds. Do
25 we have a well scheduled today that you're concerned

1 about, something on today's agenda?

2 MS. CLEVINGER: Well, I don't know. It's in our district at
3 Rowe and in Garden Creek. And for my place where will
4 they pump the gas from?

5 MR. CHAIRMAN: I have no idea, ma'am. Do you have a well on
6 your property?

7 MS. CLEVINGER: No, but they wanted to drill. They haven't
8 yet.

9 MR. CHAIRMAN: Well, we'll go ahead with this discussion and
10 then I'll try to see if we can help you.

11 MS. CLEVINGER: All right.

12 MR. CHAIRMAN: Anyone else wishing to address the Board in
13 this matter? Any other concerns, discussions, members of
14 the Board?

15 (AFTER A BRIEF DISCUSSION OFF THE RECORD, THE HEARING
16 CONTINUED AS FOLLOWS:)

17 MR. CHAIRMAN: Are we ready to vote on the modification of
18 escrow standards as to form?

19 MR. MCGLOTHLIN: I move that we accept the modification for
20 escrow standards as amended.

21 MR. CHAIRMAN: The amendments being the 60 days and
22 specifying the participating shares and conforming all
23 dates into the supplemental order?

24 MR. MCGLOTHLIN: Yes, sir.

25 MR. KELLY: Second.

1 MR. CHAIRMAN: A motion and a second. Any further discussion?

2 MR. MASON: Mr. Chairman, I would like to just ask that when
3 when the final form of this is drafted that it would
4 please be sent to each one of us.

5 MR. CHAIRMAN: Sure. No problem. I have a motion and a
6 second. All in favor signify by saying yes. (ALL
7 AFFIRM.) Opposed say no. (NONE.) It's unanimous.

8 MR. CHAIRMAN: The next part of that discussion deals then
9 with the supplemental order -- the form of the supple-
10 mental order.

11 MS. RIGGS: That's a two part form which incorporates and
12 makes a part of it an affidavit to be submitted by the
13 operator. The purpose of the supplemental order is to
14 spell out what's transpired once the pooling order's been
15 entered and the elections have been made. And it
16 basically certifies as to the mailing of copies to all
17 parties of interest. It sets forth the statement of the
18 interest and the interest that each party has and
19 elections that have been made during the 30 day period
20 following the entry of the order. The purpose of the
21 supplemental order, and these will be done individually
22 for each forced pooling order, is to instruct the escrow
23 agent as to how the escrow account is to be established.
24 And that is the sub-accounts within each unit that's been
25 pooled. I think it's pretty self-explanatory. The form

1 of the affidavit that was submitted, I had one statement
2 of interest and then I think OXY has submitted their form
3 of the affidavit. They basically both do the same thing
4 and they roll three processes that are now occurring into
5 one. And that is certification as to mailing, statement
6 of the interest, and the affidavit of election. Does
7 everybody have a copy of each of these?

8 MR. MASON: I have the supplemental order, but I do not have
9 copies of the affidavit.

10 MR. CHAIRMAN: Those were handed out, I think, at the last
11 hearing. They probably didn't mail it to you.

12 MR. MASON: Has anyone else submitted any recommendations or
13 suggestions as to the affidavit other than OXY?

14 MR. CHAIRMAN: No. We have other representatives here today
15 that -- if anyone wishes to address the Board in this
16 matter would you identify yourself, please?

17 MR. McQUIRE: Grant McQuire. I'm with Ashland Exploration.
18 I've not seen the proposed supplemental order. Does that
19 affect forced pooling applications or does it just affect
20 the way the orders are issued by the Board as far as
21 notice and elections?

22 MR. CHAIRMAN: These supplemental orders will affect how you
23 certify to the Board that all the parties interest are
24 being protected and have been transferred over to the
25 escrow agent, in essence.

1 MR. McQUIRE: That would not be a part of the forced pooling
2 application or would it?

3 MR. CHAIRMAN: No.

4 MS. RIGGS: This would occur at a stage subsequent to entry of
5 the pooling order after the election period has run to
6 certify how those elections were made and what parties of
7 interest still remain to -- that their interest will be
8 escrowed and it serves to facilitate the set-up of the
9 escrow accounts and the sub-accounts.

10 MR. CHAIRMAN: The escrow agent will not be taking any
11 independent action. They'll only act on orders of the
12 Board. Supplemental order will initiate the setting up
13 of the account and the affidavits will supplement and
14 transfer that information of how much money goes into the
15 account and back all that up.

16 MR. FULMER: As a matter of interest and clarification,
17 though, it will be recorded with the original pooling
18 order. So it will be within the original order.

19 MR. CHAIRMAN: Could you hear that?

20 MR. McQUIRE: I did.

21 MR. MASON: Mr. Chairman, isn't it correct that what will
22 actually happen is this supplemental order will become a
23 part of each pooling order as they're adopted by the
24 Board even though they don't relate to the applicant's
25 petition. It's sort of an ongoing standard that will be

1 incorporated in each Board order.

2 MR. CHAIRMAN: Right.

3 MR. MASON: So in that sense it is germane to the pooling
4 application, only in terms of how it's ordered.

5 MR. CHAIRMAN: It's germane, yes. I still believe I answered
6 him correctly. Tell me, Grant, if you have any misunder-
7 standing.

8 MR. McQUIRE: You did. I understand it doesn't affect the
9 application, but it becomes a part of the order.

10 MR. CHAIRMAN: Right.

11 MR. McQUIRE: I understand.

12 MR. CHAIRMAN: Any questions? Any further discussion? Here,
13 again, we'd be carrying forward that all dates conform to
14 the existing regulations into these orders. IF there is
15 no further discussion, do I have a motion for approval?

16 MR. KELLY: I would move that the proposed documents be
17 approved.

18 MR. CHAIRMAN: I have a motion for approval.

19 MS. ZANDER: Second.

20 MR. CHAIRMAN: A motion and a second. Further discussion?

21 MR. MASON: Which one are we approving?

22 MR. CHAIRMAN: The supplemental order with the affidavits.

23 MR. MASON: Okay. Because as I understand it there were two
24 affidavits, one of ours and one of OXY's. Which one are
25 we adopting?

1 MS. RIGGS: The OXY form. They're basically the same.
2 MR. CHAIRMAN: But it would be ours if we adopt it. Any
3 further discussion? We have a motion and a second. All
4 in favor signify by saying yes. (ALL AFFIRM.) Opposed
5 say no. (NONE.) It's unanimous.
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ITEM I, VI, X

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MR. CHAIRMAN: Housekeeping on three items. The item on the agenda which was a petition for well location exception by Equitable Resources Exploration for V-2329 located on the Coeburn quadrangle, docket number VGOB-92/09/15-0273, I have a letter requesting dismissal of that item. Is there anyone here that came today requesting to address the Board with docket number VGOB-92/09/15-0273? If there's no problem that is dismissed. Item VI on the Board's agenda, there's an appeal of inspector decision from the informal fact finding hearing for IFFH 5192 in the matter of Thelma Musick and Curtis Rasnake versus Equitable Resources, docket number VGOB-92/10/20-0282. I have a letter requesting that that matter be continued. Is there anyone here that came today to address this matter on the agenda? Without objection, that's continued. Item X on the Board's agenda, petition for the forced pooling of a drilling unit under 45.1-361.22 from Equitable Resources Exploration for V-2460 located on Maloyed Counts tract in the Sandlick District. I have a request that that be continued. That's docket number VGOB-92/10/20-0281. Is there anyone that came today to address this matter? If not, that matter is continued.

MR. HAMMONDS: I've got a tract in Maloyed Counts property.

1 The only thing -- I didn't want to lease my land and I
2 didn't understand how that worked like if you don't want
3 to lease because I don't want them to have any right-of-
4 way through my property or over the property.

5 MR. CHAIRMAN: Could you state your name, please?

6 MR. HAMMONDS: I'm William Hammonds. Edith Hammonds is my
7 wife. The deed is in her name. And I don't want them to
8 have any right-of-way over the property. I'm not making
9 any objection to drilling the well. I didn't want to
10 lease mine.

11 MR. CHAIRMAN: Do you have any objection to the continuance of
12 this case until next month's hearing?

13 MR. HAMMONDS: No.

14 MR. CHAIRMAN: Okay. What we'll try to do is get you informa-
15 tion on what your rights are in the meantime so that you
16 can be prepared at that hearing if you have questions or
17 what have you. And we can also let the folks know that
18 you have some concerns and questions. Tom, I'd ask you
19 to get to Mr. Hammonds and see if we can help him
20 understand his rights under the law. That matter is
21 continued.

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ITEM II, III, IV

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MR. CHAIRMAN: The next item on the agenda, going back to Item II on the agenda, is a petition for the forced pooling of a drilling unit under 45.1-361.22 from OXY, USA, Incorporated for unit N-3 in the Oakwood Coalbed Methane Gas Field II in Buchanan County. This is docket number VGOB-92/09/15-0260. It was continued from September. Actually II, III and IV were continued from September. We had a combined hearing on those items at that time. And at the continuance I was allowed in order to grant time to resolve a question that came up regarding notification and give the parties an opportunity for a lease. I would ask the parties that wish to address the Board at this time to identify themselves.

MR. SWARTZ: Mark Swartz and Howard Salisbury on behalf of OXY and Buchanan Production.

MR. CHAIRMAN: Is there anyone else here regarding these matters that want to address the Board? Okay. Mr. Swartz.

MR. SWARTZ: Mr. Chairman, the reason why these three -- it applies to all three of them, N-3, O-3 and P-3 which I think are docket Items II, III and IV. The reason they were continued until today is there was an effort and an expectation that we might be able to enter into a lease

1 with a group of people known as the Green Charles heirs
2 who were represented by Mr. Don Johnson at the last
3 hearing. Don had filed motions to dismiss and objections
4 in all three of these cases. I have reached an agreement
5 with Mr. Johnson with regard to a lease with regard to
6 the 276 acre tract that's involved in these units. And
7 he has authorized me to come this morning and represent
8 to the Board on his behalf that he was withdrawing all
9 objections that he had previously filed with regard to
10 these three units. He is withdrawing all motions and he
11 has no objection on behalf of his clients to a forced
12 pooling order being entered with regard to N-3, O-3 and
13 P-3. So the reason that this was continued has gone
14 away. I mean, all those objections and motions have been
15 withdrawn and I am authorized to represent that to you.
16 I spoke to him last night at 9:30. We exchanged docu-
17 ments in terms of a lease. If we sign the lease we'll
18 come back and dismiss these folks. But at least at this
19 point that's what has happened. With regard to one of
20 the units, N-3, when the testimony was offered in
21 September, and still frankly the title work is the same,
22 with regard to tract 10 and N-3 we were seeking to pool
23 a Ms. Looney. It has subsequently come to our attention
24 that she may have not conveyed her interest although we
25 do not have a title report to that effect and I'm simply

1 advising you you're probably going to see us next month
2 to amend that order to add two other people and drop her.
3 I just wanted you to be aware that that may be coming.

4 MR. CHAIRMAN: Do you represent to the Board that notice in
5 all these cases have been fully executed? That question
6 came up with Mr. Johnson --

7 MR. SWARTZ: Well, Mr. Johnson was raising that issue. After
8 the last hearing I mailed to Mr. Johnson who had appeared
9 for all these people and to Mr. Baird who said he was
10 their agent copies of the pleadings. In addition OXY on
11 behalf of Buchanan Production mailed to Mary Baird -- I
12 think it was Mary -- Florence Baird who was the only
13 party named by Mr. Baird and Mr. Johnson who they claimed
14 did not receive notice. So that occurred, but at this
15 point since Mr. Johnson has appeared for these people and
16 then withdrawn all of his objections, yes, we've given
17 them notice but I'm not sure that that's relevant to what
18 you need to do today because Mr. Johnson has appeared for
19 these people and saying through me that you can force
20 pool them.

21 MR. CHAIRMAN: Did he represent Florence Baird at that time?

22 MR. SWARTZ: Yes.

23 MR. CHAIRMAN: Any questions, members of the Board? This
24 testimony was presented in the September hearing and
25 continued for the resolution of this matter.

1 MR. MASON: I'd just like to know what are they asking us to
2 do?
3 MR. SWARTZ: They who?
4 MR. MASON: You.
5 MR. SWARTZ: Enter a force pooling order based on the testi-
6 mony since the objections which were going to be head
7 today have been withdrawn.
8 MR. MASON: Subject to potential modifications as to --
9 MR. SWARTZ: With regard to N-3 with regard to tract 10.
10 Possibly we'll be back -- we will come back for an
11 amendment if the title report comes through on that. I
12 just wanted to alert you that that was a potential issue.
13 MR. CHAIRMAN: Let me go ahead before we move toward any vote
14 and make sure that I've called all these docket numbers
15 and that there's no other parties that wish to address
16 the Board regarding these docket numbers. The ones
17 involved are the unit N-3 which is docket number VGOB-
18 92/09/15-0260, unit O-3 which is docket number VGOB-
19 92/09/15-0261 and unit P-3 which is docket number VGOB-
20 92/09/15-0262. Is there anyone else here today that
21 wished to address the Board regarding these docket
22 numbers that I've just called? The record will show that
23 there's no one identifying themselves. Board, what's
24 your pleasure? We can vote on all of them together,
25 they've all been called, unless there's any reason to

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separate them. (Pause.)

MR. KELLY: I would move that the application for the forced pooling of the three units be approved.

MR. MASON: Second.

MR CHAIRMAN: A motion and a second. Further discussion? All in favor signify by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.) It's unanimous. Let's take a ten minute recess and I'll meet with Ms. Clevenger and then we'll recall the meeting.

(AFTER A BRIEF RECESS, THE HEARING CONTINUED AS FOLLOWS:)

ITEM V

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MR. CHAIRMAN: The next item on the agenda is an appeal of Inspector's Decision from the Informal Fact Finding Hearing for the IFFH 5292 in the matter of Island Creek Coal Company versus Ashland Exploration, Incorporated. This is docket number VGOB-92/10/20-278. I'd ask the parties that wish to address the Board in this matter to come forward at this time.

MR. McQUIRE: Ashland Exploration represented by Grant Mcquire.

MR. SWARTZ: Mark Swartz and Howard Salisbury on behalf of Island Creek.

MR. CHAIRMAN: Any others? Okay. Grant.

MR. McQUIRE: Board members, this is an appeal from an inspector's decision which denied a well permit. The permit was applied for by Ashland Exploration after consulting with three different coal companies and various other people who had an ownership interest in the property. Among those coal companies consulted was Island Creek Coal Company and Island Creek gave permission through a designated agent for Ashland Exploration to drill on this site. And Island Creek further informed, and I will show it through testimony, that this well will be drilled through a barrier pillar and

1 wouldn't affect their operations and would be no problem
2 to drill. Based upon these representations Ashland spent
3 considerable money staking, surveying, and preparing the
4 site for drilling. We filed an application for a well
5 permit and to Ashland's surprise there was an objection
6 filed by Island Creek saying that 1; It interfered with
7 mining operations. 2; It was within 2,500 feet of an
8 existing well. That well was acknowledged to be in
9 existence all during the negotiation period. It was
10 approximately 600 feet from the proposed well of Ash-
11 land's. It was a coalbed methane well applied for by
12 OXY. The Inspector denied the permit on the basis of the
13 2,500 foot rule and I want to acknowledge there is a
14 2,500 foot rule out there and it's often called the coal
15 owner's veto right. The rule certainly can be waived by
16 the coal owner. It doesn't apply when the parties agree
17 as to where a location is. And it also doesn't apply
18 where a well is drilled through a barrier pillar which is
19 there for the protection of an existing well.

20 MR. KELLY: Excuse me. Mr. McQuire, is this a conventional
21 well?

22 MR. McQUIRE: It is a conventional well. And as I will also
23 show, one of the problems -- this is a conventional well
24 under Ashland Exploration's Stickley lease. One of the
25 problems that exists here is that there are a number of

1 coalbed methane wells which have been permitted or
2 applications have been made in this area and it is
3 difficult, if not impossible, to drill for conventional
4 gas with the 2,500 foot rule because there are some many
5 coalbed methane wells -- the wells that have been
6 permitted. And we're in a situation where Ashland might
7 not be able to recover any of its conventional gas under
8 its lease and likewise, the owner will not receive any of
9 his or its royalties for the conventional gas. I'd like
10 to put on as my first witness Ken Bise.

11 COURT REPORTER: (Swears witness.)

12
13 KENNETH BISE

14 a witness who, after having been duly sworn, was examined and
15 testified as follows:

16
17 DIRECT EXAMINATION

18
19 BY MR. McQUIRE:

20 Q. Would you state your name for the record?

21 A. Kenneth Bise.

22 Q. Mr. Bise, where are you employed?

23 A. Benchmark Surveying.

24 Q. What is your relationship with Ashland regarding this
25 well location?

1 A. To provide surveys to the gas well, tie to boundary and
2 mine coordinates.

3 Q. Does Ashland give you authority to go out and contact
4 coal companies on their behalf to try to work out
5 agreements?

6 A. Yes, they do.

7 Q. And did they in this case?

8 A. Yes, they did.

9 Q. Have they done so in the past?

10 A. Yes, they have.

11 Q. Would you explain to me with regard to this one location
12 the chronology of events as you know?

13 A. Yes. On April 7th Charles Toms and myself went to this
14 desired location as mapped by geology and staked a
15 possible location pending approval by Ashland as far as
16 feasibilities go and geology. That was done so and on
17 April 8th we prepared topo exhibits showing this location
18 and a report of our findings as far as access roads and
19 the location itself and it was provided to Ashland Oil.
20 On the 22nd of April we received from Ashland Exploration
21 a go-ahead to alert the coal companies that were involved
22 here as our desires to drill this well. We FAXed to Bob
23 Looney a copy of the topo exhibit. I called Island Creek
24 Coal Company's engineering department to find out who was
25 the correct person to address here and they informed me

1 that Bob Looney was the correct man.

2 Q. Is this the FAX that you sent to Mr. Looney?

3 A. Yes, that's a copy of it. That's correct.

4 Q. And that's part of your business records?

5 A. Yes, it is.

6 Q. Is this the map that was attached to the fax?

7 A. Yes.

8 MR. McQUIRE: I've given copies of the exhibits to my opposing
9 counsel I'd like to introduce this as Ashland Exhibit 1
10 which I pre-marked as Exhibit A-1. I've given the
11 original exhibits to Tom.

12 (Copy of FAX and Topo Map marked as
13 Exhibit A-1.)

14 A. (The witness continues.) On our fax transmittal, as
15 you'll see, I provided a request by Island Creek if they
16 desired mine coordinates at this site and they did so,
17 which we provided at a later date -- on June 24th
18 with --

19 Q. Let me ask you about June 22. Did you have any conversa-
20 tions with Bob Looney?

21 A. On June 22?

22 Q. I'm sorry. April 22, the date of your first fax.

23 A. Yes. I talked to Bob Looney on the phone and he informed
24 me that he was the person who takes care of this and
25 would take this through the chain of command.

1 Q. Did he talk to you about whether or not this was in a
2 place of active mining or whether it was a planned
3 barrier block?
4 A. He said it was plotted within a barrier block, but he
5 would need a more definite location before he could
6 provide us with an approval.
7 MR. MASON: Is Mr. Looney present?
8 MR. McQUIRE: Yes.
9 MR. MASON: You're testifying as to what Mr. Looney said
10 instead of what you did.
11 MR. McQUIRE: I'd like to be permitted to do that because I
12 wasn't sure if Mr. Looney was going to there and I also
13 wanted to show the effect it had on Ken Bise and what
14 actions he took. I'll let you all weigh the hearsay
15 element if you --
16 MR. CHAIRMAN: Okay.
17 A. (The witness continues.) Mr. Looney did request a more
18 definite position of that well by my coordinates. We
19 provided those on June 24th by fax and --
20 Q. Is this a copy of the fax that you sent to Mr. Looney?
21 A. That's correct.
22 Q. And that's part of your business records?
23 A. Yes.
24 MR. McQUIRE: I've provided a copy to opposing counsel. For
25 the Board's identification I'll pass out copies which I

1 have pre-marked already as Exhibit A-2 standing for
2 Ashland Exhibit 2.

3 (Copy of Fax marked as Exhibit A-2.)

4 Q. (Mr. McQuire continues.) Did I understand you to say
5 that this fax contained coordinates?

6 A. Yes, it did.

7 Q. I see the word "revised" on there. What does revised
8 mean?

9 A. Revised was -- Jewell Smokeless during the time between
10 the 22nd of April and the 24th of June objected to our
11 first spot and requested us to move northwardly 50 to 100
12 feet which we did so.

13 Q. And did you have any conversations with Bob Looney about
14 these coordinates -- about the location of the well?

15 A. About the location of the well, once he received my fax
16 he informed me that it hit within a barrier block and it
17 would be no problem.

18 Q. What happened next in the chronology of events?

19 A. The 25th of June I called Mr. Looney's office and spoke
20 to Jay Gembosh -- Mr. Looney apparently wasn't in --
21 requesting coal information. On the 26th of June I
22 received the necessary coal information from Jay Gembosh.

23 Q. Why do you need coal information?

24 A. This is to provide elevations of the coal seam, the name
25 of the seam, and if there's any mining going on within

1 that seam as to prepare a mine casing plan.

2 Q. And you say during this time you had already staked the
3 property, is that right?

4 A. Yes. The well had already been staked. Surveys had
5 already been pretty well completed.

6 Q. What other coal companies did you talk to about this
7 location?

8 A. I talked to Mike Lewis with Jewell Smokeless Company and
9 to Jack Breeding with Coke Raven Coal Company who also
10 have interest in this property.

11 Q. And you got the okays from those two coal companies as
12 well, is that correct?

13 A. That's correct.

14 Q. Anyone else that you had to talk with about this loca-
15 tion?

16 A. We contacted Per-Mac who informed me that they had no
17 interest on that property. They were merely an adjoiner.

18 Q. Is it customary for you to do this by telephone call?

19 A. Yes, it is.

20 Q. Is it in any way unusual for you to make telephone calls
21 to get approvals?

22 A. No. It's pretty much the rule.

23 Q. I understand that Ashland as part of their application
24 filed a well location map and that map was prepared by
25 you. It's not signed by you, but you prepared this map

1 for signature by Ashland's engineer, is that correct?

2 A. That's correct.

3 MR. McQUIRE: I have handed opposing counsel copies of that
4 well location map and for the Board member's information
5 I'll hand you copies as well.

6 (Copy of Map marked as Exhibit A-3.)

7 Q. (Mr. McQuire continues.) Between the June 24th fax and
8 the date of this map which was July 3rd had the well
9 location changed?

10 A. No. The well location was still in the same position.

11 Q. I notice that the first fax of June 24th doesn't have the
12 Virginia State claimant numbers on it but it does have it
13 the Jewell Smokeless value and I notice that there is a
14 slight change in the values. Could you explain to the
15 Board why that is?

16 A. Yes. We found a grid shift between the Jewell Smokeless
17 value which we tied to existing mine openings and also
18 the Coke Raven which differ. They're suppose to be the
19 same system but apparently there is a survey mistake
20 between these two grids.

21 Q. So this was a grid adjustment, is that right?

22 A. It is a grid adjustment.

23 Q. And from your experience in dealing with coal company
24 values is this common to have adjustments or common to
25 have coal company values that are off as this one was?

1 A. It seems to be a pretty common problem when more than one
2 coal company is on a lease. They're evidently not
3 coordinating their survey efforts.

4 Q. Well, when you revise these values the grid shifted
5 slightly but the well location remained the same, is that
6 right?

7 A. That's correct.

8 Q. The same as what you had explained to Island Creek
9 before, is that right?

10 A. Yes.

11 Q. As part of the informal hearing you wrote a letter to the
12 Commonwealth of Virginia Department of Mines and Miner-
13 als, Division of Gas and Oil, did you not?

14 A. Yes, I did.

15 Q. And it was made a part of the informal hearing?

16 A. Yes.

17 MR. McQUIRE: For the Board's information and for the record I
18 would like to submit a copy of that letter. I had pre-
19 marked this as A-4.

20 (Copy of Letter marked as Exhibit A-4.)

21 Q. (Mr. McQuire continues.) And that letter goes through
22 the chronology that you've explained to me, is that
23 correctly?

24 A. That's correct.

25 Q. And you were aware that Island Creek objected to this

1 application based upon it was 2,500 feet from an existing
2 well and it allegedly interfered with mine operations?
3 A. Yes. After all the permitting of the well and so forth
4 was done then we later learned of that objection by
5 Island Creek Coal Company which was a total surprise.
6 MR. McQUIRE: I have nothing further of this witness.
7 MR. SWARTZ: I have a couple of questions.

8
9 CROSS-EXAMINATION

10
11 BY MR. SWARTZ:

12 Q. In your letter that you sent September 8th that sum-
13 marized the chronology of events, Mr. Bise, you don't
14 claim in that letter anywhere that you had consent to
15 this location, do you?

16 A. We didn't have an objection --

17 MR. McQUIRE: I think the letter speaks for itself.

18 Q. (Mr. Swartz continues.) Did you claim in this letter or
19 intend to make an assertion in this letter that anyone
20 from Island Creek had agreed to this location?

21 A. Only Bob Looney.

22 Q. Show me in this letter where it says Bob Looney agreed?

23 A. On the last line of this, no denial or objection was
24 given.

25 Q. So when he didn't deny or object you took that to mean an

1 agreement?

2 A. That's pretty much the rule of coal companies. Nobody
3 wants to stick their neck out.

4 Q. From time to time do you get written waivers of objection
5 from coal companies?

6 A. If we do it's an exception. Pretty much the rule is
7 verbal. We're dealing with professionals here that
8 pretty much stand on their word.

9 Q. Were you at the hearing in Mr. Fulmer's office?

10 A. Yes, I was.

11 Q. And would you agree that Island Creek's representatives
12 appeared and objected to this well?

13 A. Yes.

14 Q. And they objected based on the 2,500 foot rule and based
15 on the location in the mine and it's impact on mining,
16 did they not?

17 A. That's what they objected to.

18 Q. And that occurred at the hearing and there was no
19 confusion in your mind that they were objecting at the
20 hearing, is that correct?

21 A. State the question again.

22 Q. At the hearing that you attended you are certain that
23 Island Creek representatives appeared and objected to
24 this well on two basis?

25 A. Yes, they objected.

1 Q. Okay. Would you agree that between your June 24th fax to
2 Mr. Looney and the filing of the permit that the coordin-
3 ates changed -- the values?
4 A. The values changed.
5 Q. The stake on the surface stayed in the same position?
6 A. That's correct.
7 Q. But the coordinates that the company would use to tie the
8 location of the bottom of the -- or the well where it
9 penetrated a coal seam, that those coordinates change
10 that a coal company might use to locate the well bore in
11 their mind?
12 A. Yes.
13 Q. And would you agree that -- if the Board assumes that Mr.
14 Looney did not make an objection on June 24th or shortly
15 thereafter when you spoke to him would you agree that
16 when he did not object he was being asked to object or
17 not object to a completely different location on June
18 24th than ultimately was submitted?
19 MR. McQUIRE: I believed he testified it was the same loca-
20 tion.
21 THE WITNESS: Yes, I did.
22 Q. (Mr. Swartz continues.) Well, were are playing word
23 games about location on the surface compared to location
24 in the mine?
25 A. No, sir. We're talking about a grid.

1 Q. And if Island Creek was going to find the location in
2 their mind where this well was going through the mind
3 they would use a grid, right?
4 A. That's correct.
5 Q. And if the values on the grid changed from June 24th till
6 the time the permit was submitted the location in the
7 mine would have changed?
8 A. Not possible. We don't know which grid system Island
9 Creek is on. Those are suppose to be both -- all of this
10 is suppose to be Island Creek grid, Coke Raven and Jewell
11 Smokeless.
12 Q. Your June 24th fax says that you were providing Jewell
13 Smokeless Coal Company values, does it not?
14 A. That's correct.
15 Q. And your well permit application used Jewell Smokeless
16 Coal Company values?
17 A. Uh-huh.
18 Q. Would you agree that if we used a Jewell map, took the
19 coordinates from June 24th and the coordinates in the
20 well permit and plotted them that they would be in two
21 different locations?
22 A. They would be.
23 Q. Would you agree then that if Mr. Looney, as you contend,
24 did not object in late June that his response if we
25 assume he didn't object was to a different location than

1 was subsequently tendered in the permit application?
2 A. There are two different coordinates.
3 Q. Would you agree that you do not claim that Mr. Looney
4 agreed to the second set of coordinates?
5 A. No, I would not. I would not say that he agreed to the
6 second set.
7 Q. All right.
8 MR. SWARTZ: That's all I have.
9 MR. McQUIRE: I'd like to follow-up on two items, if I could.
10 MR. CHAIRMAN: Sure.

11
12 REDIRECT EXAMINATION
13

14 BY MR. McQUIRE:

15 Q. Mr. Bise, on June 24th I understand your testimony was
16 that after you faxed the coordinates to Mr. Looney he
17 told you that that would be no problem, is that correct?
18 A. That's what he said. That's correct.
19 Q. Let me clear up another matter. This location which was
20 spelled out in the application is not a different
21 location from what --
22 MR. SWARTZ: I'm going to object to this because it is totally
23 misleading. I mean, we're playing a stake on the surface
24 and a location in the mine and it's not a fair question.
25 MR. McQUIRE: No. We're talking about where a well's going to

1 be drilled. I want him to explain that this is not a
2 shifting of the well site. It's a shifting of the grid.
3 MR. CHAIRMAN: I'm going to allow you to go ahead and ask the
4 question. I think the Board heard the testimony that
5 was just presented. So they can weigh that with what he
6 says now.
7 Q. (Mr. McQuire continues.) This was not a different
8 location, is that correct?
9 A. No, it's not a different location. It is the same
10 location.
11 Q. And has it been your experience that coal companies such
12 as Jewell and other companies realize that there are
13 flaws in their coordinate system and from time to time
14 they revise those coordinates?
15 A. Bob Brendlinger with Jewell Smokeless advised me that
16 their's differed from Coke Raven. They're evidently
17 apparent that they're aware of this situation.
18 MR. McQUIRE: That's all I have.
19 MR. CHAIRMAN: Any questions, members of the Board?
20 MR. MASON: I'm trying to establish a framework within which
21 this testimony goes to a conclusion and with your
22 permission I would like to ask each of these gentlemen if
23 they would tell me at what time is it that an objection
24 has to be made? Do you, sir, suggest that there is no
25 time at which an objection has to be made -- what's the

1 time limit?

2 MR. McQUIRE: If it's a 2,500 foot rule I think they can
3 object at any time if it's strictly within the rule. But
4 I think that if they give permission, pass it or other-
5 wise, and we rely upon that, go forward and spend money
6 on that reliance, then I don't believe -- I don't
7 believe Virginia contract law or any contract law allows
8 them to back out of that. If they gave permission I
9 don't believe they can withdraw it.

10 MR. MASON: What's the consideration for that? Well, you
11 abdicate a contract. What did you all give them for the
12 consent?

13 MR. McQUIRE: We relied to our detriment and spent money.

14 MR. MASON: And somehow you expect to comply consent from your
15 reliance on permission that wasn't given?

16 MR. McQUIRE: We believe permission was given.

17 THE WITNESS: We were informed there was no problem.

18 MR. MASON: I don't understand. A minute ago you said that
19 there was no denial or objection.

20 THE WITNESS: That's correct.

21 MR. MASON: So that's one of the points I want to clarify.
22 Are you telling us that someone representing Island Creek
23 told you, "We do not object"?

24 THE WITNESS: He said there was no problem with this location
25 and that's a quote.

1 MR. MASON: That's Mr. Looney?
2 THE WITNESS: That's Mr. Bob Looney.
3 MR. MASON: So you're not saying that permission was obtained
4 by silence on their part. You're saying there was
5 assertive approval or consent to this well location?
6 THE WITNESS: I took it as no problem meant no objection and I
7 further completed our work.
8 MR. MASON: And you base that on his statement there would be
9 no problem with this location?
10 THE WITNESS: That's what I based it on.
11 MR. CHAIRMAN: Any other questions of this witness?
12 MR. KELLY: I'd just like to follow-up on that for further
13 clarification on this grid business. Is this statement
14 of no objection or had no problem, is that based on the
15 original set of coordinates for the first grid that you
16 utilized?
17 MR. McQUIRE: Yes. Bob Looney was using the faxed coordinates
18 on that fax transmittal.
19 MR. KELLY: And then later when they did object, was that
20 based on change in those coordinates?
21 MR. McQUIRE: There was a change in the coordinates on the
22 plat. Again, it's a grid problem. We don't know which
23 one is the correct grid.
24 MR. KELLY: But this is the grid that's being relied on for
25 the location of the well bore within the mine plan,

1 correct?

2 MR. McQUIRE: Yes. That's the grid we're using on the permit.

3 MR. MASON: Is what you're saying that the actual -- that the
4 affect of these different grids would determine where the
5 well bore penetrated the mine? Is that correct?

6 THE WITNESS: Yes. It would determine which grid system
7 Island Creek is on where it would penetrate. I can't say
8 which one Island Creek is on.

9 MR. MASON: I understand that. But if you relied on the
10 original grid system and you looked at that you would
11 think that the well bore would penetrate the mine at one
12 location whereas if you went to the second grid that was
13 submitted it would penetrate the mine at a different
14 location.

15 THE WITNESS: That's correct.

16 MR. MASON: Now, let me ask you this. This permit that's
17 being sought is to drill a well that will penetrate the
18 well in the second location -- penetrate the mine in the
19 second location?

20 THE WITNESS: Yes, which is on the permit.

21 MR. MASON: I understand that.

22 THE WITNESS: Which is still within the barrier. The same
23 barrier.

24 MR. MASON: If they consented to the penetration of the mine
25 at one location how would you extrapolate that consent to

1 the penetration of the mine at another location?

2 THE WITNESS: I can't say which coordinate Island Creek is on.

3 I can't say.

4 MR. MASON: Well, I understand. It doesn't matter if they
5 consent to the bore penetrating the mine at one location
6 and then you move it, whether the grids are correct or
7 not, the consent was obtained, was it not, based on one
8 spot, one place. And then you changed that place and you
9 want to take that consent and move it over to this
10 location. Was there ever any consent to the penetration
11 of the mine at this second location?

12 THE WITNESS: I never received permission on the second set of
13 values.

14 MR. MASON: Thank you.

15 MR. McQUIRE: May I follow-up on that?

16 MR. CHAIRMAN: Yes.

17

18 REDIRECT EXAMINATION

19

20 BY MR. McQUIRE:

21 Q. Between the two coordinates are we talking about moving
22 it 1,000 feet? Are we talking about moving it 2,000?
23 What I'm getting at is it material?

24 A. No. It's somewhere around 40 feet.

25 Q. 40 feet is about the size of this room, is that right?

1 A. Pretty close.

2 Q. And you don't consider that a material movement?

3 A. Not a tremendous shift. Again, we can't prove which
4 coordinate system Island Creek is using. The actual
5 coordinate that we faxed to them may be the true coordin-
6 ate if we use the Island Creek grid. We don't know which
7 grid they're on. Are they on Coke Raven? Are they
8 correct or is Jewell Smokeless the correct coordinate
9 that Island Creek is on? We have no way of knowing that.

10 MR. CHAIRMAN: Well, once you learned of the objection at the
11 informal hearing and there was time given to try to
12 resolve those objections did you ever try to go back to
13 the one that you thought you had approved as far as the
14 location and obtain approval for that location?

15 THE WITNESS: We never changed our permit as far as that
16 coordinate value goes. No, sir.

17 MR. HARRIS: Has there ever been an attempt to rectify the
18 difference in the grids with Island Creek? I mean, has
19 anyone sat down -- that's what I thought Mr. Wampler was
20 going to ask. Have you all just sat down to see how the
21 grids overlay each other, how much of a difference it
22 really makes?

23 THE WITNESS: On our auto-cad system we have. We can see the
24 difference there.

25 MR. HARRIS: But what I heard you say earlier is that you're

1 not sure what grid Island Creek is using?

2 THE WITNESS: I don't if they're using what Coke Raven uses or
3 Jewell Smokeless. They're using one of the two.

4 MR. HARRIS: And one other point of clarification. You said
5 earlier that when Bob Looney said that there would be no
6 problem was this -- and you may have said this and I just
7 missed it -- was this after the June 24th revision of the
8 coordinate or was it before then?

9 THE WITNESS: After I faxed Mr. Looney the coordinates.

10 MR. HARRIS: So this is the document that says "revised
11 coordinates", right?

12 THE WITNESS: Yes.

13 MR. HARRIS: Exhibit A-2. After you faxed that then you
14 talked to Mr. Looney and he said no problem?

15 THE WITNESS: He said no problem then, after he received my
16 fax.

17 MR. MASON: Excuse me. I'm confused again. Earlier I thought
18 you said that he said no problem after he got the first
19 set of coordinates.

20 THE WITNESS: He only received one set of coordinates by fax.
21 The other one was on the well permit.

22 MR. MASON: That's what I'm saying. He said no problem after
23 he got the fax coordinate. Then he got the second
24 coordinates by means of the well permit. But there was
25 no consent -- there was no verbal consent to the second

1 set of coordinates?

2 THE WITNESS: No, sir.

3 MR. CHAIRMAN: Any other witnesses?

4 MR. McQUIRE: May I ask one more question?

5 MR. CHAIRMAN: Sure.

6 MR. McQUIRE: Did the well move with respect to where it was
7 located on the topo map?

8 THE WITNESS: No, sir.

9 MR. McQUIRE: And he had the topo map, is that right?

10 THE WITNESS: He had the topo.

11 MR. McQUIRE: That's all. Thank you.

12 (Witness stands aside.)

13 MR. McQUIRE: I'd like to call my next witness, Gary Korn.

14 COURT REPORTER: (Swears witness.)

15

16 GARY KORN

17 a witness who, after having been duly sworn, was examined and
18 testified as follows:

19

20 DIRECT EXAMINATION

21

22 BY MR. McQUIRE:

23 Q. Mr. Korn, state your name for the record, please.

24 A. Gary Korn.

25 Q. Who are you employed by?

1 A. I'm employed in the engineering department of Ashland
2 Exploration.
3 Q. And what are your duties?
4 A. My job is to coordinate -- assembling applications for
5 drilling permits in West Virginia and Virginia.
6 Q. As part of your duties are you in charge of permitting
7 wells such as the one that we are dealing with in the
8 hearing today?
9 A. Yes.
10 Q. Is it your understanding that Ken Bise had authority to
11 represent Ashland in negotiations with coal companies?
12 A. Yes. He's employed as an agent of ours for that purpose.
13 Q. Tell me, if you will, what compromises an oil and gas
14 company has to make when its trying to put a well in a
15 place such as the Stickley lease?
16 A. Well, the first consideration is to try to get as close
17 to the desired geological spot as we can in order to
18 optimize our development of the reserves there. Second-
19 ly, in looking at that area on the ground we've got to
20 find a place that is feasible for construction. For
21 instance, you can't build a gas well location on a rock
22 cliff or in a river or something. So some shifting has
23 to take place there. Additionally, which is a major
24 problem, is getting the acquiescence of the coal com-
25 panies who may be there and in this particular case

1 there are three. Additionally, if the surface has been
2 severed for the mineral title we have to deal with the
3 surface owners and try to get their approval and make
4 arrangements for compensating them for damages. Then in
5 this case there is another major factor and that is
6 compliance with the field rules for these -- I'll call
7 them legislative grids -- this Pilgrim's Knob grid, the
8 300 foot from the side spacing regulation and so forth.
9 So we have a great number of parameters to work within to
10 get a spot that we can drill.

11 Q. And I understand that this prevents you from just
12 willy/nilly going out and drilling where you want to, is
13 that correct?

14 A. No. It takes a great deal of time -- two or three months
15 is our experience -- from the time we would start looking
16 if everything well and we met with no objections we'd be
17 talking about two or three months to get to the place
18 where we could prepare an application.

19 Q. I understand that this is on a Stickley lease, is that
20 correct?

21 A. That's correct.

22 Q. And I also understand that there are a number of wells
23 that have either been permitted or an application has
24 been filed, is that correct, in the Stickley area?

25 A. That's correct.

- 1 Q. And I also understand that if the 2,500 foot rule were
2 interpreted literally that there are very few parts of
3 the Stickley lease on which you could drill to recover
4 any conventional gas, is that right?
- 5 A. That is correct.
- 6 Q. And you've not drilled any to date to recover the
7 conventional gas under the Stickley lease?
- 8 A. No. The subject of this hearing is the first well we
9 would claim to drill on this property.
- 10 Q. And it is close to a coalbed methane well, is that
11 correct?
- 12 A. Yes, sir, it is.
- 13 Q. Whose coalbed methane well is it?
- 14 A. That's OXY's to my understanding.
- 15 Q. And approximately how far away is that coalbed methane
16 well?
- 17 A. I believe the precise measurement is 596 feet. It's 600
18 feet.
- 19 Q. I'd like to show you a map which I believe Ashland
20 Exploration prepared for this hearing which shows the
21 acreage and it also shows the acreage which would be
22 denied for drilling under the 2,500 foot rule and the
23 acreage in the shaded portion which would be the only
24 acreage left, is that correct?
- 25 A. That is correct.

1 MR. McQUIRE: I've given counsel and the Court Reporter copies
2 of this. For the Board's identification this is Exhibit
3 A-5.

4 (Copy of Map marked as Exhibit A-5.)

5 Q. (Mr. McQuire continues.) As I understand this map the
6 part of the map which is in white is the acreage which
7 would be denied Ashland Exploration on the 2,500 foot
8 rule, is that correct?

9 A. That is correct.

10 Q. And the shaded area is the only area which would be
11 unaffected by the 2,500 foot rule?

12 A. That's correct.

13 Q. But there are other considerations. I believe you talked
14 about them earlier, about the compromises you have to
15 make as to where you're going to drill. And did I
16 understand that Ashland has chosen this site as the
17 optimum as far as the geology goes?

18 A. The western part of the property where the location is
19 proposed is the chose place by geological standards to
20 drill a first well and from it then wells would be
21 drilled in whatever directions the drilling prognosis
22 would indicate after that. The areas that are left here
23 on the east side of the property -- (Inaudible.)

24 (DUE TO A MALFUNCTION OF THE RECORDER, A PORTION OF THE
25 LAST ANSWER AND THE FIRST QUESTION OF CROSS-EXAMINATION WERE

1 INAUDIBLE.)

2

3

CROSS-EXAMINATION

4

5 BY MR. SWARTZ:

6 Q. (Inaudible.)

7 A. We acquired that lease through the purchase of another
8 company and I can't give you the -- I don't know how
9 long TXO had it. It was a TXO property, I believe, and
10 we acquired it from them and I don't know the dates on
11 it.

12 Q. Would it be fair to say that Ashland has had that lease
13 from TXO for at least four years?

14 A. Oh, yes. I would assume that to be correct.

15 Q. In the four years you've had it this is the first well
16 that you've planned to drill?

17 A. Yes, sir, in the Stickley property.

18 Q. And would you agree that most of the wells on the
19 Stickley lease that you're concerned about that you claim
20 might block your development have been drilled by OXY,
21 USA or Buchanan Production?

22 A. I believe that's a correct statement.

23 Q. And those have been drilled in the last two years?

24 A. Well, yeah. Since the coalbed methane business started,
25 yes.

1 Q. Would you agree that if you had aggressively pursued
2 drilling when you got this lease from TXO four years ago,
3 three years ago, whatever, you would have been in place
4 first and the 2,500 foot rule would have been of little
5 relevance to you?

6 A. I'd like to give a qualified answer to that. We have a
7 very large drilling program, as you know, and we don't go
8 around with an aggressive posture to get there first. We
9 do not operate that way. We got to this property in our
10 drilling sequence. There are many things -- let me say
11 this to the Board -- many things involved in addition to
12 the factors I've already talked about. One is being able
13 to service the well with a pipeline. You don't just go
14 out on an isolated tract and drill a well without being
15 able to sell your product into somebody's pipeline. So
16 you don't just go all over the county helter skelter
17 drilling gas wells. You've got to have a designed
18 development pattern and this drilling of this well is
19 just now coming into the scheme of things for this area.
20 So we do not run around just trying to be the first --
21 get the first well in on the tract. And additionally,
22 this coalbed methane thing, as you know, we're not real
23 keen on that ourselves at this time. We're drilling
24 conventional gas wells and we just now got to this
25 property in what I consider our orderly scheme of

1 development.

2 Q. When is the Stickley lease that you have set to expire?

3 A. I believe the date is November 13th. I'm not positive,
4 but I believe that's what it is.

5 Q. Of this year?

6 A. Yes, sir.

7 Q. And how many wells do you plan to drill between now and
8 then?

9 A. The company contemplates drilling 50 wells in the last
10 quarter of the year which runs from October 1st to
11 December 31st. And I can't tell you how many we'd fit in
12 between now and November 13th. It seems like maybe half
13 of them. 30 or something -- 25.

14 Q. How many other permit applications have you filed with
15 regard to the Stickley lease as of today?

16 A. This is the only application.

17 Q. And you have to give how many days notice for a permit
18 application, 30 days?

19 A. Well, it's probably -- I can't give you a definite days
20 answer because the regulations we're operating under are
21 relatively new and we have a lot of needing to get
22 familiar with and there are a lot of things required, the
23 public notice, the water quality business, just a whole
24 lot of things. So I don't have a pat answer for your
25 question. But, yes, it's a month or something I expect.

1 Q. If it's a month you couldn't get a permit before your
2 lease expired, wouldn't you agree?

3 MR. McQUIRE: I think that's a legal question and I'd like to
4 be able to address that.

5 MR. SWARTZ: This man has testified that he is in charge of
6 permitting.

7 A. (The witness continues.) That's correct. I don't
8 understand your question in that the application has been
9 on file since roughly August 5th and had there been no
10 objections and it had been timely issued we would have
11 had more than sufficient time to have built the location
12 and road and drilled the well.

13 Q. I guess what I'm asking you, sir, is you've tendered a
14 map to the Board today showing the Stickley lease as I
15 understand it for the proposition that the portions of
16 that lease which are in white you would be unable to
17 drill on if the 2,500 foot exemption or rule were
18 asserted by Island Creek. And isn't it a fact that your
19 lease is set to expire in roughly 30 and that if the
20 permitting application requires 30 days you couldn't even
21 have a permit to drill any more wells on this lease?

22 A. Well, that's not technically correct. We have already, I
23 believe, effectually got an extension of the lease. I
24 believe that's a correct statement.

25 Q. Well, a moment ago --

1 A. This has been under negotiation with the Stickley people
2 for some time.

3 Q. Well, a moment ago I got the impression that the lease
4 was set to expire in the middle of November and now
5 you're telling me that's not true or that you don't
6 whether or not it's true?

7 A. I'm telling you that there have been negotiations ongoing
8 for quite some time and I have been led to believe that
9 the lease will be extended if it has not actually already
10 been executed.

11 MR. MCQUIRE: May I just make this comment? Mr. Korn may not
12 know. The Stickley lease extends by its own terms when
13 operations are commenced and the staking as we've done
14 here and it says in the Stickley lease is commencing of
15 operations. So Mr. Korn is correct when he says the
16 term expires, but it's carried over when operations are
17 commenced. Maybe that will clear things up for you.

18 MR. MASON: I don't understand all this. We have this 2,500
19 foot rule and it seems to me that all this evidence
20 relates to the hardship that this 2,500 foot rule may
21 have imposed on Ashland. But I understand -- there's
22 nothing we can do about that. It seems to me there is a
23 rule and there's an exception to the rule and that the
24 evidence relative to this hearing is was there a consent
25 to this permit -- or this well location, does the rule

1 apply or do they fall within the exception to that rule.
2 And what property would be denied to them by the applica-
3 tion of this rule, I don't understand the relevance.

4 MR. SWARTZ: If I might rather than continue my cross-examina-
5 tion because I'm inclined to agree with you. If you look
6 at -- my position is if you look at 361.12 it says that
7 the relative moment in time for consent is the hearing
8 before Mr. Fulmer. I mean, it says, "If the well
9 operator and the objecting coal owner is present or
10 represented at the hearing" which is the hearing that
11 occurred in front of Mr. Fulmer "to consider the objec-
12 tions to the proposed drilling unit or location are
13 unable to agree, then the permit or drilling unit shall
14 be refused." I mean, my position is the only relevant
15 thing here is whether or not there was a dispute that
16 arose at the hearing and I think all the parties agree
17 that there was. Mr. Bise has testified that Island Creek
18 representatives showed up and said, "We are not consent-
19 ing to this location. We're asserting the 2,500 foot
20 rule and we are contending that it will negatively impact
21 on our mining." And I don't think there's any dispute as
22 to that. If the Board is inclined to agree with me and I
23 hear the same comment coming from Mr. Mason, that's the
24 only factor you need to determine. Was there a dispute
25 at the hearing in front of Mr. Fulmer? I submit there's

1 no dispute. That happened. And if that's the case, the
2 2,500 foot rule applies and it is for a civil suit or a
3 trip to the Legislature to get them to change it. But
4 that's what this says and everything else is irrelevant.

5 MR. McQUIRE: I'll address that. That has nothing to do with
6 agreements that have been made before hand and I think we
7 can hold Island Creek to the agreement because we relied
8 upon that agreement to go forward. If we had known
9 earlier that there would have been a problem Ashland
10 would have taken another route.

11 MR. CHAIRMAN: Mr. McQuire, did you present any such agreement
12 to the Inspector that he considered in his fact finding?

13 MR. McQUIRE: I was not there, but I understand Mr. Korn and
14 Mr. Bise talked about the conversations with Mr. Looney.

15 MR. CHAIRMAN: They talked about that. Did they present any
16 such agreement?

17 MR. McQUIRE: No, there is nothing in writing.

18 MR. CHAIRMAN: Okay.

19 MR. MASON: My only point is, Mr. Chairman -- I mean, I
20 understand there's a factual dispute as to whether or not
21 consent was given and certainly that is something we
22 will determine. My only point was that most of this
23 testimony seems to indicate that the affect of this 2,500
24 foot rule may impose a hardship on Ashland. And I
25 certainly don't think that that's -- obviously, it may.

1 But I don't know that we need to spend a lot of time
2 arguing about what that is.

3 MR. CHAIRMAN: Well, I had the same relevance question myself
4 as to where we were heading with that because I think the
5 real issue is we're dealing here with a request to
6 overturn the Inspector's decision of denial. And to do
7 that then we need to stick clearly with what issues --
8 given the law and all the findings that the Board has to
9 make under 361.11.

10 MR. MCQUIRE: Well, I understand and I present that to show
11 you the affect of the rule and there may be other
12 evidence. I have not taken discovery in this. I've not
13 deposed Island Creek. It may be that this fits within an
14 exception. There is an exception to the 2,500 foot rule
15 and that's where you drill through a pillar that's there
16 for the protection of a preexisting well. And we may
17 hear some evidence about that. I'm not sure.

18 MR. MASON: Let me just ask one question. Was any evidence
19 presented at the Inspector's hearing as to that excep-
20 tion?

21 MR. SWARTZ: No.

22 MR. MASON: Let me ask you one other question. Did Ashland or
23 is Ashland -- I mean --

24 MR. MCQUIRE: Evidence was presented that it would be drilled
25 through a barrier. Is that correct, Mr. Korn?

1 THE WITNESS: That's correct.

2 MR. MASON: Let me ask you a question. Absent cooperation
3 from the coal company how does the person that has a
4 conventional lease know where the pillars are and how the
5 well will affect them? Do you have to obtain that
6 information from the coal owner?

7 THE WITNESS: Yes.

8 MR. McQUIRE: I believe Mr. Korn testified as yes, that would
9 where you go for information.

10 THE WITNESS: We cannot even prepare an application without
11 having the information furnished to us by a coal company.
12 We do not know the elevations of the coal seam. We don't
13 know their status as to whether they've been mined out or
14 pillared and collapsed. We need to know those things so
15 we can design the casing program which will comply with
16 the regulations. So we cannot submit an application
17 without having had the cooperation of the coal companies.

18 MR. MASON: Thank you.

19 MR. CHAIRMAN: Mr. Korn, have you made any effort, you or your
20 staff, to negotiate with Island Creek following -- if you
21 did first learn of the objections before the Inspector,
22 have you made effort since then to resolve the dif-
23 ferences and find an acceptable location?

24 THE WITNESS: Yes, sir. I have had several conversations all
25 of which speak to your question. I've had two with Mr.

1 Breeding. The first one was very soon after the hearing
2 before Mr. Fulmer. My question at that time was, "Will
3 you offer us alternate places within the near vicinity
4 that we can look at?" The answer was no. He said he had
5 spoken with his boss and they had concluded that there
6 were no alternate spots within a reasonable proximity
7 that they would make available to us. Now, remember
8 there are two other coal companies working down here
9 underground. They also would have had to have been
10 contacted. But Island Creek said no. More recently I
11 talked with Mr. Breeding and our discussion, I think, was
12 mainly about future negotiations for gas well locations.
13 But that discussion included the understanding -- in
14 fact, he stated that there was no compromise or no
15 alternative for this immediate place. There are other
16 hearsay conversations that I think illumine the whole
17 situation here, but I don't know if you're interested in
18 hearing that. If I may throw in some other things, the
19 reliance we place on coal companies when we approach
20 them --

21 MR. SWARTZ: I'm going to this.

22 MR. McQUIRE: I think it's the heart of our theory.

23 MR. SWARTZ: His reliance on some other coal company has
24 nothing to do with this case even if reliance is relevant
25 to this case. We're talking about Island Creek.

1 THE WITNESS: I was speaking of Island Creek.

2 MR. CHAIRMAN: I'll let you go ahead and say what you want to
3 say.

4 THE WITNESS: Okay. In this particular case Mr. Bise has
5 testified that --

6 MR. SWARTZ: I'm going to object to a recapitulation of Mr.
7 Bise's testimony. If we've got something new to add,
8 fine.

9 MR. CHAIRMAN: I'll sustain the objection. If you want to
10 reference something, that's fine.

11 MR. McQUIRE: We have nothing further. Just as a matter for
12 recording keeping, may I ask the Board this. Are the
13 pleadings below contained in this file or should I -- if
14 they're not I would like to tender them into evidence.
15 It's just the application, the notice, and the finding.
16 And I don't know if you have it in your file, but if you
17 don't I would like to tender it. I can do it through Mr.
18 Korn.

19 MR. FULMER: That's required by statute to be tendered to the
20 Board. It's in the file.

21 MR. CHAIRMAN: It's all in here. It's in my notebook.

22 MR. McQUIRE: Okay. I have nothing further of my witness.

23 MR. CHAIRMAN: Anything further, members of the Board?
24 (Witness stands aside.)

25 MR. CHAIRMAN: Do you have any other witnesses?

1 MR. McQUIRE: None. We rest.

2 MR. SWARTZ: I'd like to call Mr. Steve Breeding.

3 COURT REPORTER: (Swears witness.)

4

5

STEVEN BREEDING

6 a witness who, after having been duly sworn, was examined and
7 testified as follows:

8

9

DIRECT EXAMINATION

10

11 BY MR. SWARTZ:

12 Q. State your name for me, Steve.

13 A. My name is Steven Breeding.

14 Q. And who do you work for?

15 A. I work for Island Creek Coal Company.

16 Q. And what's your position with them?

17 A. Coalbed methane coordinator.

18 Q. Were you at the hearing before -- personally at the
19 hearing before Mr. Fulmer in his office regarding this
20 well permit?

21 A. Yes, I was.

22 Q. And did you object or make any objections on behalf of
23 Island Creek Coal Company at that hearing with regard to
24 this well and if so, what were they?

25 A. Yes, I did make objection. Prior to the hearing I made

1 objection by letter. At the hearing I made objection
2 based on the fact that the proposed well is located
3 within 2,500 foot on existing well and by fact that the
4 proposed well location has an impact on our proposed
5 mining operations in the VP-2 area.

6 Q. I have marked two maps, one ICC-1 and the other one ICC-
7 2. Are these two different views of the mine plan in
8 relation to the proposed Ashland well and some coalbed
9 methane wells?

10 A. Yes, they are. One's of a larger scale. ICC-2 is one
11 inch equal one-thousand. ICC-1, I believe, is one inch
12 equals four-hundred.

13 Q. Would these maps help you explain the potential impact on
14 mining of this well?

15 A. Yes.

16 Q. Before we get to these exhibits, Mr. Breeding, what is
17 the Jewell Smokeless coordinate system?

18 A. It's a system of coordinates that Jewell used to locate
19 mining operations.

20 Q. And when someone references the Jewell Smokeless coordin-
21 ate system how would you plot that reference?

22 A. Well, if I'm not mistaken Jewell Smokeless has adopted
23 the Island Creek coordinate system. Jewell Smokeless and
24 Island Creek are one in the same to my understanding.

25 Q. How many sets of values before the permit was filed did

1 Island Creek get with regard to this well?

2 A. Well, the original sequence of events, we did get a fax
3 on 4/22 to Bob Looney and it was basically a topographic
4 map on an inch equals one-thousand scale. And I think
5 that's marked as Exhibit A-1. You'll notice on an inch
6 equals two-thousand scale the well location itself is
7 probably 400 to 500 feet wide. And it's just impossible
8 to properly locate a well without coordinates. So we did
9 ask for coordinates at that point in time.

10 Q. And when was the first time you got coordinates?

11 A. I have a fax here from Ken Bise on 6/16. This is one
12 that wasn't mentioned in the record.

13 Q. Mr. Bise didn't testify with regard to this fax?

14 A. No. This is dated 6/16/92 to Bob Looney and it --

15 Q. There's some handwriting on the fax.

16 A. That is my writing. Bob Looney had given it to me and I
17 asked him what he wanted and he said, "Well, they want
18 Island Creek to approve a location for a deep" -- I put
19 deep whole which means to be a conventional oil and gas
20 well.

21 Q. This fax of June 16th, 1992 had a map attached to it,
22 correct?

23 A. Yes. It's a topographic map and it has the PKJ-30 well
24 which is the well in question, Alpha Stickley. and
25 written on the topography are a set of coordinates. It

- 1 says, "Jewell Smokeless coordinates", North 26,165.74,
2 East 67,457.85 and it gives an elevation which I assume
3 to be surface elevations.
- 4 Q. And then the next thing to come in were some revised
5 coordinates on the 6/24/92 fax that Mr. Bise talked
6 about?
- 7 A. That's correct. We had gone to plot these coordinates --
8 these initial coordinates up into the computer system.
- 9 Q. From June 16th?
- 10 A. From June 16th. And actually before we got anything
11 plotted up they came with a set of revised coordinates.
12 Apparently, as I understand, they had had some objection
13 by Jewell Smokeless to that initial location. If you'll
14 note -- I think this is Exhibit A-2, 6/24/92 -- again
15 it's a fax to Bob Looney from Ken Bise and it notes these
16 are revised coordinates, Alpha C. Stickley, number one
17 location and it notes that these are Jewell Smokeless
18 Coal Company values. And it gives a north coordinate of
19 26,215.79, an east coordinate of 67,512.12, and at the
20 bottom it notes pending coal company approval.
- 21 Q. Have you had a chance to look at the permit package and
22 the maps attached to that?
- 23 A. Yes.
- 24 Q. And do we have a third set of coordinates?
- 25 A. This third set of coordinates -- actually we were waiting

1 on a finalized coordinate location so we could actually
2 -- we took this as to be pending Jewell Smokeless'
3 approval on 6/24. So we were rather surprised to
4 actually receive a completed permit package in.

5 Q. Why was that?

6 A. We had never issued any kind of approval and never
7 actually received a finalized location based on coordin-
8 ates. This says, "Pending coal company approval." It's
9 a pending location. The coordinates on the application
10 are different still from the pending coordinates on 6/24.
11 These are north 26,260.729 and east 67,487.36.

12 Q. If we plotted these three sets of coordinates in the
13 Island Creek -- is this the VP-2 mine?

14 A. Yes, it's the VP-2 operation.

15 Q. In the VP-2 operation would the well bore penetrate the
16 mine at three different locations?

17 A. Yes, it certainly would.

18 Q. And before you would want to give approval or reject a
19 well location would it be important to you to know where
20 the well was going to penetrate the mine?

21 A. It's absolutely vital to know where it is.

22 Q. The two maps that you gave me and that I have given to
23 the Board members this morning, let's start with ICC-2
24 which shows more information.

25 A. Correct.

1 Q. There is the proposed well which is kind of in the center
2 -- upper center which is the PKJ-30, correct?

3 A. Correct.

4 Q. And that block of coal that it's located in, is that a
5 barrier pillar?

6 A. That's a barrier that separates a north section of
7 longwalls from a south section of longwalls. That
8 barrier is left in there to separate those two particular
9 units. If you'll note, the north section the longwall
10 panels run from east to west. On the lower south section
11 the longwall panels run from north to south. So this is
12 done to separate and maintain these development entries
13 in here.

14 Q. You indicated that one of your concerns in the letter
15 that you wrote to Mr. Fulmer's office objecting to the
16 permit and then when you appeared at the hearing was
17 impact or potential impact of this deep well on the
18 operations in VP-2. Could you summarize your concerns
19 with regard to safety and impact on operations in that
20 regard?

21 A. Well, very briefly, there's a regulation that says you
22 cannot mine -- you can mine to within 500 feet of an
23 existing deep well or a well that penetrates the seam
24 that you're actually mining. Once you mine to within 50
25 feet of that you notify MSHA and you can continue mining

1 until you get within 200 feet of that well. At that
2 point in time you cannot proceed any further without
3 having obtained or actually petitioned MSHA to mine
4 within 200 feet of that particular well. At times they
5 might allow you to leave a large block of coal to protect
6 that particular well, but in this situation that impacts
7 not only the north section of longwall panels but the
8 east section of longwall panels and it presents a
9 tremendous problem to the entire mine lay-out.

10 Q. Are there entire projected on either side of that long
11 pillar that runs from left to right?

12 A. Both to the north and to the south.

13 Q. And is what you're saying is that if MSHA were not to
14 allow you to mine within 200 feet or within less than 200
15 feet, that you couldn't even drive those development
16 panels?

17 A. Probably we would lose maybe the bottom longwall panel
18 in the north or have to shift it north and redesign the
19 entire mine lay-out and possibly on the south side also.

20 Q. Did you have any safety concerns with regard to the
21 possible affects of the longwall mining and the roof
22 after mining?

23 A. Well, certainly. Subsidence is always a consideration
24 when you're talking about a deep injection well. Not
25 necessarily below the number three seam, but above the

- 1 number three seam I think everybody understands that
2 subsidence does occur from these longwall panels and
3 there's a good possibility that subsidence after one of
4 these longwall panels is mined could impact that well and
5 possibly fracture the well.
- 6 Q. The coalbed methane wells, all the other wells that are
7 shown on ICC-2, will those wells be mined through?
- 8 A. Yes, they will.
- 9 Q. So to the extent that they may be into the coal seam
10 they'll just be mined through?
- 11 A. Well, typically what they do is they set a string of
12 fiberglass casing down into the VP-3 seam which allows us
13 to mine right on through. They'll come back and plug
14 that particular area off with concrete and we can
15 actually mine through it. The fiberglass casing and the
16 concrete presents no problem to the longwall sheer
17 itself. Steel on the other hand does.
- 18 Q. The well that Ashland is proposing will be cased through
19 that coal seam and producing from a much deeper point?
- 20 A. From a much deeper zone, yes.
- 21 Q. In addition to the safety concerns that you raised did
22 you specifically raise the 2,500 foot objection at the
23 hearing that was held in front of Mr. Fulmer's office?
- 24 A. Yes, I did.
- 25 Q. Did you consent verbally, in writing, or in any other way

1 to the well location that was identified in the permit --
2 you personally?

3 A. No, I did not.

4 Q. Did you undertake to talk to people in your office who
5 are involved in considering these kinds of requests from
6 oil and gas companies who are involved in land matters --
7 did you undertake to find out if anyone had consented
8 verbally, in writing, or in any other way to the well
9 that we're talking about here?

10 A. I undertook in particular to talk to the two men who had
11 been mentioned at the informal hearing, Jay Gembosh and
12 Bob Looney. And both of those individuals indicated to
13 me that they had never given any kind of approval.

14 Q. And Mr. Looney is here today?

15 A. Yes, he is.

16 Q. Okay. With regard to discussions that you've had with
17 Mr. Korn either at this hearing or subsequent to this
18 hearing, what is your position as coalbed methane
19 coordinator with regard to whether or not you're willing
20 to work with Ashland to the extent that your mine plans
21 permit you to work with them in terms of coming up with
22 locations and what have you told him? He's told the
23 Board what he thinks you told him.

24 A. Well, actually I've talked with Gary on three different
25 occasions. Of course, the first time was right after the

1 hearing in the lobby at the DMQ office in Abingdon. And
2 he asked me in particular whether or not I thought there
3 could be an alternate location and I did tell him, I
4 said, "I think it's going to be real difficult to find an
5 alternate location in this particular area just because
6 of the location with the north longwall panels and the
7 south longwall panels. But what we would have to do
8 would be to contact Lynn Mockwell, the chief engineer,
9 set up a meeting with him and talk to him about it." I
10 did not say that there was definitely no alternative
11 location. I said it would have to be cleared through
12 proper channels. The second time I talked to Gary was I
13 think he had called to talk to Lynn Mockwell and Mockwell
14 came to see me and asked me what it was about. I had
15 previously talked to him about this particular location
16 and we sat down and looked at it and decided within that
17 immediate area that there was no location that would have
18 been suitable. So I called Gary back at Mockwell's
19 request and told him that. The third time I talked to
20 Gary was yesterday in a phone conversation and indicated
21 that what we should do is to sit down and take a look at
22 the Stickley lease with respect to our mining operations
23 and see if there are areas that we could locate wells
24 that don't have an impact on us. A little proper
25 planning ahead of time to eliminate some of these

1 problems. I gathered that he was under the impression
2 that he had been asked to call me in relation to this
3 particular well and he asked whether or not our position
4 had changed and I said, "No. Our position has not
5 changed with respect to this particular well location.
6 It's still impacts the mining operation." And in that
7 immediate area there is no location that we could come up
8 with.

9 Q. Have you or to your knowledge has anyone on your staff
10 ever told Ashland that Island Creek as drawn on this
11 exhibit they submitted is going to object under the 2,500
12 foot rule every time that you can?

13 A. Absolutely not.

14 MR. SWARTZ: That's all I have of Mr. Breeding.

15 MR. CHAIRMAN: Any other questions, members of the Board?

16 MR. MASON: I have one. Mr. Breeding, on this map indicated
17 as ICC-2 and it shows the proposed Ashland location, is
18 that marked S-32, is that correct?

19 THE WITNESS: If you'll note just to the right -- well, to the
20 left and north there's OXY, USA and CMB-S32. That's the
21 logo for the OXY well.

22 MR. MASON: PKJ-30?

23 THE WITNESS: PKJ-30 and above that particular well location
24 is Ashland. That is the logo for them.

25 MR. MASON: Okay. Looking at that and looking at -- is this

1 mining plan on record?

2 THE WITNESS: Yes, it is. It's filed with the Division of
3 Mining.

4 MR. MASON: So this mining plan has been filed?

5 THE WITNESS: Yes, sir.

6 MR. MASON: In looking at this proposed pillar or whatever --
7 this barrier, I don't note that there are any other wells
8 in there, is that correct?

9 THE WITNESS: Well, in that particular none that I see right
10 here, no.

11 MR. MASON: So is it safe -- I mean, are you telling that
12 there are no preexisting wells drilled through this
13 barrier?

14 THE WITNESS: To my knowledge there's not any existing wells
15 in that barrier. If there are it would be coincidental.
16 The barrier itself was set up as a part of the original
17 mine plan, not to protect any particular well.

18 MR. MASON: Well, I understand that. I'm just trying -- as I
19 read the law the exception provides where there is a
20 situation where the well will be drilled through an
21 existing or planned pillar required for the protection of
22 a preexisting well. What I'm asking you is is there any
23 preexisting well in this barrier?

24 THE WITNESS: Not that I'm aware of, no.

25 MR. SWARTZ: Let me ask you a follow-up. The CBM wells, you

1 do not plan your mines to accommodate the CBM wells
2 because they're irrelevant to mining, right?

3 THE WITNESS: It's because we have an agreement that they will
4 follow our requirements with respect to penetration to
5 the number three seam.

6 MR. SWARTZ: I understand, but let's assume that they strayed
7 with a CBM well on location.

8 THE WITNESS: Uh-huh.

9 MR. SWARTZ: They're irrelevant to mining operation because
10 you can mine through them.

11 THE WITNESS: Oh, as far as location, yes. There's no
12 problem.

13 MR. SWARTZ: That's all I have.

14 MR. MCGLOTHLIN: Mr. Breeding, how wide is that barrier?

15 THE WITNESS: Well, that's an inch equals one-thousand scale
16 and I don't have a scale with me, Kevin. Let's see. It
17 looks to be just a shade less than 400 feet wide.
18 Probably around 380.

19 MR. MCGLOTHLIN: Thank you.

20 MR. CHAIRMAN: Any other questions?

21 MR. KELLY: Mr. Breeding, your concern then was that in the
22 event that MSHA did not grant mining within a 200 foot
23 distance of the well if the well existed in the barrier
24 that you couldn't develop your entries that you needed
25 to?

1 THE WITNESS: That's correct.

2 MR. KELLY: So the barrier is a little less than 400 feet wide
3 total?

4 THE WITNESS: Uh-huh. Note that that particular well is
5 located to the north of that. Of course, this is the
6 pending coordinates that we had look to me like about 100
7 feet from the edge of the pillar.

8 MR. KELLY: But your concern was the 200 foot --

9 THE WITNESS: The fact is that we couldn't even drive the
10 development entries without some sort of variance and if
11 we're to that point then these mine plans are not easy to
12 change. The overall mining -- you have to have an
13 overall mining lay-out. It's not like a room and pillar
14 operation where you can just jut to the left and leave a
15 large barrier of coal.

16 MR. KELLY: What typically is the MSHA action on this type of
17 thing? Are they rigid or do they typically grant --

18 THE WITNESS: They're concerned with mine safety and as far as
19 typical I don't know what typical is.

20 MR. KELLY: If a plan was approved to go within the 200 feet
21 what then is the minimum distance or the requirement for
22 allowing you to go within the 200 foot distance of a
23 well?

24 THE WITNESS: I think that's viewed by MSHA on a case by case
25 basis, you know, taking into consideration everything.

1 MR. KELLY: Based on the depth of the cover and --

2 THE WITNESS: The depth of cover and location with respect to
3 the longwall panels, I would imagine.

4 MR. SWARTZ: In theory if you go down to 50 feet but they
5 would never let you do it in a longwall. I mean, this is
6 a barrier pillar between two longwalls running in a
7 different direction. But in theory you could get down to
8 50 feet if you could talk them into it and were willing
9 to run the risk.

10 MR. KELLY: But that was the basis for your objection essen-
11 tially, the concern about --

12 THE WITNESS: That was one of the basis.

13 MR. SWARTZ: Remind them what the other one was.

14 THE WITNESS: The other was the fact that it's located within
15 2,500 feet of an existing well. In fact, within 2,500
16 feet of a couple of existing wells.

17 MR. CHAIRMAN: Any other questions for Mr. Breeding? Cross-
18 examination.

19

20

CROSS-EXAMINATION

21

22 BY MR. McQUIRE:

23 Q. Mr. Breeding, when was this map filed?

24 A. Which map are you talking about?

25 Q. ICC-2.

- 1 A. I don't see a date on this. This says, "Attention Mr.
2 Lloyd Robinette, Harry D. Childress." It's from Mike
3 Gawna. I would imagine this has been filed -- it's been
4 on file for well over a year. We could verify that with
5 talking with Mr. Childress' office.
- 6 Q. When is Island Creek planning to mine through this area?
- 7 A. Through that particular area, I don't have any timing
8 information on it. I could guess and say probably within
9 the -- probably within the next ten years. And again, I
10 don't have timing on this particular map.
- 11 Q. Are you planning to mine through there?
- 12 A. Certainly. This is one of our major mine reserves.
- 13 Q. You told me that the S-32 well has fiberglass casing, is
14 that correct?
- 15 A. Typically that's the way they completed these wells. I
16 haven't looked particularly with respect to S-32.
- 17 Q. So what happens if you mine through a coalbed methane
18 well? What do you have to do? Do you have to go around
19 it?
- 20 A. No.
- 21 Q. You just go right through it?
- 22 A. We go right through it.
- 23 Q. So if you hurried up and wanted to complete this in the
24 next six months you would mine through any coalbed
25 methane wells that were in existence, is that right?

1 A. Restate that question, please.

2 Q. Well, you testified that you mine through coalbed methane
3 wells.

4 A. Yes.

5 Q. So they don't present the same barrier to you as a
6 conventional well, is that right?

7 A. That's simply because with respect to the penetration of
8 the seam that we're mining there is no steel casing in
9 there. They insert a fiberglass casing down through the
10 seam that we're mining. Before we actually under mine it
11 they'll come in and grout a big section of that well off
12 with concrete which allows us to cut right through that
13 fiberglass casing. The same option wouldn't be available
14 if they did it with steel.

15 Q. You don't have an MSHA problem with coalbed methane, do
16 you?

17 A. No, or at least -- I should qualify that. At least
18 that's our understanding that we don't as MSHA indi-
19 cated. You never know.

20 Q. I understand you. I don't want to bind you. If there
21 were no coalbed methane wells here, you understand that
22 conventional wells could be drilled assuming that they
23 didn't unnecessarily interfere with your mining plans,
24 but there is contemplated that conventional wells would
25 be drilled were it not for the 2,500 foot rule?

- 1 A. Well, I think that's -- yeah, that's within the law.
- 2 Q. Were there no coalbed methane wells here you basically
3 would have to put up with conventional wells, is that
4 correct?
- 5 A. You say put up with it. We would still raise assertive
6 -- the same objection of the same safety concerns and the
7 same problems with respect to our mining operation.
- 8 Q. But as far as the two type of wells, one you mine right
9 through, is that right, and the other you don't? You
10 mine around, is that correct?
- 11 A. Well, yeah, I guess that's a simple way to put it. Yeah,
12 you mine around it. You either mine around them or not
13 mine that particular area and lose those reserves.
- 14 Q. So as far as you're concerned these coalbed methane wells
15 are temporary in that whenever you mine through they're
16 gone, is that right? The case is gone?
- 17 A. With respect to the Pocahontas #3 seam, yeah.
- 18 Q. With respect to S-32, if you went through there it would
19 be gone?
- 20 A. Well, the well itself would probably still produce
21 coalbed methane from the upper zones, but it shouldn't
22 present a problem.
- 23 Q. You stated that -- I think it was in your opinion that
24 Ashland should sit down and talk about various locations
25 and do it professionally, is that right?

1 A. (Witness nods head in affirmative response.)
2 Q. Are you aware that negotiations have been in the works
3 for over a year about well locations for the Stickley
4 lease?
5 A. The only thing I'm aware of is the correspondence that
6 we've had since April.
7 Q. So it's not like Ashland hasn't talk to OXY about various
8 well locations, is it? It's not as if you haven't had
9 any knowledge at all about it?
10 A. Well, I understand there are certain law suits that have
11 been filed against -- we've been a party to those. But
12 I'm not privilege to exactly what you have or haven't
13 done with OXY. We are a sister corporation to OXY, but
14 we have two separate business functions.
15 Q. But you're aware at least since April there have been
16 some talks about agreeing upon different well locations?
17 A. I'm not necessarily aware of that.
18 Q. Oh, I thought that's what you testified to.
19 A. Agreeing to well locations? I indicated to Gary that he
20 should sit down with Island Creek, that we should look at
21 your leases with respect to Island Creek's underground
22 mining operation and see if there's some areas that we
23 don't have a problem -- Island Creek, not OXY.
24 Q. Well, I understand that you're so cooperative. I wonder
25 why there isn't an area on this grid that I'm looking at

1 that can't be used for Ashland. I understand that there
2 is none.

3 A. What are you -- restate your question.

4 Q. I'm saying why isn't there an alternate site on there
5 that would be available to Ashland?

6 A. Well, it's because within the immediate area -- what's
7 the immediate area? Within this immediate area right
8 here I don't see any place that it could possibly be
9 moved.

10 Q. Well, my question is looking at this piece of paper right
11 here there are places on that map where it could be
12 drilled if you agreed to it, is that right?

13 A. Yes. And that's exactly what I suggested to Gary to sit
14 down and look at and he indicated that that was fine and
15 we could probably do that in the future but that that
16 didn't help him on this particular well location.

17 Q. Let me ask you about Mr. Looney's position. What is Mr.
18 Looney's position with your company?

19 A. He's our land agent.

20 Q. Does Mr. Looney in his ordinary dealings talk with oil
21 companies like Ashland Exploration?

22 A. If they call him and ask him information, yeah, I'm sure
23 he does talk to them.

24 Q. If someone were to call six months ago, as Ashland did,
25 and ask who to talk to about obtaining an agreement for a

1 location would it be common for them to be referred to
2 Mr. Looney?

3 A. I imagine it depends on who you call and talk to. If you
4 call and reach one of our draftsmen they might say,
5 "Well, maybe you ought to talk to Bob Looney." If you
6 call and ask our receptionist she would probably put you
7 to the proper individual.

8 Q. Did Mr. Looney have authority back then to talk on behalf
9 of Island Creek?

10 A. With respect to -- again, I can't say. You would have to
11 ask Lynn Mockwell about that, what his realm of authority
12 is. He's our land agent and he does represent us with
13 respect to purchase of properties, location of ventila-
14 tion sites, and things of that nature.

15 MR. McQUIRE: Nothing further.

16 (Witness stands aside.)

17 MR. CHAIRMAN: I'd like to call Bob Looney.

18 COURT REPORTER: (Swears witness.)

19
20 BOB LOONEY

21 a witness who, after having been duly sworn, was examined and
22 testified as follows:
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DIRECT EXAMINATION

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BY MR. SWARTZ:

Q. Would you state your name, please?

A. Bob Looney.

Q. Who do you work for, Bob?

A. Island Creek Coal Company.

Q. And what's your title with them if you have one?

A. Land agent.

Q. Okay. What do you do in terms of processing requests for well locations, if anything?

A. I usually turn them over to Steve Breeding.

Q. Did you have any contact with Ken Bise or anybody else from Ashland with regard to this well that we've been talking about?

A. Yes. I've talked to Ken.

Q. Did he furnish you with a series of well coordinates and FAXes over time?

A. Yes, sir.

Q. And what did you do with those when you got them?

A. I gave them to Steve Breeding.

Q. Did you ever tell Ken Bise, "This is okay with Island Creek. You can drill a well here."?

A. No.

Q. Did you ever tell him, "Island Creek has no objection to

1 a well located here."?

2 A. No.

3 Q. Were you waiting for further information to even make a
4 decision?

5 A. Yes.

6 Q. Did the permit application take you by surprise, too?

7 A. I don't know if I ever seen the permit application.

8 Q. Okay. So it couldn't have surprise you if you didn't see
9 it?

10 A. I didn't see it, no, sir.

11 Q. Okay. Have you in the past turned over well location
12 requests to Mr. Breeding?

13 A. Yes. Every one I ever get I turn over to Steve.

14 Q. And has he on occasion approved them to your knowledge?
15 We're not talking about this particular one but others.

16 A. I'm not sure whether Steve does. I don't know what --

17 Q. The reason I'm asking is is it normal -- you pass it
18 along to Mr. Breeding. Is it normal then for him to give
19 it back to you to communicate with the person?

20 A. No. He doesn't give it back to me.

21 Q. So it disappears off your desk once you pass it to him?

22 A. That's right.

23 Q. And is it your understanding that you do or do not have
24 authority to make a final decision to tell an oil and gas
25 company that a location is appropriate or not appropriate

1 on behalf of Island Creek?

2 A. I don't have the authority, no.

3 MR. SWARTZ: No further questions.

4 MR. CHAIRMAN: Any questions, members of the Board?

5 MR. MCGLOTHLIN: Mr. Looney, did you ever tell Mr. Bise that
6 you didn't have that authority, that he needed to speak
7 with someone else?

8 THE WITNESS: I don't know that he ever asked me for that
9 authority.

10 MR. MCGLOTHLIN: Did you ever tell him that, "Hey, you need to
11 be talking to somebody else."?

12 THE WITNESS: I don't think it was ever brought up, no, that I
13 remember.

14 MR. MCGLOTHLIN: Thank you.

15 MR. CHAIRMAN: Other questions? Mr. McQuire.

16
17 CROSS-EXAMINATION
18

19 BY MR. McQUIRE:

20 Q. You are the land agent, is that correct?

21 A. That's right.

22 Q. Were you aware that Ashland was trying to find a drill
23 site in this particular area?

24 A. Yes. I got all the information there and I would look
25 at it and pass it on to Steve Breeding.

1 Q. Did you ever make any comments to Ken Bise about the
2 location being in a barrier pillar?
3 A. I probably did.
4 Q. Did you ever say to him, "That's no problem." Those
5 words, "No problem because it's in a barrier block."?
6 A. No. I don't think that I would ever say that there's no
7 problem because I don't know. When it gets down to the
8 mining plan I don't have any --
9 Q. Did you ever say, "You're in luck."?
10 A. I don't remember saying anything about luck.
11 Q. Did you turn all of these faxes over to Mr. Breeding?
12 A. Yes.
13 Q. And did he ask you to respond?
14 A. No.
15 Q. Did you tell him that you had reported to Ken Bise that
16 it was in a barrier pillar?
17 A. No.
18 MR. McQUIRE: I have nothing further.
19 MR. SWARTZ: That's all I have.
20 MR. MASON: Can I ask one question?
21 MR. CHAIRMAN: Sure.
22 MR. MASON: Mr. Looney, I may have missed it. I apologize if
23 this is redundant. When was the day of the conversation
24 that this "You're in luck" or that this supposedly took
25 place? Do you know?

1 THE WITNESS: I really don't know. No. I don't remember any
2 dates.

3 MR. McQUIRE: I believe testimony was June 24th. The second
4 fax, Exhibit A-2.

5 MR. MASON: No. The verbal conversation in which supposedly
6 Mr. Looney approved or consented to this, when did that
7 -- what was the date of that?

8 MR. McQUIRE: June 24. I believe that was the testimony.

9 MR. SWARTZ: Well, my notes say after 6/24 Looney said -- I'm
10 summarizing Bise's testimony -- "It hit a barrier block."
11 So my reading of Mr. Bise's testimony is that if it
12 wasn't the 24th it was within a couple of days.

13 MR. McQUIRE: But after receipt of the June 24th fax.

14 MR. MASON: That's what I was trying to tie together. Thank
15 you.

16 MR. CHAIRMAN: Other questions?

17 (Witness stands aside.)

18 MR. CHAIRMAN: Are you ready to vote?

19 MR. MASON: Just for my own -- also if I may address also to
20 our Assistant Attorney General present, based on 45.1-
21 361.12 isn't it correct that the coal owner has an
22 absolute right to object if the well's within 2,500 feet
23 of another well and the only exception to that is where
24 there's a preexisting well drilled through an existing or
25 planned pillar?

1 MS. RIGGS: I can't think of any cases right now that inter-
2 pret this section of the statute, but do you have a copy
3 of the section?

4 MR. MASON: Yes.

5 MS. RIGGS: 45.1-361.12, the language there appears to be
6 mandatory in that it says shall.

7 MR. MASON: Well, that's what I'm saying. Since there's been
8 no evidence of a preexisting well through this, the only
9 real issue to be determined here is whether or not there
10 was consent. It seems to be the way I interpret what we
11 have presented.

12 MR. McQUIRE: Not to quivel but I will give you another
13 interpretation of that. That is contemplating permanent
14 wells which give some discomfort to coal owners. As I
15 hear the testimony these are temporary wells which give
16 much -- little if no problems to the coal companies. So
17 I would make that distinction.

18 MR. SWARTZ: Not to go undeterred in a response, the term well
19 is defined and a well is a well is a well. I think we've
20 been through that before with Cabot.

21 MR. MASON: Well, I understand that. I'm just trying to -- it
22 seems to me that the only real issue here is if you
23 accept that there is a well and there's a proposed well
24 that the objection was raised and there doesn't seem to
25 be any evidence to support the exception to it. It seems

1 to me the only relevant issue is was there consent.
2 MR. SWARTZ: If I can comment as other than a Board member, I
3 don't see where it says in this statute that consent
4 given -- even if it occurred -- before the hearing on the
5 well permit is relevant. I mean, the statute seems to me
6 to say if you show up at a hearing and you object, that's
7 what it says.
8 MR. MASON: I think that certainly there will be some equit-
9 able principals involved as to the timing and reliance
10 upon consent that we could take into consideration.
11 MR. McQUIRE: And I would think it would go one step further
12 for a written agreement. I think that the coal owner
13 couldn't show up at the hearing and then disavow that
14 written agreement.
15 MR. SWARTZ: Well, I think a lot of this stuff needs to be
16 dealt with in the courts. I think my position is you
17 probably could. I mean, the way this thing is worded if
18 a well operator shows up at a hearing to consider the
19 objections and objects it says then the permit shall be
20 refused. And I suppose Mr. McQuire could take a lot of
21 these equitable theories and have an equity case, but
22 this is not a court of equity. We've got a pretty clear
23 statute and I don't see where it says you can't revoke a
24 consent if you gave one at the hearing.
25 MR. CHAIRMAN: Any further discussion, members of the Board?

1 MR. MASON: I would just make one other comment. I think that
2 in making this decision the Board needs to consider what
3 we wish to establish as necessary as consent. Are we
4 willing to rely on something that is relatively vague and
5 verbal or do we wish to set a standard higher than that?
6 I'm not necessarily suggesting an answer to that, but I
7 think that in making this decision we need to bear in
8 mind what we are establishing as a necessary level or
9 action to be consent.

10 MR. CHAIRMAN: Well, I'd be a little concerned about boxing
11 ourselves in on anything specific. I think the burden
12 that the applicant petitioning to overturn the Inspec-
13 tor's decision has is to show the Board that they had all
14 the relevant information that's necessary for us to
15 overturn the Inspector's decision. Obviously if you're
16 getting into information that substantiates a preponder-
17 ance that they relied upon in which they spent money and
18 took actions then I think that could -- that weighs
19 however it weighs based upon what you had in writing,
20 what you had verbal, and what you can prove to the
21 Board's satisfaction. I'm just a little cautious on us
22 saying that you have to have everything in a certain form
23 and in writing. I think it would be prudent certainly if
24 you're going to rely on no objection to have no objection
25 in writing. That's a personal opinion as we're just

1 sitting here in open forum discussing that. There's
2 probably six other personal opinions here.

3 MR. HARRIS: Mr. Chairman, earlier wasn't there a comment that
4 most of these consents are verbal or maybe assumptions?
5 is that what I heard from Mr. Bise maybe or --

6 MR. MCQUIRE: Mr. Bise.

7 MR. HARRIS: I think I heard that. So I'm not sure if we
8 really want to tie ourselves down. The only time it
9 seems to be a problem is when an objection comes up
10 later and I don't know if -- of course, it would help to
11 have it in writing at that time. I'm not sure how much
12 we should tie ourselves down.

13 MR. MCGLOTHLIN: I make a motion that we uphold Mr. Fulmer's
14 decision.

15 MR. CHAIRMAN: We have a motion.

16 MR. KELLY: Second.

17 MR. CHAIRMAN: A motion and a second. Any further discussion?
18 If no further discussion, all in favor signify by saying
19 yes. (ALL AFFIRM.) Opposed say no. (NONE.) It's a
20 unanimous decision.

21 (AFTER THE LUNCHEON RECESS, THE HEARING CONTINUED AS
22 FOLLOWS:)

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25

1 ITEM VII

2

3 MR. CHAIRMAN: The next item on our agenda is Item VII, a
4 petition for a well location exception by Virginia Gas
5 Company for EH-64. This is docket number VGOB-92/10/20-
6 0277. We'd ask the parties that wish to address the
7 Board in this matter to come forward at this time.

8 MR. MULLINS: Mr. Chairman, my name is Tom Mullins and I'm
9 with the Street Law Firm here in Grundy, Virginia. I
10 represent Virginia Gas Company. Here today on behalf of
11 Virginia Gas Company is Mr. Al Mueller. David Street
12 also with the Street Law Firm is here with us today. We
13 plan to present testimony through Mr. Al Mueller and some
14 exhibits to be handed to the Board in connection with our
15 application.

16 MR. CHAIRMAN: Is there anyone else that wishes to address the
17 Board in this matter? You may proceed.

18 MR. MULLINS: Could I have him sworn, please?

19 COURT REPORTER: (Swears witness.)

20

21 ALAN WALTER MUELLER

22 a witness who, after having been duly sworn, was examined and
23 testified as follows:

24

25

DIRECT EXAMINATION

1

2

3 BY MR. MULLINS:

4 Q. Sir, would you state your full name, please.

5 A. My name is Alan Walter Mueller.

6 Q. How do you spell your last name?

7 A. M-U-E-L-L-E-R.

8 Q. Sir, what do you do for a living?

9 A. I'm a field engineer for Virginia Gas Company.

10 Q. And how long have you been doing that?

11 A. Approximately a little over two years.

12 Q. Have you testified as an expert witness before this Board
13 on prior occasions?

14 A. Yes, I have.

15 Q. Has your testimony been accepted as expert witness
16 testimony by this Board?

17 A. Yes, it has.

18 MR. MULLINS: At this time I'd like to move that his testimony
19 again be accepted as expert witness testimony.

20 MR. CHAIRMAN: Okay. We'll accept it.

21 Q. (Mr. Mullins continues.) Sir, are you familiar with the
22 well designated as EH-64?

23 A. Yes, I am.

24 Q. How did you come to be familiar with that well?

25 A. By numerous field visits when we were staking the well

1 and surveying the location.

2 Q. Where is this well located?

3 A. It's located in the (Inaudible.) City quad on USA tract
4 550B.

5 Q. In what county?

6 A. In Dickenson County.

7 Q. There's an exhibit that's been placed upon the easel and
8 we have small a version of that exhibit. Would you tell
9 the Board what this exhibit is?

10 A. This exhibit shows the surrounding wells or the wells
11 that are in the vicinity of the EH-64.

12 Q. There are circles around various locations. What do
13 those circles signify or identify?

14 A. They identify the unit of each well which is a radius of
15 1,320 feet.

16 Q. Is this the well that we're talking about today, the EH-
17 64?

18 A. Yes, it is.

19 Q. Which well are you seeking a well location exception
20 from?

21 A. The EH-53.

22 Q. And that's this well?

23 A. Yes.

24 Q. And the orange on this big plat demonstrates wells that
25 have already been drilled?

1 A. That's correct.

2 Q. Why do you need to place this well in this location and
3 have to have a location variance from the EH-53?

4 A. Geologically the production we feel on this site of the
5 fault will be primarily from the --

6 Q. Fault, now is that what this is?

7 A. Yes.

8 Q. What fault is that?

9 A. That is the Russell Fork Fault.

10 Q. Why is that important?

11 A. Russell Fork Fault forms the northeastern boundary of the
12 Pine Mountain block. We have numerous wells drilled
13 along the fault and gas production is enhanced dramat-
14 ically by this fault.

15 Q. You mean you get more gas out of wells if they're closer
16 to the fault?

17 A. That's right.

18 Q. I notice there's a lot of wells on this side of the fault
19 but only this one and this one that's proposed on this
20 side of the fault. Why is that?

21 A. Well, on the eastern side of the fault we have several
22 wells drilled already. There are numerous smaller faults
23 that are on the eastern side which --

24 Q. Is there a geologic reason why this area is better to put
25 wells in than in this area?

- 1 A. There's a difference in blocks here. On the western side
2 of the fault you have the Pine Mountain Fault which is a
3 block about 20 miles wide --
- 4 Q. That's this area?
- 5 A. Yes. And it's approximately 100 miles long. The
6 southern edge of it terminates the Jacksboro Fault near
7 Knoxville. That whole block is just a thrust block. In
8 other words, it's just pushed up. On the eastern side
9 which is where those wells are at this block is also
10 rotated and it's compressed where there are numerous
11 smaller fractures on the eastern side that enhance --
12 these wells over there also. They produce out of
13 numerous smaller fractures.
- 14 Q. Those smaller fractures are sort of like a stimulated
15 area -- naturally stimulated?
- 16 A. Naturally stimulated you might say.
- 17 Q. What would happen in your opinion if you moved it towards
18 the west?
- 19 A. If you move it away from the fracture -- the fault you
20 may very well not have a productive well. It may not be
21 economical to drill.
- 22 MR. MULLINS: I'd like to ask the Board to refer to the plat
23 filed with the application.
- 24 Q. (Mr. Mullins continues.) Do you have a copy of that plat
25 in front of you?

1 A Yes.

2 Q. Why can't you move the EH-64 to the south to get it
3 further away from the EH-53?

4 A. If you move it directly to the south there's the road and
5 there's also a small stream called Skag Branch and south
6 of that you have extremely rocky cliffs -- rocky out-
7 crops.

8 Q. Let's back up a little bit. Who owns the surface in this
9 area?

10 A. U.S. Forest Service.

11 Q. Do they have restrictions to your knowledge about the
12 placement of wells or roads --

13 A. Yes, they do.

14 Q. -- adjacent to streams?

15 A. Yes, they do.

16 Q. Do you know what those restrictions are?

17 A. They do not want a site within 100 feet of a stream.

18 Q. So you would have to move the site location 100 feet
19 beyond the stream?

20 A. If that was possible, yes.

21 Q. To the south below the stream?

22 A. Yes.

23 Q. What would that do in relation to the EH-50?

24 A. Well, you would then crowd the EH-50 well. You would
25 have to obtain a variance in that well.

1 Q. Would it also not be true if you moved this either to the
2 south or to the west that there will be a bigger area
3 here that would not be drained at all?

4 A. That is true.

5 Q. And if I understood your testimony the reason that this
6 site was picked was to get it as close to the fault as
7 possible?

8 A. Yes, it was.

9 Q. Have these wells that are closer to the fault proven to
10 be highly productive?

11 A. Yes, very productive.

12 MR. MULLINS: I don't believe I have any other questions.

13 MR. CHAIRMAN: Questions of this witness, members of the
14 Board?

15 MR. KELLY: I'll ask my standard question and that's the well
16 which you overlap there -- the circles where they
17 overlap, the EH-53, is that the 500 foot circle situation
18 there or is that --

19 MR. MULLINS: I think that's a 1,320.

20 MR. KELLY: That is a 1,320 situation. So you are actually --

21 MR. MULLINS: These are the same leases?

22 THE WITNESS: Right.

23 MR. MULLINS: And this is a USA tract also, is that correct?

24 THE WITNESS: That is also USA and there's also a private
25 tract on that on one on the 53.

1 MR. MULLINS: Have you received any objections on these?
2 THE WITNESS: No.
3 MR. KELLY: So you are affecting the same royalty owner there.
4 THE WITNESS: The overlap area on both those wells falls with
5 the U.S. Forest Service's property.
6 MR. KELLY: So how will you accommodate the payment of the
7 royalties in the overlap area, split the royalties
8 between the two wells or --
9 MR. MULLINS: I think the way the royalties are, whatever the
10 production from this well is it's attributed to the
11 ownership interest there and whatever the production --
12 this is my understanding of it -- and this well is
13 attributed to whatever the ownership issue is in this
14 well is. Somebody might get paid twice, but you can't
15 take the gas out twice. So they end up -- it's a wash.
16 That's my understanding.
17 MR. KELLY: There are no other tracts in there that will be
18 involved?
19 MR. MULLINS: I believe the Willis heirs and the USA are the
20 only two --
21 THE WITNESS: But not in the overlap area.
22 MR. KELLY: Thank you.
23 MR. CHAIRMAN: Any other questions? The area that you
24 mentioned setting the well back, is that still Forest
25 Service land, all of that, even if you did set it back?

1 THE WITNESS: Yes. That tract extends -- it's a 1,000 acre
2 tract. It extends to the south and west another -- I
3 want to say 4,000, 5,000, 6,000 feet.

4 MR. CHAIRMAN: That's an area that they've approved?

5 THE WITNESS: Yes, they have.

6 MR. MCGLOTHLIN: Mr. Mueller, do you have a lease with the E.
7 C. Willis heirs?

8 THE WITNESS: Yes, we do.

9 MR. MCGLOTHLIN: And the Donald Burn Willis heirs?

10 THE WITNESS: Yes.

11 MR. MCGLOTHLIN: Columbia National Resources?

12 THE WITNESS: Yes.

13 MR. MCGLOTHLIN: Thank you.

14 MR. CHAIRMAN: Do you have anything further?

15 MR. MULLINS: No, sir.

16 (Witness stands aside.)

17 MR. MCGLOTHLIN: I move we accept the application for
18 exception as filed.

19 MR. MASON: Second.

20 MR. CHAIRMAN: We have a motion and a second to approve. Any
21 further discussion? All in favor signify by saying yes.

22 (ALL AFFIRM.) Opposed say no. (NONE.) It's unanimous.

23 (AFTER A BRIEF DISCUSSION OFF THE RECORD, THE HEARING

24 CONTINUED AS FOLLOWS:)

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3 ITEM VIII

4 MR. CHAIRMAN: The next item on our agenda is a petition for
5 forced pooling of a drilling unit under 45.1-361.22 from
6 Pocahontas Gas Partnership for BB-29. This is docket
7 number VGOB-92/10/20-0279 and we would ask the parties
8 that wish to address the Board in this matter to come
9 forward at this time.

10 MS. McCLANAHAN: The BB-29 unit is a unit that's in the
11 Oakwood Coalbed Gas Field 1 order and it's also covered
12 the Oakwood Coalbed Gas Field 2 order. Pocahontas Gas
13 Partnership is requesting that the Board pool the
14 interests of the coalbed methane gas underlying that
15 unit. There is a .047 percent interest that is unleased
16 in the entire unit. The first witness I'd like to call
17 is Les Arrington.

18 COURT REPORTER: (Swears witness.)
19

20 LESLIE ARRINGTON

21 a witness who, after having been duly sworn, was examined and
22 testified as follows:
23
24
25

1 DIRECT EXAMINATION

2
3 BY MS. McCLANNAHAN:

4 Q. Les, would you please state your full name and address
5 for the record?

6 A. Leslie K. Arrington, 26 Mountaintop Drive, Princeton,
7 West Virginia.

8 Q. And could you identify the exhibit that's marked for
9 identification as Exhibit 1?

10 A. Yes. That's my present work resume and work history.

11 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
12 Exhibit 1.

13 MR. CHAIRMAN: Okay, with no objection.

14 (Resume and Work History marked as Exhibit 1.)

15 Q. (Ms. McClannahan continues.) Does this resume reflect
16 your educational background, work history, and qualifica-
17 tions?

18 A. Yes, it does.

19 Q. Have you been qualified as an expert witness before the
20 Gas and Oil Board previously?

21 A. Yes.

22 Q. Have you given notice as required by Virginia Code
23 Section 45.1-361.19 to each person or entity identified
24 on Exhibit C of the forced pooling application as a
25 potential owner of the methane gas underlying the unit?

1 A. Yes, I have.

2 Q. Is the hearing notice marked for identification as
3 Exhibit 2?

4 A. Yes.

5 Q. Is this the notice of hearing that was mailed to the
6 parties listed on Exhibit C of the forced pooling
7 application?

8 A. Yes.

9 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
10 Exhibit 2.

11 MR. CHAIRMAN: Okay.

12 (Notice of Hearing marked as Exhibit 2.)

13 Q. (Ms. McClannahan continues.) How was the notice of
14 hearing mailed to each of the parties that are listed on
15 Exhibit C?

16 A. By certified mail, return receipt requested.

17 Q. Do you have the returned receipts?

18 A. Yes, I do.

19 Q. And are copies of those listed at Exhibit 3?

20 A. Yes, they are.

21 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
22 Exhibit 3.

23 MR. CHAIRMAN: Okay.

24 (Copies of Returned Receipts marked as
25 Exhibit 3.)

- 1 Q. (Ms. McClannahan continues.) Were there any persons
2 whose names and/or addresses were unknown?
- 3 A. No. However, we still published in the Virginia Moun-
4 taineer and the Bluefield Daily Telegraph on October 1st
5 and September 25th.
- 6 Q. Were those proofs of publication previously submitted to
7 the Board?
- 8 A. Yes, they were.
- 9 Q. What percentage of the coal rights in the tracts that
10 comprise the BB-29 unit does Pocahontas Gas Partnership
11 control?
- 12 A. 100 percent of all coal below the Tiller Seam.
- 13 Q. And what percentage of the oil and gas rights in the
14 tracts that comprise this unit does PGP control?
- 15 A. 99.953 percent.
- 16 Q. Have you obtained coalbed methane gas leases on any
17 portion of the acreage within this unit?
- 18 A. Yes.
- 19 Q. What percentage?
- 20 A. 99.953.
- 21 Q. Is the unleased owner that's listed on Exhibit D of the
22 unit application list his percentage of ownership in the
23 respective tract?
- 24 A. Yes.
- 25 Q. Are the conflicting claimants whose funds are to be

1 escrowed listed on Exhibit E of the unit forced pooling
2 application?

3 A. Yes, they are.

4 Q. Are you requesting that the Board pool the interest of
5 the parties listed on Exhibit C of the application?

6 A. Yes, we are.

7 MS. McCLANNAHAN: Those are all the questions I have for Mr.
8 Arrington.

9 MR. CHAIRMAN: Any questions, members of the Board?

10 (Witness stands aside.)

11 MR. CHAIRMAN: For the record, let me verify that there are no
12 other parties here interested in addressing the Board.
13 The record will show that there are none. You may call
14 your next witness.

15 MS. McCLANNAHAN: Gil Gillenwater.

16 COURT REPORTER: (Swears witness.)

17

18 WILLIAM D. GILLENWATER

19 a witness who, after having been duly sworn, was examined and
20 testified as follows:

21

22 DIRECT EXAMINATION

23

24 BY MS. McCLANNAHAN:

25 Q. Gil, would you please state your full name and address

1 for the record?

2 A. William D. Gillenwater, 1564 Old Athens Road, Princeton,
3 West Virginia.

4 Q. Would you identify the exhibit that's marked for identi-
5 fication as Exhibit 4?

6 A. That's my resume.

7 Q. And does that reflect your work history and qualifica-
8 tions?

9 A. Yes.

10 MS. McCLANNAHAN: I move the introduction of Exhibit 4.
11 (Resume marked as Exhibit 4.)

12 Q. (Ms. McClannahan continues.) Have you been qualified as
13 an expert witness before the Gas and Oil Board previous-
14 ly?

15 A. Yes.

16 Q. Where has your experience in obtaining mineral leases
17 been concentrated?

18 A. Coal leasing in oil and gas and coalbed methane leasing.

19 Q. In your experience in obtaining leases in Southwestern
20 Virginia are you familiar with the fair market value for
21 oil and gas leases and coalbed methane gas leases in the
22 BB-29 unit area?

23 A. Yes.

24 Q. What are the fair market value terms for an oil, gas and
25 coalbed methane lease in this area?

1 A. \$5 per acre per year as rentals and a one-eighth produc-
2 tion royalty. That's for oil, gas and coalbed methane.
3 For coalbed methane \$1 per acre per year with a one-
4 eighth production royalty.

5 Q. Do you pay a bonus for these leases other than the delay
6 rental?

7 A. No, we don't.

8 Q. What about coalbed methane leases?

9 A. No.

10 Q. What would be the standard primary term for oil and gas
11 and coalbed methane leases?

12 A. Ten years.

13 Q. With regard to the unleased owner that is listed on the
14 BB-29 unit forced pooling application have you contacted
15 this landowner or tried to contact him to obtain a lease?

16 A. Yes.

17 Q. By what method did you contact him and offer the lease?

18 A. It was verbal in person.

19 Q. Was he willing to sign a lease with your company?

20 A. No, he was not.

21 MS. McCLANNAHAN: Those are all the questions I have for Mr.
22 Gillenwater.

23 MR. CHAIRMAN: Any questions, members of the Board?

24 (Witness stands aside.)

25 MS. McCLANNAHAN: Randy Albert is my next witness.

1 COURT REPORTER: (Swears witness.)

2

3

RANDALL M. ALBERT

4 a witness who, after having been duly sworn, was examined and
5 testified as follows:

6

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DIRECT EXAMINATION

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9

BY MS. McCLANNAHAN:

10 Q. Randy, would you please state your full name and address
11 for the record?

12 A. Randall Mark Albert, 2801 Tallosa Street, Bluefield, West
13 Virginia.

14 Q. Would you identify the exhibit that's marked for iden-
15 tification as Exhibit 5?

16 A. That's my resume.

17 Q. And does that reflect your educational background, work
18 history and qualifications?

19 A. Yes, it does.

20 MS. McCLANNAHAN: I move the introduction of Exhibit 5.

21

(Resume marked as Exhibit 5.)

22 Q. (Ms. McClannahan continues.) Have you been qualified as
23 an expert witness before the Gas and Oil Board previous-
24 ly?

25 A. Yes, I have.

1 Q. Has a drilling permit been previously refused to PGP on
2 any of the tracts that comprise this unit?
3 A. No, it has not.
4 Q. Has a well work permit been issued for the BB-29 unit?
5 A. Yes. The BB-29 permit was issued on 7/1/92. It's permit
6 number 1980.
7 Q. And what type of well was the permit issued?
8 A. Coalbed methane gas well.
9 Q. Have you received any written responses from the owners
10 of the tracts within this unit to the forced pooling
11 application that you filed?
12 A. No, we have not.
13 Q. Does the plat that's attached to the forced pooling
14 application indicate the acreage and the shape of the
15 acreage that's to be embraced within the BB-29 unit as it
16 was established by the Board in the previous orders?
17 A. Yes.
18 Q. Does the plat attached to the forced pooling application
19 indicate the area within which the well will be drilled
20 on the BB-29 unit?
21 A. Yes, it does.
22 Q. Does it also embrace two or more separately owned tracts?
23 A. Yes, it does.
24 Q. Are the costs and expenses for the well set forth on a
25 detailed well estimate that's attached to the forced

1 pooling application as Exhibit H?

2 A. Yes, they are.

3 Q. Do these exhibits reflect the cost of drilling the well
4 to total depth and completed for production costs?

5 A. Yes, they do.

6 Q. How did you calculate the costs that are listed on the
7 DWE?

8 A. Up through the drilling portion of the well there is
9 actual costs for completion and stimulation of the well.
10 It is estimated costs.

11 Q. How do you propose to allocate the costs that are listed
12 on the DWE among the owners that are within the unit?

13 A. Net surface acreage.

14 Q. Are you requesting that PGP be designated as the well
15 operator authorized to operate the BB-29 unit?

16 A. Yes, we are.

17 Q. And also the relieve sought in paragraph 4 of PGP's
18 application in accordance with the Virginia Gas and Oil
19 Act?

20 A. That is correct.

21 MS. McCLANNAHAN: I have no further questions for Mr. Albert
22 or any other witnesses and would move that the Board
23 approve this forced pooling application as it's been
24 filed.

25 MR. MASON: I just want to ask one question. Randy, have you

1 all actually fracked any of these wells yet?

2 THE WITNESS: Yes. We have fracked one well of this type to
3 date.

4 MR. MASON: What was the actual frack cost?

5 THE WITNESS: The actual frack cost on that well was about
6 \$67,000.

7 MR. MASON: Does that include any discounts or rebates with
8 regard to it?

9 THE WITNESS: Well, depending on which vender we use for that
10 work there are some discounts associated with the volume
11 of work. That does include the discount, yes.

12 MR. MASON: Thank you.

13 MR. CHAIRMAN: Any other questions, members of the Board?
14 You're only dealing with one well to be in this unit?

15 THE WITNESS: Yes.

16 MR. CHAIRMAN: Other questions, members of the Board?
17 (Witness stands aside.)

18 MR. MASON: Mr. Chairman, I move the approval of this
19 application.

20 MR. CHAIRMAN: We have a motion for approval.

21 MR. MCGLOTHLIN: Second.

22 MR. CHAIRMAN: A motion and a second. The Chairman needs time
23 to look at something. (Pause.) Any further questions?
24 We have a motion and a second. All in favor signify by
25 saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)

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It's unanimous.

1 ITEM IX

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3 MR. CHAIRMAN: The next item on our agenda is a petition for
4 the forced pooling of a drilling unit under 45.1-361.22
5 from Pocahontas Gas Partnership for CC-28 located in the
6 Oakwood Field unit of the Keene Mountain Quadrangle.
7 This is docket number VGOB-92/10/20-0280. We would ask
8 the parties that wish to address the Board in this matter
9 to come forward at this time.

10 MS. McCLANNAHAN: This is also one well that will be drilled
11 in the CC-28 unit. This unit is also subject to the
12 Oakwood Coalbed Gas Field 1 order and it's also covered
13 the Oakwood Coalbed Gas Field 2 order that have been
14 previously approved by the Board. In this particular
15 unit we're requesting that the Board pool the interests
16 of the parties in that unit. There is a .265 percent
17 interest that is unleased within that unit. The first
18 witness I'd like to call is Mr. Les Arrington.

19

20

21 LESLIE ARRINGTON

22 a witness who, after having been previously sworn, was
23 examined and testified as follows:

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DIRECT EXAMINATION

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BY MS. McCLANNAHAN:

Q. Les, I'll just remind you that you've been previously sworn. Would you please state your full name and address for the record?

A. Leslie K. Arrington, 26 Mountaintop Drive, Princeton, West Virginia.

Q. And is the exhibit that's marked for identification as Exhibit 1 your resume which reflects your educational background, work history and qualifications?

A. Yes, it is.

MS. McCLANNAHAN: Mr. Chairman, I move the introduction of Exhibit 1.

(Resume and Work History marked as Exhibit 1.)

Q. (Ms. McClannahan continues.) Have you been qualified as an expert witness before the Gas and Oil Board previously?

A. Yes.

Q. Have you given notice as required by Virginia Code Section 45.1-361.19 to each person or entity that's identified on Exhibit C of the forced pooling application as a potential owner of the methane gas underlying the unit?

A. Yes, we have.

1 Q. Is the hearing notice that was mailed to each of those
2 parties marked for identification as Exhibit 2?

3 A. Yes, it is.

4 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
5 Exhibit 2.

6 MR. CHAIRMAN: Okay.

7 (Notice of Hearing marked as Exhibit 2.)

8 Q. (Ms. McClannahan continues.) How was this notice of
9 hearing mailed to each of the parties on Exhibit C?

10 A. By certified mail, return receipt requested.

11 Q. Do you have the returned receipts?

12 A. Yes, we do. They're marked as Exhibit 3.

13 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
14 Exhibit 3.

15 MR. CHAIRMAN: Okay.

16 (Copies of Returned Receipts marked as
17 Exhibit 3.)

18 Q. (Ms. McClannahan continues.) Were there any persons
19 whose names and/or addresses were unknown?

20 A. No. However, it was published in the Virginia Moun-
21 taineer on October 1st and the Bluefield Daily Telegraph
22 on September 25th.

23 Q. Were those proofs of publication previously submitted to
24 the Board?

25 A. Yes.

- 1 Q. What percentage of the coal rights in the tracts that
2 comprise the CC-28 unit does Pocahontas Gas Partnership
3 control?
- 4 A. 100 percent of all coal below the Tiller Seam.
- 5 Q. And what percentage of the oil and gas rights in the
6 tracts that comprise this unit does PGP control?
- 7 A. 99.735 percent.
- 8 Q. Have you obtained coalbed methane gas leases on the
9 tracts that are within this unit?
- 10 A. Yes, we have.
- 11 Q. On what percentage of the acreage?
- 12 99.735 percent.
- 13 Q. Is the unleased owner that's listed on Exhibit D of the
14 forced pooling application listed with his percentage of
15 ownership in his respective tract?
- 16 A. Yes.
- 17 Q. Are the conflicting claimants whose funds are to be
18 escrowed listed on Exhibit E?
- 19 A. Yes.
- 20 Q. Are you requesting that the Board pool the interest of
21 the parties listed on Exhibit C of the application?
- 22 A. Yes, we are.
- 23 MS. McCLANAHAN: Those are all the questions I have for Mr.
24 Arrington.
- 25 MR. CHAIRMAN: Any questions, members of the Board?

1 (Witness stands aside.)

2 MR. CHAIRMAN: Okay. You may call your next MS. McCLANNAHAN:
3 Gil Gillenwater.

4
5
6 WILLIAM D. GILLENWATER

7 a witness who, after having been previously sworn, was
8 examined and testified as follows:

9
10 DIRECT EXAMINATION

11
12 BY MS. McCLANNAHAN:

13 Q. Gil, I'll just remind you that you have been previously
14 sworn. Would you please state your full name and address
15 for the record?

16 A. William D. Gillenwater, 1564 Old Athens Road, Princeton,
17 West Virginia.

18 Q. Would you identify the exhibit that's marked for ident-
19 ification as Exhibit 4?

20 A. That's my resume.

21 Q. And does that reflect your work history and qualifica-
22 tions?

23 A. Yes.

24 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
25 Exhibit 4.

1 (Resume marked as Exhibit 4.)

2 Q. (Ms. McClannahan continues.) Have you been qualified as
3 an expert witness before the Gas and Oil Board previous-
4 ly?

5 A. Yes.

6 Q. Where has your experience in obtaining mineral leases
7 been concentrated?

8 A. Coal leasing in oil and gas and coalbed methane leasing.

9 Q. In Virginia?

10 A. Yes.

11 Q. In your experience in obtaining leases in Southwestern
12 Virginia are you familiar with the fair market value for
13 oil and gas leases and coalbed methane gas leases in this
14 unit area?

15 A. Yes, I am.

16 Q. And what are the fair market value terms for an oil, gas
17 and coalbed methane lease in this area?

18 A. \$5 per acre per year rentals and a one-eighth production
19 royalty.

20 Q. No bonus?

21 A. No, ma'am.

22 Q. And for a coalbed methane lease?

23 A. \$1 per acre per year, a one-eighth production royalty.

24 Q. And no bonus?

25 A. No, ma'am.

1 Q. What would be the standard primary term for oil and gas
2 and coalbed methane leases in this area?

3 A. Ten years.

4 Q. With regard to the unleased owner that is listed on the
5 CC-28 unit forced pooling application have you contacted
6 this individual and tried to obtain a lease from him?

7 A. Yes.

8 Q. By what method did you contact him and offer the lease?

9 A. It was verbal in person.

10 Q. And was he willing to sign a lease with your company?

11 A. No.

12 MS. McCLANNAHAN: Those are all the questions I have for Mr.
13 Gillenwater.

14 MR. CHAIRMAN: Any questions, members of the Board?

15 (Witness stands aside.)

16 MS. McCLANNAHAN: The next witness I'd like to call is Randy
17 Albert.

18

19

20

RANDALL M. ALBERT

21

a witness who, after having been previously sworn, was

22

examined and testified as follows:

23

24

25

DIRECT EXAMINATION

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3 BY MS. McCLANNAHAN:

4 Q. Randy, I'll just remind you that you've been previously
5 sworn. Please state your full name and address for the
6 record.

7 A. Randall Mark Albert, 2801 Tallosa Street, Bluefield, West
8 Virginia.

9 Q. Would you identify the exhibit that's marked for identi-
10 fication as Exhibit 5?

11 A. That's my resume.

12 Q. And does that reflect your educational background, work
13 history and qualifications?

14 A. Yes, it does.

15 MS. McCLANNAHAN: I move the introduction of Exhibit 5.

16 (Resume marked as Exhibit 5.)

17 Q. (Ms. McClannahan continues.) Have you been qualified as
18 an expert witness before the Gas and Oil Board previous-
19 ly?

20 A. Yes.

21 Q. Has a drilling permit been previously refused to PGP on
22 any of the tracts that comprise this unit?

23 A. No, it has not.

24 Q. Has a well work permit been issued for this unit?

25 A. Yes. The permit for CC-28 was issued on 7/1/92. It's

1 permit number 1979.

2 Q. And for what type of well was the permit issued?

3 A. Coalbed methane gas well.

4 Q. Have you received any written responses from the owners
5 within this unit to the forced pooling application that
6 you filed?

7 A. No, we have not.

8 Q. Does the plat that's attached to the forced pooling
9 application filed by PGP indicate the acreage and the
10 shape of the acreage to be embraced within this unit as
11 it was established by the Board in it's 3-90 and 19-0162
12 orders?

13 A. Yes, it does.

14 Q. Does the plat attached to the forced pooling application
15 filed by PGP indicate the area within which the well will
16 be drilled?

17 A. Yes, it does.

18 Q. Does it also embrace two or more separately owned tracts?

19 A. Yes, it does.

20 Q. Are the costs and expenses for the well that's to be
21 drilled within this unit listed on the DWE attached to
22 the forced pooling application as Exhibit H?

23 A. That's correct.

24 Q. Do these exhibits reflect the cost of drilling the well
25 to total depth and completed for production costs?

1 A. Yes, it does.

2 Q. How did you calculate the costs that are listed in the
3 DWE?

4 A. Again, the well is drilled. So as far as the drilling
5 costs go those are actual costs. For the completion and
6 stimulation estimated costs.

7 Q. How do you propose to allocate the costs that are listed
8 on the DWE among the owners that are in the unit?

9 A. Net surface acreage.

10 Q. Are you requesting that PGP be designated as the well
11 operator?

12 A. Yes, we are.

13 Q. Are you also requesting the relief sought in paragraph 4
14 of PGP's application in accordance with the Virginia Gas
15 and Oil Act?

16 A. Yes, we are.

17 MS. McCLANNAHAN: Those are all the questions I have for Mr.
18 Albert.

19 MR. CHAIRMAN: Any questions, members of the Board?

20 MR. MCGLOTHLIN: Between the last well, your DWE and this
21 well, there's 240 depth differential and a \$50,000
22 differential in your costs -- your DWE. Could you
23 explain that, please?

24 THE WITNESS: Sure. Primarily in two areas. If you'll notice
25 this well required 400 foot more of coal protection

1 string than the previous well did due to the depth of the
2 Tiller Seam in this location and approximately one mile
3 more of high voltage power line to be constructed. Those
4 are the two areas that are principally different in the
5 cost beside the inherent difference in about the 300 foot
6 of depth.

7 MR. MCGLOTHLIN: Thank you.

8 MR. CHAIRMAN: Other questions, members of the Board?

9 MR. MASON: In view of this -- is it \$85,000? Is it \$65,000
10 or \$85,000?

11 THE WITNESS: \$65,000.

12 MR. MASON: For the power. Is that your best judgement as
13 the way to -- you can't use any other lifting systems or
14 pumping systems other than electric in something like
15 that?

16 THE WITNESS: We are evaluating that, Mr. Mason, and if it
17 should be determined that we go another route then
18 naturally our well estimate would be reduced by that
19 amount. But right now our best economics tell us that
20 for the long run, for a 20 year life, that electricity
21 would be in our best interest. Not only do we have the
22 lift system, this particular well will possibly require a
23 well head compression as well. Our investment has been
24 in electric driven machinery rather than gas fired
25 machinery.

1 MR. MASON: So you all have made an evaluation or are doing
2 that now?

3 THE WITNESS: In the process of that, that's correct.

4 MR. MASON: Thank you.

5 MR. CHAIRMAN: What I was looking at earlier and now I'll
6 bring it up. It's probably -- it could have happened
7 with the making of these copies with the exhibits. I'll
8 be specific. The Exhibit A is reversed for Item VIII and
9 IX, BB-29 and CC-28, that could have happened as our
10 office made copies. I don't know.

11 MR. MASON: The one that shows the unit?

12 MR. CHAIRMAN: Yes.

13 (AFTER A BRIEF DISCUSSION OFF THE RECORD, THE HEARING
14 CONTINUED AS FOLLOWS:)

15 MR. CHAIRMAN: Any other questions?

16 (Witness stands aside.)

17 MR. MASON: Mr. Chairman, I move the approval of the
18 application.

19 MR. KELLY: Second.

20 MR. CHAIRMAN: A motion and a second. Any further
21 discussion? If not, all in favor signify by saying yes.
22 (ALL AFFIRM.) Opposed say no. (NONE.) It's unanimous.
23 That concludes the agenda today.

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(End of Proceedings for
October 20, 1992.)

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CERTIFICATE

COMMONWEALTH OF VIRGINIA
COUNTY OF WASHINGTON

I, Cleadys D. Griffin, Notary Public in and for the Commonwealth of Virginia, at Large, do hereby certify that the foregoing proceedings of the Virginia Gas and Oil Board meeting held on October 20, 1992 in the Board of Supervisors Room, Courthouse, Grundy, Abingdon, Virginia, were taken by me and that the foregoing is a true and correct transcript of the proceedings had as aforesaid to the best of my ability.

I further certify that I am not a relative, counsel, or attorney for either party, or otherwise interested in the outcome of this action.

GIVEN under my hand this 4th day of November, 1992.


CLEADYS D. GRIFFIN
NOTARY PUBLIC

My commission expires March 19, 1993.